



## CITY COUNCIL SPECIAL AND REGULAR MEETING AGENDA JULY 2, 2024

**SPECIAL MEETING: 6:00 P.M. – 7:00 P.M**  
**REGULAR MEETING: 7:00 P.M.**

**WE ENCOURAGE ALL MEMBERS OF THE PUBLIC TO PARTICIPATE IN THE MEETING VIA TELECONFERENCE BY CALLING (520) 525-8911. ANY MEMBER OF THE PUBLIC PARTICIPATING VIA TELECONFERENCE WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT.**

**ADDITIONALLY, THE REGULAR MEETING WILL BE STREAMED ON YOUTUBE LIVE**  
[https://www.youtube.com/channel/UCB\\_ZmQZIHlH-ECEPZ2VwZg](https://www.youtube.com/channel/UCB_ZmQZIHlH-ECEPZ2VwZg)

Notice is hereby given that the City Council will hold a Special and Regular Meeting on July 2, 2024, at the City Council Chambers, 663 Main Street, Livingston, California. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the Deputy City Clerk at least 24 hours prior to this meeting at (209) 394-8041, Ext. 121. Any writings or documents pertaining to an Open Session item provided to a majority of the members of the legislative body less than 72 hours prior to the meeting shall be made available for public inspection by email if requested. Public comments can be submitted via email at [citycouncil@livingstoncity.com](mailto:citycouncil@livingstoncity.com). Comments must be received by 2:00 p.m. on the day of the City Council meeting in order for them to be distributed to the Council prior to consideration of the matter. You will need to provide: Meeting date, item number, name, email and comment (please limit to 300 words or 3 minutes). Please include: PUBLIC COMMENT in the subject for the email. Written comments will not be read aloud at the meeting, but will be reported as received for the record. If you do not receive an acknowledgement of receipt by 4:00 p.m., please call the City Clerk's Office at (209) 394-8041, Ext. 121 (Note: This technology is not a guaranteed method).

## SPECIAL MEETING

1. Call to Order
2. Roll Call
3. Pledge of Allegiance.
4. Moment of Silence – First Responders and Military Members.
5. Citizen Comments

### **CLOSED SESSION**

*A “Closed” or “Executive” Session of the City Council or the Successor Agency to the Redevelopment Agency of the City of Livingston may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators, conference with legal counsel regarding pending litigation. The Closed Session will be held in the City Council Chambers located at 663 Main Street, Livingston, California. **Any public comment on Closed Session items will be taken before the Closed Session.** Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 633 Main Street, Livingston, California.*

6. Conference with Labor Negotiator  
(Government Code Section 54957.6)  
Labor Negotiator: Christopher Lopez, Interim City Manager  
Employee Organizations:  
OE3- Clerical Bargaining Unit  
OE3 - Police Supervisory Employees Association.  
OE3 - Management/Confidential Bargaining Unit  
OE3 - Livingston Police Officer Association  
AFSCME- Public Works and Park Unit
7. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
(Gov. Code section 54956.9) Name of Case: Animal Legal Defense Fund v. Foster Poultry Farms, Merced County Superior Court Case No. 20CV-02493
8. Conference with Legal Counsel – Pending Litigation  
Paragraph (2) of subdivision (d) of Section 54956.9 of the Government Code  
Number of Cases: One Matter  
Name of Case: NEW NATIONAL OPIOID SETTLEMENT NOTICE - Kroger Co. –  
RefNum CL-789627

# REGULAR MEETING

## CALL TO ORDER

Next Resolution No.: 2024-40  
Next Ordinance No.: 656

Pledge of Allegiance.

Moment of Silence – First Responders and Military Members.

Roll Call.

Closed Session Announcement.

Changes to the Agenda.

## CITIZEN COMMENTS

*This section of the agenda allows members of the public to address the City Council on any item NOT on the agenda. Members of the public, when recognized by the Mayor, should come forward to the lectern, and identify themselves. Comments are normally limited to three (3) minutes. In accordance with State Open Meeting Laws, no action will be taken by the City Council this evening.*

## ANNOUNCEMENTS AND REPORTS

Supervisor Rodrigo Espinoza Announcements and Reports.

City Staff Announcements and Reports.

City Manager Announcements and Reports.

City Council Members' Announcements and Reports.

Mayor's Announcements and Reports.

### Robert Wallis

- City Council Alternate Liaison - Parks, Recreation and Arts Commission – **Vacant**
- Merced Integrated Regional Water Management Plan (MIRWMA) – **Vacant, Representative and Jason Roth, Alternate Representative.**
- Central Valley Division League of California Cities – **Maria Soto, Representative and Vacant, Alternate.**

### Jason Roth

- City Council Liaison - Livingston Planning Commission – **Jason Roth**
- Special City Selection Committee of the San Joaquin Valley Air Pollution Control Board – **Jason Roth, Representative and Gurpal Samra, Alternative.**
- Merced Integrated Regional Water Management Plan (MIRWMA) – **Vacant, Representative and Jason Roth, Alternate Representative.**

**Maria Soto**

- Merced County Local Agency Formation Commission (LAFCO) – **Maria Soto, Representative.**
- Central Valley Division League of California Cities – **Maria Soto, Representative and Jason Roth, Alternate.**

**Gurpal Samra**

- Merced County Mosquito Abatement District Board of Directors – **Gurpal Samra, Representative and Jason Roth, Alternate.**

**Jose Moran**

- Merced County Association of Governments (MCAG) Governing Board – **Jose Moran, Representative and Gurpal Samra, Alternate.**
- City Council Liaison - Parks, Recreation and Arts Commission – **Jose Moran.**
- Utility Stakeholders Committee – **Jose Moran and Gurpal Samra.**

**CONSENT AGENDA**

*Items on the Consent Calendar are considered routine or non-controversial and will be enacted by one vote, unless separate action is requested by a member of the public, the City Manager or City Council Member. There will be no separate discussion of these items unless members of the public, City Council or City Manager request that specific items be removed. Public comment on consent agenda items shall be limited to three (3) minutes per-person regardless of the number of items contained within the consent agenda.*

1. City Treasurer’s Investment Report for the Month Ending May 30, 2024.
2. Consideration of a Resolution Accepting the Grand Deed for the Street Right of Way and Public Utility Easement Dedicated by Amba National Limited Company for APN 023-060-001 and Authorize the Interim City Manager to Execute a Certificate of Acceptance for Recording of the Grant Deed. Staff Recommendation: Approve Resolution.
3. Consideration of a Resolution Accepting BID and Award a Contract to TBS Contractors for the East Avenue Pump Station Project and Authorizing the Interim City Manager to Execute the Agreement. Staff Recommendation: Approve Resolution.
4. Consideration of a Resolution Authorizing Approval of Purchase of One (1) New Utility Tractor and Loader (2022 John Deere 5075E Utility Tractor and John Deere 520M Loader) from BELKORP AG, LLC, in the Amount of \$48,940.79 and Authorizing the Interim City Manager to Execute all Required Documents. Staff Recommendation: Approve Resolution.

**DISCUSSION AND POTENTIAL ACTION ITEMS**

5. Consideration of Resolution Submitting Questions at the General Election Regarding the Changing of the Positions of City Clerk and City Treasure from Elective to Appointive Positions and Requesting County to Add it to the Ballot at the Consolidated Statewide Election; Receive Direction from the Council on Council Argument In Favor Of. Staff Recommendation: Approve Resolution and Give Direction on Council Argument In Favor Of.



6. Consideration of a Resolution Submitting to the Voters at the General Municipal Election to be Consolidated with the Statewide General Election Held on Tuesday, November 5, 2024, A Measure to Change the Term of the Mayor to Four Years and Limit Consecutive Terms of Councilmembers to Two Terms; Receive Direction from Council on Council Argument In Favor Of. Staff Recommendation: Approve Resolution and Give Direction on Council Argument In Favor Of.

**COUNCIL DIRECTION ON FUTURE AGENDA ITEMS**

**ADJOURNMENT**



## ELECTED OFFICIAL'S REPORT

**AGENDA ITEM:** Treasurer's Report: May 2024  
**MEETING DATE:** July 02, 2024  
**PREPARED BY:** Katherine Schell Rodriguez – Elected City Treasurer

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### **RECOMMENDATION:**

Receive and File Treasurer's Report for the month ending May 31, 2024.

### **BACKGROUND:**

The Treasurer's Report is required to be presented to the governing body.

### **DISCUSSION:**

Total Cash and City Investments including cash in the bank, and cash in the Local Agency Investment Fund is \$43,500,315.93 and represents a 3.18% increase from the previous month.

The attached Treasurer's report is a "snapshot" report of our cash position on the last day of the month in all our accounts per Bank Statements.

### **FISCAL IMPACT:**

None.

### **ATTACHMENTS:**

May 31, 2024, Treasurer's Report with signature



# TREASURER'S REPORT

Bank Statement Period Ending **May 31, 2024**  
 Report Date **June 23, 2024**  
 Meeting Date **July 02, 2024**

The following cash and investment information pertains to the period ending per Bank Statements

Institution	Acct#	Investment Type	Average Monthly Yield %	Balance MAY
State of California LAIF (Local Agency Investment Fund)	xx-xx-463	Pooled	4.332%	40,711,669.66
<b>Non Interest Bearing Items</b>				
Farmers & Merchants Bank	xxxxxx5801	Operating Account	N/A	2,785,226.77
Farmers & Merchants Bank	xxxxxx6601	Payroll Account	N/A	3,419.50
Farmers & Merchants Bank	xxxxxx8201	Web Payments Account	N/A	0.00
<b>Subtotal F&amp;M Bank</b>			<b>Subtotal</b>	<b>2,788,646.27</b>
<b>Total Cash &amp; Investments</b>			<b>Totals</b>	<b>43,500,315.93</b>

- Notes
- 1) There are currently no Investments, In an Institution, with a Maturity Date, and/or a Maturity Date of 12 Months or More. The City's Portfolio consists of Non Interest Bearing Items in F&M Bank, and funds deposited with the State Local Investment Agency (LAIF)
  - 2) Percentage Yield Rate from the LAIF Website "PMIA Average Monthly Yield"
  - 3) The Average Daily Balance in F & M Bank for the month was \$2,205,990.93 per statements

Prepared By:

*Katherine Schell-Rodriguez*  
 \_\_\_\_\_  
**Katherine Schell-Rodriguez City Treasurer**



## STAFF REPORT

**AGENDA ITEM:** Resolution of the City Council of the City of Livingston Accepting the Grant Deed for the Street Right of Way and Public Utility Easement Dedicated by Amba National Limited Liability Company for APN 023-060-001 and Authorize the Interim City Manager to Execute a Certificate of Acceptance for Recording of the Grant Deed

**MEETING DATE:** July 2, 2024

**PREPARED BY:** Noe Martinez, PE, Gouveia Engineering Inc.

**Approved By:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 2024-\_\_\_\_\_, accepting the Grant Deed for the Street Right of Way and Public Utility Easement dedications from Amba National Limited Liability Company for APN 023-060-001 and authorize the Interim City Manager to execute a Certificate of Acceptance for recording of the Grant Deed.

### **BACKGROUND AND DISCUSSION:**

On September 17, 2019, the City Council of the City of Livingston approved Site Plan/Design Review 2018-03 for the construction of an Arco AM/PM Gas Service Station at the southwest corner of the Campbell and Hammatt intersection (APN 023-060-001). The construction work for the project is substantially completed and the Applicant is currently working on punch list items.

The Conditions of Approval for this project required the dedication of street Right of Way (ROW) pursuant to Arterial standards and a 10' Public Utility Easement (PUE) along the property street frontage of Campbell Boulevard. The ROW and PUE dedications should be filed with the County Recorder's office prior to the issuance of a permanent certificate of occupancy for this project.

The project owner, Amritpaul Singh, has prepared the attached Grant Deed for the dedications of said right of way and public utility easement. City staff has reviewed the Grant Deed and recommends that the City Council accept the ROW and PUE for said property for recording.

The resolution also authorizes the Interim City Manager to execute the attached Certificate of Acceptance for recording of the Grant Deed.

### **FISCAL IMPACT**

There would be no fiscal impact for this item.

### **ATTACHMENTS:**

1. Resolution
2. Grant Deed for Right of Way and Public Utility Easement Dedications
3. Certificate of Acceptance



**RESOLUTION NO. 2024-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON ACCEPTING THE GRAND DEED FOR THE STREET RIGHT OF WAY AND PUBLIC UTILITY EASEMENT DEDICATED BY AMBA NATIONAL LIMITED LIABILITY COMPANY FOR APN 023-060-001 AND AUTHORIZE THE INTERIM CITY MANAGER TO EXECUTE A CERTIFICATE OF ACCEPTANCE FOR RECORDING OF THE GRANT DEED**

**WHEREAS**, the City Council of the City of Livingston approved the Site Plan/Design Review 2018-03 on September 17, 2019, for the development of an Arco AM/PM Gas Service Station by Amba National Limited Liability Company; and

**WHEREAS**, the subject property is located at the southwest corner of the Campbell and Hammatt intersection on APN 023-060-001; and

**WHEREAS**, the construction work for the project is substantially completed and the Applicant is currently working on punch list items; and

**WHEREAS**, the Conditions of Approval for this project required the dedication of street right of way pursuant to Arterial Standards and a 10' Public Utility Easement to the City of Livingston along the property street frontage of Campbell Boulevard; and

**WHEREAS**, the City has obtained a completed Grant Deed for the dedications for street right of way and public utility easement from the property owner, Amritpaul Singh; and

**WHEREAS**, the City desires to accept the Grant Deed for street right of way and public utility easement dedications from said property owner and record the dedications prior to the issuance of a permanent certificate of occupancy for this project; and

**WHEREAS**, the City Council delegates authority to the Interim City Manager to execute a Certificate of Acceptance for the recording of said Grant Deed.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Livingston as follows:

Section 1. The above recitals are true and correct and are incorporated herein by reference.

Section 2. The Grand Deed for street right of way and public utility easement prepared by Amritpaul Singh is hereby accepted.

Section 3. The Interim City Manager is hereby directed and authorized to execute the Certificate of Acceptance.

Section 4. This resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_ is a full, true and correct copy of a resolution duly passed and adopted by City Council of the City of Livingston at a regular meeting thereof duly held on 2<sup>nd</sup> day of July 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
of the City of Livingston

ATTEST:

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk  
of the City of Livingston

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Roy C. Santos, City Attorney

Recording requested by City of Livingston  
When recorded return to:  
City of Livingston  
City Clerks Office  
1416 C Street  
Livingston, CA 95334

Exempt from recording fee per  
Government Code § 6103 and 27383

Documentary Transfer Tax Exempt per  
Rev. & Tax Code Section 11922

A.P.N.:023-060-001

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged,

AMBA NATIONAL LIMITED LIABILITY COMPANY, a California Limited Liability Company

hereby GRANT (S) to

**The City of Livingston, a political subdivision of the State of California, organized and existing under and by virtue of the laws of the State of California, State of California, in fee simple for public roadway, utilities and related improvement purposes described as:**

the real property in the City of Livingston, County of Merced, State of California

See EXHIBIT "A" and shown on EXHIBIT "B" attached hereto and by reference made a part.

**GRANTOR:**

AMBA NATIONAL LIMITED LIABILITY COMPANY, a California Limited Liability Company

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name:

OWNERS ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_\_\_, before me, \_\_\_\_\_, a Notary Public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said State

(SEAL)





**EXHIBIT "A"**  
**RIGHT OF WAY DEDICATION**

All that certain real property situate in the City of Livingston, County of Merced, State of California being a portion of Parcel 3 as said Parcel is shown on the Map entitled Parcel Map for Yagi Ranch 1, LLC filed for Record May 29<sup>th</sup>, 2018 in Book 116 of Parcel Maps, at Pages 21-23, Merced County being more particularly described as follows:

Beginning at the Northwest corner of said Parcel 3 thence North 80°23'34" East along the Northerly line of said Parcel coincident with the Southerly line of Campbell Drive, 103.01 feet; thence North 85°31'08" East continuing along said line, 129.20 feet; thence South 78°58'51" East continuing along said line, 48.16 feet to a point of cusp of a non-tangent curve concave Southerly having a radius of 995.00 feet, a line to the radius point bears South 1°24'51" West; thence Westerly leaving said line and along said curve through a central angle of 11°33'59", an arc length of 200.86 feet; thence along a line tangent to said curve, South 79°50'52" West, 79.11 feet to a point on the Westerly line of said Parcel, said point bears South 00°53'08" West, 11.14 feet from the Point of Beginning; thence North 00°53'08" East, along said Westerly line, 11.14 feet to the POINT OF BEGINNING.

containing 2,368 square feet, more or less

**End of Legal Description**



**EXHIBIT "A" (CONTINUED)  
10' WIDE PUBLIC UTILITY EASEMENT DEDICATION**

All that certain real property situate in the City of Livingston, County of Merced, State of California being a portion of Parcel 3 as said Parcel is shown on the Map entitled Parcel Map for Yagi Ranch 1, LLC filed for Record May 29<sup>th</sup>, 2018 in Book 116 of Parcel Maps, at Pages 21-23, Merced County being more particularly described as follows:

Beginning at a point on the Westerly line of said Parcel that bears South 00°53'08" West, 11.14 feet from the Northwest corner of said Parcel; thence North 79°50'52" East, 79.11 feet to the beginning of a tangent curve to the right having a radius of 995.00 feet; thence along said curve through a central angle of 11°33'59", an arc length of 200.86 feet to a point on the Northerly line of said Parcel coincident with the Southerly line of Campbell Drive; thence along said line South 78°58'51" East, 143.87 feet to the Northeast corner of said Parcel; thence South 17°14'30" West, 10.06 feet to a point parallel with and 10 feet Southerly from said Southerly line; thence North 78°58'51" West, 141.94 feet to the beginning of a non-tangent curve concave Southerly having a radius of 985.00 feet, a line to the radius point bears South 1°21'55" West; thence along curve through a central angle of 11°31'03", an arc length of 198.00 feet; thence along a line tangent to said curve, South 79°50'52" West, 81.06 feet to a point on the Westerly line of said Parcel, said point bears South 00°53'08" West, 10.19 feet from the Point of Beginning; thence North 00°53'08" East, along said Westerly line, 10.19 feet to the POINT OF BEGINNING.

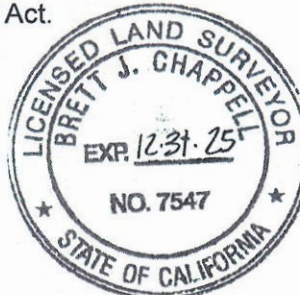
containing 4,224 square feet, more or less

**End of Legal Description**

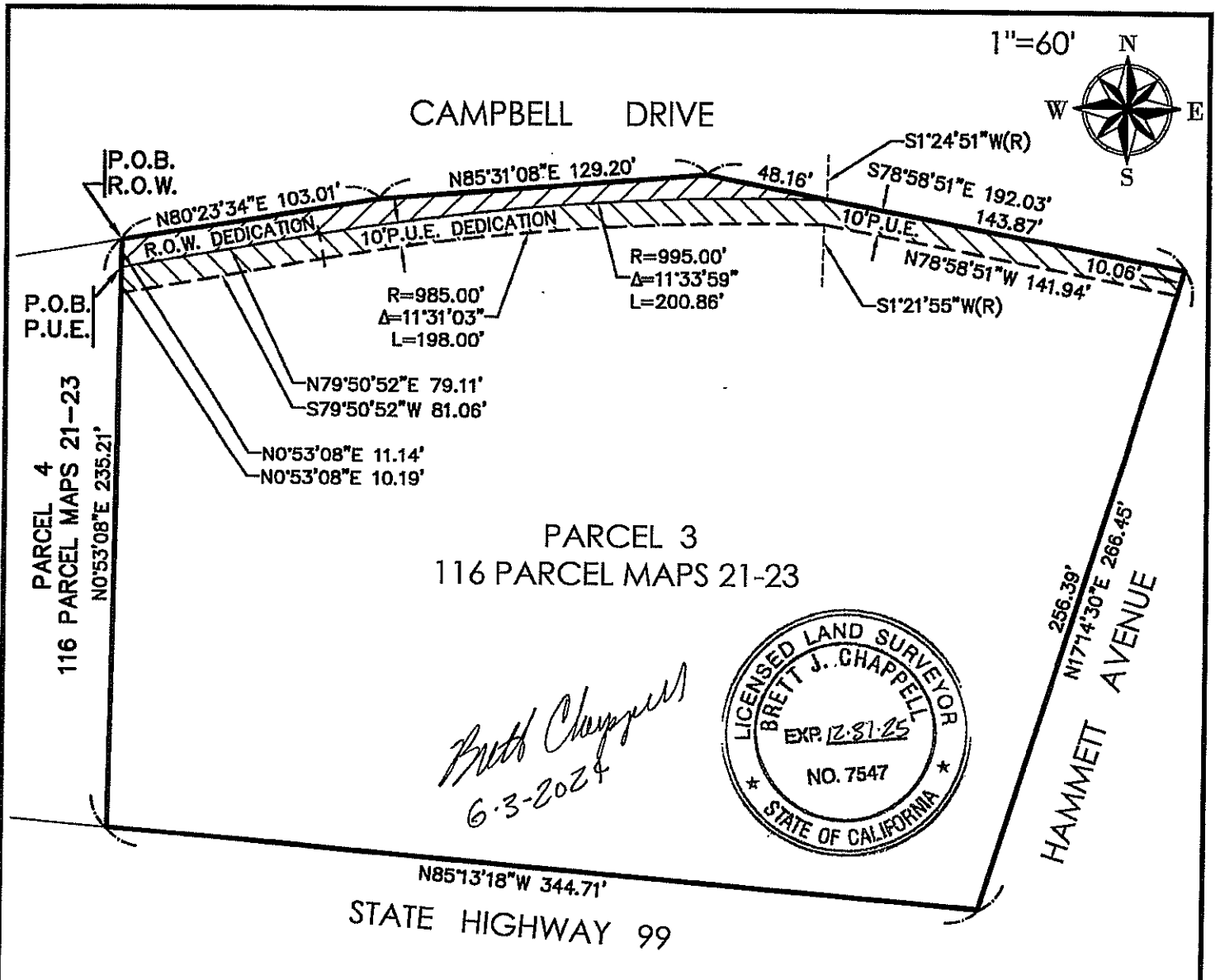
See Exhibit "B" attached hereto and by reference made a part hereof.

This real property description has been prepared by me or under my direction in conformance with the Professional Land Surveyors' Act.

  
Brett J. Chappell, PLS 7547



6-3-2024  
Date



**LEGEND**

BOUNDARY LINE

DESCRIBED RIGHT OF WAY DEDICATION



DESCRIBED PUBLIC UTILITY EASEMENT DEDICATION



**ABBREVIATIONS**

- P.O.B. POINT OF BEGINNING
- (R) RADIAL LINE
- P.U.E. PUBLIC UTILITY EASEMENT
- R.O.W. RIGHT OF WAY

SHEET	1 OF 1
SCALE:	1"=60'
DATE:	6/3/2024
PREPARED BY:	BJC
Job. No.:	2022081

**EXHIBIT "B"**  
**PLAT MAP**  
**R.O.W. & P.U.E. DEDICATION**  
 CITY OF LIVINGSTON

COUNTY OF MERCED STATE OF CALIFORNIA



**CHAPPELL**  
**GEOMATICS, INC.**  
 147 N 1st Avenue  
 OAKDALE, CA, 95361  
 PHONE: (209) 845 9694  
 WWW.CHAPGEO.COM

**CERTIFICATE OF ACCEPTANCE**  
**(Government Code § 27281)**

This is to certify that the interest in real property, as shown on Exhibit "A" attached hereto, conveyed by the Right of Way and Public Utility Easement Grant Deed dated \_\_\_\_\_, 2024, from Amba National Limited Liability Company, to the CITY OF LIVINGSTON, is hereby accepted by order of the Livingston City Council, by adoption of Resolution No. 2024-\_\_\_\_, on July 2, 2024. The City of Livingston hereby consents to recordation thereof by its duly authorized officer.

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Christopher Lopez, Interim City Manager





# STAFF REPORT

**AGENDA ITEM:** Resolution of the City Council of the City of Livingston to accept Bid and Award a Contract to TBS Contractors for the East Avenue Pump Station Project and authorizing the Interim City Manager to execute the Agreement.

**MEETING DATE:** July 2, 2024

**PREPARED BY:** Mario Gouveia, City Engineer

**REVIEWED BY:** Christopher Lopez, Interim City Manager

## **RECOMMENDATION:**

Staff recommends that the City Council adopt Resolution No. 2024-\_\_\_\_, accepting the low bid from TBS Contractors in the amount of \$160,196.00 and authorize the Interim City Manager to execute the Agreement.

## **BACKGROUND:**

As part of the City’s 1-year Capital Improvement Program, the City Council approved the rehabilitation of the East Avenue Pump Station. The City determined the need to replace an existing aging storm drain pump in order to improve system reliability during storm events and reduce the potential for local flooding to occur. The project will also include connections for portable generators to be utilized for operating the pump during power outages. The major work consists of removing the existing storm drain pump and equipment, furnishing and installing a new submersible storm drain pump, discharge piping, appurtenances, and electrical upgrades to the East Avenue Pump Station.

## **DISCUSSION:**

Following a public bidding process, the project was advertised in the Merced Sun Star on May 21, 2024, May 28, 2024, and June 4, 2024. The City received a total of three (3) bids that were opened and read aloud at 2:30 p.m. on June 11, 2024, at the City of Livingston City Hall, this being the advertised bid opening date and time. The lowest responsible and responsive bid was submitted by TBS Contractors. The bid results were as listed below:

TBS Contractors	\$ 160,196.00
Howk Systems	\$ 230,444.00
Rolfe Construction, Inc.	\$ 259,557.00
Engineer’s Estimate	\$ 270,000.00

It is recommended that a Contract be awarded to TBS Contractors in the amount of one hundred sixty thousand one hundred ninety-six dollars and zero cents (\$160,196.00).

**FISCAL IMPACT:**

The funding for this project was approved for Fiscal Year 2024/2025 Budget. The East Avenue Pump Station Project will be funded using Sewer Capital Funds.

**ATTACHMENTS:**

1. Resolution
2. Abstract of Bids
3. Agreement
4. Contractor's Bid

**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON TO ACCEPT BID AND AWARD A CONTRACT TO TBS CONTRACTORS FOR THE EAST AVENUE PUMP STATION PROJECT AND AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE THE AGREEMENT**

**WHEREAS**, the City of Livingston has identified the need to rehabilitate the East Avenue Pump Station; and

**WHEREAS**, the Invitation to Bid for the East Avenue Pump Station Project was advertised in the Merced Sun Star on May 21, 2024; and

**WHEREAS**, a total of three (3) bids were received and read aloud at 2:30 p.m. on June 11, 2024 at the City of Livingston City Hall, this being the advertised bid opening date and time. The bid results were as listed below:

TBS Contractors	\$ 160,196.00
Howk Systems	\$ 230,444.00
Rolfe Construction, Inc.	\$ 259,557.00
Engineer's Estimate	\$ 270,000.00

**WHEREAS**, the bids have been reviewed and TBS Contractors submitted the lowest responsive and responsible bid.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Livingston hereby:

Section 1. Adopt a Resolution to award a contract to TBS Contractors in the amount of one hundred sixty thousand one hundred ninety-six dollars and zero cents (\$160,196.00).

Section 2. Authorize the Interim City Manager to execute an agreement with TBS Contractors on behalf of the City of Livingston.

Section 3. This Resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 2<sup>nd</sup> day of July 2024, by the vote recorded as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
of City of Livingston

ATTEST

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Roy C. Santos, City Attorney



**ABSTRACT OF BIDS FOR  
CITY OF LIVINGSTON  
East Avenue Pump Station  
Bid Opening: June 11, 2024 at 2:30 p.m.**

Item No.	Item Description	Quantity and Unit		<i>Engineer's Estimate</i>		TBS Contractors 1605 E. Gerard Avenue Merced, CA 95341		Howk Systems 1825 Yosemite Blvd. Modesto, CA 95354		Rolfe Construction, Inc. 3573 Southern Pacific Ave. Atwater, CA 95301	
				Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
1	Mobilization, Demobilization, Bonds and Insurance	1	LS	10,000.00	10,000.00	6,250.00	6,250.00	9,188.00	9,188.00	10,000.00	10,000.00
2	Demolition	1	LS	10,000.00	10,000.00	4,716.00	4,716.00	36,576.00	36,576.00	33,000.00	33,000.00
3	Construct Pump Station Improvements	1	LS	235,000.00	235,000.00	139,230.00	139,230.00	152,722.00	152,722.00	190,557.00	190,557.00
4	Construct Fence Improvements	1	LS	15,000.00	15,000.00	10,000.00	10,000.00	31,958.00	31,958.00	26,000.00	26,000.00
<b>BID TOTAL</b>					<b>\$270,000.00</b>		<b>\$160,196.00</b>		<b>\$230,444.00</b>		<b>\$259,557.00</b>

*Subcontractors Listed:* American Elite Electric      None      American Elite Electric  
Merced Fence      Stockton Fence & Material

**Project Name/No.:** East Avenue Pump Station

**Contract No.:** 635.04-2024

**Project Manager:** Christopher Lopez, Interim City Manager

**Approved:** \_\_\_\_\_

**PUBLIC WORKS AGREEMENT  
BETWEEN CITY OF LIVINGSTON AND  
TBS CONTRACTORS**

THIS PUBLIC WORKS AGREEMENT (“**Agreement**”) is made and entered into this 12<sup>th</sup> day of JULY, 2024 by and between the CITY OF LIVINGSTON, a municipal corporation, (“**City**”) and TBS CONTRACTORS, a corporation (“**Contractor**”). City and Contractor may be referred to, sometimes individually or collectively, as “**Party**” or “**Parties.**”

**RECITALS**

A. The City desires to retain Contractor, on an independent contractor basis, to perform services for public works, as more particularly described below.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the authority of the City of Livingston Municipal Code and California state law, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**ARTICLE 1. CONTRACTOR SERVICES**

**1.1 Scope of Work.**

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the Bid Documents for the project entitled East Avenue Pump Station (“**Project**”). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, “**Bid Documents**” refers to all of the documents included in the solicitation of bids for the Project to the extent applicable or appropriate (it being understood that one or more of such documents may not be applicable in the event a competitive bidding process is not utilized due to existence of emergency or exigent circumstances), including but not limited to, the Notice Inviting Bids, Summary of Work, Instructions to Bidders, Bid or Bid Proposal, General Provisions, Special Provisions, Plans, Drawings, and Addenda, and any other documents included, referenced, or

incorporated therein. The Bid Documents are incorporated into this Agreement. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

## **1.2 Incorporation of Greenbook.**

The provisions 2018 Edition of the Standard Specifications for Public Works Construction, as updated by errata, (“Greenbook”) are incorporated herein, except as explicitly modified by the Bid Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Labor and Wage Laws.**

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“**DIR**”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on with the City at 1416 C Street, Livingston, CA 95334 and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state for federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

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

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.4 Licenses, Permits, Fees and Assessments.**

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.5 Familiarity with Work.**

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed; (ii) has carefully considered how the services should be performed; and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

#### **1.6 Discovery of Unknown Conditions.**

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

### **1.7 Unidentified Utilities.**

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Agreement is subject to Government Code sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

### **1.8 Trench Excavation.**

Pursuant to Labor Code section 6705, if this Agreement is for more than \$25,000.00 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

### **1.9 Protection and Care of Work and Materials.**

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

### **1.10 Warranty.**

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming

materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **1.11 Additional Work and Change Orders.**

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Project Manager to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All Change Orders must be signed by the Contractor and Project Manager prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000.00, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Project Manager. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Project Manager. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.12 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements," attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in Contractor's Bid, attached hereto as Exhibit A and incorporated herein by this



reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation of ONE HUNDRED SIXTY THOUSAND ONE HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$160,196.00) for completion of the work.

## **2.2 Invoices.**

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

## **2.3 Payment.**

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

## **2.4 Retention.**

Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

## **2.5 Substitution of Securities.**

(a) In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 3.3 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

### **ARTICLE 3. PERFORMANCE SCHEDULE**

#### **3.1 Schedule of Performance.**

Contractor shall begin work within thirty (30) calendar days after receiving a Notice to Proceed from the City and the work shall be completed within THIRTY (30) consecutive working days from the date on which the work was started and in accordance with any schedule contained in or required to be provided by the Bid Documents, and any revisions thereof approved by the City in writing. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply.

#### **3.2 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Five Hundred Dollars (\$500.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold any accrued liquidated damages from any monies payable on account of services performed by the Contractor. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the City or owner of the utility to provide for removal or relocation of utility facilities.

#### **3.3 Inspection and Final Acceptance.**

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. If City finds that Contractor's work does not meet the requirements and standards provided in the Bid Document, Contractor shall remedy any defects in the work at Contractor's sole expense following notice by the City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such

gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

#### **ARTICLE 4. COORDINATION OF WORK**

##### **4.1 Representatives and Personnel of Contractor.**

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Andrew Taylor	Vice President
_____ (Name)	_____ (Title)
Janet Taylor	President
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

##### **4.2 Status of Contractor.**

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

##### **4.3 Project Manager.**

The Project Manager shall be Christopher Lopez, Interim City Manager or any other person as may be designated by the Project Manager. It shall be the Contractor's responsibility to assure

that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City General Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### **5.1 Insurance Coverages.**

Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in

an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(d) Builder's Risk Insurance. Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area.

(e) Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000.00 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

## 5.2 General Insurance Requirements.

- (a) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.
- (b) Proof of Insurance. Contractor shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.
- (c) Duration of Coverage. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors.
- (d) Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.
- (e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.
- (f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.
- (g) Enforcement of Contract Provisions (non-estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.
- (h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other

requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

(o) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance

under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

(r) Endorsements.

### **5.3 Indemnification.**

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

### **5.4 Notification of Third-Party Claims.**

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.



## **5.5 Performance, Labor, and Warranty Bonds.**

Concurrently with execution of this Agreement, Contractor shall deliver to the City the following bonds:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(b) A labor and materials bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(c) A warranty bond, guaranteeing the Contractor's warranty under Section 1.9 of this Agreement, in an amount not less than 20% of the total compensation for this Agreement, as stated in Section 2.1.

All bonds shall be on a form approved by the City Clerk. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement.

## **5.6 Sufficiency of Insurer or Surety.**

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds required in Section 5.5 may be changed accordingly upon receipt of written notice from the City.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given

to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

## **6.2 Reports.**

Contractor shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Agreement as the Project Manager shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

## **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

## **6.4 Confidentiality and Release of Information.**

(a) Information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions,

response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Merced, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in the County of Merced, State of California.

### **7.2 Termination.**

This Agreement may be terminated in accordance with Section 6-7 and 6-8 of the 2018 Edition of the Standard Specifications for Public Works Construction (the Greenbook).

### **7.3 Dispute Resolution Process.**

Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work

and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim's cost, if any.

(vi) Analysis of the claim's time/schedule impact, if any.

(c) City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have

against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to

the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of \$375,000.00 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000.00 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

#### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### **7.5 Rights and Remedies Are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### **7.6 Unfair Business Practices Claims.**

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

## **8.2 Conflict of Interest.**

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which 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 express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## **8.3 Covenant Against Discrimination.**

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

## **8.4 Unauthorized Aliens.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# **ARTICLE 9. MISCELLANEOUS PROVISIONS**

## **9.1 Provisions Required By Law.**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.



## **9.2 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Project Manager (with her/his name and City title), City of Livingston 1416 C Street, Livingston, CA 95334 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

## **9.3 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **9.4 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## **9.5 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **9.6 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

## **9.7 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating

to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**9.8 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

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**CITY:**

CITY OF LIVINGSTON, a California  
Municipal Corporation.

\_\_\_\_\_  
Christopher Lopez, Interim City Manager

**CONTRACTOR:**

TBS CONTRACTORS

\*By: \_\_\_\_\_  
Name: Andrew Taylor  
Title: Vice President

**ATTEST:**

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

\*By: \_\_\_\_\_  
Name: Janet Taylor  
Title: President

Address:  
TBS Contractors  
1605 E. Gerard Avenue  
Merced, California 95341

**APPROVED AS TO FORM:  
ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
Roy C. Santos, City Attorney

**\*Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MERCED

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER  _____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ NUMBER OF PAGES
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE



**EXHIBIT A**  
**CONTRACTOR'S BID**

PROPOSAL TO THE CITY OF LIVINGSTON  
DEPARTMENT OF PUBLIC WORKS

NAME OF BIDDER Taylor Backhoe Service Inc. dba TBS Contractors

BUSINESS P.O. BOX None

CITY, STATE, ZIP N/A  
*(Please include even if P.O. Box used)*

BUSINESS STREET ADDRESS 1605 E. Gerard Avenue

CITY, STATE, ZIP Merced, CA 95341

TELEPHONE NO.: AREA CODE ( 209 ) 384-8424

FAX NO.: AREA CODE ( 209 ) 384-7629

CONTRACTOR LICENSE NO.: 810520

The work for which this proposal is submitted is for construction in accordance with the special provisions (including the payment of not less than the State general prevailing wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in accordance with the Current California Department of Transportation Standard Plans, Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The special provisions and plans for the work to be done are dated MAY 2024 and are entitled:

**CITY OF LIVINGSTON  
DEPARTMENT OF PUBLIC WORKS  
CONTRACT DOCUMENTS  
FOR CONSTRUCTION OF  
EAST AVENUE PUMP STATION**

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

(a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;

(b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the *CITY of LIVINGSTON's* Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise, if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the item total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the *CITY of LIVINGSTON*, and that discretion will be exercised in the manner deemed by the *CITY of LIVINGSTON* to best protect the public interest in the prompt and economical completion of the work. The decision of the *CITY of LIVINGSTON* respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the *CITY of LIVINGSTON*, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the *CITY of LIVINGSTON* that the contract has been awarded, the *CITY of LIVINGSTON* may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the *CITY of LIVINGSTON*.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal



is accepted, that he will contract with the *CITY of LIVINGSTON*, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the following prices, to wit:

**CITY OF LIVINGSTON  
DEPARTMENT OF PUBLIC WORKS  
BID SCHEDULE  
EAST AVENUE PUMP STATION**

ITEM NO.	BID ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
1	Mobilization, Demobilization, Bonds, and Insurance <i>*(Item 1 not to exceed \$10,000.00)</i>	1 LS	\$ <u>6,250.00</u>	\$ <u>6,250.00</u> <i>*(See Note)</i>
2	Demolition	1 LS	\$ <u>4,716.00</u>	\$ <u>4,716.00</u>
3	Construct Pump Station Improvements	1 LS	\$ <u>139,230.00</u>	\$ <u>139,230.00</u>
4	Construct Fence Improvements	1 LS	\$ <u>10,000.00</u>	\$ <u>10,000.00</u>
<b>TOTAL BID</b>			\$ <u>160,196.00</u>	

NOTE: "TOTAL BID" is only on the last page of the Bid Schedule List



1605 East Gerard Ave., Merced CA 95341  
Phone (209) 384-8424 | Fax (209) 384-7629

### Authorized Officers

### Resolution

Resolved, that any one of the following persons, with titles as designated, are authorized and directed to execute on behalf of and as the act of this corporation all bids, contracts, and other documents necessary.

Janet Taylor, President, Secretary  
Andy Taylor, Vice President, Treasurer  
Jacob Taylor, Vice President  
Levi Dukes, Vice President

### Certificate of Secretary

I certify that:

I am duly qualified and acting Secretary of Taylor Backhoe Service, Inc., a California Corporation.

The foregoing is a true copy of a resolution duly adopted by the Board of Directors of the Corporation at a regular meeting duly held on October 1, 2018, entered in the minutes of such meeting in the minute book of the Corporation.

The resolution is in conformity with the Articles of Incorporation and By-Laws of the Corporation, has never been modified or repealed, and is now in full force and effect.

Dated September 14, 2023

  
Janet Taylor

**CALIFORNIA NOTARY ACKNOWLEDGEMENT  
(INDIVIDUAL)**

*Authorized Officers Resolution*

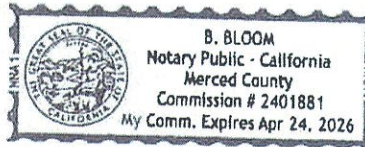
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Merced

On 4/14/2023 before me, B. Bloom, Notary Public (insert name and title of the officer), personally appeared Janet Taylor, V.P., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *[Handwritten Signature]* (Seal)

**INFORMATION REQUIRED OF BIDDER**

List of Subcontractors

As of March 1,2015, Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms.**

Bid Item No.	Description of Work to be Performed	Percent of Total Contract	Subcontractor's License No.	Dept. of Industrial Relations (DIR) Registration No.	Subcontractor's Name and Address
3	Construct Pump Station Improvements	24.95%	669819	1000546583	American Elite Electric P.O. Box 2019 Turlock, CA 95381
4	Construct Fence Improvements	3.12%	407008	1000027866	Merced Fence 2252 Spacecraft Dr. Atwater, CA 953011

## STATEMENT OF QUALIFICATIONS

### Experience

Bidder shall identify three (3) most recently completed projects similar to Work described in these Contract Documents.

	1	2	3
Project Title	New Hilmar Elementary School TK-2	Billy Wright Landfill: Leachate Pump Station	Weaver Middle School
Public Agency	Hilmar Unified School District	Merced County Regional Waste Management Authority	Weaver Union School District
Address	7807 Lander Ave. Hilmar, CA 95324	7040 N. Hwy. 59 Merced, CA 95348	3976 E. Childs Ave. Merced, CA 95341
Telephone No.	(209) 667-5701	(209) 723-4481	(209) 723-2174
Engineer in Charge	Tasha Rodriguez	Roy Lopez	Scott Stokes
Project Value (\$)	\$15,600,000.00	\$100,000.00	\$7,489,000.00
Date Accepted	7/26/22	11/8/23	3/10/20
Claims Filed?	No	No	No
<i>If yes explain below:</i>			

N/A

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(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)

-----  
(list Subcontractor(s) above)

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)  
Merced Fence  
*(list Subcontractor(s) above)*

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)  
American Elite Electric

*(list Subcontractor(s) above)*

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_



## PUBLIC CONTRACT CODE

### Public Contract Code Section 10285.1 Statement

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder

has

has not

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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### Public Contract Code Section 10162 Questionnaire

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes

No

If the answer is yes, explain the circumstances in the following space.

## Public Contract Code 10232 Statement

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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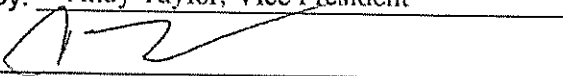
### CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION INSURANCE

State of California

County of Merced

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

Taylor Backhoe Service Inc. dba TBS Contractors  
(Name of Contractor)

By: Andy Taylor, Vice President  
  
(Signature of Contractor)

Date: June 11, 2024

## **Noncollusion Affidavit**

(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY of LIVINGSTON DEPARTMENT OF PUBLIC WORKS.

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

---

## DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions to an additional sheet of paper and include with the bid.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

---

### NPDES/MS4 Compliance Certification

All construction projects within the City limits must comply with the National Pollutant Discharge Elimination System (NPDES) storm water regulation adopted by the EPA, and as applicable, and the Phase II Small Municipal Separate Storm Sewer System (MS4) General Permit requirements, regardless of size.

The City is required under these permits to provide information to Contractors performing work within City limits about training opportunities to assist in managing potential pollutants from construction –related activities, selection, installation, implementation, and maintenance of Best Management Practices (BMPs), as well as overall program compliance.

The Bidder acknowledges that they are aware of the necessity to be in compliance with the NPDES and MS4 permits while working within City limits.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

The above certifications are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of these Certifications.

---

Accompanying this proposal is Bidder's Bond

(NOTICE: INSERT THE WORDS "CASH (\$ \_\_\_\_\_)," "CASHIER'S CHECK,"  
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

## IMPORTANT NOTICE

*If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.*

Taylor Backhoe Service Inc. dba TBS Contractors

President/Secretary/Manager: Janet Taylor

Treasurer: Andy Taylor

Licensed in conformance with an act providing for the registration of Contractors,

License No. 810520 Classification(s) A, B & C21

Department of Industrial Relations (DIR) Registration No. 1000597055

### ADDENDA

This Proposal is submitted with respect to the changes to the contract included in Addenda Number/s

None Issued

*(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)*

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code).

Date: June 11, 2024



Taylor Backhoe Service Inc. dba TBS Contractors

[Handwritten Signature]

Andy Taylor, Vice President

Signature and Title of Bidder

Business Address 1605 E. Gerard Avenue, Merced, CA 95341

Place of Business 1605 E. Gerard Avenue, Merced, CA 95341

Place of Residence 1605 E. Gerard Avenue, Merced, CA 95341

# BID BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

BIDDER (Name and Address)

Taylor Backhoe Service, Inc. dba TBS Contractors  
1605 E Gerard Ave, Merced, CA 95341

SURETY (Name, and Address of Principal Place of Business):

The Ohio Casualty Insurance Company  
175 Berkeley Street, Boston, MA 02116

OWNER (Name and Address):

City of Livingston  
1416 C Street, Livingston, CA 95334

BID

Bid Due Date: June 11th, 2024  
Description: (Project Name and Location)  
East Avenue Pump Station  
City of Livingston

BOND

Bond Number:	N/A	
Date:	June 7th, 2024	
Penal Sum:	Ten Percent of the Total Amount Bid	\$ 10% of the Total Amount Bid
	(Words)	(Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

BIDDER

SURETY

Taylor Backhoe Service, Inc. dba TBS Contractors (Seal)  
Bidder's Name and Corporate Seal

The Ohio Casualty Insurance Company (Seal)  
Surety's Name and Corporate Seal

By:

Signature

Andy Taylor

Print Name

Vice President

Title

By:

Signature (Attach Power of Attorney)

Breanna Boatright

Print Name

Attorney-in-Fact

Title

Attest:

Signature

Witness

Title

Note: Addresses are to be used for giving any required notice.

Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**CALIFORNIA NOTARY ACKNOWLEDGEMENT  
(INDIVIDUAL)**

*Bid Bond*

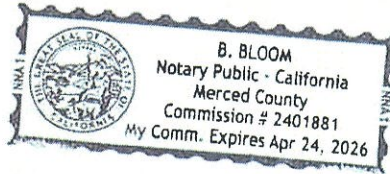
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Merced

On 06/11/2024 before me, B. Bloom, Notary Public (insert name and title of the officer), personally appeared Andy Taylor, J.P., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *[Handwritten Signature]*

(Seal)



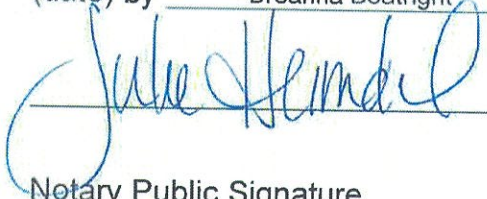
# NEVADA NOTARY ACKNOWLEDGMENT

THE STATE OF NEVADA

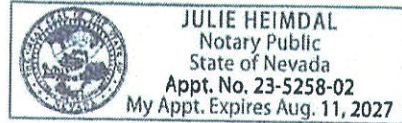
COUNTY OF Washoe

This instrument was acknowledged before me on June 7th, 2024

(date) by Breanna Boatright, (name of person).

  
\_\_\_\_\_

Notary Public Signature



Print Julie Heimdahl

Title Notary Public

(Seal)



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8211474-971829

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Breanna Bontrighi, Tony Clark, Elizabeth Colloidi, Brad Espinosa, Matthew Foster, Dineen Fraser, John Hopkins, Jennifer Lakmann, Kathleen Le, Kris Lopes, Jason March, Cassandra Medina, Deanna Quintero, Renee Ramsey, Bill Rapp, Paula Senna, Pam Sey, Sharon Smith, Mike Taylor, Peggy Trusty, Sara Walliser, Phil Watkins, Samantha Watkins, John Weber, Mindy Whitehouse, Steven L. Williams

all of the city of Chico state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of March, 2024.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Signature of David M. Carey

By: David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 12th day of March, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

Signature of Teresa Pastella
By: Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12 Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5 Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7th day of June, 2024.



Signature of Renee C. Llewellyn

By: Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com



CONTRACTORS  
STATE LICENSE BOARD  
ACTIVE LICENSE



License Number **810520**

Entity **CORP**

Business Name **TAYLOR BACKHOE SERVICE INC  
DBA TBS CONTRACTORS**


Classification(s) **A C21 B**

Expiration Date **07/31/2024**

[www.cslb.ca.gov](http://www.cslb.ca.gov)



## Contractor's License Detail for License # 810520

 **DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.**

- CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- Arbitrations are not listed unless the contractor fails to comply with the terms.
- Due to workload, there may be relevant information that has not yet been entered into the board's license database.

### Business Information

TAYLOR BACKHOE SERVICE INC  
dba TBS CONTRACTORS

1605 E GERARD AVE  
MERCED, CA 95341  
Business Phone Number:(209) 384-8424

**Entity** Corporation  
**Issue Date** 07/12/2002  
**Expire Date** 07/31/2024

### License Status

**This license is current and active.**

**All information below should be reviewed.**

### Classifications

- [A - GENERAL ENGINEERING](#)
- [C21 - BUILDING MOVING, DEMOLITION](#)
- [B - GENERAL BUILDING](#)

### Bonding Information

#### Contractor's Bond

This license filed a Contractor's Bond with [OHIO CASUALTY INSURANCE COMPANY \(THE\)](#).



**Bond Number:** 784319C

**Bond Amount:** \$25,000

**Effective Date:** 01/01/2023

Contractor's Bond History

**Bond of Qualifying Individual**

- The qualifying individual ANDREW RAY TAYLOR certified that he/she owns 10 percent or more of the stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

**Effective Date:** 07/12/2002

- This license filed Bond of Qualifying Individual number **D10605C** for WILLIAM LEVI DUKES in the amount of **\$25,000** with OHIO CASUALTY INSURANCE COMPANY (THE).

**Effective Date:** 01/01/2023

BQI's Bond History

**Workers' Compensation**

This license has workers compensation insurance with the TRANSVERSE INSURANCE COMPANY

**Policy Number:**FORWC0000001352

**Effective Date:** 10/01/2023

**Expire Date:** 10/01/2024

Workers' Compensation History

**Other**

**EXHIBIT B**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

If the Parties wish to revise provisions in the Agreement above (from page 1 through the signature page), then the revisions shall be presented in this Exhibit B, with deletions shown in ~~strike-through~~ and additions shown in ***bold and italics***.

**Project Name/No.:** East Avenue Pump Station

**Contract No.:** 635.04-2024

**Project Manager:** Christopher Lopez, Interim City Manager

**Approved:** \_\_\_\_\_

**PUBLIC WORKS AGREEMENT  
BETWEEN CITY OF LIVINGSTON AND  
TBS CONTRACTORS**

THIS PUBLIC WORKS AGREEMENT (“**Agreement**”) is made and entered into this 12<sup>th</sup> day of JULY, 2024 by and between the CITY OF LIVINGSTON, a municipal corporation, (“**City**”) and TBS CONTRACTORS, a corporation (“**Contractor**”). City and Contractor may be referred to, sometimes individually or collectively, as “**Party**” or “**Parties**.”

**RECITALS**

A. The City desires to retain Contractor, on an independent contractor basis, to perform services for public works, as more particularly described below.

B. Contractor represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the authority of the City of Livingston Municipal Code and California state law, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of the services and desire that the terms of that performance be as particularly defined and described herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

**AGREEMENT**

**ARTICLE 1. CONTRACTOR SERVICES**

**1.1 Scope of Work.**

The Contractor shall perform all of the work, furnish all labor, materials, equipment, tools, utility services, and transportation, and comply with all of the specifications and requirements in the Bid Documents for the project entitled East Avenue Pump Station (“**Project**”). All such work shall be performed in a good and workmanlike manner, as reasonably determined by the City, and shall be performed in compliance with all local, state, and federal laws and regulations. As used herein, “**Bid Documents**” refers to all of the documents included in the solicitation of bids for the Project to the extent applicable or appropriate (it being understood that one or more of such documents may not be applicable in the event a competitive bidding process is not utilized due to existence of emergency or exigent circumstances), including but not limited to, the Notice Inviting Bids, Summary of Work, Instructions to Bidders, Bid or Bid Proposal, General Provisions, Special Provisions, Plans, Drawings, and Addenda, and any other documents included, referenced, or

incorporated therein. The Bid Documents are incorporated into this Agreement. In the event of any conflict between the terms of the Bid Documents and this Agreement, the terms of this Agreement shall govern.

## **1.2 Incorporation of Greenbook.**

The provisions 2018 Edition of the Standard Specifications for Public Works Construction, as updated by errata, (“Greenbook”) are incorporated herein, except as explicitly modified by the Bid Documents. In the event of any conflict between the provisions of the Greenbook and this Agreement, the terms of this Agreement shall govern.

## **1.3 Compliance with Labor and Wage Laws.**

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“**DIR**”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Registration with DIR. Pursuant to Labor Code section 1771.1, Contractor and all subcontractors must be registered with, and pay an annual fee to, the DIR prior to and during the performance of any work under this Agreement.

(c) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on with the City at 1416 C Street, Livingston, CA 95334 and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the DIR determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement. If this Agreement is subject to the payment of federal prevailing wages under the Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*), then Contractor shall pay the higher of either the state for federal prevailing wage applicable to each laborer.

(d) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(e) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.



(f) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(g) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(h) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(i) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

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

(j) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.4 Licenses, Permits, Fees and Assessments.**

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.5 Familiarity with Work.**

By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed; (ii) has carefully considered how the services should be performed; and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

#### **1.6 Discovery of Unknown Conditions.**

(a) Pursuant to Public Contract Code section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement.

(b) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Agreement.

(c) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

### **1.7 Unidentified Utilities.**

To the extent required by Government Code section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Bid Documents with reasonable accuracy, and for equipment on the project necessarily idled during such work. Nothing herein shall be deemed to require City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Agreement is subject to Government Code sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

### **1.8 Trench Excavation.**

Pursuant to Labor Code section 6705, if this Agreement is for more than \$25,000.00 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This subsection shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

### **1.9 Protection and Care of Work and Materials.**

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

### **1.10 Warranty.**

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming

materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

#### **1.11 Additional Work and Change Orders.**

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Project Manager to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("**Change Order**"). All Change Orders must be signed by the Contractor and Project Manager prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000.00, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Project Manager. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Contractor's Bid. If the rates in the Contractor's Bid do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Project Manager. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: The cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

### **1.12 Special Requirements.**

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements," attached hereto as Exhibit B and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit B and any other provisions of this Agreement, the provisions of Exhibit B shall govern.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts set forth in Contractor's Bid, attached hereto as Exhibit A and incorporated herein by this

reference. Subject to any additions or deductions that may be made by change order or amendment, and any penalties or damages that may be assessed against Contractor, Contractor shall receive total compensation of ONE HUNDRED SIXTY THOUSAND ONE HUNDRED NINETY-SIX DOLLARS AND NO CENTS (\$160,196.00) for completion of the work.

## **2.2 Invoices.**

Each month Contractor shall furnish to City an original invoice for all work performed during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the DIR. Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Agreement, as applicable, with Contractor's first invoice. If these rates change at any time during the term of the Agreement, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

## **2.3 Payment.**

City shall independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, City will cause Contractor to be paid within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

## **2.4 Retention.**

Pursuant to Section 9203 of the Public Contract Code, City will deduct a five percent (5%) retention from all progress payments, which shall be released to Contractor no later than sixty (60) days from completion of the work in accordance with Section 7107 of the Public Contract Code. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount.

## **2.5 Substitution of Securities.**

(a) In conformance with the State of California Public Contract Code, Part 5, Section 22300, Contractor may substitute securities for any monies withheld by the City to ensure performance under this Agreement.

(b) At the request and expense of Contractor, Contractor has the option of establishing an escrow account with a state or federally chartered bank which shall serve as an escrow agent, for Contractor's direct deposit of securities as a substitute for retention earnings required to be withheld by the City. Upon Contractor's completion of its obligations hereunder, as evidenced by the City's acceptance of the work pursuant to Section 3.3 hereof, the escrow agent shall return the securities to Contractor. The escrow agent shall notify the City within ten (10) days after deposit of the securities. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention. Securities shall be held in the name of the City and shall designate Contractor as the beneficial owner. Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to the escrow account.

### **ARTICLE 3. PERFORMANCE SCHEDULE**

#### **3.1 Schedule of Performance.**

Contractor shall begin work within thirty (30) calendar days after receiving a Notice to Proceed from the City and the work shall be completed within THIRTY (30) consecutive working days from the date on which the work was started and in accordance with any schedule contained in or required to be provided by the Bid Documents, and any revisions thereof approved by the City in writing. Time is of the essence. If the work is not completed within said time period, liquidated damages shall apply.

#### **3.2 Liquidated Damages.**

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of Five Hundred Dollars (\$500.00) as liquidated damages for each working day of delay in the performance of any service required hereunder. The City may withhold any accrued liquidated damages from any monies payable on account of services performed by the Contractor. To the extent required by Government Code section 4215, Contractor shall not be assessed liquidated damages for delay in completion of the work when such delay was caused by the failure of the City or owner of the utility to provide for removal or relocation of utility facilities.

#### **3.3 Inspection and Final Acceptance.**

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. If City finds that Contractor's work does not meet the requirements and standards provided in the Bid Document, Contractor shall remedy any defects in the work at Contractor's sole expense following notice by the City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such

gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Contractor.**

The following principals of Contractor (“Principals”) are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

Andrew Taylor	Vice President
_____ (Name)	_____ (Title)
Janet Taylor	President
_____ (Name)	_____ (Title)
_____ (Name)	_____ (Title)

The Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor’s staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor’s staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

**4.2 Status of Contractor.**

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor’s officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor’s officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City’s employees. Contractor expressly waives any claim Contractor may have to any such rights.

**4.3 Project Manager.**

The Project Manager shall be Christopher Lopez, Interim City Manager or any other person as may be designated by the Project Manager. It shall be the Contractor’s responsibility to assure



that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City General Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### **4.5 Prohibition Against Subcontracting or Assignment.**

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### **ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS**

#### **5.1 Insurance Coverages.**

Without limiting Contractor's indemnification of City, and prior to commencement of any services under this Agreement, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

(a) General liability insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in

an amount not less than \$2,000,000.00 per occurrence, \$4,000,000.00 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

(b) Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Services to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000.00 combined single limit for each accident.

(c) Workers' compensation insurance. Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

(d) Builder's Risk Insurance. Contractor shall maintain Builder's Risk (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the project site or any staging area.

(e) Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than \$1,000,000.00 per claim and in the aggregate. All activities contemplated in this Agreement shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the project site to the final disposal location, including non-owned disposal sites.

Products/completed operations coverage shall extend a minimum of three (3) years after project completion. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. Policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. Policy shall specifically provide for a duty to defend on the part of the insurer.

## 5.2 General Insurance Requirements.

(a) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall include all of the requirements stated herein.

(b) Proof of Insurance. Contractor shall provide certificates of insurance and endorsements to City as evidence of the insurance coverages required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this Agreement. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

(c) Duration of Coverage. Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Services hereunder by Contractor, its agents, representatives, employees or subcontractors.

(d) Primary/noncontributing. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

(e) City's Rights of Enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Agreement.

(f) Waiver of Subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(g) Enforcement of Contract Provisions (non-estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(h) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this section are not intended as a limitation on coverage, limits or other

requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

(i) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(j) Additional Insured Status. General liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(k) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(l) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(m) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(n) Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

(o) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(p) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance

under this Agreement, and that involve or may involve coverage under any of the required liability policies.

(q) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

(r) Endorsements.

### **5.3 Indemnification.**

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

Contractor obligations under this section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Agreement, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

### **5.4 Notification of Third-Party Claims.**

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

## **5.5 Performance, Labor, and Warranty Bonds.**

Concurrently with execution of this Agreement, Contractor shall deliver to the City the following bonds:

(a) A performance bond securing the faithful performance of this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(b) A labor and materials bond, securing the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement, in an amount not less than 100% of the total compensation for this Agreement, as stated in Section 2.1.

(c) A warranty bond, guaranteeing the Contractor's warranty under Section 1.9 of this Agreement, in an amount not less than 20% of the total compensation for this Agreement, as stated in Section 2.1.

All bonds shall be on a form approved by the City Clerk. The bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. The bonds shall be unconditional and remain in force during the entire term of the Agreement.

## **5.6 Sufficiency of Insurer or Surety.**

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better. If the City determines that the work to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds required in Section 5.5 may be changed accordingly upon receipt of written notice from the City.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Project Manager to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Project Manager shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given

to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

## **6.2 Reports.**

Contractor shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Agreement as the Project Manager shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

## **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

## **6.4 Confidentiality and Release of Information.**

(a) Information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions,

response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Merced, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in the County of Merced, State of California.

### **7.2 Termination.**

This Agreement may be terminated in accordance with Section 6-7 and 6-8 of the 2018 Edition of the Standard Specifications for Public Works Construction (the Greenbook).

### **7.3 Dispute Resolution Process.**

Section 20104 *et seq.* of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of \$375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 *et seq.* and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work



and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Agreement and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this section applies:

(a) Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements otherwise provided in the Agreement for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

(b) Supporting Documentation. The Contractor shall submit all claims in the following format:

(i) Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

(ii) List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

(iii) Chronology of events and correspondence related to the claim.

(iv) Statement of grounds for the claim.

(v) Analysis of the claim's cost, if any.

(vi) Analysis of the claim's time/schedule impact, if any.

(c) City's Response. Upon receipt of a claim pursuant to this section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

(i) If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

(ii) Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have

against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

(iii) The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than \$50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

(d) Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

(i) If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

(ii) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(iii) Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

(iv) All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

(f) City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this section or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to

the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

(g) Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth in Government Code Section 900 *et seq.* prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 *et seq.*, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

(h) Civil Actions for Claims of \$375,000.00 or Less. The following procedures are established for all civil actions filed to resolve claims totaling \$375,000.00 or less:

(i) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

(ii) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(iii) Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division.

(iv) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

#### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### **7.5 Rights and Remedies Are Cumulative.**

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

#### **7.6 Unfair Business Practices Claims.**

Pursuant to Public Contract Code section 7103.5, in entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

## **8.2 Conflict of Interest.**

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which 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 express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which affects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## **8.3 Covenant Against Discrimination.**

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

## **8.4 Unauthorized Aliens.**

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# **ARTICLE 9. MISCELLANEOUS PROVISIONS**

## **9.1 Provisions Required By Law.**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein, and the Agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either party, the contract shall forthwith be physically amended to make such insertion or correction.

## **9.2 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Project Manager (with her/his name and City title), City of Livingston 1416 C Street, Livingston, CA 95334 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

## **9.3 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **9.4 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## **9.5 Integration; Amendment.**

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

## **9.6 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

## **9.7 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating

to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**9.8 Corporate Authority.**

The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date and year first-above written.

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**CITY:**

CITY OF LIVINGSTON, a California  
Municipal Corporation.

\_\_\_\_\_  
Christopher Lopez, Interim City Manager

**CONTRACTOR:**

TBS CONTRACTORS

\*By: \_\_\_\_\_  
Name: Andrew Taylor  
Title: Vice President

**ATTEST:**

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

\*By: \_\_\_\_\_  
Name: Janet Taylor  
Title: President

Address:  
TBS Contractors  
1605 E. Gerard Avenue  
Merced, California 95341

**APPROVED AS TO FORM:**  
ALESHIRE & WYNDER, LLP

\_\_\_\_\_  
Roy C. Santos, City Attorney

**\*Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**





## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MERCED

On \_\_\_\_\_, 2023 before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

<b>CAPACITY CLAIMED BY SIGNER</b>	<b>DESCRIPTION OF ATTACHED DOCUMENT</b>
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER  _____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ NUMBER OF PAGES
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ DATE OF DOCUMENT
	_____ SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT A**  
**CONTRACTOR'S BID**

PROPOSAL TO THE CITY OF LIVINGSTON  
DEPARTMENT OF PUBLIC WORKS

NAME OF BIDDER Taylor Backhoe Service Inc. dba TBS Contractors

BUSINESS P.O. BOX None

CITY, STATE, ZIP N/A  
*(Please include even if P.O. Box used)*

BUSINESS STREET ADDRESS 1605 E. Gerard Avenue

CITY, STATE, ZIP Merced, CA 95341

TELEPHONE NO.: AREA CODE ( 209 ) 384-8424

FAX NO.: AREA CODE ( 209 ) 384-7629

CONTRACTOR LICENSE NO.: 810520

The work for which this proposal is submitted is for construction in accordance with the special provisions (including the payment of not less than the State general prevailing wage rates), the project plans described below, including any addenda thereto, the contract annexed hereto, and also in accordance with the Current California Department of Transportation Standard Plans, Standard Specifications, and the Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished.

The special provisions and plans for the work to be done are dated MAY 2024 and are entitled:

**CITY OF LIVINGSTON  
DEPARTMENT OF PUBLIC WORKS  
CONTRACT DOCUMENTS  
FOR CONSTRUCTION OF  
EAST AVENUE PUMP STATION**

Bids are to be submitted for the entire work. The amount of the bid for comparison purposes will be the total of all items.

The bidder shall set forth for each unit basis item of work a unit price and a total for the item, and for each lump sum item a total for the item, all in clearly legible figures in the respective spaces provided for that purpose. In the case of unit basis items, the amount set forth under the "Item Total" column shall be the product of the unit price bid and the estimated quantity for the item.

In case of discrepancy between the unit price and the total set forth for a unit basis item, the unit price shall prevail, except as provided in (a) or (b), as follows:

(a) If the amount set forth as a unit price is unreadable or otherwise unclear, or is omitted, or is the same as the amount of the entry in the item total column, then the amount set forth in the item total column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price;

(b) (Decimal Errors) If the product of the entered unit price and the estimated quantity is exactly off by a factor of ten, one hundred, etc., or one-tenth, or one-hundredth, etc. from the entered total, the discrepancy will be resolved by using the entered unit price or item total, whichever most closely approximates percentage-wise the unit price or item total in the *CITY of LIVINGSTON's* Final Estimate of cost.

If both the unit price and the item total are unreadable or otherwise unclear, or are omitted, the bid may be deemed irregular. Likewise, if the item total for a lump sum item is unreadable or otherwise unclear, or is omitted, the bid may be deemed irregular unless the project being bid has only a single item and a clear, readable total bid is provided.

Symbols such as commas and dollar signs will be ignored and have no mathematical significance in establishing any unit price or item total or lump sums. Written unit prices, item totals and lump sums will be interpreted according to the number of digits and, if applicable, decimal placement. Cents symbols also have no significance in establishing any unit price or item total since all figures are assumed to be expressed in dollars and/or decimal fractions of a dollar. Bids on lump sum items shall be item totals only; if any unit price for a lump sum item is included in a bid and it differs from the item total, the item total shall prevail.

The foregoing provisions for the resolution of specific irregularities cannot be so comprehensive as to cover every omission, inconsistency, error or other irregularity which may occur in a bid. Any situation not specifically provided for will be determined in the discretion of the *CITY of LIVINGSTON*, and that discretion will be exercised in the manner deemed by the *CITY of LIVINGSTON* to best protect the public interest in the prompt and economical completion of the work. The decision of the *CITY of LIVINGSTON* respecting the amount of a bid, or the existence or treatment of an irregularity in a bid, shall be final.

If this proposal shall be accepted and the undersigned shall fail to enter into the contract and furnish the 2 bonds in the sums required by the State Contract Act, with surety satisfactory to the *CITY of LIVINGSTON*, within 8 days, not including Saturdays, Sundays and legal holidays, after the bidder has received notice from the *CITY of LIVINGSTON* that the contract has been awarded, the *CITY of LIVINGSTON* may, at its option, determine that the bidder has abandoned the contract, and thereupon this proposal and the acceptance thereof shall be null and void and the forfeiture of the security accompanying this proposal shall operate and the same shall be the property of the *CITY of LIVINGSTON*.

The undersigned, as bidder, declares that the only persons or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes, and agrees if this proposal

is accepted, that he will contract with the *CITY of LIVINGSTON*, in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction, and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth, and that he will take in full payment therefore the following prices, to wit:

**CITY OF LIVINGSTON**  
**DEPARTMENT OF PUBLIC WORKS**  
**BID SCHEDULE**  
**EAST AVENUE PUMP STATION**

ITEM NO.	BID ITEM DESCRIPTION	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
1	Mobilization, Demobilization, Bonds, and Insurance <i>*(Item 1 not to exceed \$10,000.00)</i>	1 LS	\$ <u>6,250.00</u>	\$ <u>6,250.00</u> <i>*(See Note)</i>
2	Demolition	1 LS	\$ <u>4,716.00</u>	\$ <u>4,716.00</u>
3	Construct Pump Station Improvements	1 LS	\$ <u>139,230.00</u>	\$ <u>139,230.00</u>
4	Construct Fence Improvements	1 LS	\$ <u>10,000.00</u>	\$ <u>10,000.00</u>
<b>TOTAL BID</b>			\$ <u>160,196.00</u>	

NOTE: "TOTAL BID" is only on the last page of the Bid Schedule List



1605 East Gerard Ave., Merced CA 95341  
Phone (209) 384-8424 | Fax (209) 384-7629

### Authorized Officers

### Resolution

Resolved, that any one of the following persons, with titles as designated, are authorized and directed to execute on behalf of and as the act of this corporation all bids, contracts, and other documents necessary.

Janet Taylor, President, Secretary  
Andy Taylor, Vice President, Treasurer  
Jacob Taylor, Vice President  
Levi Dukes, Vice President

### Certificate of Secretary


I certify that:

I am duly qualified and acting Secretary of Taylor Backhoe Service, Inc., a California Corporation.

The foregoing is a true copy of a resolution duly adopted by the Board of Directors of the Corporation at a regular meeting duly held on October 1, 2018, entered in the minutes of such meeting in the minute book of the Corporation.

The resolution is in conformity with the Articles of Incorporation and By-Laws of the Corporation, has never been modified or repealed, and is now in full force and effect.

Dated September 14, 2023

  
\_\_\_\_\_  
Janet Taylor

**CALIFORNIA NOTARY ACKNOWLEDGEMENT  
(INDIVIDUAL)**

*Authorized Officers Resolution*

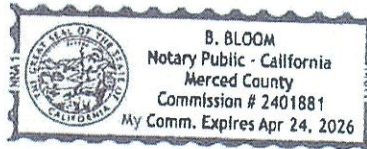
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of Merced

On 9/14/2023 before me, B. Bloom, Notary Public (insert name and title of the officer), personally appeared Sunset Taylor, V.P., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/~~they~~ executed the same in ~~his~~/~~her~~/~~their~~ authorized capacity(ies), and that by ~~his~~/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *[Handwritten Signature]* (Seal)



**INFORMATION REQUIRED OF BIDDER**  
List of Subcontractors

As of March 1, 2015, Contractors (and sub-contractors) wishing to bid on public works contracts shall be registered with the State Division of Industrial Relations and certified to bid on Public Works contracts. Please register at: <https://www.dir.ca.gov/Public-Works/Contractor-Registration.html>

In accordance with Title 49, Section 26.11 of the Code of Federal Regulations, and Section 4104 of the Public Contract Code of the State of California, as amended, the following information is required for each sub-contractor who will perform work amounting to more than one half of one percent (0.5%) of the Total Base Bid or \$10,000 (whichever is greater). **Photocopy this form for additional firms.**

Bid Item No.	Description of Work to be Performed	Percent of Total Contract	Subcontractor's License No.	Dept. of Industrial Relations (DIR) Registration No.	Subcontractor's Name and Address
3	Construct Pump Station Improvements	24.95%	669819	1000546583	American Elite Electric P.O. Box 2019 Turlock, CA 95381
4	Construct Fence Improvements	3.12%	407008	1000027866	Merced Fence 2252 Spacecraft Dr. Atwater, CA 953011

**STATEMENT OF QUALIFICATIONS**

**Experience**

Bidder shall identify three (3) most recently completed projects similar to Work described in these Contract Documents.

	1	2	3
Project Title	New Hilmar Elementary School TK-2	Billy Wright Landfill: Leachate Pump Station	Weaver Middle School
Public Agency	Hilmar Unified School District	Merced County Regional Waste Management Authority	Weaver Union School District
Address	7807 Lander Ave. Hilmar, CA 95324	7040 N. Hwy. 59 Merced, CA 95348	3976 E. Childs Ave. Merced, CA 95341
Telephone No.	(209) 667-5701	(209) 723-4481	(209) 723-2174
Engineer in Charge	Tasha Rodriquez	Roy Lopez	Scott Stokes
Project Value (\$)	\$15,600,000.00	\$100,000.00	\$7,489,000.00
Date Accepted	7/26/22	11/8/23	3/10/20
Claims Filed?	No	No	No
<i>If yes explain below:</i>			

N/A

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(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)

-----  
(List Subcontractor(s) above)

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)

Merced Fence

*(list Subcontractor(s) above)*

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_

(THE BIDDER'S EXECUTION ON THE SIGNATURE PORTION OF THIS PROPOSAL SHALL ALSO CONSTITUTE AN ENDORSEMENT AND EXECUTION OF THOSE CERTIFICATIONS WHICH ARE A PART OF THIS PROPOSAL)

## EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Taylor Backhoe Service Inc. dba TBS Contractors, proposed subcontractor(s)  
American Elite Electric

*(list Subcontractor(s) above)*

hereby certifies that he

has

has not

participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

**Note:** The above certification is part of the bid. Signing this bid on the signature portion thereof shall also constitute signature of these certifications.

\_\_\_\_\_

## PUBLIC CONTRACT CODE

### Public Contract Code Section 10285.1 Statement

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder

has

has not

been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

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### Public Contract Code Section 10162 Questionnaire

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes

No

If the answer is yes, explain the circumstances in the following space.

## Public Contract Code 10232 Statement

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

---

### CONTRACTOR'S CERTIFICATION REGARDING WORKERS' COMPENSATION INSURANCE

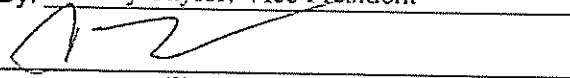
*State of California*

County of Merced

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

Taylor Backhoe Service Inc. dba TBS Contractors  
(Name of Contractor)

By: Andy Taylor, Vice President

  
(Signature of Contractor)

Date: June 11, 2024

## **Noncollusion Affidavit**

(Title 23 United States Code Section 112 and  
Public Contract Code Section 7106)

To the CITY of LIVINGSTON DEPARTMENT OF PUBLIC WORKS.

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

---



## DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions to an additional sheet of paper and include with the bid.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

---

### NPDES/MS4 Compliance Certification

All construction projects within the City limits must comply with the National Pollutant Discharge Elimination System (NPDES) storm water regulation adopted by the EPA, and as applicable, and the Phase II Small Municipal Separate Storm Sewer System (MS4) General Permit requirements, regardless of size.

The City is required under these permits to provide information to Contractors performing work within City limits about training opportunities to assist in managing potential pollutants from construction –related activities, selection, installation, implementation, and maintenance of Best Management Practices (BMPs), as well as overall program compliance.

The Bidder acknowledges that they are aware of the necessity to be in compliance with the NPDES and MS4 permits while working within City limits.

Note: Providing false information may result in criminal prosecution or administrative sanctions.

The above certifications are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of these Certifications.

---

Accompanying this proposal is Bidder's Bond

(NOTICE: INSERT THE WORDS "CASH (\$ \_\_\_\_\_)," "CASHIER'S CHECK,"  
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

### IMPORTANT NOTICE

*If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a copartnership, state true name of firm, also names of all individual copartners composing firm; if bidder or other interested person is an individual, state first and last names in full.*

Taylor Backhoe Service Inc. dba TBS Contractors

President/Secretary/Manager: Janet Taylor

Treasurer: Andy Taylor

Licensed in conformance with an act providing for the registration of Contractors,

License No. 810520 Classification(s) A, B & C21

Department of Industrial Relations (DIR) Registration No. 1000597055

### ADDENDA

This Proposal is submitted with respect to the changes to the contract included in Addenda Number/s

None Issued

*(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)*

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code).

Date: June 11, 2024



Taylor Backhoe Service Inc. dba TBS Contractors

[Handwritten Signature]

Andy Taylor, Vice President

Signature and Title of Bidder

Business Address 1605 E. Gerard Avenue, Merced, CA 95341

Place of Business 1605 E. Gerard Avenue, Merced, CA 95341

Place of Residence 1605 E. Gerard Avenue, Merced, CA 95341

# BID BOND

Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.

**BIDDER** (Name and Address)

Taylor Backhoe Service, Inc. dba TBS Contractors  
1605 E Gerard Ave, Merced, CA 95341

**SURETY** (Name, and Address of Principal Place of Business):

The Ohio Casualty Insurance Company  
175 Berkeley Street, Boston, MA 02116

**OWNER** (Name and Address):

City of Livingston  
1416 C Street, Livingston, CA 95334

**BID**

Bid Due Date: June 11th, 2024  
Description: (Project Name and Location)  
East Avenue Pump Station  
City of Livingston

**BOND**

Bond Number:	N/A	
Date:	June 7th, 2024	
Penal Sum:	Ten Percent of the Total Amount Bid (Words)	\$ 10% of the Total Amount Bid (Figures)

Surety and Bidder, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Bid Bond to be duly executed by an authorized officer, agent, or representative.

**BIDDER**

Taylor Backhoe Service, Inc. dba TBS Contractors (Seal)  
Bidder's Name and Corporate Seal

By:

  
Signature

Andy Taylor  
Print Name

Vice President  
Title

**SURETY**

The Ohio Casualty Insurance Company (Seal)  
Surety's Name and Corporate Seal

By:

  
Signature (Attach Power of Attorney)

Breanna Boatright  
Print Name

Attorney-in-Fact  
Title

Attest:

  
Signature

Witness  
Title

Note: Addresses are to be used for giving any required notice.  
Provide execution by any additional parties, such as joint venturers, if necessary.

1. Bidder and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to pay to Owner upon default of Bidder the penal sum set forth on the face of this Bond. Payment of the penal sum is the extent of Bidder's and Surety's liability. Recovery of such penal sum under the terms of this Bond shall be Owner's sole and exclusive remedy upon default of Bidder.
2. Default of Bidder shall occur upon the failure of Bidder to deliver within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents.
3. This obligation shall be null and void if:
  - 3.1 Owner accepts Bidder's Bid and Bidder delivers within the time required by the Bidding Documents (or any extension thereof agreed to in writing by Owner) the executed Agreement required by the Bidding Documents and any performance and payment bonds required by the Bidding Documents, or
  - 3.2 All Bids are rejected by Owner, or
  - 3.3 Owner fails to issue a Notice of Award to Bidder within the time specified in the Bidding Documents (or any extension thereof agreed to in writing by Bidder and, if applicable, consented to by Surety when required by Paragraph 5 hereof).
4. Payment under this Bond will be due and payable upon default of Bidder and within 30 calendar days after receipt by Bidder and Surety of written notice of default from Owner, which notice will be given with reasonable promptness, identifying this Bond and the Project and including a statement of the amount due.
5. Surety waives notice of any and all defenses based on or arising out of any time extension to issue Notice of Award agreed to in writing by Owner and Bidder, provided that the total time for issuing Notice of Award including extensions shall not in the aggregate exceed 120 days from Bid due date without Surety's written consent.
6. No suit or action shall be commenced under this Bond prior to 30 calendar days after the notice of default required in Paragraph 4 above is received by Bidder and Surety and in no case later than one year after Bid due date.
7. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in the state in which the Project is located.
8. Notices required hereunder shall be in writing and sent to Bidder and Surety at their respective addresses shown on the face of this Bond. Such notices may be sent by personal delivery, commercial courier, or by United States Registered or Certified Mail, return receipt requested, postage pre-paid, and shall be deemed to be effective upon receipt by the party concerned.
9. Surety shall cause to be attached to this Bond a current and effective Power of Attorney evidencing the authority of the officer, agent, or representative who executed this Bond on behalf of Surety to execute, seal, and deliver such Bond and bind the Surety thereby.
10. This Bond is intended to conform to all applicable statutory requirements. Any applicable requirement of any applicable statute that has been omitted from this Bond shall be deemed to be included herein as if set forth at length. If any provision of this Bond conflicts with any applicable statute, then the provision of said statute shall govern and the remainder of this Bond that is not in conflict therewith shall continue in full force and effect.
11. The term "Bid" as used herein includes a Bid, offer, or proposal as applicable.

**CALIFORNIA NOTARY ACKNOWLEDGEMENT  
(INDIVIDUAL)**

*Bid Bond*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

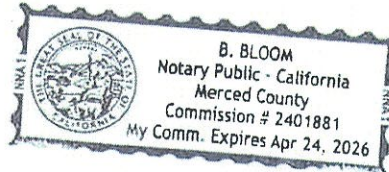
State of California  
County of Merced

On 06/11/2024 before me, B. Bloom, Notary Public (insert name and title of the officer), personally appeared Andy Taylor, J.P., who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *[Handwritten Signature]*



(Seal)



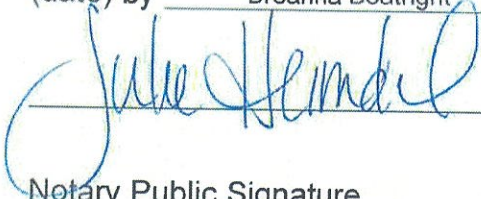
# NEVADA NOTARY ACKNOWLEDGMENT

THE STATE OF NEVADA

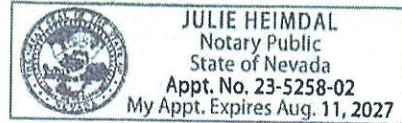
COUNTY OF Washoe

This instrument was acknowledged before me on June 7th, 2024

(date) by Breanna Boatright, (name of person).

  
\_\_\_\_\_

Notary Public Signature



Print Julie Heimdal

Title Notary Public

(Seal)



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8211474-971829

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Breanna Boatright, Tony Clark, Elizabeth Colodi, Brad Espinosa, Matthew Foster, Dinceen Fraser, John Hopkins, Jennifer Lakmann, Kathleen L.e. Kris Lopes, Jason March, Cassandra Medina, Deanna Quintero, Renee Ramsey, Bill Rapp, Paula Senna, Pam Sey, Sharon Smith, Mike Taylor, Peggy Trusty, Sara Walliser, Phil Watkins, Samantha Watkins, John Weber, Mindy Whitehouse, Steven L. Williams

all of the city of Chico state of CA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 12th day of March, 2024.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company
By: David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 12th day of March, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5 Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 7th day of June, 2024.



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary



CONTRACTORS  
STATE LICENSE BOARD  
ACTIVE LICENSE



License Number **810520**

Entity **CORP**

Business Name **TAYLOR BACKHOE SERVICE INC  
DBA TBS CONTRACTORS**

Classification(s) **A C21 B**


Expiration Date **07/31/2024**

[www.cslb.ca.gov](http://www.cslb.ca.gov)





## Contractor's License Detail for License # 810520

 **DISCLAIMER: A license status check provides information taken from the CSLB license database. Before relying on this information, you should be aware of the following limitations.**

- CSLB complaint disclosure is restricted by law ([B&P 7124.6](#)) If this entity is subject to public complaint disclosure click on link that will appear below for more information. Click [here](#) for a definition of disclosable actions.
- Only construction related civil judgments reported to CSLB are disclosed ([B&P 7071.17](#)).
- Arbitrations are not listed unless the contractor fails to comply with the terms.
- Due to workload, there may be relevant information that has not yet been entered into the board's license database.

### Business Information

TAYLOR BACKHOE SERVICE INC  
dba TBS CONTRACTORS

1605 E GERARD AVE  
MERCED, CA 95341  
Business Phone Number:(209) 384-8424

**Entity** Corporation  
**Issue Date** 07/12/2002  
**Expire Date** 07/31/2024

### License Status

**This license is current and active.**

**All information below should be reviewed.**

### Classifications

- [A - GENERAL ENGINEERING](#)
- [C21 - BUILDING MOVING, DEMOLITION](#)
- [B - GENERAL BUILDING](#)

### Bonding Information

#### Contractor's Bond

This license filed a Contractor's Bond with [OHIO CASUALTY INSURANCE COMPANY \(THE\)](#).

**Bond Number:** 784319C

**Bond Amount:** \$25,000

**Effective Date:** 01/01/2023

Contractor's Bond History

**Bond of Qualifying Individual**

- The qualifying individual ANDREW RAY TAYLOR certified that he/she owns 10 percent or more of the stock/membership interest of this company; therefore, the Bond of Qualifying Individual is not required.

**Effective Date:** 07/12/2002

- This license filed Bond of Qualifying Individual number **D10605C** for WILLIAM LEVI DUKES in the amount of **\$25,000** with OHIO CASUALTY INSURANCE COMPANY (THE).

**Effective Date:** 01/01/2023

BQI's Bond History

**Workers' Compensation**

This license has workers compensation insurance with the TRANSVERSE INSURANCE COMPANY

**Policy Number:** FORWC0000001352

**Effective Date:** 10/01/2023

**Expire Date:** 10/01/2024

Workers' Compensation History

**Other**

**EXHIBIT B**

**SPECIAL REQUIREMENTS**

**(Superseding Contract Boilerplate)**

If the Parties wish to revise provisions in the Agreement above (from page 1 through the signature page), then the revisions shall be presented in this Exhibit B, with deletions shown in ~~strike through~~ and additions shown in *bold and italics*.





## STAFF REPORT

**AGENDA ITEM:** Resolution Approving the purchase of one (1) New Utility Tractor and Loader (2022 John Deere 5075E Utility Tractor and John Deere 520M Loader) from Belkorp Ag, LLC, in the amount of \$48,940.79, and Authorizing the Interim City Manager to execute all required documents.

**MEETING DATE:** July 2, 2024

**PREPARED BY:** Anthony Chavarria, Director of Public Works

**REVIEWED BY:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Staff recommends that the City Council adopt a Resolution of the City Council of the City of Livingston approving the purchase of one (1) New Utility Tractor and Loader from Belkorp Ag, LLC, in the amount of \$48,940.79, and authorize the Interim City Manager to execute all required documents.

### **BACKGROUND:**

Under California Senate Bill 1383 (SB1383 Lara, Chapter 395, Statutes of 2016), the City is required to “procure” a target goal of 1,235.84 tons of organic waste per year (or 716.79 tons of compost) from a permitted organic waste processing facility, such as Gilton Solid Waste (which, Gilton has stated it will provide the organic waste material in the form of mulch and/or compost to the City at no cost, since Gilton is the City’s franchise hauler).

Since more than 1,200 tons of organic waste material is a large volume to manage every year, the City applied for grant funds offered by the State of California Department of Resources Recycling and Recovery (CalRecycle) through its “SB1383 Local Assistance Grant Program (OWR4)”. The OWR4 grant application, which the submittal of the grant application was previously approved by City Council on December 5, 2023, under Resolution 2023-79, was for the purchase of utility equipment to assist the City with the loading/unloading and movement of the organic waste, and for continued assistance from a Recycling Consultant to assist the City with SB1383 program compliance, program implementation/enforcement, site visits and OWR grant administration/reporting.

The City’s Finance Department has since received the awarded amount of \$75,000 from CalRecycle through the OWR4 program. This awarded grant funding amount of \$75,000 is to be kept separate from the General Fund and used solely for the approved budget activities mentioned above, unless a modified budget is submitted and approved by the CalRecycle OWR4 Grant Manager.

### **DISCUSSION:**

City staff intends to use the procurement services from SourceWell to meet the City of Livingston Municipal Code Title 1, Chapter 11 for purchasing. SourceWell is a public agency that offers national, competitively solicited purchasing contracts that meet the California Government Code Section 6502 for cooperative purchasing agreements.



Staff solicited three (3) quotes, of which two had SourceWell pricing (Belkorp Ag, LLC of Firebaugh and N&S Tractor of Merced):

	<b>Base Price</b>	<b>Tax, License &amp; Fees</b>	<b>Total</b>
Belkorp Ag, LLC	\$ 45,414.19	\$ 3,526.60	\$ 48,940.79
N&S Tractor	\$ 47,900.00	\$ 3,719.25	\$ 51,619.25
Garton Tractor	\$ 74,405.00	\$ 7,584.31	\$ 81,989.31

**FISCAL IMPACT:**

\$48,940.79 from the City's awarded OWR4 Grant Funds. No fiscal impact to the City's General Fund accounts.

**ATTACHMENTS:**

1. Resolution No. 2024-
2. Exhibit "A" Cost Proposal from Belkorp Ag, LLC, of Firebaugh for the amount of \$48,940.79
3. Exhibit "B" Cost Proposal from N&S Tractor of Merced for the amount of \$51,619.25
4. Exhibit "C" Cost Proposal from Garton Tractor of Merced for the amount of \$81,989.31

**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON  
AUTHORIZING APPROVAL OF PURCHASE OF ONE (1) NEW UTILITY TRACTOR  
AND LOADER (2022 JOHN DEERE 5075E UTILITY TRACTOR AND JOHN DEERE  
520M LOADER) FROM BELKORP AG, LLC, IN THE AMOUNT OF \$48,940.79 AND  
AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ALL REQUIRED  
DOCUMENTS.**

**WHEREAS**, the City is required under SB1383 (Lara, Chapter 395, Statutes of 2016) to procure Organic Waste Products from a permitted facility every year; and

**WHEREAS**, the City was awarded OWR4 Grant Funds from the State of California Department of Resources Recycling and Recovery (CalRecycle) for the purchase of equipment to assist the City with the loading/unloading and movement of Organic Waste Products; and

**WHEREAS**, Council has previously approved this purchase through the approval of the submittal of individual grant applications on December 5, 2023, Resolution 2023-79; and

**WHEREAS**, City staff intended to use the procurement services from SourceWell to meet the City of Livingston Municipal Code Title 1, Chapter 11 for purchasing; and

**WHEREAS**, Sourcewell is a public agency that offers national, competitively solicited purchasing contracts that meet the California Government Code Section 6502 for cooperative purchasing agreements; and

**WHEREAS**, Staff solicited three (3) quotes:

1. Belkorp Ag, LLC of Firebaugh for the amount of \$48,940.79
2. N&S Tractor of Merced for the amount of \$51,619.25
3. Garton Tractor of Merced for the amount of \$81,989.31

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Livingston as follows:

Section 1. Adopt a Resolution of the City Council of the City of Livingston approving the purchase of one (1) New Utility Tractor and Loader from Belkorp Ag, LLC in the amount of \$48,940.79.

Section 2. Authorize the Interim City Manager to execute all required documents.

Section 3. This Resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 2<sup>nd</sup> day of July 2024, by the vote recorded as follows:

AYES:

NOES:

ABSENT:

ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
Of City of Livingston

ATTEST

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Roy C. Santos, City Attorney



Quote Id: 31143603

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580  
UEID: FNSWEDARMK53

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**

Belcorp Ag, LLC  
985 12th Street  
Firebaugh, CA 93622  
559-659-2039  
sales@belkorpag.com

Prepared For:

**CITY OF LIVINGSTON**



**Proposal For:**

**Delivering Dealer:**

Nathan Chang

Belcorp Ag, LLC  
985 12th Street  
Firebaugh, CA 93622

sales@belkorpag.com

**Quote Prepared By:**

Nathan Chang  
nchang@thomasontractor.com

Date: 11 June 2024

Offer Expires: 11 July 2024





**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**  
 Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580  
 UEID: FNSWEDARMK53

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**  
 Belkorp Ag, LLC  
 985 12th Street  
 Firebaugh, CA 93622  
 559-659-2039  
 sales@belkorpag.com

**Quote Summary**

**Prepared For:**  
 CITY OF LIVINGSTON  
 1416 C ST  
 LIVINGSTON, CA 95334  
 Business: 209-394-8041  
 ACHAVARRIA@LIVINGSTONCITY.COM

**Delivering Dealer:**  
**Belkorp Ag, LLC**  
 Nathan Chang  
 985 12th Street  
 Firebaugh, CA 93622  
 Phone: 559-659-2039  
 nchang@thomasontractor.com

**Quote ID:** 31143603  
**Created On:** 11 June 2024  
**Last Modified On:** 11 June 2024  
**Expiration Date:** 11 July 2024

Equipment Summary	Selling Price	Qty	Extended
2022 JOHN DEERE 5075E Utility Tractor - 1PY5075EKNN123558 <b>Contract:</b> Sourcewell Ag Tractors 082923-DAC (PG 1P CG 70) <b>Price Effective Date:</b>	\$ 37,255.59 X	1 =	\$ 37,255.59
JOHN DEERE 520M Loader <b>Contract:</b> Sourcewell Ag Tractors 082923-DAC (PG 1P CG 70) <b>Price Effective Date:</b> June 10, 2024	\$ 8,158.60 X	1 =	\$ 8,158.60
<b>Equipment Total</b>			<b>\$ 45,414.19</b>

\* Includes Fees and Non-contract items

<b>Quote Summary</b>	
Equipment Total	\$ 45,414.19
Trade In	
SubTotal	<b>\$ 45,414.19</b>
Sales Tax - (7.75%)	\$ 3,519.60
CA TIRE TAX	\$ 7.00
Est. Service	\$ 0.00
Agreement Tax	
Total	\$ 48,940.79
Down Payment	(0.00)
Rental Applied	(0.00)

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_



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**ALL PURCHASE ORDERS MUST BE MADE OUT  
TO (VENDOR):**

Deere & Company  
2000 John Deere Run  
Cary, NC 27513  
FED ID: 36-2382580  
UEID: FNSWEDARMK53

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**ALL PURCHASE ORDERS MUST BE SENT  
TO DELIVERING DEALER:**

Belkorp Ag, LLC  
985 12th Street  
Firebaugh, CA 93622  
559-659-2039  
sales@belkorpag.com

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**Balance Due**

**\$ 48,940.79**

Salesperson : X \_\_\_\_\_

Accepted By : X \_\_\_\_\_



# Selling Equipment

Quote Id: 31143603      Customer Name: CITY OF LIVINGSTON

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**  
 Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580  
 UEID: FNSWEDARMK53

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**  
 Belcorp Ag, LLC  
 985 12th Street  
 Firebaugh, CA 93622  
 559-659-2039  
 sales@belcorpag.com

2022 JOHN DEERE 5075E Utility Tractor - 1PY5075EKNN123558							
Hours: 1							
Stock Number: 59060							
Contract: Sourcewell Ag Tractors 082923-DAC (PG 1P CG 70)							Selling Price *
							\$ 37,255.59
Price Effective Date:							
* Price per item - includes Fees and Non-contract items							
Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
1756LV	2022 JOHN DEERE 5075E TRACTOR	1	\$ 31,294.00	14.00	\$ 4,381.16	\$ 26,912.84	\$ 26,912.84
<b>Standard Options - Per Unit</b>							
0202	UNITED STATES - COUNTRY CODE	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	5E ENGLISH OM	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
1381	5075E, PRT, MFWD	1	\$ 3,059.00	14.00	\$ 428.26	\$ 2,630.74	\$ 2,630.74
1799	NON-LOADER/LESS LOADER PREP	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
2006	5E OOS MFWD	1	\$ 0.00	14.00	\$ 0.00	\$ 0.00	\$ 0.00
3420	5E DUAL MID VALVE	1	\$ 1,327.00	14.00	\$ 185.78	\$ 1,141.22	\$ 1,141.22
5184	16.9-24 6PR R4 BIAS	1	\$ -389.00	14.00	\$ -54.46	\$ -334.54	\$ -334.54
6040	5E MFWD	1	\$ 6,048.00	14.00	\$ 846.72	\$ 5,201.28	\$ 5,201.28
6133	12.5/80-18 6PR I3 BIAS	1	\$ 794.00	14.00	\$ 111.16	\$ 682.84	\$ 682.84
<b>Standard Options Total</b>			<b>\$ 10,839.00</b>		<b>\$ 1,517.46</b>	<b>\$ 9,321.54</b>	<b>\$ 9,321.54</b>
<b>Dealer Attachments/Non-Contract/Open Market</b>							
BSJ10341	Mounting parts, kit, canopy mountin	1	\$ 92.40	0.00	\$ 0.00	\$ 92.40	\$ 92.40
LVB25334	Canopy, kit, canopy	1	\$ 750.61	0.00	\$ 0.00	\$ 750.61	\$ 750.61
RE242110	Strap kit, field installation kit,	1	\$ 178.20	0.00	\$ 0.00	\$ 178.20	\$ 178.20
<b>Dealer Attachments Total</b>			<b>\$ 1,021.21</b>		<b>\$ 0.00</b>	<b>\$ 1,021.21</b>	<b>\$ 1,021.21</b>
<b>Value Added Services Total</b>			<b>\$ 0.00</b>			<b>\$ 0.00</b>	<b>\$ 0.00</b>
<b>Total Selling Price</b>			<b>\$ 43,154.21</b>		<b>\$ 5,898.62</b>	<b>\$ 37,255.59</b>	<b>\$ 37,255.59</b>





# Selling Equipment

Quote Id: 31143603      Customer Name: CITY OF LIVINGSTON

**ALL PURCHASE ORDERS MUST BE MADE OUT TO (VENDOR):**  
 Deere & Company  
 2000 John Deere Run  
 Cary, NC 27513  
 FED ID: 36-2382580  
 UEID: FNSWEDARMK53

**ALL PURCHASE ORDERS MUST BE SENT TO DELIVERING DEALER:**  
 Belkorp Ag, LLC  
 985 12th Street  
 Firebaugh, CA 93622  
 559-659-2039  
 sales@belkorpag.com

## JOHN DEERE 520M Loader

**Equipment Notes:**

Hours:

**Stock Number:**

**Selling Price \***

**Contract:** Sourcewell Ag Tractors 082923-DAC (PG 1P CG 70)

**\$ 8,158.60**

**Price Effective Date:** June 10, 2024

\* Price per item - includes Fees and Non-contract items

Code	Description	Qty	List Price	Discount%	Discount Amount	Contract Price	Extended Contract Price
14B1P	520M Loader	1	\$ 9,785.00	24.00	\$ 2,348.40	\$ 7,436.60	\$ 7,436.60
<b>Standard Options - Per Unit</b>							
0202	United States	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0409	English	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
0500	Less package	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
1507	Mounting frame	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
2512	520M Mechanical Farm Loader, Mechanical Self-Leveling (MSL) - Two-function	1	\$ 1,097.00	24.00	\$ 263.28	\$ 833.72	\$ 833.72
3590	Two-function hoses and parts	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
4658	Two-Function Mid-Mount Quick Couplers	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
5436	Hood Guard	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
6995	Less ballast box	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
7510	John Deere™ 500-style carrier	1	\$ -147.00	24.00	\$ -35.28	\$ -111.72	\$ -111.72
8425	1850-mm (73-in.) general purpose bucket (John Deere™ carrier)	1	\$ 0.00	24.00	\$ 0.00	\$ 0.00	\$ 0.00
<b>Standard Options Total</b>			<b>\$ 950.00</b>		<b>\$ 228.00</b>	<b>\$ 722.00</b>	<b>\$ 722.00</b>
<b>Total Selling Price</b>			<b>\$ 10,735.00</b>		<b>\$ 2,576.40</b>	<b>\$ 8,158.60</b>	<b>\$ 8,158.60</b>



# Purchase Agreement

N&S Tractor Merced  
 209-383-5888 · 600 CA-59 Merced, CA 95341

**Prepared For:** CITY OF LIVINGSTON (CL11)  
**Address:** 1416 C STREET LIVINGSTON, CA 95334  
**Contact:** · accountspayable@livingstoncity.com

**Quote Number:** Q-161-31965  
**Date Prepared:** 05/1/2024  
**Presented By:** Brian Alamo (209-505-7211)

## Quoted Equipment Overview

### New 2022 CASE IH FARMALL 070A

**Stock Number:** NCA034                      **Serial #:** FR5646399  
**Engine Hours:** 3                                **Delivery Included**

Case IH Farmall 70A Tractor Tier 4 with Silencer Downswept Exhaust-  
 2 Rear Remotes 1 Kickout 540 RPM Single PTO 9.5x24 4WD Front  
 Wheels and Tires 14.9x28 Rear Wheels and Tires Loader Mount  
 Ready and 40KG Rear Wheel Weights

### New 2022 CASE IH L555

**Stock Number:** CE2202                      **Serial #:** YNWL35003  
**Engine Hours:** 0                                **Delivery Included**

Case IH L555 NSL SSL Loader with Mounting Kit Econ3 73" Mat  
 Bucket

## Pricing

<b>2022 CASE IH FARMALL 070A:</b>	\$43,147.50
<b>Inland Freight:</b>	\$3,500.00
<b>PDI:</b>	\$1,000.00
<b>Fuel Surcharge:</b>	\$30.00
<b>Load Fee-Factory:</b>	\$670.00
<b>Marketing Fee:</b>	\$60.00
<b>18% Sourcewell discount:</b>	-\$-8,707.50
<b>2022 CASE IH L555:</b>	\$8,731.74
<b>Inland Freight:</b>	\$586.00
<b>PDI:</b>	\$500.00
<b>Fuel Surcharge:</b>	\$214.00
<b>Marketing :</b>	\$30.00
<b>Load Fee-Factory:</b>	\$170.00
<b>20% Sourcewell discount:</b>	-\$-2,031.74
<b>Subtotal:</b>	\$47,900.00
<b>Sales Tax (7.750%):</b>	\$3,712.25
<b>Subtotal:</b>	\$51,612.25
<b>Tire Tax:</b>	\$7.00
<b>Total Price:</b>	<b>\$51,619.25</b>
<b>Quote Expires:</b>	05/31/2024

**Accepted By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Comments:** City of Livingston Sourcewell Account # 60833  
 Case Sourcewell # 082923 CNH-1

700 S. Hwy 59  
 Merced, CA 95341  
 (209) 726-4600  
 Fax (209)726-5122



Quality People Quality Products®

1-877-TRACTOR

(1-877-872-2867)

www.GartonTractor.com

**QUOTE**

Buyer: City of Livingston

Date: 3/21/2024

Address: \_\_\_\_\_

City, State: \_\_\_\_\_

Zip: \_\_\_\_\_

Invoice No. \_\_\_\_\_

Date: \_\_\_\_\_

Phone #: \_\_\_\_\_

Sales Tax District: \_\_\_\_\_

MERCED CO.

Fax: \_\_\_\_\_

E-Mail: - \_\_\_\_\_

P.O. # \_\_\_\_\_

New/Used	Make	Model	Serial #	Stock #	Description	Amount
New	Kubota	M4D-071HDC12			utility cab tractor, ac/heat, 12 speeds, R4 tires	\$65,550.00
New	Kubota	LA1154A			Loader with mounts, Valve, and 72" bucket	\$8,855.00
					assemble, freight, PDI	\$1,677.42

**TRADE-INS:** Buyer Certifies Below Trade-Ins to be free of encumbrances except as noted.

Year	Make	Model	Serial #	Stock #	Description	Trade- In Allowance	Freight:	Subtotal:	
								\$76,082.42	
							Tax Rate: 7.750%	\$5,896.39	
							Calif. Tire Fee:	\$10.50	
							Extended Coverage:		
							UCC/DOC Fee:		
Trade-In Allowance: _____							Amount Owing: _____		Net Trade-In Allowance: _____
							Total Delivered Price:		\$81,989.31

"Trade-In's must be turned in or picked up no later than 5 days after delivery of purchased equipment."

Financing Terms:

Trade-In Allowance	_____
Less Cash Down Payment*	_____
<b>Total Down Payment</b>	_____
Unpaid Balance	\$81,989.31
PD Insurance:	_____
Other Charges:	_____
<b>AMOUNT FINANCED OR DUE ON DELIVERY</b>	<b>\$81,989.31</b>

Notes {

**Warranty:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Extended Coverage:** \_\_\_\_\_

\_\_\_\_\_

**Availability:** \_\_\_\_\_

WE appreciate your business!

Kim Bishop kbishop@gartontractor.com  
 (209) 620-7706

\*\*\*Quotes are subject to change by availability or manufacturer programs\*\*\*

**QUOTE**



## STAFF REPORT

**AGENDA ITEM:** Consideration of a Resolution of the City Council of the City of Livingston Submitting Questions at the General Election regarding the changing of the positions of City Clerk and City Treasure from Elective to Appointive Positions, and requestion County to add it to the Ballot at the Consolidated Statewide Election; Receive Direction from the Council on Council Argument In Favor Of

**MEETING DATE:** July 2, 2024

**PREPARED BY:** Roy Santos, City Attorney

**REVIEWED BY:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Adopt Resolution NO. \_\_; entitled:

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CITY OF LIVINGSTON SUBMITTING QUESTIONS OF CHANGING THE OFFICES OF CITY CLERK AND CITY TREASURER FROM ELECTED POSITIONS TO APPOINTED POSITIONS AT THE CITY'S GENERAL ELECTION, WHICH IS CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024 AND REQUESTING THE COUNTY ADD THE MEASURE TO THE BALLOT AT THE CONSOLIDATED STATEWIDE GENERAL ELECTION**

**Council Motion to appoint member to draft argument and bring back to council or to draft argument on behalf of Council.**

### **BACKGROUND AND DISCUSSION:**

State law requires every general law city to have a City Clerk and City Treasurer, who may be either elected by the voters or appointed by the City Council. The City Council proposes to consider whether to ask electorate of the City of Livingston if the positions of Treasurer and City Clerk should be changed from elected to appointive positions. A draft Resolution for consideration is included as an attachment to this staff report, should the Council decide to move forward with a ballot measure on the question.

The California Government Code addresses the election process for this ballot question for a general law city.

"Section 36508. At any municipal election, or a special election held for that purpose, the city council may submit to the electors the question whether the elective officers, or any of them except council members, shall be appointed by the city council; provided, however, that the city council shall not submit such question to the electors more often than once in an 11-month period.

"36509. The question shall be printed on the ballots used at the election substantially in the following form: 'Shall the office of city clerk be appointive?' or "Shall the office of city treasurer be appointive"

The words 'yes' and 'no' shall be so printed on the ballots that the voters may express their choice.



“36510. If a majority of the votes cast on the proposition is for it, the city council shall appoint such officer at the expiration of the terms of the officer then in office, and on a vacancy in any such office. Such officer shall hold office during the pleasure of the city council and, notwithstanding Section 36502 to the contrary, is not required to be a resident or elector in the city.

Placing a ballot measure before the electorate is accomplished by City Council adoption of a resolution that:

- Submits proposed ballot measure wording to the County Elections Department/Registrar of Voters
- Authorizes written argument regarding the measure, including providing for the filing of rebuttal arguments to the measure in accordance with filing deadlines, and
- Directs the City Attorney to prepare an impartial analysis of the measure.

### Office of the City Clerk

Generally, the City Clerk Duties and Responsibilities pursuant to law are as follows:

The basic duties of the City Clerk are set forth in the Government Code.

“40801. The city clerk shall keep an accurate record of the proceeding of the legislative body ... in books bearing appropriate titles and devoted exclusively to such purposes, respectively. The books shall have a comprehensive general index.

“40806. The city clerk shall keep a book marked "ordinances" and record in it all city ordinances with his certificate annexed to each, stating:

(a) It is a true and correct copy of a city ordinance. (b) The ordinance number.

(c) It has been published or posted pursuant to law.

“40811. The city clerk is the custodian of the city seal.

“40812. [The city clerk] shall perform such additional duties as are prescribed by ordinance.

“40813. The city clerk may appoint deputies, for whose acts he and his bondsmen are responsible. The deputies shall hold office at the pleasure of the city clerk and receive such compensation as is provided by the legislative body.

“40814. The city clerk and his deputies may administer oaths or affirmations and take and certify affidavits and depositions pertaining to city affairs and business which may be used in any court or proceedings in the state. The acknowledgment of an instrument may be made before a city clerk and his deputies within the city in which they were elected or appointed.”

### Additional City Clerk Responsibilities

In addition to these basic, historic duties, the legislature has assigned ever greater and more complex responsibilities to the City Clerk over the years.

Per Election Code Section 320, the City Clerk is the Election Official for the City. In this capacity, the City Clerk interacts with the County Elections Department during all local elections to assure compliance with all election laws and regulations.

Under Section 54950 et seq. of the Government Code, the City Clerk is responsible for ensuring compliance with the Brown Act (“Open Meeting Laws”), regarding conduct of city business and responses to public inquiries.

The Political Reform Act, Government Code Section 83111, designates the City Clerk as the official responsible for coordinating, recording and retaining the Statements of Economic Interests of all elected and appointed officials and staff, and for collecting and maintaining all candidate Campaign Finance Forms.





## Elective Versus Appointive City Clerk

Of the 483 cities in California, 397 have appointed City Clerks and 86 have elected City Clerks. The percentage of elected City Clerks in California has continued to decline. As the legal responsibilities and professional expertise required to fulfill the duties of the position have increased, elected City Clerks are being replaced by appointed professional staff with appropriate training and experience who typically perform both City Clerk and other City staff duties.

### The Office of City Treasurer

The California Government Code requires cities to have an elected or appointed City Treasurer even though most of the City's finances are overseen by the Finance Director. The only qualifications to serve as an elected City Treasurer are that a candidate be of-age and a registered voter; there is no guarantee that an elected City Treasurer will possess the necessary skills and expertise required.

Under the Government Code, the City Treasurer has the following duties:

41001. The city treasurer shall receive and safely keep all money the treasurer receives.

41002. (a) The city treasurer shall comply with all laws governing the deposit and securing of public funds and the handling of trust funds in his or her possession.

(b) If the city has issued bonds, the city treasurer shall use a system of accounting and auditing that adheres to generally accepted accounting principles.

41003. The city treasurer shall pay out money only on warrants signed by legally designated persons.

41004. Regularly, at least once each month, the city treasurer shall submit to the city clerk a written report and accounting of all receipts, disbursements, and fund balances. The city treasurer shall file a copy with the legislative body.

41005 The city treasurer shall perform such duties relative to the collection of city taxes and license fees as are prescribed by ordinance.

### **FISCAL IMPACT:**

The proposed election measure will be added to the ballot at the Consolidated General Election and increase the costs of the election according to the County. Staff received a preliminary projection from the County and the cost is estimated to be approximately \$24,441.65.

### **OPTIONS:**

#### **On Resolution**

1. Adopt Resolution submitting question to the voters regarding changing city clerk and city treasurer positions from elective to appointive positions;
2. Do not Adopt Resolution and maintain the status quo of elected positions of City Treasurer and City Clerk.

#### On Council Direction re Arguments

1. Authorize council member to write argument and return to Council regarding arguments.
2. Authorize council member to write an argument on behalf of the Council.
3. Do nothing.



**ATTACHMENTS:**

1. Proposed Resolution

**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CITY OF LIVINGSTON SUBMITTING A MEASURE TO THE VOTERS REGARDING CHANGING THE OFFICES OF CITY CLERK AND CITY TREASURER FROM ELECTED POSITIONS TO APPOINTED POSITIONS AT THE CITY'S GENERAL ELECTION, WHICH IS CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024, AND REQUESTING THE COUNTY ADD THE MEASURE TO THE BALLOT AT THE CONSOLIDATED STATEWIDE GENERAL ELECTION**

WHEREAS, the California Government Code requires general law cities such as the City of City of Livingston (the "City") to maintain the positions of City Clerk and Treasurer; and

WHEREAS, the City Council of the City ("City Council") desires that the positions of City Clerk and City Treasurer be changed from elected positions to positions appointed by the City Council; and

WHEREAS, pursuant to Government Code Sections 36508-36510, the City Council may submit to the voters the question of whether the position of City Clerk and City Treasurer shall be elected or appointed by the City Council; and

WHEREAS, if the majority of the votes cast on the propositions regarding the City Clerk and City Treasurer is for converting the positions to appointive positions, the City Council shall appoint such officers upon the expiration of the terms of the City Clerk and City Treasurer commencing in November/December 2024 and ending in November/December 2028; and

WHEREAS, it is the desire of the City Council to submit to the voters at the General Municipal Election on November 5, 2024, which is consolidated with the Statewide General Election to be held on November 5, 2024 the question of whether the City Clerk and City Treasure shall be appointive positions.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livingston hereby resolves and orders as follows:

Section 1. That pursuant to the requirements of the laws of the State of California relating to the conduct of elections and Government Code Sections 3508 and 3510, there is to be submitted at the general election called and ordered to be held in the City of Livingston, on Tuesday, November 5, 2024, a measure attached hereto as Exhibit A attached hereto and by this reference incorporated herein, ("Exhibit A") for the purpose of changing the positions of City Clerk and City Treasurer from elected to appointive positions to the qualified voters of the City. The forms of the question to appear on the ballot are specified below in Section 2 of this Resolution. The City Manager is hereby authorized and directed to make any changes to the text of the measure, or this resolution as required to conform to any requirements of law.

Section 2. That pursuant to the requirements of Section 10403 of the Elections Code of the State of California, the City Council has requested that the Board of Supervisors of the County of Merced to consent and agree to the consolidation of the Municipal Election with the Statewide General Election on Tuesday, November 5, 2024, and the City Council hereby requests that the Board of Supervisors add the questions below to the ballot:

Measure ___ APPOINTIVE CITY TREASURER Shall the office of the city treasurer be appointive?	Yes
	No

Measure ___ APPOINTIVE CITY CLERK Shall the office of the city clerk be appointive?	Yes
	No

Section 3. That pursuant to the provisions of Section 10002 of the Elections Code of the State of California, the City Council has requested pursuant to Resolution No. \_\_\_ and hereby requests the Board of Supervisors of the County of Madera to permit the County Election Department/Registrar of Voters to conduct the General City Election and consolidate it with the Statewide General Election to be held on November 5, 2024, including the ballot measure question described herein.

Section 4. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the measure: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City Clerk; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. All written arguments may be changed or withdrawn until and including the date fixed by the City Clerk, being the close of business on \_\_\_\_\_, after which time no arguments for or against the measure may be submitted to the City Clerk. The dates may correspond with any dates for the consolidated election.

Section 5. That the City Council hereby directs the City Clerk to transmit a copy of the measure to the City Attorney. In accordance with California Elections Code § 9280, the City Attorney is hereby directed to prepare an impartial analysis of the measure, not to exceed five hundred (500) words in length, showing the effect of the measure on the existing law and the operation of the measure. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the City Clerk's office at (insert telephone number) and a copy will be mailed at no cost to you." The impartial analysis shall be filed by the date set by the City Clerk for the filing of primary arguments. The dates may correspond with any dates for the consolidated election.

Section 6. That pursuant to Elections Code § 9285, when the City's designated elections official has selected the arguments for and against the foregoing measure which will be printed and distributed to the voters, the City's designated elections official shall send copies of the argument in favor of the measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The author or a majority of the authors of an argument relating to the foregoing city measure may prepare and submit a rebuttal argument not to exceed two hundred and fifty (250) words in length. A rebuttal argument may not be signed by more than five (5) authors. The rebuttal arguments shall be filed with the City Clerk not later than the close of business on \_\_\_\_\_. The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in

the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut. The dates may correspond with the consolidated election.

Section 7. That the City Clerk shall cause the City Attorney's Impartial Analysis, and arguments and rebuttals to be transmitted to the County, to be printed and distributed to voters in accordance with State law regarding same.

Section 8. That the City Clerk is authorized, instructed and directed to procure and furnish to the County, if requested, any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election in accordance with the Elections Code and the laws of the State of California. That the notice of time and place of holding of the election is hereby given and the city clerk is authorized, instructed and directed to give further or additional notice as required by law.

Section 9. That the Consolidated Election shall be held in accordance with Elections Code 10203 and 10418.

Section 10. That the County Election Department is authorized to canvass the returns of the ballot questions/measures. The election shall be held in all respects as if there were only one election, and one form of ballot shall be used.

Section 11. That the electorate vote requirement for the measures to pass is a majority (50%+1) of the votes cast on each measure at the November 5, 2024, consolidated election.

Section 12. That pursuant to Elections Code Section 10002 City Council hereby requests the Board of Supervisors of the County to permit the county elections official to renders specified services to the City relating to the conduct of the election. Such services shall include and not be limited to the preparation of all of the City's election materials.

Section 13. That the City shall reimburse the County for services performed when the work is completed and upon presentation to the City of a properly approved invoice.

Section 14. The City Clerk is hereby directed to forward a certified copy of this resolution to the County Election Department.

Section 15. This Resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 4<sup>th</sup> day of June 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
Of City of Livingston

ATTEST

Monica Cisneros, Deputy City Clerk

**APPROVED AS TO LEGAL FORM**

Roy C. Santos, City Attorney

Exhibit A

**Ordinance No.**

**AN INITIATIVE ORDINANCE OF THE CITY OF LIVINGSTON CHANGING THE OFFICES OF THE CITY TREASURER AND CITY CLERK FROM ELECTIVE TO APPOINTIVE POSITIONS**

THE PEOPLE OF THE CITY OF LIVINGSTON DO ORDAIN AS FOLLOWS:

SECTION 1. The office of City Treasurer shall be changed from elective to appointive pursuant to California Government Code section 36508.

SECTION 2. The office of City Clerk shall be changed from elective to appointive pursuant to California Government Code section 36508.

SECTION 3. This ordinance shall take effect as provided in §9217 of the Elections Code of the State of California.

SECTION 4. The City Clerk shall publish this ordinance according to law.



## STAFF REPORT

**AGENDA ITEM:** Consideration of a Resolution of the City Council of the City of Livingston Submitting Questions at the General Election regarding the changing the term of the Mayor to 4 years and enacting term limits for council members, requesting the County to add it to the ballot; Receive Direction from the Council on Council Argument In Favor of.

**MEETING DATE:** July 2, 2024

**PREPARED BY:** Roy Santos, City Attorney

**REVIEWED BY:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Adopt Resolution NO. \_\_; entitled:

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION HELD ON TUESDAY, NOVEMBER 5, 2024, MEASURES TO CHANGE THE TERM OF THE MAYOR TO FOUR YEARS AND LIMIT CONSECUTIVE TERMS OF COUNCILMEMBERS TO TWO TERMS**

**Council Motion to appoint member to draft argument and bring back to council or to draft argument on behalf of Council.**

### **BACKGROUND AND DISCUSSION:**

The City currently has a two year term for the Mayor. In 2000, the City electorate determined to have a two year term for the Mayor over a four year term. In 2014, the electorate rejected another ballot measure to provide for a 4 year term for the Mayor. The Council has requested to provide for another election to change the term to four years.

The Council has also requested to limit the terms of Councilmembers to two consecutive four (4) year terms.

The resolution provides for two measures associated with these items and an Ordinance enacting the term limits and term of the mayor.

### **FISCAL IMPACT:**

The proposed election measure will be added to the ballot at the Consolidated General Election and increase the costs of the election according to the County. Staff received a preliminary projection from the County and the cost is estimated to be approximately \$24,441.65.





**OPTIONS:**

**On Resolution**

1. Adopt Resolution submitting question to the voters regarding changing the term, and enacting term limits and consolidating election;
2. Do not Adopt Resolution and maintain the status quo of two year term for Mayor and the Council.

**On Council Direction re Arguments**

1. Authorize council member to write argument and return to Council regarding arguments.
2. Authorize council member to write an argument on behalf of the Council.
3. Do nothing.

**ATTACHMENTS:**

1. Proposed Resolution with Ordinance Attached.

**RESOLUTION NO. 2024-**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON, CALIFORNIA, SUBMITTING TO THE VOTERS AT THE GENERAL MUNICIPAL ELECTION TO BE CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION HELD ON TUESDAY, NOVEMBER 5, 2024, MEASURES TO CHANGE THE TERM OF THE MAYOR TO FOUR YEARS AND LIMIT CONSECUTIVE TERMS OF COUNCILMEMBERS TO TWO TERMS**

**WHEREAS**, the City Council of the City of Livingston ("City") desires to submit to the voters a measure changing the term of the elected mayor from a four year term to a two year term, commencing with the term of the mayor elected in the November 5, 2024 election; and

**WHEREAS**, the City Council of the City desires to submit to the voters another measure setting term limits for councilmembers to two (2) consecutive four (4) year terms; and

**WHEREAS**, the City Council desires to present such measure to the qualified voters at the next regularly scheduled general election; and

**WHEREAS**, the City Council may submit the measures to the voters pursuant to California Government Code Sections 34900 *et seq.* and Government Code Section 36502; and

**WHEREAS**, the City Council has passed Resolution No. 2024-30 on June 4, 2024 calling a general municipal election for the purpose of electing two (2) members of the City Council, the Mayor, the City Clerk and the City Treasurer, and requesting that the general municipal election be consolidated with the Statewide general election to be held on Tuesday, November 5, 2024, and requesting that the Board of Supervisors of the County of Merced direct the Registrar of Voters/ Election Department to take any and all necessary steps to conduct the consolidated election; and under the provisions of the laws relating to cities in the State of California, a General Municipal Election shall be held on November 5, 2024, for the election of Municipal Officers; and

**WHEREAS**, pursuant to Elections Code Section 10403, whenever an election called by a district, city or other political subdivision for the submission of any question, proposition, or office to be filled is to be consolidated with a statewide election, and the question, proposition, or office to be filled is to appear upon the same ballot as that provided for that statewide election, the district, city or other political subdivision shall, at least 88 days prior to the date of the election, file with the board of supervisors, and a copy with the elections official, a resolution of its governing board requesting the consolidation, and setting forth the exact form of any question or questions, proposition, or office to be voted upon at the election, as it is to appear on the ballot. Upon such request, the Board of Supervisors may order the consolidation; and

**WHEREAS**, the resolution requesting the consolidation shall be adopted and filed at the same time as the adoption of the ordinance, resolution, or order calling the election; and

**WHEREAS**, various federal, district, county, state and other political subdivision elections may be or have been called to be held on November 5, 2024;

**WHEREAS**, the City Council also desires request the County to consolidate the term limits measure and the mayoral term measure election with the Statewide general election to be held on November 5, 2024;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LIVINGSTON DOES RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:**

Section 1. That the Recitals hereto are true and correct and incorporated herein by this reference.

Section 2. That the City Council, pursuant to its right and authority, does order submitted to the voters at the General Municipal Election to be held and consolidated with the Statewide general election on Tuesday, November 5, 2024, the following questions:

<p><b>Shall the term of office of mayor of the City of Livingston be four (4) years, commencing with mayor elected in the November 5, 2024 election? (currently the term of mayor is 2 years as provided by the voters in the November 2000 general election)</b></p>	<p><b>YES</b></p>
	<p><b>NO</b></p>

<p><b>Term Limit for Council Members.</b></p> <p><b>Shall the measure, establishing a consecutive term limit of two (2) terms of four (4) years served as member of the City Council in the City of Livingston, be adopted?</b></p>	<p><b>YES</b></p>
	<p><b>NO</b></p>

Section 3. That the proposed complete text of the Ordinance related to the measures submitted to the voters is attached hereto as Exhibit A and is hereby approved and adopted and by this reference incorporated herein.

Section 4. That the Board of Supervisors of the County of Merced is hereby requested to consent and agree to the consolidation of the election on these ballot measures and the City's general municipal elections for councilmembers and other officers with the Statewide general election to be held on November 5, 2024, and to direct the Merced County Registrar of Voters/Election Official to take any and all necessary steps to conduct the consolidated election.

Section 5. That the Election Department of the County of Merced and Board of Supervisors/Registrar of Voters is authorized to canvass the returns of the election. The election

shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

Section 6. That the City recognizes that additional costs will be incurred by the County by reason of this consolidation and agrees to reimburse the County for its share of the costs.

Section 7. That the City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election in accordance with the Elections Code and the laws of the state of California.

Section 8. That the City Clerk is hereby directed to file a certified copy of this resolution with the Board of Supervisors and Election Department of the County of Merced.

Section 9. That the deadline for filing arguments on the ballot measures with the City Clerk of the City shall be the close of business on August 12, 2024. That in accordance with the requirements of Division 9, Chapter 3, Article 4 of the California Elections Code, all written arguments for or against the foregoing measures: (1) shall not exceed three hundred (300) words in length; (2) shall be filed with the City's elections official; (3) shall be accompanied by the printed name(s) and signature(s) of the person(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of the principal officers who is the author of the argument; and (4) shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. All written arguments may be changed or withdrawn until and including the date fixed by the City's elections official, being the close of business on August 19, 2024, after which time no arguments for or against the foregoing measure may be submitted to the elections official. Pursuant to Elections Code 9285, the City Council is authorized file a written argument.

That in the event that more than one argument for or against any of the foregoing measures is timely submitted, the City's elections official shall give preference and priority first, to arguments submitted by member(s) of the City Council, as authorized by this Resolution, and second, to individual voters, bona fide associations, or a combination thereof, in the order set forth at California Elections Code § 9287.

Section 10. That the deadline for filing of rebuttal arguments on the ballot measures with the City Clerk shall be at the close of business on August 19, 2024. Rebuttals shall not exceed 250 words in length. The rebuttal arguments shall be accompanied by the Form of Statement to be Filed by Author(s) of Argument as provided for in California Elections Code § 9600. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.

Section 11. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

Section 12. That, pursuant to Elections Code Section 9280, the City Clerk is hereby directed to transmit a copy of the measures to the City Attorney. The City Attorney shall prepare an impartial analysis of the measures, not to exceed 500 words in length, showing the effect of the measures on the existing law and the operation of the measure, and transmit such impartial analysis to the City Clerk by the close of business on August 2, 2024. The analysis shall include a statement indicating whether the measure was placed on the ballot by a petition signed by the

requisite number of voters or by the governing body of the city. In the event the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-point bold type, a legend substantially as follows: "The above statement is an impartial analysis of Ordinance or Measure \_\_\_\_\_. If you desire a copy of the ordinance or measure, please call the elections official's office/city clerk at 209) 394-5544 and a copy will be mailed at no cost to you."

Section 13. That City Council of Livingston hereby orders an election be called and consolidated with any and all elections also called to be held on November 5, 2024 insofar as said elections are to be held in the same territory or in territory that is in part the same as the territory of the requests the Board of Supervisors of the County of Merced to order such consolidation under Elections Code Section 10401 and 10403.

Section 14. That the City Council hereby requests the Board of Supervisors to permit the Merced County Elections Department to provide any and all services necessary for conducting the election and agrees to pay for said services.

Section 15. That the Merced County Elections Department shall conduct the election for the measure delineated in Section 2 to be voted on at the election on November 5, 2024.

Section 16. The Elections Departments of Merced County is hereby requested not to print the attached full measure text of Exhibit A hereto in the Voter Guide, but send a copy to voters upon request at the cost of the City. The contact number to be printed in the Voter Guide is (831) 386-5971 (EC §§ 9160, 9312, 9280).

In addition, the full text will be available at the following web site address: [cityoflivingston.org](http://cityoflivingston.org).

Section 17. That the electorate vote requirement for each of the measures to pass is a majority (50%+1) of the votes cast on the measures at the November 5, 2024 consolidated election..

Section 18. The adoption of this Resolution is exempt from the California Environmental Quality Act, Public Resources Code §§ 21000 et seq. ("CEQA") and 14 Cal. Code Reg. §§ 15000 et seq. ("CEQA Guidelines"). The calling and noticing of a General Municipal Election for the submission of a question on a ballot measure to voters is not a project within the meaning of CEQA Guidelines Section 15378.

Section 19. That the City Clerk and City Manager are hereby authorized to take all actions as necessary to effectuate the purposes of this resolution and the election.

Section 20. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions. This resolution shall be effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 2<sup>nd</sup> day of June 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSTAIN  
ABSENT

**CITY OF LIVINGSTON**

\_\_\_\_\_  
**Jose A. Moran, Mayor  
of City of Livingston**

**ATTEST:**

By: \_\_\_\_\_  
**Monica Cisneros, Deputy City Clerk**

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
**Roy C. Santos, City Attorney**

**Exhibit A to Resolution No. \_\_\_\_**

(Full Text of Ordinance)

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE PEOPLE OF THE CITY OF LIVINGSTON, CALIFORNIA,  
CHANGING THE TERM OF THE MAYOR TO FOUR YEARS AND PROVIDING TERM LIMITS  
FOR COUNCILMEMBERS**

**WHEREAS**, the City of Livingston currently elects its Mayor every two years, with the next election for Mayor on November 5, 2024; and,

**WHEREAS**, City desires to change the term of the Mayor to four years; and

**WHEREAS**, it is in the best interests of the City that the voters decide on the term of the Mayor.

**THE PEOPLE OF THE CITY OF LIVINGSTON DO HEREBY ORDAIN AS  
FOLLOWS:**

**Section 1.** Recitals Incorporated. The foregoing Recitals are incorporated herein by reference as if set forth in full.

**Section 2.** Mayoral Term. The Mayor shall serve a term of four years. The first four-year term shall commence with the mayor elected in the November 5, 2024 election.

**Section 3.** Councilmember Term Limits. No City Councilmember shall serve more than two (2) consecutive four (4) year terms.

**Section 4.** Severability. If any subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional or otherwise unenforceable, such decision shall not affect the validity of the remaining portion of this ordinance or any part thereof. The People of the City of Livingston hereby declare that they would have passed each subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more subsection, subdivision, paragraph, sentence, clause, or phrase be declared unconstitutional or otherwise unenforceable.

**Section 5.** Effective Date. After its adoption by the voters, this Ordinance shall be in full force and effect ten (10) days after the vote is declared by the City Council of the City of Livingston, pursuant to the provisions of Election Code §§ 9217 and 15400 and as provided by law.

PASSED AND APPROVED by the City Council of the City of Livingston, County of Merced, State of California, on \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:



**ATTEST:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor