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**N.P.U.A.**  
**PUBLIC WORKS MAINTENANCE AGREEMENT**  
**(PETRELLI ELECTRIC, INC.)**

This PUBLIC WORKS MAINTENANCE AGREEMENT ("Agreement") is made and effective this 11th Day of March 2022, by and between the Needles Public Utility Authority (NPUA"), a public agency and PETRELLI ELECTRIC, INC. A California Corporation ("CONTRACTOR"). In consideration of the mutual covenants and Conditions set forth herein, the parties agree as follows:

**I. SCOPE OF WORK**

The CONTRACTOR shall perform within the time set forth in Article 2 of this Agreement and shall furnish all labor, equipment, tools, utility services, and transportation and perform and complete all work required in connection with the MAINTENANCE WORK AS NEEDED AND REQUESTED BY N.P.U.A., ON A TIME & EQUIPMENT BASIS FOR A FULL FOUR (4) PERSON LINE CREW WITH LINE TRUCKS & STANDARD TOOLS. ALL TASKS SUBJECT TO PRIOR WRITTEN APPROVAL OF N.P.U.A. MANAGER. ALL TASKS IN EXCESS OF \$15,000.00 REQUIRE N.P.U.A. APPROVAL. For the Project (hereinafter "Project"). NPUA's Request for Proposals ("Invitation") for the Project, dated

03/10/2021 and CONTRACTOR's Bid in response to the Invitation, dated 03/25/2021 are attached hereto as Exhibits "A" and "B", respectively and incorporated herein by this reference. The Scope of Work for the Project is set forth in the Invitation.

By entering into this Agreement, CONTRACTOR acknowledges that there may be other contractors on the site whose work will be coordinated with that of its own. CONTRACTOR expressly warrants and agrees that it will cooperate with other contractors and will do nothing to delay, hinder, or interfere with the work of other separate contractors, the NPUA, the Construction Manager, the Engineer, or utilities. CONTRACTOR also expressly agrees that, in the event its work is hindered, delayed, interfered with, or otherwise affected by a separate contractor, its sole remedy will be a direct action against the separate contractor. To the extent allowed by law, the CONTRACTOR will have no remedy, and hereby expressly waives any remedy against the NPUA, the Construction Manager (if any), and the Engineer on account of delay, hindrance, interference, or other events.

**II. TIME FOR PROJECT COMPLETION**

All of CONTRACTOR's work on the Project shall be completed within durations established for the individual activities as set forth in the Task Order signed by the NPUA Manager. All work shall commence on the date specified in the Task Order NPUANPUA. CONTRACTOR shall refer to the Task Order for additional contractual obligations regarding individual activity durations.

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### III. THE CONTRACT SUM

The NPUA shall pay to the CONTRACTOR on a as needed basis for the performance of this Agreement, subject to any additions and deductions provided in the Project documents, the sum of \$ 702.54 per hour for time & equipment for a full 4-person line crew with line trucks and standard tools. Each Job Order shall contain an estimated maximum cost for labor and materials which may be exceeded only with the consent of the NPUA Manager

### IV. PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Engineer by the CONTRACTOR and Certificates for Payment issued by the Engineer, the NPUA shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided in the General Conditions, attached hereto as Exhibit "C" which are fully incorporated into this Agreement by this reference.

This Agreement is subject to the provisions of Article 1.7 (commencing at Section 20104.50) of Division 2, Part 3 of the Public Contract Code regarding prompt payment of contractors by local governments. Article 1.7 mandates certain procedures for the payment of undisputed and properly submitted payment requests within 30 days after receipt, for the review of payment requests, for notice to Contractor of improper payment requests, and provides for the payment of interest on progress payment requests which are not timely made in accordance with that Article. This Agreement hereby incorporates the provisions of Article 1.7 as though fully set forth herein.

### V. INDEMNITY, DEFENSE AND HOLD HARMLESS AGREEMENT

CONTRACTOR shall indemnify, defend with legal counsel, and hold harmless NPUA, its officers, officials, employees and volunteers 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, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the NPUA. Should conflict of interest principles preclude a single legal counsel from representing both NPUA and CONTRACTOR, or should NPUA otherwise find CONTRACTOR's legal counsel unacceptable, then CONTRACTOR shall reimburse the NPUA its costs of defense, including without limitation reasonable legal counsel's fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the NPUA (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 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 Indemnatee. However, without affecting the rights of NPUA under any provision of this agreement, CONTRACTOR shall not be required to indemnify and hold harmless NPUA for liability

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attributable to the active negligence of NPUA, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where NPUA is shown to have been actively negligent and where NPUA active negligence accounts for only contractors comparative negligence.

**VI. PREVAILING WAGES**

A. Contractor shall comply with all applicable laws and regulations relating to prevailing wages. Wage rates for this Project shall be in accordance with the "General Wage Determination Made by the Director of Industrial Relations Pursuant to California Labor Code, Part 7, Chapter 1, Article 2, Sections 1770, 1773 and 1773.1", for San Bernardino County. Wage rates shall conform with those posted at Needles City Hall and the Project site.

B. The following Labor Code sections are hereby referenced and made a part of this Agreement:

1. Section 1775 - Penalty for Failure to Comply with Prevailing Wage Rates.
2. Section 1777.4 - Apprenticeship Requirements.
3. Section 1777.5 - Apprenticeship Requirements.
4. Section 1813 - Penalty for Failure to Pay Overtime.
5. Sections 1810 and 1811 - Working Hour Restrictions.
6. Section 1775 - Payroll Records.
7. Section 1773.8 - Travel and Subsistence Pay.

**VII. RECORD AUDIT**

In accordance with Government Code, Section 8546.7, records of both the NPUA and the CONTRACTOR shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

**VIII. FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the NPUA to the CONTRACTOR no sooner than thirty-five (35) days after approval of the work by the NPUA.

**IX. CONTRACTOR'S FAILURE TO PROCURE COMPLETION OF PROJECT**

In the event CONTRACTOR fails to furnish tools, equipment, or labor in the necessary quantity or quality, or fails to prosecute the work or any part thereof contemplated by this Agreement in a diligent and workmanlike manner, and if the CONTRACTOR for a period of three (3) calendar days after receipt of written demand from NPUA or its designated representative to do so, fails to furnish tools, equipment, or labor in the necessary quantity or quality, and to prosecute its work and all parts thereof in a diligent and workmanlike manner, or after commencing to do so within said three (3) calendar days, fails to continue to do so; then the NPUA may exclude the CONTRACTOR from the premises, or any portion thereof, and take possession of said premises or any portion thereof, together with all material thereon, and may complete the work contemplated by this Agreement or any portion

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of said work, either by furnishing the tools, equipment, labor or material necessary, or by letting the unfinished portion of said work, or the portion taken over by the NPUA to another contractor or by a combination of such methods. In any event, the procuring of the completion of said work, or the portion thereof taken over by the NPUA, shall be a charge against the CONTRACTOR, and may be deducted from any money due or becoming due to CONTRACTOR from the NPUA, or the CONTRACTOR shall pay the NPUA the amount of said charge, or the portion thereof unsatisfied. The sureties provided for under this Agreement shall become liable for payment should CONTRACTOR fail to pay in full any said cost incurred by the NPUA.

## **X. INSURANCE**

Prior to the beginning of and throughout the duration of the Project, CONTRACTOR and its subcontractors shall maintain insurance in conformance with the requirements set forth below. CONTRACTOR will use existing coverage to comply with these requirements. If that existing coverage does not meet the requirements set forth herein, CONTRACTOR agrees to amend, supplement, or endorse the existing coverage to do so.

CONTRACTOR acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to CONTRACTOR or its subcontractors more than the limits and coverage identified in this Agreement and which is applicable to a given loss, claim or demand, will be equally available to NPUA.

### **A. Types of Insurance**

Without limiting CONTRACTOR's indemnification of NPUA, and prior to commencement of Work, 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 NPUA:

- 1. 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 \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage, and \$2,000,000 completed operations aggregate. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.
- 2. 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 Work 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 combined single limit for each accident.
- 3. Umbrella or excess liability insurance.** If CONTRACTOR is using umbrella coverage to meet part of its liability insurance requirements under Paragraph 1 of

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this Section, CONTRACTOR shall obtain and maintain an umbrella or excess liability insurance that will provide bodily injury, personal injury, completed operations and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop-down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason.
- Pay on behalf of wording as opposed to reimbursement.
- Concurrency of effective dates with primary policies.
- Policies shall "follow form" to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

4. **Workers' compensation insurance.** CONTRACTOR shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000) for CONTRACTOR's employees in accordance with the laws of the State of California, Section 3700 of the Labor Code. In addition, CONTRACTOR shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California, Section 3700 for all the subcontractor's employees.

CONTRACTOR shall submit to CITY Along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of NPUA, its officers, agents, employees, and volunteers.

5. **Pollution liability insurance.** Environmental Impairment Liability Insurance shall be written on a CONTRACTOR's Pollution Liability form or other form acceptable to NPUA 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 dollars 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. The CITY OF NEEDLES, the NPUA, their officials, officers, agents, and employees, shall be included as additional insureds under the policy.

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**B. Other provisions or requirements**

- 1. Proof of insurance.** CONTRACTOR shall provide certificates of insurance to NPUA as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by NPUA's risk manager prior to commencement of performance. Current certification of insurance shall always be kept on file with NPUA during the term of this contract. NPUA reserves the right to require complete, certified copies of all required insurance policies, at any time.
- 2. Duration of coverage.** CONTRACTOR shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONTRACTOR, his agents, representatives, employees, or subcontractors. CONTRACTOR must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory or other exposure to completed operations claims. The CITY, NPUA and their officers, officials, employees, and agents shall continue as additional insureds under such policies during such period.
- 3. Primary/noncontributing.** Coverage provided by CONTRACTOR shall be primary and any insurance or self-insurance procured or maintained by CITY OR NPUA 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 AND NPUA before the CITY's or NPUA's own insurance or self-insurance shall be called upon to protect it as a named insured.
- 4. NPUA's rights of enforcement.** In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, NPUA has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by NPUA will be promptly reimbursed by CONTRACTOR or NPUA will withhold amounts sufficient to pay premium from CONTRACTOR payments. In the alternative, NPUA may cancel this Agreement.
- 5. Acceptable insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the NPUA's risk manager.
- 6. Waiver of subrogation.** All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against NPUA, its elected or appointed officers, agents, officials, employees, and volunteers or shall

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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 NPUA and shall require similar written express waivers and insurance clauses from each of its sub consultants.

- 7. Enforcement of contract provisions (non estoppel).** CONTRACTOR acknowledges and agrees that any actual or alleged failure on the part of the NPUA to inform CONTRACTOR of non-compliance with any requirement imposes no additional obligations on the NPUA nor does it waive any rights hereunder.
- 8. 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 NPUA 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 NPUA.
- 9. Notice of cancellation.** CONTRACTOR agrees to oblige its insurance agent or broker and insurers to provide to NPUA 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.
- 10. Additional insured status.** General liability policies shall provide or be endorsed to provide that NPUA and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.
- 11. Prohibition of undisclosed coverage limitations.** None of the coverages required herein will be in compliance with this Agreement if it includes any limiting endorsement of any kind that has not been first submitted to NPUA and approved of in writing.
- 12. 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.
- 13. 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.

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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 NPUA for review.

- 14. NPUA's right to revise requirements.** The NPUA 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 a ninety (90) day advance written notice of such change. If such change results in substantial additional cost to the CONTRACTOR, the NPUA and CONTRACTOR may renegotiate CONTRACTOR's compensation.
- 15. Self-insured retentions.** Any self-insured retentions must be declared to and approved by NPUA. NPUA 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 NPUA.
- 16. Timely notice of claims.** CONTRACTOR shall give NPUA 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.
- 17. 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.

## **XI. CONTRACTOR'S LICENSE**

CONTRACTOR must possess at the time of commencing work and throughout the Project duration, a Contractor's License and pocket cards of employees working on Needles projects, issued by the State of California, which is current and in good standing. CONTRACTOR shall ensure that any subcontractor working on the Project possesses at the time of commencing work and throughout the Project duration, a Contractor's License, issued by the State of California, which is current and in good standing.

## **XII. REGISTRATION REQUIREMENTS**

- A. Pursuant to Section 1771.1(a) of the Labor Code:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."



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B. CONTRACTOR must be registered with the Department of Industrial Relations (DIR) of the State of California to be eligible to work on public works projects. CONTRACTOR must ensure registration with the DIR that is active and in good standing.

C. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

D. The CONTRACTOR is not subject to public works requirements (including registration with the DIR) if the public works project is under \$1,000, unless the NPUA knows that the same CONTRACTOR will be awarded total project costs more than \$1,000 for a given year.

### **XIII. CORPORATION IN GOOD STANDING**

If CONTRACTOR is a corporation, the undersigned hereby represents and warrants that the corporation is duly incorporated and in good standing in the State of California, and that **Sal Petrelli** whose title is authorized representative is authorized to act for and bind the corporation.

### **XIV. PROVISIONS REQUIRED BY LAW**

Each 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, and if through mistake or otherwise any such provision is not inserted, or is not currently inserted, then upon application of either party the Agreement shall forthwith be physically amended to make such insertion or correction.

### **XV. SUBSURFACE HAZARDOUS MATERIALS**

A. In the event trenches or other excavations extend deeper than four (4) feet below the surface, the CONTRACTOR shall promptly, and before the following conditions are disturbed, notify the NPUA in writing of any:

1. Material that the CONTRACTOR believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code that is required to be removed to a Class I, Class II or Class III disposal site in accordance with the provisions of existing law.

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2. Subsurface or latent physical conditions at the site differing from those indicated.
  3. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the Work or the character provided for in the CONTRACT.
- B. Upon receipt of said notification the NPUA will investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the CONTRACTOR's cost of or the time required for performance of any part of the work, the NPUA will issue a change order under the procedures described in the General Conditions.
- C. In the event that a dispute arises between the NPUA and the CONTRACTOR whether the conditions materially differ or involve hazardous waste or cause a decrease or increase in the CONTRACTOR's cost of or time required for performance of any part of the work, the CONTRACTOR shall not be excused from any scheduled completion date provided for by the Agreement but shall proceed with all work to be performed under the Agreement. The CONTRACTOR shall retain all rights provided either by Agreement or by law which pertain to the resolution of disputes and protests between the contracting parties.

**XVI. COMPONENT PARTS OF THE CONTRACT**

This Agreement entered consists of the following CONTRACT DOCUMENTS, all of which are component parts of the Agreement as if herein set out in full or attached hereto

All the above-named CONTRACT DOCUMENTS are intended to be complementary. Work required by one of the above-named CONTRACT DOCUMENTS and not by others shall be done as if required by all.

**XVII. ENTIRE CONTRACT**

This Agreement constitutes the entire contract of the parties. No other agreements or contracts, whether oral or written, pertaining to the work to be performed, exists between the parties. This Agreement can be modified only by an amendment in writing, signed by both parties.

**XVIII. TERMINATION**

This agreement may be terminated by NPUA with or without cause on thirty (30) days written notice.

[Signatures on following page]

SIGNATURE PAGE TO

NPUA  
PUBLIC WORKS MAINTENANCE AGREEMENT  
(PETRELLI ELECTRIC INC.)

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in two (2) copies, each of which shall be deemed an original on the date first above written.

**OWNER:** (Needles Public Utility Authority)

BY: [Signature]  
Signature

TITLE: CITY/UTILITY MGR

DATE: 3/27/22

**ATTEST:**

BY: [Signature]  
Signature

TITLE: Dale Jones, NPUA Clerk

DATE: 3-29-22

**APPROVED AS TO FORM:**

BY: [Signature]  
Lena Wade (Mar 31, 2022 09:26 PDT)

TITLE: John O. Pinkney, NPUA Attorney Lena Wade

**CONTRACTOR:**

BY: [Signature]  
Signature

NAME: SAL PETRELLI  
Print Name

ADDRESS: 11615 DAVENPORT ROAD, AGUA DULCE, CA 91390

EMPLOYER IDENTIFICATION NO: 95-4501798

LICENSE NUMBER: CSLB 444795

TELEPHONE: (661) 268-7312

FAX: (661) 268-7331

EMAIL: sal@petrellelectric.com

REGISTRATION NO. 1000045836






# Petrelli & PW Project Signature Pages

Final Audit Report

2022-03-31

Created:	2022-03-30
By:	Tammy Ellmore (tellmore@cityofneedles.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAA9mwqT8TcNKdE5WsFyog7jCI4M_S8ShNv

## "Petrelli & PW Project Signature Pages" History

-  Document created by Tammy Ellmore (tellmore@cityofneedles.com)  
2022-03-30 - 10:53:59 PM GMT - IP address: 69.161.204.209
-  Document emailed to Lena Wade (wade@sbemp.com) for signature  
2022-03-30 - 10:56:04 PM GMT
-  Email viewed by Lena Wade (wade@sbemp.com)  
2022-03-31 - 4:04:33 PM GMT - IP address: 173.196.63.114
-  Document e-signed by Lena Wade (wade@sbemp.com)  
Signature Date: 2022-03-31 - 4:26:11 PM GMT - Time Source: server- IP address: 173.196.63.114
-  Agreement completed.  
2022-03-31 - 4:26:11 PM GMT

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**NPUA  
PUBLIC WORKS MAINTENANCE AGREEMENT  
PETRELLI ELECTRIC**

**EXHIBIT "A"**

NPUA'S RFP

DATED: **MARCH 25, 2021**

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**CITY OF NEEDLES  
INVITATION TO BID**

Sealed bids will be received by the Office of the City Clerk, Needles California, 92363 for the following:  
**ELECTRIC LINE CREW** consists of a 4-person line crew with line truck, bucket truck and all standard line tools.

**BID OPENING DATE:** on or before 03/25/2021, 3:30 p.m. PST

**DESCRIPTION OF WORK:** The PROJECT consists of a 4-person line crew to perform general high voltage electrical line work as assigned by the City of Needles Electric Line Crew Supervisor to repair current infrastructure in a 3-year contract. The bid is for the cost of a "Time and Equipment" Electric Line Crew.

**QUESTIONS:** Rainie Torrance

(760) 326-5700 x 140, [rtorrance@cityofneedles.com](mailto:rtorrance@cityofneedles.com)

**BID PACKETS:** In conformance with the Needles Charter, prospective bidders can view contract specifications (electronic copy) only at the City of Needles website at [www.cityofneedles.com](http://www.cityofneedles.com) under RFP.

**QUESTION CUT OFF DATE:** 03/23/2021

For addendums, please Email: [tellmore@cityofneedles.com](mailto:tellmore@cityofneedles.com) to be added to our bid holder / interested bidders list.

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**NPUA  
PUBLIC WORKS MAINTENANCE AGREEMENT**

(PETRELLI ELECTRIC INC.)

**EXHIBIT "B"**

CONTRACTOR'S Bid  
DATED **APRIL 13, 2021**

**3-YEAR CONTRACT**  
**EXPIRING: APRIL 13, 2024**

(Insert behind this page.)

**CONTRACTOR INFORMATION**

Company Legal Name: Petrelli Electric Inc

Company Legal Status (corporation, partnership, sole proprietor, etc.): Corporation

Business Address: 11615 Davenport Road, Agua Dulce, CA 91390

Website Address: www.petrellelectric.com

Telephone Number: (661) 268-7312 Facsimile Number: (661) 268-7331

Email Address: sal@petrellelectric.com

Length of time the firm has been in business: 38 years

Is your firm a sole proprietorship doing business under a different name? Yes No-X

If yes, please indicate sole proprietor's name and the DBA:

N/A

Is your firm incorporated? X Yes      No If yes, State of Incorporation: CA

Federal Taxpayer ID Number: 95-4501798

Regular business hours: 7:00AM-3:30PM Monday-Friday

**ACKNOWLEDGEMENTS**

BIDDER has examined the CONTRACT DOCUMENTS, including the following  
ADDENDA (as acknowledged below):

No. <u>1</u> Date: <u>3/23/21</u>	No. <u>    </u> Date: <u>    </u>
No. <u>    </u> Date: <u>    </u>	No. <u>    </u> Date: <u>    </u>
No. <u>    </u> Date: <u>    </u>	No. <u>    </u> Date: <u>    </u>



**REQUEST FOR CLERIFICATION**

**Standard Fee Schedule**

4-person Electrical Crew

Based on the Exhibit A Standard Fee Schedule submitted for your bid please provide the following breakdown.

4-person ELECTRICAL CREW (per hour)

(1) Forman, Regular Time \$ 140.12

(2) Lineman / Cable Splicer, Regular Time \$ 269.20

(1) Groundman, Regular Time \$ 95.22

(1) Digger Derrick (HD 6x6) \$ 78.00

(1) Bucket Truck 100 \$ 92.00

(1) Pickup 4x4 \$ 28.00

Employee Subsistence (per hour, include cost for 4-person crew above) \$ Included

Portal to Portal Rate per Mile (if applicable) \$                     

**Total 4-person ELECTRICAL CREW (per hour)      \$ 702.54**

Company Name: Petrelli Electric Inc

Notes: All emergency call-outs will be billed per hour from Agua Dulce to Needles.

Labor rates will be increased 1.8% on June 1, 2021, per the collective bargaining agreement with IBEW Local 47.

**RETURN NO LATER THAN MONDAY MARCH 29, 2020 BY  
10:00 A.M.**

**NON-COLLUSION DECLARATION**

To be executed by BIDDER  
And Submitted with BID  
Per Public Contract Code Section 7106

State California  
County Los Angeles

The undersigned declares:

I am the Vice President of Petrelli Electric Inc, the party making the foregoing BID.

The BID is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The BID is genuine and not collusive or sham. BIDDER has not directly or indirectly induced or solicited any other BIDDER to put in a false or sham BID. BIDDER has not directly or indirectly colluded, conspired, connived, or agreed with any BIDDER or anyone else to put in a sham BID, or to refrain from bidding. BIDDER has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the BID price of 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. All statements contained in the BID are true. 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, to any corporation, partnership, company, association, organization, BID depository, or to any member or agent thereof, to effectuate a collusive or sham BID, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a BIDDER that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of BIDDER.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 3-23-21 (date), at

Woodland Hills, CA (city / state).

By: 

Name: Sal Petrelli



**EXHIBIT A**  
**Standard Fee Schedule**  
4-person Electric Crew

<b><u>Classification</u></b>	<b><u>Hourly Rate</u></b>
General Foreman, Regular Time	<u>\$151.70</u>
General Foreman, Double Time	<u>\$ 232.42</u>
Foreman, Regular Time	<u>\$ 140.12</u>
Foreman, Double Time	<u>\$215.10</u>
Lineman / Cable Splicer, Regular Time	<u>\$134.60</u>
Lineman / Cable Splicer, Double Time	<u>\$ 197.79</u>
Apprentice 7 <sup>th</sup> Step, Regular Time	<u>\$128.16</u>
Apprentice 7 <sup>th</sup> Step, Double Time	<u>\$ 185.40</u>
Apprentice 6 <sup>th</sup> Step, Regular Time	<u>\$122.24</u>
Apprentice 6 <sup>th</sup> Step, Double Time	<u>\$ 179.40</u>
Apprentice 5 <sup>th</sup> Step, Regular Time	<u>\$119.31</u>
Apprentice 5 <sup>th</sup> Step, Double Time	<u>\$ 175.95</u>
Apprentice 4 <sup>th</sup> Step, Regular Time	<u>\$119.31</u>
Apprentice 4 <sup>th</sup> Step, Double Time	<u>\$ 175.95</u>
Groundman, Regular Time	<u>\$95.22</u>
Groundman, Regular Double Time	<u>\$127.68</u>
Meter Tech	<u>\$134.60</u>

<b><u>Equipment</u></b>	<b><u>Hourly Rate</u></b>
Digger Derrick (HD 6 x 6)	<u>\$78.00</u>
Bucket Truck 100	<u>\$ 92.00</u>
Bucket Truck 77	<u>\$78.00</u>
Digger Derrick 60, 65	<u>\$58.00</u>
Digger Derrick 50, 55	<u>\$52.00</u>
Bucket Truck 50, 55	<u>\$52.00</u>
Pickup 4 x 4	<u>\$28.00</u>

Company Name: Petrelli Electric Inc

*Notes: A flat rate of \$75.00 per day, per employee, will also be charged for subsistence in accordance with the collective bargaining agreement with IBEW Local 47. Our rates are normal to normal from our yard in Aqua Dulce, CA*

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**NPUA  
PUBLIC WORKS MAINTENANCE AGREEMENT**

(PETRELLI ELECTRIC INC.)

**EXHIBIT "C"**

ATTACH GENERAL CONDITIONS

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## GENERAL AND SUPPLEMENTAL CONDITIONS

### 1. DEFINITIONS

- 1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:
- 1.2 ADDENDA - Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications, or corrections.
- 1.3 BID - The offer or proposal of BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.
- 1.4 BIDDER - Any person, firm or corporation submitting a BID for the WORK.
- 1.5 BONDS - BID, Performance, and Payment BONDS and other instruments of surety, furnished by CONTRACTOR and CONTRACTOR'S SURETY in accordance with the CONTRACT DOCUMENTS.
- 1.6 CHANGE ORDER - A written order to CONTRACTOR authorizing an addition, deletion, or revision in the WORK within the general scope of the CONTRACT DOCUMENTS or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME. NO CHANGE ORDER is effective unless executed on the approved form, "Contract CHANGE ORDER," and approved by a CITY'S Representative.
- 1.7 CONTRACT DOCUMENTS - The Contract, including Advertisement for BIDS, Information for BIDDERS, BID, BID BOND, NOTICE OF AWARD, Payment BOND, PERFORMANCE BOND, NOTICE TO PROCEED, General Conditions, SUPPLEMENTAL CONDITIONS, Equal Opportunity Requirements, CHANGE ORDERS, Technical SPECIFICATIONS, DRAWINGS and ADDENDA.
- 1.8 CONTRACT PRICE - The total monies payable to CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.
- 1.9 CONTRACT TIME - The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.
- 1.10 CONTRACTOR - The person, firm, or corporation with whom OWNER has executed the Agreement.

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- 1.11 DRAWINGS - The parts of the CONTRACT DOCUMENTS, which show the characteristics, and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.
  - 1.12 ENGINEER - The person, firm or corporation named as such in the CONTRACT DOCUMENTS.
  - 1.13 FIELD ORDER - A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE, or an extension of the CONTRACT TIME, issued by the ENGINEER to CONTRACTOR during construction.
  - 1.14 NOTICE OF AWARD - WRITTEN NOTICE of the acceptance of the BID from OWNER to the successful BIDDER.
  - 1.15 NOTICE TO PROCEED - Written communication issued by OWNER to CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.
  - 1.16 OWNER - A public or quasi-public body or authority, corporation, association, partnership, or an individual for whom the WORK is to be performed, CITY OF NEEDLES, CALIFORNIA.
  - 1.17 PROJECT - The undertaking to be performed as provided in the CONTRACT DOCUMENTS.
  - 1.18 RESIDENT PROJECT REPRESENTATIVE - The authorized representative of OWNER who is assigned to the PROJECT site or any part thereof.
  - 1.19 SHOP DRAWINGS - All DRAWINGS, diagrams, illustrations, brochures, schedules and other data which are prepared by CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.
  - 1.20 SPECIFICATIONS - A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship and including the General Conditions and SUPPLEMENTAL CONDITIONS.
  - 1.21 SUBCONTRACTOR - An individual, firm, or corporation having a direct contract with CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the WORK at the site.

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- 1.22 SUBSTANTIAL COMPLETION - That date certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.
  - 1.23 SUPPLEMENTAL CONDITIONS - Additions and modifications to the General Conditions required by PROJECT specific requirements and applicable laws.
  - 1.24 SUPPLIER - Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.
  - 1.25 WORK - All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.
  - 1.26 WRITTEN NOTICE - Any notice to any party of the Agreement relative to any part of this Agreement, in writing, and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address or delivered in person to said party or their authorized representative on the WORK.

## 2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

- 2.1 CONTRACTOR may be furnished additional instructions and detail DRAWINGS, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.
- 2.2 The additional DRAWINGS and instructions thus supplied will become a part of the CONTRACT DOCUMENTS. CONTRACTOR shall carry out the WORK in accordance with the additional detail DRAWINGS and instructions.

## 3. SCHEDULES, REPORTS AND RECORDS

- 3.1 CONTRACTOR shall submit to OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data, where applicable, as are required by the CONTRACT DOCUMENTS for the WORK to be performed.
- 3.2 Prior to the first partial payment estimate, CONTRACTOR shall submit construction progress schedules showing the order in which CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:



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3.2.1 The dates at which special detail DRAWINGS will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 CONTRACTOR shall also submit a schedule of payments that CONTRACTOR anticipates will be earned during the WORK.

#### 4. DRAWINGS AND SPECIFICATIONS

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS, and all incidental WORK necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over general DRAWINGS.

**4.3 In case of conflict between the SPECIFICATIONS, and the STANDARD SPECIFICATIONS (Greenbook), the Specification shall govern.**

4.4 Any discrepancies found between the DRAWINGS and SPECIFICATIONS, and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by CONTRACTOR after discovery of such discrepancies, inconsistencies or ambiguities shall be done at CONTRACTOR's risk.

#### 5. SHOP DRAWINGS

5.1 CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. At a minimum, CONTRACTOR shall provide submittals required to be in a list format. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER's approval of any SHOP DRAWING shall not release CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING, which substantially deviates from the requirement of the CONTRACT DOCUMENTS, shall be evidenced by a CHANGE ORDER.

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- 5.2 When submitted for the ENGINEER's review, SHOP DRAWINGS shall bear CONTRACTOR's certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
  - 5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by CONTRACTOR at the site and shall be available to the ENGINEER.
  - 5.4 CONTRACTOR shall accept full responsibility for the completeness of each re-submittal. CONTRACTOR shall verify that all corrected data and additional information previously requested by the ENGINEER are provided on the re-submittal.
  - 5.5 When corrected copies are resubmitted, CONTRACTOR, shall in writing, direct specific attention to all revisions and shall list separately any revisions made other than those called for by ENGINEER on previous submissions.
  - 5.6 Requirements specified for initial submittals shall also apply to re-submittals. Re-submittals shall bear the number of the first submittal followed by a letter (A, B, etc.) to indicate the sequence of the re-submittal.
  - 5.7 If more than one resubmission is required because of failure of CONTRACTOR to provide all previously requested corrected data or additional information, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER for review of the additional re-submissions. This does not include initial submittal data, such as shop tests and field tests, which are submitted after initial submittal.
  - 5.8 Re-submittals shall be made within 10 days of the date of the letter returning the material to be modified or corrected, unless within 30 days CONTRACTOR submits an acceptable request for an extension of the stipulated time period, listing the reasons the re-submittal cannot be completed within that time.
  - 5.9 Any need for more than one resubmission, or any other delay in obtaining ENGINEER's review of submittals, will not entitle CONTRACTOR to extension of the CONTRACT TIMES unless delay of WORK is directly caused by a change in the WORK authorized by a CHANGE ORDER or by failure of ENGINEER to review any submittal within the submittal review period of two weeks and return the submittal to CONTRACTOR.

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## 6. MATERIALS, SERVICES AND FACILITIES

- 6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.
- 6.2 Material and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located to facilitate prompt inspection.
- 6.3 Manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned as directed by the manufacturer.
- 6.4 Materials, supplies, and equipment shall be in accordance with the SHOP DRAWINGS and samples submitted by CONTRACTOR and approved by the ENGINEER.
- 6.5 Materials, supplies, and equipment to be incorporated into the WORK shall not be purchased by CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

## 7. INSPECTION AND TESTING

- 7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted industry standards, as required and defined in the CONTRACT DOCUMENTS.
- 7.2 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than CONTRACTOR, CONTRACTOR will give the ENGINEER timely notice of readiness. CONTRACTOR will then furnish the ENGINEER with the required certificates of inspection, testing or approval.
- 7.3 Inspections, tests, or approvals by the ENGINEER or others shall not relieve CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

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- 7.4 The ENGINEER and the ENGINEER's representatives will, always, have access to the WORK. In addition, authorized representatives and agents of any participating federal, state or local agencies shall be permitted to inspect all WORK, materials, payrolls, records on personnel, invoices of materials, and other relevant data and records. CONTRACTOR will provide proper facilities for such access and observation of the WORK, and for any inspection or testing thereof.
- 7.5 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for the ENGINEER / INSPECTOR's observation and replaced at CONTRACTOR's expense.
- 7.6 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, CONTRACTOR, at the ENGINEER's request, will uncover, expose, or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction; if, however, such WORK is not found to be defective, CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.
- 7.7 A pre-final inspection of the WORK will be made by OWNER, ENGINEER, and project inspector. This inspection shall be made as soon as practical after CONTRACTOR has notified OWNER, in writing, that the WORK is ready for this inspection. The pre-final inspection shall be made prior to acceptance of any portion of the WORK as being substantially complete and prior to filing of the Notice of Completion.
- 7.8 A final inspection of all the WORK will be made by OWNER, ENGINEER, and CONTRACTOR, prior to acceptance of the WORK.
- 7.9 Forty-eight hours prior to WORK being accomplished, CONTRACTOR will notify the ENGINEER of the proposed working hours to accomplish the WORK for that day. WORK may be accomplished on weekends or holidays only if CONTRACTOR provides prior notification, ENGINEER approves the request, and CONTRACTOR pays for the additional amount for holiday or overtime inspection costs beyond the normal hourly inspection rates for weekdays.

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7.10 CONTRACTOR shall make the WORK accessible at all reasonable times for inspection by OWNER. CONTRACTOR shall inspect all material and equipment delivered to the job site by others to be used or incorporated in the WORK.

## 8. SUBSTITUTIONS

8.1 For purposes of this provision the term "substitution" shall mean the substitution of any material, product, thing or service that is substantially equal or better in every respect to that so indicated or specified in the SPECIFICATIONS.

8.2 Pursuant to Public Contract Code section 3400(b) of City may make a finding designating certain materials, products, things, or services by specific brand or trade name for the statutorily enumerated purposes. As required by section 3400 (b) OWNER may have made such finding as may be further described in the General Conditions and SUPPLEMENTAL CONDITIONS. These findings if made, as well as the materials, products, things, or services and their specific brand or trade names that must be used for the PROJECT may be found in section 37.3 of the SUPPLEMENTAL CONDITIONS, if applicable.

8.3 Unless specifically designated in section 37.3 of the SUPPLEMENTAL CONDITIONS, whenever in SPECIFICATIONS any material, product, thing, or service is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such SPECIFICATIONS shall be deemed to be used for the purpose of facilitating the description of the material, product thing, or service desired and shall be deemed to be followed by words "or approved equal." CONTRACTOR may, unless otherwise stated, offer for substitution any material, product, thing or service which shall be substantially equal or better in every respect to that so indicated or specified. However, OWNER has adopted certain uniform standards for certain materials, products, things, and/or services. If any material, product, thing, or service offered for substitution by CONTRACTOR is not, in the opinion of the ENGINEER and OWNER, substantially equal or better in every respect to that specified, BIDDERS shall furnish the material, product, thing, or service specified. The burden of proof as to the equality of any material, product, thing, or service shall rest with CONTRACTOR.

8.4 CONTRACTOR shall submit requests together with substantiating data for substitution of any "or approved equal" material, product, thing, or service no later than 20 days after award of the contract. Provisions authorizing submission of "or approved equal" substitution justification data shall not in any way authorize an extension of time for performance of this Contract. Furthermore, if a proposed "or approved equal" substitution request is rejected, a CONTRACTOR shall be

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responsible for including the specified material, product, thing, or service in its BID. OWNER shall not be responsible for any cost of CONTRACTOR associated with “or approved equal” substitution request. OWNER has the complete and sole discretion to determine if a material, product, thing, or service is an “or approved equal” material, product, thing, or service that may be substituted.

- 8.5 For purposes of subsection 8.4 above, data required to substantiate requests for substitutions of an “or approved equal” material, product, thing, or service data shall include a signed affidavit from CONTRACTOR stating that the substituted “or approved equal” material, product, thing, or service is equivalent to that specified in the specification in every way except as listed on the affidavit. Substantiating data shall also include and all illustrations, SPECIFICATIONS, and other relevant data including catalogue information which describes the requested substituted “or approved equal” to the material product, thing, or service specified. In addition, the submittal documentation must also include a statement of the cost implications of the substitution being requested stating whether and why the substitution of the “or approved equal” material, product, thing, or service will reduce or increase the CONTRACT PRICE. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted “or approved equal” material, product, thing, or service. Failure to submit all the needed substantiating data, including the signed affidavit, to the ENGINEER in a timely fashion so that the substitution can be adequately reviewed may result in the rejection of the proposed substitution. The ENGINEER is not obligated to review multiple substitution submittals for the same materials, products, things, or services due to CONTRACTOR’s failure to submit a complete package initially.
- 8.6 Time limitations in this Section must be complied with strictly and in no case will an extension of time for completion be granted because of CONTRACTOR’s failure to request the substitution of an alternative item at the times and manner set forth herein in subdivision 8.4. Further, CONTRACTOR shall bear the cost of all engineering WORK associated with the review of submittals for substitution of equals.
- 8.7 In the event CONTRACTOR furnishes material, product, thing, or service more expensive than that specified, the difference in cost of such material, product, thing, or service so furnished shall be borne by CONTRACTOR.

## 9. PATENTS

- 9.1 CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save OWNER harmless

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from loss on account thereof, except that OWNER shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified; however, if CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, CONTRACTOR shall be responsible for such loss unless CONTRACTOR promptly gives such information to the ENGINEER.

## 10. SURVEYS, PERMITS, AND REGULATIONS

10.1 Survey will be provided by OWNER (if applicable).

10.2 CONTRACTOR shall bear all costs for RE-STAKE, lost, or otherwise removed.

10.3 CONTRACTOR shall carefully preserve benchmarks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by OWNER, unless otherwise specified. CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, CONTRACTOR shall promptly notify the ENGINEER, in writing, and any necessary changes shall be adjusted as provided in section 14, CHANGES IN THE WORK.

## 11. PROTECTION OF WORK, PROPERTY, AND PERSONS

11.1 CONTRACTOR will be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the WORK. CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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- 11.2 CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction. CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. CONTRACTOR will notify owners of adjacent utilities when prosecution of the WORK may affect them. CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone of whose acts of any of them will be liable, except damage or loss attributable to the fault of OWNER, of the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR.
- 11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, CONTRACTOR, without special instructions or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. CONTRACTOR will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.
- 11.4 For all excavations more than five (5) feet, CONTRACTOR shall, pursuant to Labor Code section 6705, submit in advance of any excavation hereunder a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from caving ground. No such excavation shall be made until said detailed plan is submitted by CONTRACTOR and accepted by the ENGINEER. All excavations shall comply with OSHA standards.

## 12. PROPERTY OWNER NOTIFICATION

- 12.1 CONTRACTOR is required to notify all property owners, businesses, residences, etc. in letter form in both English and Spanish of the construction dates and times, at least 5 days prior to the beginning of WORK. A copy of this notification letter must also be sent to the Engineering Department at 817 Third Street, Needles, CA 92363. CONTRACTOR shall also post "Temporary No Parking" signs, a minimum of 48 hours prior to the commencing WORK adjacent to their property. The notification shall be by posting visible signs at the edge of the curbs and gutters. The signs which will be posted must be on their own lath or attached to delineator cones, or pylons, and not stapled or nailed to any tree, utility pole or street signs. Trees must be protected from being scarred or broken during construction and must be replaced at CONTRACTOR's expense if damage is done.



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12.2 In the event that vehicles are on the street at the time construction is to begin, CONTRACTOR shall take appropriate action to notify owner/s of said vehicle to have it moved. If this is not possible, or the vehicle is inoperable and owner is not capable of moving the vehicle, CONTRACTOR shall inform the Engineering Department, who will notify the San Bernardino County Sheriff Department to have the vehicle towed at the owner's expense. Note: The above action may take place only if the "Temporary No Parking" signs have been in place, and placement has been verified by the ENGINEER, for the required 48-hour time period. Removal of said signs by the property owners or vandals will not constitute non-compliance with this section."

13. SUPERVISION BY CONTRACTOR

13.1 CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated, in writing, by CONTRACTOR as CONTRACTOR's representative at the site. The supervisor shall have full authority to act on behalf of CONTRACTOR and all communications given to the supervisor shall be as binding as if given to CONTRACTOR. The supervisor shall be present on the site, always, as required to perform adequate supervision and coordination of the WORK.

14. CHANGES IN THE WORK

14.1 OWNER may, at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

14.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in details of the WORK. CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless CONTRACTOR believes that such FIELD ORDER entitles CONTRACTOR to a change in CONTRACT PRICE or CONTRACT TIME, or both, in which event CONTRACTOR shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter, CONTRACTOR shall document the basis for the change in CONTRACT PRICE or CONTRACT TIME within thirty (30) days. CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from OWNER.

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15. CHANGES IN CONTRACT PRICE

- 15.1 All changes that affect the cost or time of the construction of the PROJECT must be authorized by means of a CHANGE ORDER. The CHANGE ORDER will include extra WORK, WORK for which quantities have been altered from those shown in the BIDDING schedule, as well as decreases or increases in the quantities of installed units which are different than those shown in the BIDDING schedule because of final measurements. All changes should be recorded on a CHANGE ORDER as they occur. Each CHANGE ORDER must contain complete and detailed justification for all items addressed by the CHANGE ORDER. All CHANGE ORDERS must be executed on a, "Contract CHANGE ORDER," and must be approved by OWNER prior to execution of the WORK by CONTRACTOR.
- 15.2 The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:
- (a) Unit prices previously approved.
  - (b) An agreed lump sums.
  - (c) Force account as stated in the most current edition of the Standard Specification for Public Works Construction SSPWC – Greenbook Standard SPECIFICATIONS except that the negotiated total mark up, including overhead and profit, is limited to a maximum 15 percent for CONTRACTOR doing the WORK and a maximum of an additional 5 percent for the prime contractor if the WORK is performed by any SUBCONTRACTOR. For joint ventures, such is considered a prime contractor.

16. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

- 16.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on the date specified in the NOTICE TO PROCEED.
- 16.2 CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between CONTRACTOR and OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

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16.3 The parties acknowledge that CONTRACTOR's failure to complete the WORK within the CONTRACT TIME *will cause OWNER to incur substantial economic damages and losses of types and in amounts which are impossible to compute and ascertain with certainty as a basis for recovery by OWNER of actual damages, and that liquidated damages represent a fair, reasonable and appropriate estimate thereof. Accordingly, in lieu of actual damages for such delay, CONTRACTOR agrees that liquidated damages may be assessed and recovered by OWNER as against CONTRACTOR and its Surety, in the event of delayed completion and without OWNER being required to present any evidence of the amount or character of actual damages sustained by reason thereof; therefore, CONTRACTOR will pay to OWNER liquidated damages in the amount of \$300.00 per day for each day beyond the CONTRACT TIME.*

16.4 CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and CONTRACTOR has promptly given WRITTEN NOTICE of such delay to OWNER or ENGINEER.

16.4.1 To any preference, priority or allocation order duly issued by OWNER.

16.4.2 To unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of OWNER, acts of another CONTRACTOR in the performance of a contract with OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather; and

16.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 16.4.1 and 16.4.2 of this Article.

## 17. CORRECTION OF WORK

17.1 CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS, and without expense to OWNER, and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

17.2 All removal and replacement WORK shall be done at CONTRACTOR's expense. If CONTRACTOR does not take action to remove such rejected WORK within ten (10)

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days after receipt of WRITTEN NOTICE, OWNER may remove such WORK and store the materials at the expense of CONTRACTOR.

18. SUBSURFACE CONDITIONS

18.1 CONTRACTOR shall promptly, and before the following conditions are disturbed, notify OWNER by WRITTEN NOTICE of:

18.1.1 Material that CONTRACTOR believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

18.1.2 Subsurface or latent physical conditions at the site differing from those indicated on the contract documents.

18.1.3 Unknown physical conditions at the site of an unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the Contract.

18.2 Upon such notification, OWNER shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in CONTRACTOR's cost of, or the time required for or both performance of any part of the WORK shall issue a CHANGE ORDER under the procedures described in the Contract.

18.3 In the event that a dispute arises between OWNER and CONTRACTOR whether the conditions do materially so differ, or involve hazardous waste, or cause a decrease or increase in CONTRACTOR's cost of, or time required for or both performance of any part of the WORK, CONTRACTOR shall not be excused from any scheduled completion date provided for by the Contract but shall proceed with all WORK to be performed under the Contract. 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.

19. SUSPENSION OF WORK, TERMINATION, AND DELAY

19.1 OWNER may suspend the WORK or any portion thereof for a period of not more than ninety (90) days or such further time as agreed upon by CONTRACTOR, by WRITTEN NOTICE to CONTRACTOR and the ENGINEER, which shall fix the date on which WORK shall be resumed. CONTRACTOR will resume that WORK on the dates so fixed. CONTRACTOR will be allowed an increase in the CONTRACT

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PRICE, or an extension of the CONTRACT TIME, or both, directly attributing to any suspension.

- 19.2 If CONTRACTOR is adjudged as bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable material or equipment, or repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the ENGINEER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then OWNER may, without prejudice to any other right or remedy and after giving CONTRACTOR and its SURETY a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by CONTRACTOR, and finish the WORK by whatever method OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess shall be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR will pay the difference to OWNER. Such costs incurred by OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.
- 19.3 Where CONTRACTOR's services have been so terminated by OWNER, said termination shall not affect any right of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by OWNER due to CONTRACTOR will not release CONTRACTOR from compliance with the CONTRACT DOCUMENTS.
- 19.4 After ten (10) days from delivery of a WRITTEN NOTICE to CONTRACTOR and the ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.
- 19.5 If, through no act or fault of CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30)

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days after it is submitted, or OWNER fails to pay CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days after its approval and presentation, then CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to OWNER and the ENGINEER terminate the Contract and recover from OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the Contract, if the ENGINEER has failed to act on a request for payment or if OWNER has failed without good cause to make any payment as aforesaid, CONTRACTOR may, upon ten (10) days WRITTEN NOTICE to OWNER and the ENGINEER, stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

- 19.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate CONTRACTOR for the costs and delays necessarily caused by the failure of OWNER or ENGINEER.
- 19.7 OWNER may, at any time, terminate the Contract for OWNER's convenience and without cause. CONTRACTOR shall be entitled to receive payment for WORK executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the WORK executed.

## 20. PAYMENT TO CONTRACTOR

- 20.1 OWNER agrees to pay CONTRACTOR in monthly progress payments for all WORK completed according to the schedules delivered to OWNER under Section 3.2. At least ten (10) days before each progress payment falls due (but not more often than once a month), CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, such as paid invoices, or other written evidence satisfactory to OWNER; as will establish OWNER's title to the material and equipment and protect OWNER's interest therein, including applicable insurance.

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The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate, in writing, approval of the payment, and present the partial payment estimate to OWNER, or return the partial payment estimate to CONTRACTOR indicating, in writing, the reasons for refusing to approve payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. OWNER will, within twenty (20) days of presentation of an approved partial payment estimate, pay CONTRACTOR a progress payment based on the approved partial payment estimate less the retention. The retention shall be an amount equal to 10% of said estimate. If at any time thereafter when the progress of the WORK is not satisfactory, additional amounts may be retained. Upon SUBSTANTIAL COMPLETION of the WORK, any amount retained may be paid to CONTRACTOR. When the WORK has been substantially completed, except for WORK which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgment of OWNER are valid reasons for non-completion, OWNER may make additional payments, always retaining an amount sufficient to cover the estimated cost of the WORK to be completed.

- 20.2 Payments will not be made that would deplete the retention nor place in escrow any funds that are required for retention nor invest the retention for the benefit of CONTRACTOR.
- 20.3 All progress payments and the final payment shall be processed on a "Partial Payment Estimate", and all payments shall be approved by OWNER.
- 20.4 Prior to SUBSTANTIAL COMPLETION, OWNER, with the approval of the ENGINEER, and with the concurrence of CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.
- 20.5 OWNER shall have the right to enter the premises for the purpose of doing WORK not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of OWNER.
- 20.6 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by OWNER, shall be paid to CONTRACTOR thirty (30)

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days after the timely recording of a Notice of Completion, Late payments of the retention shall bear interest at a rate of two percent (2%) per month until paid.

- 20.7 CONTRACTOR will indemnify and save OWNER or OWNER's agents harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. CONTRACTOR shall, at OWNER's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If CONTRACTOR fails to do so, OWNER may, after having notified CONTRACTOR, either pay unpaid bills or withhold from CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged where upon payment to CONTRACTOR shall be resumed in accordance with the terms of CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon OWNER to either CONTRACTOR, CONTRACTOR's SURETY, or any third party. In paying any unpaid bills of CONTRACTOR, any payment so made by OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by OWNER to CONTRACTOR and OWNER shall not be liable to CONTRACTOR for any such payments made in good faith.
- 20.8 If OWNER fails to make payment within the time specified in section 20.6, in addition to other remedies available to CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by CONTRACTOR.
- 20.9 The ENGINEER may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect OWNER from loss on account of:
- (a) Defective WORK not remedied.
  - (b) Claims filed or reasonable evidence indicating probable filing of claims.
  - (c) Failure of CONTRACTOR to make payments properly to SUBCONTRACTORS or for material or labor.
  - (d) A reasonable doubt that the WORK can be completed for the balance then unpaid.
  - (e) Damage to another CONTRACTOR.



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(f) Performance of WORK in violation of the terms of the CONTRACT DOCUMENTS.

20.10 Where WORK on unit price items is substantially complete but lack clean-up and/or corrections ordered by the ENGINEER, amounts shall be deducted from unit prices in partial payment estimates to amply cover such clean-up and corrections.

21. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

21.1 CONTRACTOR's release upon payment shall be in accordance with Civil Code section 3262.

22. INSURANCE

22.1 CONTRACTOR shall purchase and maintain such insurance as will protect it from claims set forth below which may arise out of, or result from CONTRACTOR's execution of the WORK, whether such execution be by CONTRACTOR, any SUBCONTRACTOR, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

22.1.1 Claims under Workers' Compensation, disability benefit and other similar employee benefit acts;

22.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employees.

22.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees.

22.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (2) by any other person; and

22.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

22.2 Certificates of Insurance acceptable to OWNER shall be filed with OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least (15) days prior WRITTEN NOTICE has been given to OWNER.

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22.3 CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense, during the CONTRACT TIME, liability insurance as hereinafter specified:

22.3.1 CONTRACTOR's General Public Liability and Property Damage Insurance including vehicle coverage issued to CONTRACTOR and protecting CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by CONTRACTOR or by any SUBCONTRACTOR employed by CONTRACTOR or anyone directly or indirectly employed by CONTRACTOR, or by a SUBCONTRACTOR employed by CONTRACTOR. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$250,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident. The City shall be added as additional insured to general liability and auto liability policies, and CONTRACTOR's insurance shall be primary and non-contributory. CONTRACTOR shall provide an endorsement providing that OWNER, its officials, officers, employees, agents and volunteers shall be additional insureds with regard to liability and defense of suits or claims arising out of the performance of the WORK.

22.3.2 CONTRACTOR shall acquire and maintain Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of OWNER, CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release CONTRACTOR or CONTRACTOR's SURETY from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

22.4 CONTRACTOR shall procure and maintain, at CONTRACTOR's own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the WORK is performed, Workers' Compensation Insurance, including occupational disease provisions, for all of CONTRACTOR's employees at the site of the PROJECT and in case any WORK is sublet, CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workers' Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by CONTRACTOR. In case

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any class of employees engaged in hazardous WORK under this Contract at the site of the PROJECT is not protected under Workers' Compensation statute, CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of its employees not otherwise protected. CONTRACTOR shall provide an endorsement providing a waiver of subrogation stating that the insurer waives all rights of subrogation against OWNER.

22.5 CONTRACTOR shall secure "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, vehicle damage, theft, flood, earthquake, civil commotion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by OWNER. The policy shall name as the insured CONTRACTOR, and OWNER.

22.6 "All insurance coverages shall be primary and any other insurance, deductible, or self-insurance maintained by OWNER shall not contribute with this primary insurance. Policies shall contain or be endorsed to contain such provisions."

## 23. CONTRACT SECURITY

23.1 CONTRACTOR shall, within ten (10) days after the receipt of the NOTICE OF AWARD, furnish OWNER with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Only BONDS executed by an admitted surety insurer, as defined in Code of Civil Procedure section 995.120, shall be accepted. If a California-admitted surety insurer issuing BONDS does not meet these requirements, the insurer will be considered qualified if it is in conformance with section 995.660 of the California Code of Civil Procedure, and proof of such is provided to City. The expense of these BONDS shall be borne by CONTRACTOR. If, at any time, a SURETY on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of surety companies accepted on federal BONDS, CONTRACTOR shall, within ten (10) days after notice from OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other SURETY or SURETIES as may be satisfactory to OWNER. The premiums on such BOND shall be paid by CONTRACTOR. No further payment

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shall be deemed due nor shall be made until the new SURETY or SURETIES shall have furnished an acceptable BOND to OWNER.

23.2 The Performance BOND and the Payment BOND to be furnished by CONTRACTOR shall be executed on the forms provided in the CONTRACT DOCUMENTS.

## 24. ASSIGNMENTS

24.1 CONTRACTOR shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or of any right, title, or interest therein, or any obligations thereunder, without written consent of the other party.

24.2 CONTRACTOR offers and agrees to assign to OWNER all rights, title and interest in and to all causes of action as it may have under Section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700 of Part 2 of Division 7 of Business and Professions Code), and any other applicable laws, arising from purchase of goods, services, or materials, pursuant to this Contract. This assignment shall become effective at the time that OWNER tender's final payment to CONTRACTOR, without further acknowledgment by the parties.

## 25. INDEMNIFICATION

25.1 CONTRACTOR will indemnify and hold harmless OWNER and the ENGINEER against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom; and is caused in whole or in part by any negligent or willful act or omission of CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

25.2 In any and all claims against OWNER or the ENGINEER, or any of their agents or employees, by any employee of CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for those acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for CONTRACTOR or any SUBCONTRACTOR under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

25.3 The obligation of CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, its agents or employees arising out of the preparation or approval

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of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

26. SEPARATE CONTRACTS

26.1 OWNER reserves the right to let other contracts in connection with this PROJECT. CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of CONTRACTOR's WORK depends upon the WORK of any other contractors, CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

26.2 OWNER may perform additional WORK related to the PROJECT or OWNER may let other contracts containing provisions like these. CONTRACTOR will afford the other CONTRACTORS who are parties to such contracts (or OWNER, if OWNER is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK and shall properly connect and coordinate the WORK with theirs.

26.3 If the performance of additional WORK by other CONTRACTORS or OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the Contract, WRITTEN NOTICE thereof shall be given to CONTRACTOR prior to starting any such additional WORK. If CONTRACTOR believes that the performance of such additional WORK by OWNER or others involves it in additional expense or entitles it to an extension of the CONTRACT TIME, or both CONTRACTOR may make a claim thereof as provided in sections 14 and 15.

27. SUBCONTRACTING

27.1 CONTRACTOR may utilize the services of specialty subcontracts on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

27.2 CONTRACTOR shall not award WORK to SUBCONTRACTOR (S), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of OWNER.

27.3 CONTRACTOR shall be fully responsible to OWNER for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR.

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27.4 CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and give CONTRACTOR the same power as regards terminating any subcontract that OWNER may exercise over CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

27.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and OWNER.

## 28. ENGINEER'S AUTHORITY

28.1 The ENGINEER shall act as OWNER's representative during the construction period, shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

28.2 CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS regarding the quality of materials, workmanship, and execution of the WORK. Inspections may be at the factory or fabrication plant of the source of material supply.

28.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

28.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

## 29. LAND AND RIGHTS-OF-WAY

29.1 Prior to issuance of NOTICE OF PROCEED, OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

29.2 OWNER shall provide to CONTRACTOR information, which delineates and describes the lands owned and rights-of-way acquired.

29.3 CONTRACTOR shall provide, at its own expense and without liability to OWNER, any additional land and access thereto that CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

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30. GUARANTEE

30.1 CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of the damage of other parts of the system resulting from such defects. OWNER will give notice of observed defects with reasonable promptness. If CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, OWNER may do so and charge CONTRACTOR the cost thereby incurred. **The Performance BOND shall remain in full force and effect through the guarantee period.**

31. RESOLUTION OF CONSTRUCTION CLAIMS

31.1 Claim means a separate demand by CONTRACTOR for (a) a time extension, (b) payment of money or damages arising from WORK done by, or on behalf of CONTRACTOR, pursuant to this Contract, payment not otherwise expressly provided in the Contract, or any separate demand by CONTRACTOR, the amount of which is disputed by OWNER. If this is a "Public Works Contract" as defined in 22200 of the California Public Contract Code, claims shall be resolved pursuant to Sections 20104 et seq. of the California Public Contract Code. These sections are summarized as follows:

31.1.1 For claims less than \$50,000, OWNER shall respond in writing to all written claims within forty-five (45) days of receipt of the claim, or may request in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses OWNER may have against such claim. OWNER's written response to the claim, as further documented, will be submitted to CONTRACTOR within fifteen (15) days from receipt of the further documentation, or within a period no greater than that taken by CONTRACTOR in producing the additional documentation, whichever is greater.

31.1.2 For claims over \$50,000 and less than or approved equal to \$375,000, OWNER shall respond, in writing, to all written claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to any defenses OWNER may have against such claim. OWNER's

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written response to the claim, as further documented, will be submitted to CONTRACTOR within thirty (30) days from receipt of the further documentation, or within a period no greater than that taken by CONTRACTOR in producing the additional documentation, whichever is greater.

31.1.3 If CONTRACTOR disputes OWNER's written response, or OWNER fails to respond within the time specified, CONTRACTOR may notify OWNER, in writing, within either fifteen (15) days of receipt of OWNER's response, or within fifteen (15) days of OWNER'S failure to respond within the statutorily prescribed time and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand, OWNER shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

31.1.4 Following the meet and confer conference, if the claim or any portion remains in dispute, CONTRACTOR may file a claim pursuant to Government Code sections 900, et seq. The period within to file such a claim shall be defined in Public Contract Code section 20104.2(e).

31.2 All claims, disputes, and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims, which have been waived by the making of an acceptance of final payment as provided by Section 20, may be decided by arbitration if the parties mutually agree. Any agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The arbitration will be conducted pursuant to sections 10240 - 10240.13 of the California Public Contract Code. The award rendered by the arbitrators shall be final, the judgment may be entered upon it in any court having jurisdiction thereof.

31.2.1 Notice of the request for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and a copy shall be filed with the ENGINEER. Request for arbitration shall in no event be made on any claim, dispute, or other matter in question which would be barred by the applicable statute of limitations.

31.2.2 CONTRACTOR will carry on the WORK, and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31.2.3 Arbitration awards must be presented, in writing, and include the following elements:



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- (a) Legal "findings of fact" established by the arbiter.
  - (b) Specific breakdown of the dollar amounts allocated for each issue under arbitration.
  - (c) The arbiter's "conclusions of law".
  - (d) A summary of the evidence.
  - (e) Reasons underlying the arbiter's award.

31.3 Pursuant to Public Contract Code Section 9201, City shall provide CONTRACTOR with timely notification of the receipt of any third-party claim, relating to the Contract. OWNER is entitled to recover its reasonable costs incurred in providing such notification.

## 32. TAXES

31.1 CONTRACTOR will pay all sales, consumer, use, and other similar taxes required by the laws of the place where the WORK is performed.

## 33. CONFLICT OF INTEREST

33.1 CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. CONTRACTOR shall ensure that no conflict of interest exists between its officers, employees, or SUBCONTRACTORS, and OWNER. CONTRACTOR shall ensure that no City officer or employee in a position that enables them to influence this Agreement will have any direct or indirect financial interest resulting from this Agreement. CONTRACTOR shall ensure that no City employee shall have any relationship to CONTRACTOR or officer or employee of CONTRACTOR, nor that any such person will be employed by CONTRACTOR in the performance of this Agreement without immediate divulgence of such fact to OWNER.

## 34. PRECONSTRUCTION CONFERENCE

34.1 Prior to the start of construction, OWNER will schedule a pre-construction conference. At the conference, the ENGINEER will review the project with OWNER, resident inspector, CONTRACTOR, and other interested parties.

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35. ACCESS TO CONTRACTOR'S RECORDS

35.1 For each negotiated (non-bid) contract in excess of \$2,500, OWNER, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of CONTRACTOR which are directly pertinent to a specific project for the purpose of making audits, examinations, excerpts, and transcriptions.

36. UTILITIES

36.1 Unless otherwise indicated in the CONTRACT DOCUMENTS, all utility lines, conduits, wires, or structures shall be maintained by CONTRACTOR and shall not be disturbed, disconnected, or damaged by him during the progress of the WORK, provided, that should CONTRACTOR in the performance of the WORK disturb, disconnect, or damage any of the above, all expenses arising from such disturbance or in the replacement or repair thereof shall be borne by CONTRACTOR. However, in accordance with Section 4215 of the California Government Code, CONTRACTOR shall be compensated for all costs of locating and repairing damage to main or trunk-line utility facilities located on the WORK site and for costs of operating equipment on the WORK site necessarily idled during such WORK where CONTRACTOR has exercised reasonable care in removing or relocating utility facilities which are inaccurately indicated in the CONTRACT DOCUMENTS.

*(END OF SECTION)*