

**SECTION ONE
D - CONTRACT**

THIS CONTRACT is made and entered _____, 202__, by and between the **City of Lindsay**, hereinafter referred to as the “City” and _____, hereinafter referred to as the “Contractor”.

IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

First. Contract Documents. The complete Contract includes all of the contract documents, to-wit: **(a)** Notice of Inviting Bids; **(b)** Instructions to Bidders; **(c)** Bid Proposal; **(d)** Contract; **(e)** General Conditions; **(f)** Special Conditions for the City of Lindsay, **Pool Deck Renovation Project**; **(g)** Performance Bond; **(h)** Payment Bond; **(i)** Duly issued Addenda and all modifications incorporated in the foregoing documents before execution of the Contract Agreement.

The foregoing contract documents are hereby incorporated by reference and shall be deemed and considered as forming a part of this Contract Agreement as fully and to the same extent as if it were copied at length herein.

Second. The Work. The Contractor agrees to furnish all tools, labor, materials, equipment, transportation, services and supplies necessary to perform and complete in a good and workmanlike manner the work designated as City of Lindsay, **Pool Deck Renovation Project** in strict conformity with and in exact accordance with, the Plans and Specifications and all other Contract Documents referred to above, which plans are on file at the offices of the Participants.

Third. Payment. The City agrees to pay and the Contractor agrees to _____ dollars (\$ _____) according to the Bid Proposal at the time and manner set forth in these Specifications.

The foregoing shall be accepted by the Contractor as full and final compensation for work done under this contract.

Fourth. Commencement and Completion of the Work. The Contractor agrees to begin and complete the work within the time specified in the Notice of Inviting Bids. Time is of the essence in completing the project.

Fifth LIQUIDATED DAMAGES. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO FIX THE ACTUAL DAMAGE AND LOSS SUSTAINED BY THE CITY SHOULD THE CONTRACTOR FAIL TO COMPLETE THE WORK IN THE SPECIFIED TIME, THEREFORE, HE SHALL PAY TO THE CITY, AS LIQUIDATED DAMAGES and NOT IN THE NATURE OF A PENALTY, EIGHT HUNDRED DOLLARS (\$800.00) A DAY FOR EACH DAY DELAYED, WHICH SHALL BE DEDUCTED FROM ANY AMOUNT TO BE PAID UNDER THIS CONTRACT. THE AMOUNT OF LIQUIDATED DAMAGES HEREIN

PROVIDED FOR REPRESENTS AN ENDEAVOR BY THE CITY AND THE CONTRACTOR TO MUTUALLY DETERMINE, FIX AND STATE AN AMOUNT THAT NEARS A REASONABLE RELATIONSHIP TO THE ACTUAL DAMAGE SUFFERED BY THE CITY SHOULD THE CONTRACTOR FAIL TO COMPLETE THE WORK WITHIN THE TIME SPECIFIED; PROVIDED THAT EXTENSIONS OF TIME WITH WAIVER OF FORFEITURE DUE TO DELAY MAY BE GRANTED AS PROVIDED IN SECTION 2-05 OF THE GENERAL CONDITIONS.

Sixth. Performance and Payment Bond. The Contractor agrees to furnish bonds guaranteeing the performance of this Contract and guaranteeing payment for all labor and material used under this Contract as required by the laws of the State of California, in forms approved by the Participants. The Performance Bond shall be for an amount not less than one hundred percent (100%) of the amount of this Contract and shall be conditioned on full and complete performance of the Contract, guaranteeing the work against faulty workmanship and materials for a period of one year after completion and acceptance. The Payment Bond shall be in an amount not less than one hundred percent (100%) of the amount of this Contract and shall be conditioned upon full payment of all labor and material entering into or incident to the work covered by this Contract. The Contractor agrees to furnish the bonds on the forms bound within these Specifications.

Seventh. Insurance. The Contractor agrees to carry Public Liability Insurance, Property Damage Insurance, Fire and Extended Coverage, Builder's All Risk and Worker Compensation Insurance in amounts and any other requirements as stated as required by the General Conditions.

Eighth. General Prevailing Rate of Per Diem Wages. Any contract entered into pursuant to this notice will incorporate the provisions of the U.S. Department of Labor Code and the State of CA Department of Industrial Relations with the prevailing rates of wages and apprenticeship employment standards established by both agencies.

Ninth. Compliance with Other Provisions of Law Relative to Public Contract. The City is a public agency in the State of California and is subject to the provisions of the Government Code, The Public Contract Code and the Labor Code of that State. It is stipulated and agreed that all provisions of law applicable to public contracts are a part of this Contract to the same extent as though set forth herein and will be complied with by the Contractor. These include, but are not limited to, the stipulation that eight hours' labor constitutes a legal day's work and the Contractor will, as a penalty to the City, forfeit twenty-five (\$25.00) for each workman employed in the execution of the Contract by the Contractor or any subcontractor for each calendar day during which such workman is required or permitted to work more than eight hours in violation of the provisions of Article Three, Chapter One, Part Seven, Division 2 of the California Labor Code, except as permitted by law.

Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, 9821 Business Park Drive, Sacramento, California 95827.

Tenth. Protecting of Public Utilities. The Contractor shall be compensated for the cost of locating, repairing damage not due to the failure of the Contractor to exercise reasonable care, in removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy and for equipment on the project necessarily idle during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the project, which such delay was caused by the failure of the City or the owner of the utility to provide for removal or relocation of such utility facilities.

Nothing herein shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other facilities, such as buildings, meter junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve the City from identifying main or trunk lines in the Plans and Specifications.

If the Contractor, while performing a contract, discovers utility facilities not identified by the City on the Plans or in the Specifications, he shall immediately notify the City and the utility in writing. The City, where it is the owner, shall have the sole discretion to perform the repairs or relocation work or permit the

Contractor to do such repairs or relocation work at a reasonable price. If the Contractor discovers hazardous waste or unusual physical conditions, he shall comply with the notice provisions of Public Contract Code Section 7104.

Eleventh. Submission of Bids: Agreement to Assign. In accordance with Section 4552 of the Government Code, the bidder shall conform to the following requirements. In submitting a bid to the City, the bidder offers and agrees that if the bid is accepted, it will assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C.) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, materials, or services by the bidder.

Twelfth. Termination or Modification of Contract. Environmental Reasons. City may terminate, amend, or modify the contract for environmental considerations. In the event of such termination, modification, or amendment, the notification to the Contractor thereof will include a statement of the compensation payable, if any, by reason of such termination, modification, or amendment. Any claims filed by the Contractor shall be in sufficient detail to enable the City to ascertain the basis and amount of said claims. The City will consider and determine the Contractor's claim, and it will be the responsibility of the Contractor to furnish, within a reasonable time, such further information and details as may be required by the City to determine the facts or contentions involved in his claims. Failure to submit such information and details will be sufficient cause for denying the claims.

Upon final determination of any claim, the City shall then make and issue its final estimate in writing, and within forty (40) days thereafter, the City will pay the entire sum found due thereon, if any.

Thirteenth. Integration Clause. This Contract constitutes the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed under this Contract exist between the parties. This Contract may be modified only by a written agreement signed by both parties.

IN WITNESS WHEREOF, this Contract is executed by the duly authorized agent(s) of the City and by the Contractor on the date set before the name of each.

CITY OF LINDSAY

By: _____
Mayor

(City Seal)

Attest:

City Clerk
City of Lindsay

Contractor

(Corporate Seal)

By: _____

Title

Approved as to Form:

City Attorney for City of Lindsay

**CONTRACTOR'S/SUBCONTRACTOR'S CERTIFICATION
CONCERNING STATE LABOR STANDARDS**

All contractors and subcontractors shall give the following certifications to the grantee and forward this certification to the grantee within ten days after the execution of any contract or subcontract.

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

B. "It is further agreed that, except as may be provided in Section 1815 of the California Labor Code, the maximum hours a worker is to be employed is limited to eight hours a day and 40 hours a week and the subcontractor shall forfeit, as a penalty, twenty-five dollars (\$25.00) for each worker employed in the execution of the subcontract for each calendar day during which a worker is required or permitted to labor more than 8 hours in any calendar day or more than 40 hours in any calendar week."

Contractor/Subcontractor

By: _____

Typed Name and Title

CERTIFICATION OF NONSEGREGATED FACILITIES

The Consultant certifies that he does not nor will not maintain or provide for his employees any segregated facilities at any of his establishments and that he does not permit his employees to perform their services at any location, under his control, where segregated facilities are maintained.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, creed, color, or national origin, because of habit, local custom or otherwise.

We further agree that (except where we have obtained identical certifications from proposed sub consultants for specific time periods) we will obtain identical certifications from proposed sub consultants prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause; that we will retain such certification in our files; and that we will forward the following notice to such proposed sub consultants (except where the proposed sub consultants have submitted identical certifications for specific time periods).

We understand and agree that breach of this certification is a violation of Equal Opportunity clause required by Executive Order 11246, amended.

NOTE: Whoever knowingly and willfully makes any false, fictitious or fraudulent representation may be liable to criminal prosecution under 18 U.S.C. 1001.

Signature

By: _____

Title

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor", as Principal, and _____ as Surety, are held firmly bound unto the City of Lindsay in the sum of _____ (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, said Contractor has been awarded and is about to enter a Contract with the City of Lindsay for furnishing all materials, equipment, and labor and in the constructing of City of Lindsay, **Pool Deck Renovation Project** for said City and is required by said City to give this bond in connection with the execution of said Contract:

NOW, THEREFORE, if the said Contractor shall well and truly do and perform all the covenants and obligations of said Contract on his part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect:

PROVIDED, that any alternations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either the Contractor or the Surety thereunder, nor shall the extension of time granted under the provisions of said contract release either the Contractor or the Surety, and notice of such alternations or extensions of the Contract is hereby waived by the Surety.

WITNESS our hands this _____ day of _____, 20_____.

(Corporate Seal)

Contractor/Principal

By: _____

Title

(Corporate Seal)

Surety

By: _____

Title

Approved as to Form:

City Attorney for City of Lindsay

BOND FOR MATERIALS AND LABOR

KNOW ALL MEN BY THESE PRESENTS:

That we, _____ hereinafter referred to as "Contractor", as Principal, and _____ as Surety, are held firmly bound unto the City of Lindsay in the sum of _____ (\$ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, jointly and severally, firmly by these presents.

The condition of the above obligation is such that:

WHEREAS, said Contractor has been awarded and is about to enter a Contract with the City of Lindsay for furnishing all materials, equipment and labor and in the constructing of City of Lindsay, **Pool Deck Renovation Project** for said City and is required by said City to give this bond in connection with the execution of said Contract:

NOW, THEREFORE, if the said Principal as Contractor in said contract, or its, his or their subcontractors fails to pay for any materials, provisions, provider or other supplies, or teams, used in, upon, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, said Surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, a reasonable attorney's fee to be fixed by the Court. This bond shall inure to the benefit of any and all persons entitled to file claims as under Section 1192.1 of the Code of Civil Procedure of the State of California.

PROVIDED, that any alternations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of said Contract, shall not in any way release either the Contractor or the Surety thereunder, nor shall the extension of time granted under the provisions of said contract release either the Contractor or the Surety, and notice of such alterations or extensions of the Contract is hereby waived by the Surety.

WITNESS our hands this _____ day of _____, 20_____.

(Corporate Seal)

Contractor/Principal

By: _____

Title

(Corporate Seal)

Surety

By: _____

Title

Approved as to Form:

City Attorney for City of Lindsay

CERTIFICATE OF OWNER’S ATTORNEY

I, the undersigned, _____ the duly authorized and acting
(Please Type)

legal representative of **City of Lindsay**, do hereby certify as follows:

I have examined the attached CONTRACT(s), Performance and Payment BONDS and insurance certificates and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions, and provisions thereof. I also am of the opinion that the CONTRACTOR’s insurance coverage complies with the requirements of the CONTRACT.

(Attorney’s Signature)

DATE: _____

SECTION TWO
GENERAL CONDITIONS
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SECTION TWO
GENERAL CONDITIONS

2-01. Definition of Terms:

Terms used herein are defined as follows and as in the “Glossary, Water and Wastewater Control Engineering” proposed by the Joint Committee representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and Water Pollution Control Federation.

- a. Addendum: A supplement of any of the Contract Documents issued, in writing, after advertisement of, but prior to the opening of bids for a Contract.
- b. Advertisement: The public announcement, as required by law, inviting bids for work to be performed or materials to be furnished.
- c. Agency: City of Lindsay, California, Party of the First Part of this Contract, or duly authorized agent of the Agency.
- d. Award: The formal action of the governing body in accepting a proposal.
- e. Bid Security: Refers to the certified check, cashier’s check, or surety bond, which is required to be submitted with the Proposal to insure execution of the Contract and the furnishing of the required bonds.
- f. Bidder: Any individual, firm, co-partnership or corporation, submitting a proposal for the work contemplated, acting directly or through a duly authorized representative.
- g. Change Order: A written order issued by the Agency ordering the Contract to make changes in the work or to perform extra work, and setting forth conditions for payment and adjustment in time of completion.
- h. Contract: The written instrument executed by the Contractor and the Agency by which the Contractor is bound to furnish all labor, equipment and materials and to perform the work specified, and by which the Agency is obligated to compensate the contractor therefore at the prices set forth therein. The Contract Documents are herewith by reference made a part of the Contract as if fully set forth therein.
- i. Contract Documents: The works “Contract Documents” include the Notice Inviting Bids, Information for Bidders, General Conditions, Special Conditions, Specifications, Measurement and Payment, Proposal, Contract Payment Bond, Performance Bond, Plans and Addenda thereto.
- j. Contractor: The party of the second part, or his duly authorized agent, entering into contract with the Agency for performance of the work required by the Specifications. The Contractor is referred to throughout the contract documents as if of a singular number and masculine gender.
- k. Days: Unless otherwise designated, days will be understood to mean calendar days.
- l. District: The City of Lindsay or duly authorized agent of the District.
- m. Engineer: Whenever the Engineer is referred to, it is meant to mean City of Lindsay Engineer, limited in each case to the particular duties entrusted to him, or them.

- n. Inspector: Whenever the Inspector is referred to, it is meant to mean the City of Lindsay.
- o. Labor and Material Bond: A bond furnished by the Contractor and an approved surety, conditioned upon the Contractor promptly paying all monies due persons supplying labor or material to be used in protection of the Contract.
- p. Materials: The word “materials” includes, in addition to material incorporated into the project, equipment and other material consumed in the performance of the work.
- q. Notice of Award: A directive issued by the Agency notifying the Bidder that his proposal for the work contemplated has been accepted.
- r. Notice to Proceed: A directive issued by the Agency authorizing the Contractor to start the work or improvements required in the Contract.
- s. Faithful Performance Bond: A bond furnished by the Contractor and an approved surety, conditioned on the faithful performance and completion of the work covered by the Contractor.
- t. Plans: The approved detail drawings, or exact reproduction thereof, listed in the detail Specifications, which shows location, character, dimensions and details of the work to be done and which is to be constructed as a part of this Contract.
- u. Specifications: All written directions, provisions and requirements governing the procedure to be followed in connection with the performance and execution of the work, the quantities and qualities of materials to be used and the method of measurement of the quantities of work.
- v. Subcontractor: A person, firm, or corporation supplying labor and materials or labor for work at the site of the project as an agent of the Contractor.
- w. Surety: The word “surety” refers to the person, firm or corporation with whom the Contractor joins in assuring the liability for their performance of the contract in accordance with the Plans and Specifications by issuing the bonds required by law.
- x. Work: The word “work” or “improvement” includes any or all of the improvements mentioned and authorized to be made, and the construction, reconstruction and repair of all, or any portion of such improvements, and all labor, services, incidental expenses, and material necessary or incidental thereto.
- y. The terms approved, directed, satisfactory, acceptable, proper, required, necessary, and or equal, shall be defined as meaning as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary, or equal in the opinion of the Engineer.

2-02. Abbreviation.

The abbreviations used in the Plans and Specifications are abbreviations, the meaning of which are established by general usage, throughout the industry, those shown on the standard symbols of the Plans, and those defined hereinafter.

2-03. Supplementary Specifications.

Wherever reference is made within these documents to certain standard specifications, the reference shall be construed to mean the standards, with all subsequent amendments, changes, or additions as thereafter adopted and published that are in effect at the date of approval of the Plans and Specifications.

AASHTO	American Association of State Highway and Transportation Officials (formerly AASHO)
ACI	American Concrete Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWG	American Wire Gauge
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
FS	Federal Specification
SSPC	Steel Structures Painting Council

2-04. Subcontractors and Contracts.

All persons engaged by the Contractor for the furnishing of labor, materials, equipment or any one or more of them will be considered as employees of the Contractor, except regarding insurance as provided in paragraph 2-14. hereinafter. The Contractor will be held responsible for their work. The City will deal directly with and make all payments to the Contractor only.

Subcontractors may be permitted, to such extent as shall be shown to be necessary of definitely advantageous to the principal Contractor in the prosecution of the work, and in the opinion of the Engineer without injury to the interests of the Agency. The subcontract shall contain a reference to the agreement and all parts thereof shall be made a part of such subcontract insofar as applicable to the work covered thereby. All work and materials furnished by the subcontractor shall be guaranteed by the Contractor and the Agency will hold the Contractor responsible therefor.

2-05. Performance of Work.

The work shall be commenced on the date of the Notice to Proceed and shall be completed by the Contractor within the number of calendar days stipulated in the Contract from the commencement of work. If the work is not completed in accordance with the foregoing, the Agency shall have the right to extend the time for completion if it determines such extension to be in the best interests of the Agency. In case the Agency decides to extend the time limit for the completion of the work, it shall have the further right to charge the Contractor, his executors, administrators, heirs, assigns or sureties, all or any part as the Agency may deem proper, of the actual costs of engineering inspection, supervisors, incidental and other overhead expenses, that are directly chargeable to the Contract and that accrue during the period of such extension, and to deduct the amount thereof from the final payment for the work. However, the cost of the final survey and the preparation of the final estimate will not be included in such charges.

If the work is not completed by the Contractor in the time specified, or within any period of extension as above-authorized, it is understood that the Agency, will suffer damage and it being impractical and extremely difficult to determine the amount of actual damage, it is agreed that the Contractor shall pay to the Agency as fixed and liquidated damages and not as a penalty, the sum specified in the Contract Agreement for each calendar day of delay until the work is completed and accepted and the Contractor and his surety shall be liable for the amount thereof, provided that the Contractor shall not be charged liquidated damages because of any delays in the completion of the work due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor (including, but not restricted to, acts of God, or of the public enemy, acts of the Government, acts of the Agency, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (such as rain where the contractor's normal operational level is impeded). The Contractor shall, within ten (10) days from the beginning of any such delay, notify the Engineer in writing the cause of the delay; whereupon the Agency shall ascertain the facts and the extent of the delay and extend the time for completing the work when in its judgment the findings of fact justify such an extension; and its findings of fact thereby shall be final and conclusive on the parties thereto.

In the event of a dispute between the parties as to performance of the work, the interpretation of this contract, or payment or nonpayment for work performed, the parties shall attempt to resolve the dispute. If the dispute is not resolved, Contractor agrees to continue the work diligently to completion and will neither rescind this contract nor seek to stop the Contract by order of a court of competent jurisdiction until after the project has been completed, or to arbitration as provided in Paragraph 3-15 of the Special Conditions.

The Contractor must ascertain to his own satisfaction the scope of the project and the nature of any other contracts that have been or may be awarded by the Agency in the project to the end that the Contractor may perform the contract in the light of such other contract, if any. Nothing herein contained shall be interpreted as granting to the Contractor exclusive occupancy of the site of the project. The Contractor shall not cause any unnecessary hindrance or delay to any other contractor working on the project. If the performance of any contract for the project is likely to be interfered with by the simultaneous execution of some other contract or contracts, the Agency shall decide which Contractor may proceed. The Agency shall not be responsible for any damages suffered or extra costs incurred by the Contractor resulting directly, or indirectly from the award or performance of any other contract or contracts on the project, or caused by any decision or omission of the Agency respecting the order of precedence in the performance of the contracts awarded for completion of the project.

2-06. Federal Hindrance.

In entering into this contract, it is clearly understood by all parties hereto that conditions may subsequently arise resulting from, connected with, or growing out of any war, in which the United States may be engaged, or any national emergency or condition created directly or indirectly by or for national defense and which are entirely beyond the control of either party, that may hinder, delay or render impossible the performance of this contract in accordance with its terms and conditions.

It is therefore mutually understood and agreed, anything herein contained to the contrary notwithstanding, that in the event the Contractor shall be prevented from performing the contract or any part thereof by reasons of the conditions above stated, the following procedure shall govern.

The Contractor shall, in writing, notify the Agency of his inability to perform, stating in full the reason therefore and the probable durations of such inability. If required, he shall also submit proof or evidence in support of this claim or inability to perform.

If it shall appear to the satisfaction of the Agency that the cause of inability to perform arose after the contract was entered into and is beyond the control of the Contractor, the Agency may:

- a. If lawfully within its power, remove the cause which prevents performance; or
- b. Suspend this contract until the cause of inability to perform is removed; or
- c. With the consent of the Contractor, renegotiate or amend this contract by extending the time of performance or by making changes in the character of the work, or in the materials or equipment required in order to enable performance of the contract; or
- d. Waive performance of that part of the Contract which is impossible, or supply substitute materials for those unavailable. Where this remedy is resorted to, the payment due the Contractor shall be diminished to the extent of the work not required to be supplied, based on a written agreement.

If none of the foregoing procedures are adopted by the Agency within thirty (30) days after the Agency is satisfied and so finds that the Contractor is unable to perform for the reason above stated, then either party hereto may, without incurring any liability, elect to declare this contract terminated upon the going of impossibility of performance. Upon such termination, the Contractor shall be entitled to proportionate compensation at the contract price for such portion of the contract as may have been performed.

2-07. Suspension of Contract.

If the work to be done under the Contract shall be abandoned by the Contractor, or if the Contractor shall make a general assignment for the benefit of his creditors or be adjudicated as bankrupt, or a receiver of his property or business be appointed by a court of competent jurisdiction, or if this Contract shall be assigned by him otherwise than as hereinafter specified, or if at any time the Engineer shall be of the opinion that the performance of the Contract is unnecessarily delayed, or that the Contractor is willfully violating any of the conditions or covenants of the Contract or of the Specifications, or is executing same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time named in the Contract for its completions, or approved extension of such time, the Agency may, by written notice, instruct the Contractor to discontinue all work, or any part thereof, under the Contract.

When such written notice is served upon the Contractor, he shall immediately discontinue the work or such part thereof as is covered by the notice and shall not resume the same except by written instruction from the Agency.

In any case, the Agency may take charge of the work and complete it by whatever method it deems expedient. In doing so, the Agency may take possession of any materials, plant, tools, equipment, supplies, and property of every kind provided by the Contractor for the purpose of his work. The Contractor shall not be entitled to receive any payments after the date of said notice. If upon completion of the work, the total cost of the Agency in connection therewith from the date of said notice to the date of completion exceeds the amount which would have been due the Contractor if the Contract had been completed by him, he shall pay the amount of such excess to the Agency; and in case such total cost shall be less than the amount which would have been payable under the Contract if the same had been completed by the Contractor, then the difference shall be paid to the Contractor in the same manner as the final payment under the Contract.

The Agency also reserves the right of suspending the whole or any part of the work if the Engineer shall deem it for the interest of the Agency to do so and, unless otherwise provided in the Technical Provisions, the Contractor shall have not claim for damages or additional compensation on account of such suspension, but will be entitled to so much additional time wherein to complete the Contract as determined in accordance with paragraph 2-06. herein before.

2-08. Protests.

If the Contractor considers any work demanded of him to be outside the requirements of the Contract, or if he considers any instructions, ruling or decision of the Agency or Engineer, or of any inspection, to be unfair, he shall, within ten days after any such demand is made, or instruction, ruling, or decision is given, file a written protest with the Engineer, stating clearly and in detail his objections and the reasons therefore. Except for such protests and objections as are made of record in the manner and within the time stated herein, the Contractor shall be deemed to have waived and does hereby waive all grounds for protests or objections to such demands, instruction, ruling, or decision of the Engineer.

2-09. Right-of-Way.

The proposed improvements will be installed on public right-of-way and on easements secured for project purposes. The Contractor will be responsible for any encroachments in connection with the required construction pursuant to Section 3-13.

2-10. Loss or Damage.

The Agency shall not be answerable or accountable in any manner for any loss or damage that may happen to the work or any part thereof, or to any of the materials or other things used in performing the work, or for injury to any person or persons, either workmen or to the public, or for damage to any property for any cause which might have been prevented by the Contractor. Against all these injuries or damages to persons and property, the Contractor shall properly guard. The Contractor shall be responsible for any liability imposed by law for any damage to any person or property resulting from defects or obstructions, or from any cause whatsoever during the process of the work, or at any time before final acceptance, and shall indemnify, defend and save harmless the Agency from all suits or actions of every description brought for, or on account of, any injuries or damages received or sustained by any person or persons by reason of the construction of work, or any negligence in guarding the same, of improper materials used in its construction, or of any act of omission of the Contractor.

2-11. Protection of Property and Utilities.

a. Protection of Property. The Contractor shall conduct his operation in such a manner as to avoid injury or damage to adjacent property, improvements, or facilities.

Buildings, trees, ground cover and shrubbery that are not designated for removal, pole lines, fences, guard rails, guideposts, culvert and project markers, signs, pavement, structures, conduits, pipelines and other improvements within or adjacent to the proposed improvements shall be protected from injury or damage. The Contractor shall provide and install suitable safeguards to protect such objects from injury or damage, which objects, if injured or damaged, by reason of the Contractor's operations, shall be replaced or restored to a condition as good as when entered upon the work, or as required by the Specifications.

The Contractor shall be responsible for all damage to streets, roads, highways, canals, ditches, embankments, bridges, culverts or other public or private property, which may be caused by transporting equipment, materials, or men to or from the work. The Contractor shall make satisfactory and acceptable arrangements with the property owner over the damaged property concerning its repair or replacement.

b. Protection of Utilities and Substructures. A diligent search of known utility records has been made in the endeavor to indicate on the plans the nature and location of all utilities which exist within the limits of the work. However, the accuracy or completeness of the utilities on the Plans is not guaranteed. Utility structures and/or service connections to adjacent property may or may not be shown on the Plans.

It shall be the responsibility of the Contractor, before commencing any excavation or proceeding with ground-disturbing activities (including root pruning), to contact all possible owners of utilities within the work area and to ascertain from records or otherwise, the existence, position and ownerships of all utilities, utility structures and service connections. No error or omission regarding said utilities shall be construed to relieve the Contractor from his responsibility in protecting all such facilities.

Utilities with facilities in the area of the work covered by these Specifications include:

- | | |
|--|--|
| 1. GAS LINES:
Southern California Gas Company
5000 W. Cypress
Visalia, CA 93292
Phone 559-739-2234 | 2. UNDERGROUND SERVICE
ALERT:
800-227-2600 or 411 |
| 3. TELEPHONE SERVICE:
Verizon
710 S. Kaweah
Exeter, CA 93221
Phone 800-483-4000 | 4. ELECTRIC POWER:
Southern California Edison Co.
2425 S. Blackstone
Tulare, CA 93274
Phone 559-685-3268 |
| 5. IRRIGATION LINES:
Lindsay-Strathmore Irrigation District
23260 Round Valley Road
Lindsay, CA 93247
Phone 559-562-2581 | Lindmore Irrigation District
240 West Lindmore Street
Lindsay, CA 93247
Phone 559-562-2534 |
| 5. WATER, SEWER & STORM DRAIN LINES:
City of Lindsay
251 East Honolulu
Lindsay, CA 93247
Phone 559-562-5945 | 6. CABLE T.V.:
Charter Communications
151 North Main Street
Porterville, CA 93257
559-560-5312 |

Unless otherwise indicated on the Plans or in these Specifications or unless otherwise cared for by the Agency thereof, all water, gas, oil, or irrigation lines; lighting power, or telephone conduits; sewer lines, house connection lines; sprinkling systems, and other subsurface structure of any nature along the work shall be maintained by the Contractor at his own expense and shall not be disturbed, disconnected, or damaged by him during the progress of the work. Should the Contractor in the performance of the work disturb, disconnect, or damage any of the above, all expenses of whatever nature arising from such disturbance, or the replacement or repair thereof shall be borne by the Contractor.

The Contractor shall be compensated for the cost of locating, repairing damage not due to the failure of the Contractor or exercise of reasonable care, in removing or relocating such utility facilities not indicated on the Plans and in the Specifications with reasonable accuracy and for equipment on the project necessarily idle during such work. The Contractor shall not be assessed liquidated damages for delay in completion of the project when such delay was caused by the failure of the Agency or the owner of the utility to provide for removal or relocation of such utility facilities.

Nothing herein shall be deemed to require the Agency to indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the site of the construction project can be inferred from the presence of other visible facilities, such as building, meter junction boxes, on or adjacent to the site

of the construction; provided, however, nothing herein shall relieve the Agency from identifying main or trunk lines on the Plans and in the Specifications.

If the Contractor, while performing a contract, discovers utility facilities not identified by the Agency in the contract Plans or Specifications, he shall immediately notify the Agency and the utility in writing. The public utility, where they are the owner, shall have the sole discretion to perform the repairs or relocation work or permit the Contractor to do such repairs or relocation work at a reasonable price.

In any case, should it be necessary to move or temporarily maintain the property of any public utility or other property, the cost of which because of the terms of any franchise or for any other reason must be borne by the Agency thereof, such Agency will, upon proper application by the Contractor, be notified by the Engineer to move or temporarily maintain such property within a specified reasonable time, and the Contractor shall not interfere with said property until after the expiration of the time specified.

If the Contractor discovers any of the following three conditions during excavation or trenching, the conditions shall be reported to the Engineer before the condition is disturbed:

- (1) Materials that the Contractor believes may be hazardous waste, as defined in Section 25117 of the Health and Safety Code, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- (2) Subsurface or latent physical conditions differing from those indicated.
- (3) Unknown physical conditions of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

The Engineer shall promptly investigate any such report to determine if it justifies an increase or decrease in the Contractor's cost, or a change in the time required for performance of the work. Any dispute with the decision of the Engineer shall not excuse Contractor from proceeding on the basis of established completion dates, but Contractor shall be entitled to contest the Engineer's decision in the normal course of claims resolution as provided for in this Contract.

The right is reserved to the Agency, to governmental agencies, and to owners of public utilities and franchises to enter upon any street, alley, right-of-way, or easement for the purpose of maintaining or of making necessary repairs or changes in property made necessary by the work. The Agency reserves the right during the progress of the work, upon determination of the actual position of the existing utilities and structures, to make changes in the grade or alignment of the pipelines wherever by so doing, the necessity for relocation of such utility structure will be avoided. Such changes will be ordered by the Engineer.

c. Removal, Relocation or Protection of Existing Utilities. In accordance with the provisions of Section 4215 of the California Government Code, the contractor shall not be assessed liquidated damages for delay in completion of the project, when such delay was caused by the failure of the public agency or owner of the utility to provide for the removal or relocation of such utility facilities.

2-12. Observance of Laws and Regulations.

The address given in the Contractor's proposal on which the contract is founded, is hereby designated as the place to which all notices, letters, and other communications to the Contractor shall be mailed or delivered, except that said address may be changed by the Contractor by so notifying the Engineer and Agency in

writing. This shall not be construed to preclude the service of any notice, letter, or other communication upon the Contractor personally.

a. Patents or Copyrights. The Contractor shall hold and save the Agency harmless from liability of any nature and kind including costs and expenses, for or on account of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or applicant, manufactured, furnished, or used by him in the performance of this contract, including their use by the Agency unless otherwise specifically stipulated in the contract.

b. Labor Standard. Subject to the provisions of Section 1810 to 1817, both inclusive, of the California Labor Code, the time of service of any laborer, workman, or mechanic employed on the work shall be limited and restricted to eight hours during any one calendar day, except as otherwise provided in said sections, and the Contractor shall forfeit, as a penalty to the Agency, \$25.00 for each laborer, workman, mechanic employed in the execution of this Contract by him or any subcontractor under him, for each calendar day during which such laborer, workman, or mechanic is required or permitted to labor more than eight hours in violation of the provisions of the California Labor Code.

c. Bonds. Upon the execution of this Contract, the Contractor shall furnish to the Agency the bonds required in these Specifications. Said bonds to be in substantially the forms hereto attached and with sureties approved by the Agency. The premium upon all such bonds shall be paid by the Contractor. The Agency will approve any surety company which, at the time of execution of this Contract, is listed in the latest published U.S. Treasury Department list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds as Acceptable Reinsuring Companies."

The Contractor shall, and the Contractor does, hereby assume all risks of damage to this Work and material from fire, earthquake, storm, and/or other causes prior to the completion and acceptance of the Contractor's Work, and shall at the Contractor's own cost and expense, repair and/or replace any work or materials damaged or destroyed.

d. Compliance with Laws and Regulations. The Contractor shall keep himself informed of all laws, ordinances and regulations in any manner affecting those employed on the work, or the materials used in the work, or in any way affecting the conduct of the work and of all orders and decree of bodies or tribunals having any jurisdiction or authority over the same. He shall, at all times, observe and comply with all such applicable laws, ordinances, regulations, orders and decrees in effect or which may become effective before completion of this contract; and shall protect and indemnify the Agency against any claim of liability arising from or based upon the violation of any such law ordinance, regulation, order or decree, whether by himself, his employees, or his subcontractors.

Unless otherwise explicitly provided in these Specifications, all permits and licenses necessary to the prosecution of the work shall be secured by the Contractor at his own expenses, and he shall pay all taxes properly assessed against his equipment or property used in connection with the work.

2-13. Insurance Requirements for Contractors.

The 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 the Contractor, his agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 11 88)

2. Insurance Services Office form number CA 00 01 06 92 covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Course of Construction insurance covering for all risk of loss.

B. Minimum Limits of Insurance. Contractor shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$2,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
4. Course of Construction: Completed value of the project.

C. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. The City, its officers, officials, employees, and volunteers are to be covered as insured with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out to work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance, or as a separate owner's policy.
2. For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Course of construction policies shall contain the following provisions:

1. The City shall be named as loss payee.
2. The insurer shall waive all rights of subrogation against the City.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. Verification of Coverage. Contractor shall furnish the Entity with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the City's forms, provided those endorsements or policies conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

G. Subcontractors. Contractors shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

2-14. Construction Facilities.

a. Power. The Contractor will make arrangement for power and shall pay for all power and installation thereof, required for the execution of the work required to complete this contract.

b. Sanitary Facilities. The Contractor shall provide temporary chemical toilet facilities for the use of all workmen. The toilet building shall be maintained in a sanitary condition at all times and at the completion of construction shall be removed from the site. Pit-type privies shall not be used.

c. Telephone. Any telephone facilities which the Contractor may install in connection with the work shall be made available for use of the Engineer or his representatives without charge; except that any toll charges incurred by the Engineer shall be paid by the Engineer.

d. Storage. The Contractor shall be responsible for the storage of all materials, equipment and so on, which are used in the work. All materials, equipment and articles at the site shall be adequately housed by the Contractor or otherwise protected by him against deterioration and damage. All costs incurred through the failure to provide protection shall be borne by the Contractor during the course of the work.

e. Transportation Facilities. The Contractor shall investigate the ability of transportation facilities and shall make all arrangements necessary for the delivery of materials to be used on the work. The Contractor shall make his own investigation on the condition of available public roads, access right-of-way, and of restrictions, bridge load limits and other limitations affecting transportation and ingress and egress at the site of the work.

f. Dust Control. The Contractor shall refer to Section Three, Dust Control, of the Technical Provisions of these specifications.

g. Drinking Water. The Contractor shall supply pure, cool, drinking water with individual drinking cups or a sanitary bubbler fountain.

h. Safety Measures and Public Conveniences. The Contractor shall provide for the protection of all persons and property at all times. The Contractor shall comply with the recommendations for safe construction methods from the "Manual of Accident Prevention in Construction", published by the Associated General Contractors of America, Inc., to the intent that such provisions do not conflict with the applicable laws. Machinery and equipment shall be guarded in accordance with the requirements of the "Manual of Accident Prevention in Construction", published by the Associated General Contractor of America, Inc., to the extent that such provisions do not conflict with the applicable laws.

The Contractor shall take all necessary measures to protect the work and prevent accidents during the construction. He shall provide and maintain sufficient night lights, barricades, guards, temporary sidewalks, temporary bridges, danger signals, watchmen and necessary appliances and safeguards to properly safeguard life and property. He shall also protect all excavations, equipment and materials with barricades and danger signals so that the public will not be endangered.

The Contractor shall so conduct his operations as to offer the least possible obstruction and inconvenience to traffic, and shall have under construction no greater amount of work than he can handle properly with due regard to the rights of the public. Where existing streets are not available for detours,

all traffic shall be permitted to pass through the work with as little and inconvenience as possible, unless otherwise authorized by the Engineer.

The Contractor shall be responsible for all damage or injury which may be caused on any property by trespass by the Contractor or his employees in the course of their employment, whether the said trespass was committed with or without the consent or knowledge of the Contractor.

i. Representative for Emergencies. The Contractor shall file with the Engineer, the names, addresses, and telephone numbers of representatives who can be contacted, at any time, in case of emergency. The representatives must fully be authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice.

2-15. Superintendence and Labor Competency.

Whenever the Contractor is not present on any part of the work where it may be desired to give direction, orders given by the engineer shall be received and obeyed by the superintendent or foreman as authorized representative who may be in charge of the work. Any order given by the Engineer, not otherwise required be in writing by the Specifications, will, on request of the Contractor, be giving or confirming in writing. An authorized representative of the Contractor shall be at the site of the work during working hours.

All superintendents and foremen shall be English-speaking. Any superintendent, foreman, laborer, or other person employed on the work by the Contractor who fails or refuses to perform the work in the manner specified herein, shall be discharged immediately and such person shall not again be employed on the work. When required in writing by the Engineer, the Contractor or any subcontractor shall discharge any person who is, in the opinion of the Engineer, incompetent, unfaithful, disorderly, or otherwise unsatisfactory. Such discharge shall not be the basis of any claim for compensation or damage against the Agency.

2-16. Work Site Maintenance.

a. Access to Property Adjacent to Work. The convenience of abutting property owners shall be provided for as far as practicable. Convenient access to driveways, houses and buildings adjoining the work shall be maintained and temporary approaches to intersecting streets and alleys shall be provided and kept in good condition. When a section of surfacing, pavement, or a structure has been completed, it shall be opened for use by traffic at the request of the Engineer. In order that unnecessary delay to the traveling public may be avoided, the Contractor, when so ordered by the Engineer or City, shall provide competent flagman whose sole duty shall consist of directing traffic either through or around the work.

b. Water Hydrant and Utility Valves. The Contractor shall not prevent the free access to water, valves, water hydrants, or gas valves.

c. Rights to Access. The Contractor shall, at all times, provide proper facilities for access and inspection of the work by the Engineer, his assistants, inspectors, agents, and representatives of public agencies having jurisdiction.

d. Restoration of Work Site. Work shall be cleaned at the end of each workday to remove debris piles from sidewalks, all paved areas, and pedestrian access areas.

2-17. Use of Explosives.

Explosives shall not be used on this project.

2-18. Drawing and Data to be Furnished by the Contractor.

Shop drawings shall be submitted by the Contractor to the Engineer as called for in the Specifications. A minimum of five (5) copies of all shop fabrication drawings that are required shall be submitted to the Engineer for approval prior to the fabrication or placement of any of all items, three (3) of which will be retained by the Engineer. The remaining drawings, with comments of the Engineer, will be returned to the Contractor.

Approval of shop and working drawings shall indicate only that such drawings generally express the intent of the contract documents and shall not be construed as a complete check. Approval of drawings shall not relieve the Contractor of the responsibility of furnishing all materials and work required by and conforming to the Plans and Specifications. Approval of shop drawings shall, in addition, not relieve the Contractor of the responsibility of accuracy of dimensions; provision of adequate connections and the proper fitting of the work in the completed construction. An effort will be made to discover any errors in sizes of materials, general dimensions and detailed dimensions, but the responsibility for these items shall remain that of the Contractor.

Prior to submittal, the Contractor shall check the shop drawings prepared by subcontractor for accuracy and completeness, especially that the relation to adjoining work is accurately shown. Approval of shop drawings does not authorize any substitution of material or other departure from the requirements of the Contract Documents. Request for such changes shall be made the subject of separate correspondence. Shop drawings shall be submitted at such a time as will permit the Engineer not less than fifteen (15) days for checking. Any fabrication or other work done prior to the receipt of the approved shop and fabrication drawings shall be done entirely at the Contractor's risk.

The Contractor shall, in addition, file one (1) set of Contract Drawings, herein referred to as "Record Drawings", on which shall be recorded all variations between the work "as-built" and the Contract Drawings or other information specified. The Record Drawings shall be supplemented by any detailed sketches as necessary or directed to indicate fully the work "as-built". The Record Drawings shall be delivered to the Engineer upon completion of the work.

The Contractor shall supply to the Engineer, three (3) copies of the manufacturer's literature for all materials to be used in the project.

2-19. Final Conditions of Work.

Before application is made for the Agency to accept the work, all items of work shall be complete, ready to operate, and in a clean condition. All trash, debris, unused building material, and temporary structures shall have been removed from the site of the work. Tools and construction machinery not needed for repair and adjustment consequent to operational tests shall not be on the site. The walkways, parking areas, and roadways shall be completely swept and broomed.

2-20. General Supervising.

The City shall have general supervision and direction of the work. They have authority to stop the work whenever such stoppage may be necessary to ensure the proper execution of the contract. They shall have authority to reject any work or materials which do not conform to the Contract Documents, to direct the application of forces to such portions of the work as in their judgment is required, to order the force increased or diminished, to direct the sequence of the work and to decide questions which arise in the execution of the work.

2-21. Lines and Grades, Setting Stakes.

Not used.

2-22. Inspection.

The Agency shall provide inspection for all work to be performed under the Contract.

Inspectors employed by the Agency shall be authorized to inspect all work done and materials furnished. Such inspection may extend to all or any part of the work, and to the preparation, fabrication, or manufacture of the materials to be used. The inspector will have authority to reject defective material and to suspend any work that is being improperly performed, subject to the final decision of the Engineer.

The Inspector will exercise such additional authority only as may, from time to time, be delegated to him by the Engineer.

The Contractor shall notify the Agency or the Engineer two working days in advance of any work to be done in order that inspection services may be provided.

2-23. Materials and Workmanship.

Unless otherwise specified, all material incorporated in the permanent work shall be new. Materials so designated shall be as detailed and shall be of the best commercial quality and suitable for the purpose intended.

All workmanship shall be in conformance with the best trade practices. Particular attention shall be given to the appearance of exposed work. Any work or workmanship not conforming to the best practices shall be subject to rejection.

Preference for Materials. In accordance with the provision of Section 3400 of the California Public Contract Code, a contractor shall be provided a period of not less than 35 days after award of the contract for submission of data substantiating a request for a substitution of "an equal" item.

2-24. Guarantees.

The Contractor shall guarantee all parts of the work against defective materials or workmanship furnished by the Contractor for a period of one (1) year from the date of filing of the "Notice of Completion" of the contract, unless otherwise stipulated.

2-25. Attorney Fees.

If an action is commenced in a court of competent jurisdiction, or if the parties agree to settle a controversy of claim by arbitration, as provided in Section 3-15 of the Special Conditions attached hereto and made a part hereof, and if as a result of such action or settlement, the Agency is afforded any relief, it shall be entitled to its reasonable attorneys', paralegals', appraisers', engineers', and other professionals' fees and costs.

2-26. Subsurface Conditions.

The Contractor shall promptly, and before such conditions are disturbed except in the event of an emergency, notify the Agency of written notice of:

** Subsurface or latent physical conditions at the site differing materially from those indicated on the Contract Documents; or

** Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.

The Agency shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the work, an equitable adjustment hereunder shall be made and the contract documents shall be modified by a change order. Any claim of the Contractor for adjustment hereunder shall not be allowed unless the required written notice has been given; provided that the Agency may, if the Agency determines the facts so justify, consider and adjust any such claims consented to before the date of final payment.

2-27. Assignments.

- a. Public Works Contracts: Assignment to Awarding Body. In accordance with Section 4551 of the Government Code, the Contractor and subcontractor shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract of the subcontractor. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.
- b. Submission of Bids: Agreement to Assign. In accordance with Section 4552 of the Government Code, the bidder shall conform to the following requirements; In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchase of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignments shall be made and become effective at the time the purchasing body tender final payment to the bidder.
- c. Submission of a Bid to a Public Agency Without a License: Misdemeanor; Exceptions: Previous Conviction; Fine: Application.
 1. It is a misdemeanor for any person to submit a bid to a public agency in order to engage in the business or act in the capacity of a contractor within this state without having a license therefore, except in any of the following cases:
 - (a) The person is particularly exempted from the provisions of this chapter.
 - (b) The bid is submitted on a state project governed by Section 10164 of the Public Contract Code.
 2. If a person has been previously convicted of the offense described in this section, the court shall impose a fine of 20 percent of the price of the contract under which the unlicensed

person performed contracting work, or four thousand five hundred dollars (\$4,500) whichever is greater, or performed imprisonment in the county jail for not less than 10 days nor more than six months, or both.

In the event the person performing the contracting work has agreed to furnish materials and labor on an hourly basis, "the price of the contract" for the purpose of this subdivision means the aggregate sum of the cost of materials and labor furnished and the cost of completing the work to be performed.

3. This section shall not apply to a joint venture license, as required by Section 7029.1. However, at the time of making a bid as a joint venture, each person submitting the bid shall be subject to this section with respect to his or her individual licenser.
4. This section shall not affect the right or ability of a licensed architect or registered professional engineer to form joint ventures with licensed contractors to render services within the scope of their respective practices.
5. A licensed contractor shall not submit a bid to a public agency unless his or her contractor's license number appears clearly on the bid, the license expiration date is stated, and the bid contains a statement that the representations made therein are made under penalty of perjury. Any bid not containing this information, or a bid containing information which is subsequently proven false, shall be considered nonresponsive and shall be rejected by the public agency.

2-28. Access to Contractor Records.

Access to all Contractor and Subcontractor records related to work performed under this contract shall be subject to examination and audit by the State Auditor General for a period of three (3) years after final payment under this contract. Such records shall be maintained for a minimum period of three (3) years after final payment is received and shall be available to the State, its representatives, or during the term of this project and for a minimum period of three (3) years after the final payment.

2-29 Payments to the Contractor and Completion.

The Agency shall make payments as follows:

One payment may be submitted per month. The City will withhold five percent (5%) retention from payments due the Contractor until thirty-five (35) days after the date of recording of the Notice of Completion. The project will be considered complete once:

- Contractor notifies Agency's representative (Project Manager) that work is 100% completed
- Agency's Representative conducts final walk-through and identifies any outstanding items
- Contractor completes outstanding items identified by the Agency in the final walk-through

For request for payments submitted by the Contractor, the Agency agrees to pay the Contractor, an amount to be determined by taking 95 percent of the approved completed work, proportionate to the amount of the Contract, of labor and materials incorporated in the Work to be performed, and by deducting the aggregate of all previous payments. The balance of the total Contract Price shall be paid 35 calendar days after the date of filing by the Agency of such Notice of Completion of all the Work to be done under this Contract.

The Agency reserves the right to withhold payments on accounts of:

- (1) Defective work not remedied.
- (2) Failure of the Contractor to make payments properly to subcontractors or for materials or labor.
- (3) A reasonable doubt that the Contract can be completed for the balance then unpaid.
- (4) Default of the Contractor in the performance of the terms and/or conditions of the Contract, or in their performance of any such terms and/or conditions.

b. Substitution of Securities in Lieu of Retainage. Pursuant to Section 22300 of the California Public Contract Code, the Contractor may substitute securities for any money held by the Agency to insure performance of the contract. At the request and expense of the contractor, securities equivalent to the amount withheld shall be deposited with the Agency or with the State or Federally-chartered bank as the escrow agent, who shall return such securities to the contractor upon satisfactory completion of the contract.

Deposit of the securities with an escrow agent shall be subject to a written agreement in the form outlined in Section 22300 of the Public Contract Code. The Agency shall not certify that the contract has been completed until at least 45 days after the filing by the Agency of a Notice of Completion. Securities eligible for investment under said Section shall be those listed in Section 16430 of the California Government Code, bank or savings and loan certificates of deposit, interest-bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed upon by the Contractor and the public agency.

c. Working Hours. The Contractor shall comply with all applicable provisions of Section 1810 to 1815, inclusive, of the California Labor Code relating to working hours. The Contractor shall, as a penalty of the Owner, forfeit \$25.00 for each worker employed in the execution of the Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week, unless such worker receives compensation for all hours in excess of 8 hours at not less than 1-1/2 times the basic rate of pay.

d. Workers Compensation.

(1) In accordance with the provisions of Section 1860 of the California Labor Code, the Contractor's attention is directed to the requirement that in accordance with the provisions of Section 3700 of the California Labor Code, every Contractor will be required to secure the payment of compensation of his or her employees.

(2) In accordance with the provisions of Section 1861 of the California Labor Code, each Contractor to whom a public works contract is awarded shall sign and file with the awarding body the following certificate prior to performing the work of the contract: "I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

e. Protection of Workers in Trench Excavations. As required by Section 6705 of the California Labor Code and in addition thereto, whenever work under the Contract involves the excavation of any trench or trenches 5 feet or more in depth, the Contractor shall submit for acceptance by the Owner or by a registered civil or structural engineer, employed by the Owner, to Whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation, of such trench or trenches. If such plan varies from the shoring system standards established by the Construction Safety Orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor, and all costs therefore shall be included in the price named in the Contract Documents. Nothing in this Section shall be deemed to allow the use

of a shoring, sloping, or other protective system less effective than that required by the Construction Safety Orders. Nothing in this Section shall be construed to impose tort liability on the Owner, the Engineer, nor any of their officers, agents, representatives, or employees.

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SPECIAL CONDITIONS
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**SECTION THREE
SPECIAL CONDITIONS**

3-01. Scope of Work.

This Request for Proposal (RFP) construction services at the Lindsay Wellness Center pool facility. Specific goals are as follows:

- 1) Demolish and dispose of the damaged existing exterior concrete pool deck. Approx. 7,274 Sq. Ft.
- 2) Install a new concrete deck, utilizing the existing footprint.
 - Approx. 7,274 Sq. Ft. of 3,500 P.S.I. concrete with integral color in the mix design. The concrete should be 6” thick with rebar reinforcement every 18” on the center, each way. The pool deck will receive a standard broom finish and be saw-cut as required. Concrete details will also be provided for starting platform footings, rebar specifications, and deck drainage.
 - a. The concrete deck proposal shall include a slip-resistant deck surface that complies with the attached specifications.
 - b. All deck bracing and construction work shall minimally comply with current Tulare County and State Code standards.
 - c. Replacement of Therapy Pool Skimmers (qty. 3)
 - d. Replacement of all handrail anchors, (qty. 26)
 - e. Replacement of flag poles and flagpole sleeve anchors (qty. 4)
 - f. Replacement of ADA-Lift anchors (qty. 2)
- 3) Install new swimming infrastructure. Includes but is not limited to new Quikblox mid-profile starting platforms (qty. 8), in-deck platform anchors (qty. 8), Colorado Timing Systems scoreboard (qty. 1), scoreboard structural supports, Colorado Timing Systems deck plates (qty. 8), Colorado Timing Systems wall plates (qty. 1), in-deck conduit for deck plates, wall plates and scoreboard.
- 4) Scope includes disposal and site safety, including the installation of temporary barriers to prevent access to the pool.
- 5) The winning bidder will be required to communicate monthly on budget, schedule, and percent complete.
- 6) Contractor to furnish all materials.
- 7) This is a prevailing wage project.

3-02. Time of Performance.

Upon receiving the “NOTICE TO PROCEED”, the successful bidder has **144 CALENDAR DAYS** to complete the project (**January 8, 2027**).

3-03. Payments.

One payment may be submitted per month. The City will withhold five percent (5%) retention from payments due the Contractor until thirty-five (35) days after date of recording of the Notice of Completion. The project will be considered complete once:

- Contractor notifies the City's representative (Project Manager) that work is complete
- City's representative conducts final walk-through and identifies any outstanding items
- Contractor completes outstanding items identified by the City in the final walk-through

For requests for payments submitted by the Contractor, the Agency agrees to pay the Contractor an amount to be determined by taking 95 percent of the approved completed work, proportionate to the amount of the Contract, of labor and materials incorporated in the Work to be performed, and by deducting the aggregate of all previous payments.

Work completed as estimated shall be an estimate only, and no inaccuracy or error in said estimate shall operate to or release the Contractor or any bondsman from damages arising from such work or from enforcing each and every provision of the Contract; and the City shall have the right subsequently to correct any error made in any estimate for payment. The Contractor shall not be entitled to have any payment estimates processed or be entitled to have any payment made for work performed so long as any lawful or proper direction concerning the work or any portion thereof by the Agency shall remain uncompiled with.

Retained amounts shall be limited, except where greater retention is necessary under specific circumstances specifically provided for in this Specification, to the following:

Retention of 5% of payments claimed until construction is complete. Retention shall be paid after 35 calendar days following the Notice of Completion filed by the City Clerk.

The foregoing condition will not apply to the extent that it may be prohibited by any specific requirement of State or local laws or ordinances.

Contractor may elect to substitute securities for money withheld pursuant to Public Contract Code Section 22300 subject to escrow instructions approved by City.

In addition to the amount which the City may retain as provided above, the City may withhold a sufficient amount or amounts of any payments otherwise due to the Contractor as in its judgment may be necessary to cover (a) payments which may be past due and payable for just claims against the Contractor or any subcontractor for labor or materials furnished in or about the performance of the work on the Project under the contract; (b) for defective work not corrected; and (c) for failure of the Contractor to make proper payments to any of his subcontractors; and (d) for delays which expose the City to claims from other contractors or suppliers.

The City may apply such withheld amount or amounts to the payment of such claims, in its discretion. In so doing, the City shall be deemed the agent of the Contractor, and any payments so made by the City shall be considered as a payment made under the contract by the City to the Contractor, and the City shall not be liable to the Contractor for such payment in good faith. Such payment may be made without prior judicial determination of the claim or claims. The City will render to the Contractor a proper accounting of such funds disbursed on behalf of the Contractor.

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Engineer, (a) a construction commencement and completion program schedule of each of the various subdivisions of work required under the Contract and the anticipated amount of each monthly payment that will become due the contract price, and (b) periodical itemized estimates of work done for the purpose of making partial payments thereon.

At the expiration of thirty-five (35) days after the final acceptance and filing of a Notice of Completion, the Contractor will be paid the remainder of the total contract price after deducting any sums which may be legally retained under this contract.

3-04. Measurement and Payment.

General. Work performed by the Contractor in accordance with the Contract Documents will be paid at the unit prices set forth in the Bid Proposal. The quantities of work performed will be measured by the Engineer in accordance with United States Standard Measures. The contractor will need to specify, in their proposal submittal, the total costs and an estimated percent increase in total costs for the following years for services.

All miscellaneous work required to complete the contract in accordance with the Contractor proposal shall be included in and paid for in the items contained in the Bid Schedule submitted by the contractor, and no claim shall be made for extra work on this account.

Payments made to the Contractor as specified herein shall constitute full compensation for all labor, materials, tools, equipment, taxes, fees, royalties, freight and incidentals necessary to the completed work and for performing all work contemplated and embraced under the Contract Documents; also for loss or damage arising from the nature of the work, or from the action of the elements, or from any unforeseen difficulties which may be encountered during the prosecution of the work until the acceptance by the Agency and for all risks of every description connected with the prosecution of the work, also for all expenses incurred in consequence of the suspension or discontinuance of the work as provided in the Contract documents; and for completing the work according to the Specifications. Neither the payment of any estimate nor of any retained percentage shall relieve the Contractor of any obligation to make good any defective work or material. No compensation will be made in any case for loss of anticipated profits.

3.05. Contract Modifications, Contract Price, Contract Time.

1. Contract Modifications. The Agency, without invalidating the Contract and without notice to any Surety, may, at any time, require changes in, additions to, or deductions from the work to be performed or materials to be furnished pursuant to the provisions of the Contract. These will be authorized by a Written Amendment, a Contract Change Order (CCO), or a Work Directive Change. Upon approval of any such document, the Contractor shall promptly proceed with the Work involved, which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

A 10% contingency may be allowed to increase the project amount via CCO's, depending on the scope of the CCO and the overall project budget. This 10% contingency is an aggregate total of all CCO's, not CCO's presented on an individual basis.

The City Council, through the City Manager, shall authorize the Parks and Recreation Director to execute CCO increases so long as they fall within the 10% contingency and there is a nexus to the original scope of work.

For CCO (individual or aggregate) increases that exceed the 10% aggregate contingency and are below 25% increase of the project bid and there is a nexus to the original scope of work, the City Council shall approve and authorize the City Manager to execute the CCO.

For CCO's (individual or aggregate) that exceed 25% of the original bid proposal, and there is a nexus to the original scope of work, City Council shall approve and authorize the City Manager to execute a Supplemental Agreement with the Contractor.

Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract time with respect to any work performed that is not required by the Contract Documents as amended, modified, and/or supplemented. The Contractor shall, when required by the Agency, furnish an itemized breakdown of the quantities and prices used in computing the value of any change that might be ordered.

Notice of any change affecting the general scope of the work or provisions of the Contract Documents (including but not limited to, Contract Price or Contract Time) is required, by the provisions of any bond, to be given to a surety, the giving of any such notice will be the Contractors responsibility, and the amount of each applicable bond will be adjusted accordingly.

The Agency and Contractor shall execute appropriate Change Orders or Written Amendments covering:

- (a). Changes in the Work which are ordered by the Agency or are agreed to by the Parties;
- (b.) Changes in the Contract price or Contract time which are agreed to by the Parties;
- (c.) Changes in the Contract price or Contract time which embody the substance of any written decision rendered by the Agency; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable laws and regulations, but during any such appeal, Contractor shall carry on the work and adhere to the progress schedule.

2. Contract Price. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to the Contractor for performing the work. All duties, responsibilities, and obligations assigned to or undertaken by the Contractor shall be at his expense without change in the Contract Price.

The Contract Price may only be changed by a Change Order or by a Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days of such occurrence (unless Agency allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the claimant is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this Section.

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following methods:

- A. Unit Price. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
 1. Where the Contract documents provide that all or part of the work is to be unit price work, initially the contract price will be deemed to include, for all unit price work, an amount equal to the sum of the established unit prices for each separately identified item of unit price work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of the Bids and determining an initial contract price. Determinations of the actual quantities and classifications of unit price work performed by the Contractor will be made by the Agency.
 2. Each unit price will be deemed to include an amount considered by the Contractor to be adequate to cover the Contractor's overhead and profit for each separately identified item.

3. Where the quantity of any item of unit price work performed by the Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of work and if the Contractor believes that the Contractor has incurred additional expenses as a result thereof, the Contractor may make a claim for an increase in the Contract Price in accordance with this Section if the parties are unable to agree as to the amount of any such increase.

4. In the case of such an increase or decrease in a major unit item, the use of this basis for the adjustment of payment will be limited to that portion of the change, which together with all previous changes to that item, is not in excess of twenty-five percent (25%) of the total cost of such item based on the original quantity and Contract Unit Price.

5. Should any Contract unit item be deleted in its entirety, payment will be made only for actual costs incurred prior to notification of such deletion.

B. Lump Sum. By mutual acceptance of a lump sum proposal from the Contractor (which may include an allowance for overhead and profit); or

C. Force Account. On the basis of the Cost of the Work (as determined below) plus a Contractor's fee for overhead and profit (as determined below).

Daily force account reports shall be submitted to the Engineer no later than seven (7) days following the performance of said work. The reports shall itemize the materials used, hours and rate of pay of each workman, and the hours and rental rates of each piece of equipment utilized in extra work.

The term "Cost of the Work" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the work. Except as otherwise may be agreed to in writing by the Agency, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items, and shall not include any of the costs itemized in Section 3-05.:

1. Payroll costs for employees in the direct employ of the Contractor in the performance of the Work under schedules of job classifications agreed upon by the Agency and the Contractor. Payroll costs for employees not employed full time on the work shall be apportioned on the basis of their time spent on the work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise, and payroll taxes, workers or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. Such employees shall include foremen at the site, only in the proportion that the claimed extra work applies to all work of the foreman. The costs of supervisory workers shall be considered part of the overhead as allowed per Section 3-05.2.F., Contractor's Fee. The expenses of performing work after regular working hours, on Sunday, or legal holidays, shall be included in the above to the extent authorized by the Agency.

2. Cost of all materials and equipment furnished and incorporated in the work, including cost of transportation and storage thereof, and Suppliers field services required in connection therewith. All cash discounts shall accrue to the Contractor unless the Agency deposits funds with the Contractor with which to make payments, in which case the cash discounts shall accrue to the Agency.

All trade discounts, rebates, and refunds, and all returns from sale of surplus materials and the Contractor shall accrue to the Agency, and the Contractor shall make provisions so that they may be obtained.

3. Payments made by the Contractor to the subcontractors for work performed by subcontractors. If required by the Agency, the Contractor shall obtain competitive bids from subcontractors acceptable to the Contractor and shall deliver such bids to the Agency who will then determine which bids will be accepted. If a subcontract provides that the subcontractor is to be paid on the basis of cost of the work plus a fee, the subcontractor's cost of the work shall be determined in the same manner as the Contractor's cost of the work. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.

4. Cost of special consultants (including, but not limited to, engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for service specifically related to the work except that the cost for special consultants employed for purposes of the prosecution or defense of any claims arising out of the work shall not be included in "Cost of the Work".

D. Supplemental costs including the following:

1. The proportion of necessary transportation, travel, and subsistence expenses of the Contractor's employees incurred in discharge of duties connected with the work.
2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site, and hand tools not owned by the workers which are consumed in the performance of the work, and cost less market value of such items used but not consumed which remain the property of the Contractor.
3. Rentals of all construction equipment and machinery and the parts thereof whether rented from the Contractor or others in accordance with rental agreements approved by the Agency, and all costs of transportation, loading, unloading, installation, dismantling, and removal thereof ; all in accordance with terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the work.
4. Sales, consumer, use, or similar taxes related to the work and for which the Contractor is liable, imposed by laws and regulations.
5. Deposits lost for causes other than negligence of the Contractor, any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
6. Losses and damages (and related expenses), not compensated by insurance or otherwise, to the work or otherwise sustained by the Contractor in connection with the performance and furnishing of the work (except losses and damages within the deductible amounts of property insurance established by the Agency for this work.), provided they have resulted from causes other than the negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of the Agency.
7. No such losses, damages, and expenses shall be included in the cost of the work for the purpose of determining the Contractor's fee. If, however, any such loss or damage requires reconstruction and the Contractor is placed in charge thereof, the Contractor shall be paid for services a fee proportionate to that.
8. The cost of utilities, fuel, and sanitary facilities at the site.

9. Cost of premiums for additional bonds and insurance required because of changes in the work and premiums for property insurance within the deductible amounts established by the Agency.

E. The term "Cost of the Work" shall not include any of the following:

1. Payroll costs and other compensation of the Contractor's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by the Contractor whether at the site or in the Contractor's principal or a branch office for general administration of the work and not specifically included in the agreed upon schedule of job classifications referred to in Section 3-05.2.C.1. or specifically covered by Section 3-05.2.C.4. - all of which are to be considered administrative costs covered by the Contractor's Fee.
2. Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.
3. Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work and charges against the Contractor for delinquent payments.
4. Cost of premiums for all bonds and for all insurance, whether or not the Contractor is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by Section 3-05.2.D.9. above).
5. Costs due to the negligence of the Contractor, any subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including, but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
6. Minor expenses such as telegrams, long-distance telephone calls, telephone service at the site, expressage, and similar petty cash items in connection with the work.
7. Other overhead or general expense costs of any kind and the costs of any items not specifically and expressly included in Sections 3-05.C. and 3-05.D.

F. Contractor's Fee. The Contractor's Fee allowed to the Contractor for overhead and profit shall be determined as follows:

1. A mutually acceptable fixed fee, or if none can be agreed upon.
2. To the total of the direct costs computed, an allowable markup of 10% for overhead and 5% for profit may be added. The markup shall constitute full compensation for all overhead costs and shall be deemed to include all items of expense and profit. The allowable markup for overhead and profit will be determined according to the work involved and the Contractor's operation. The percentage of markup shall be approved by the Agency.

In case work is performed by a subcontractor, the markup will be added only once to the actual cost of the work; however, the Contractor may add five percent (5%) to the subcontractor price to cover his own overhead and profit.

The amount of credit to be allowed by the Contractor to the Agency for any such change which results in a net decrease in cost shall be the amount of the actual net decrease plus a deduction in the Contractor's fee by an amount equal to ten percent of the net decrease; and

When both additions and credits are involved in any one change, the adjustment in the Contractor's fee shall be computed on the basis of the net change in accordance with Section 3-05.2.F.

3. Whenever the cost of any work is to be determined pursuant to Section 3-05.2.E., the Contractor shall submit in form acceptable to the Agency, an itemized cost breakdown together with supporting data.

G. Cash Allowances. It is understood that the Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the work so covered to be done by such subcontractors or suppliers and for such sums within the limit of the allowances as may be acceptable to the Agency. The Contractor agrees that;

1. The allowances include the cost to the Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and
2. The Contractor's cost for unloading and handling on the site, labor, installation, costs, overhead, profit, and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

Prior to final payment, an appropriate Change Order will be issued as recommended by the Agency to reflect actual amounts due the Contractor on account of work covered by allowances, and Contract Price shall be correspondingly adjusted.

3. Contract Time. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the Contract Time shall be based on a written notice delivered by the party making the claim to the other party promptly (but in no case later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days of such occurrence (unless Agency allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for adjustment in Contract Time will be valid if not submitted in accordance with the requirements of this Section, 3-05.3.

The Contract Time will be extended in an amount equal to the time lost due to delays beyond the control of the Contractor if a claim is made, therefore as provided in Section 3-05.3. Such delays shall include, but not be limited to, acts or neglect by the Agency or others performing additional work, or to fires, floods, labor disputes, epidemics, abnormal weather conditions, or acts of God.

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Section 3-05.3. shall not permit recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys, and other professionals and court and arbitration costs) for delay by either party otherwise excluded by Section 3-05.2.C.4.

3-06. Authority of Engineer.

In these Specifications or in other contract documents in which these Specifications govern, the term Engineer shall mean authorized personnel of the City of Lindsay.

The work shall be done under the direction of the Engineer, and the materials used shall comply with these Specifications and to be to the satisfaction of the Engineer. The Engineer shall have authority to stop the work,

authority to reject any work or materials which do not conform to the contract documents, to direct the application of forces to such portion of the work as, in his judgment, is required, to order the force increased or diminished, to direct the sequence of the work and to decide questions which arise in the execution of the work. All work under this contract shall be done under the direction and to the satisfaction of the Engineer.

3-07. Materials Furnished by Agency.

Materials and equipment to be furnished by the Agency will be supplied in accordance with the applicable portions of the Technical Provisions.

3-08. Access to Work.

The City, its inspectors, agents and other employees shall at all times and for any purpose have access to the work and the premises used by the Contractor, and the Contractor shall provide safe and proper facilities therefor. Furthermore, the City, its inspectors and agents shall, at all times, have immediate access to all places of manufacture where machinery or materials are being manufactured, produced or fabricated for use under these Specifications, and shall have full facilities for determining that all such machinery or materials are being made strictly in accordance with the Specifications. The Contractor shall, whenever so requested, give the Engineer access to the proper invoices, bills of lading, etc., and shall provide scales and assistance for weighing, or assistance for measuring any of the materials.

3-09. Shutdown.

Shutdown periods for the existing facility will be necessary for this project.

3-10. Land Survey Monuments.

Land Survey monuments and property marks shall not be moved or otherwise disturbed by the Contractor until an authorized agent of the agency having jurisdiction over the land monuments or property marks the setting, witnesses or otherwise references their location, and only then as directed by the Engineer.

3-11. Disposal Area.

The Contractor shall use the nearest approved solid waste disposal facility for the disposal of surplus construction material from the work. It is required that any asphalt or concrete excavated from this project shall be taken to an approved recycling center.

3-12. Compaction Tests.

All compaction tests required in accordance with these Specifications will be paid by the City. The cost of any re-compaction test resulting from the failure of the original test will be charged to the Contractor at \$50.00 per retest.

3-13. Permits, City Licenses.

The Contractor shall be required to obtain an encroachment permit as follows:

- a. Encroachment Permit, General. The Contractor shall obtain an encroachment permit from the City of Lindsay Department of City Services, 150 North Mirage, Lindsay, California, before performing any work in public right-of-way areas. Permit fees shall be the Contractor's responsibility.

b. Application. Requirements for the application of an encroachment permit include:

1. A certificate of comprehensive general liability insurance furnishing coverage in an amount not less than one million dollars (\$1,000,000) combined single limit and naming the City of Lindsay as an additional insured in the policy.
2. A surety bond in a form acceptable to the City of Lindsay for an amount not less than that specified by the City.
3. A completed application for encroachment permit signed by the Contractor.
4. Two (2) sets of Plans and Specifications (provided by the City).

c. Processing. The Contractor shall provide for the requirements listed in 1. and 2. and shall furnish to the City necessary forms filled with the information pertaining to the Contractor for the requirements listed in 3. The Contractor will furnish the Plans and Specifications to the City of Lindsay Permit Office and will fill in the information pertaining to the City and the project on the forms furnished by the Contractor. Such forms, when completed by the Agency, will be returned to the Contractor for further processing.

d. City Business License, General. The Contractor shall obtain a City of Lindsay business license from the City of Lindsay Finance Department, 251 East Honolulu, Lindsay, California, before performing any work. License fees shall be the Contractor's responsibility. This shall pertain to all subcontractors on this project also.

3-14. Contracts with Subcontractors.

Contracts with subcontractors must contain excerpts from "Labor Standards - Instructions".

The Contractor may utilize the services of specialty subcontractors for those parts of the work that, under normal contracting practices, are performed by specialty subcontractors. The Contractor shall not award work to subcontractor(s), which, in the aggregate, exceeds fifty percent (50%) of the contract price, unless specifically specified in the bid documents.

The Contractor shall be fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts and omissions of persons directly employed by it.

The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractors to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors and give the Contractor the same power as regards terminating any subcontract that the City may exercise over the Contractor under any provision of the Contract Documents.

Nothing contained in this contract shall create contractual relations between any subcontractor and the City.

3-15. Claims and Disputes Resolution.

- a. Time Limits on Claims. Claims by Contractor must be made within 7 days after the occurrence of the event giving rise to such claim, except that claims made due to delay or hindrances which Contractor claims was caused by the City shall be made within 10 days after the occurrence of the event giving rise to such claim. Claims must be made by written notice. Failure to make such a claim in writing in the time set forth

herein shall bar Contractor from recourse for such a claim. All claims must be filed on or before the Final Payment date.

b. Claims for Additional Costs.

1. If Contractor wishes to make a claim for an increase in the Contract Price, he shall give the Agency written notice thereof within the time set forth in Paragraph a. above. This notice shall be given by the Contractor before proceeding to execute the work, except in an emergency endangering life or property, in which case the Contractor shall, as soon as possible, advise Agency of his intent to do the Work.
2. Increases in Contract Price due to claims shall be calculated based on the force account method detailed in paragraph 3-05.
3. Under no circumstances shall Contractor recover any administrative overhead costs or recover on the basis of any "Home Office" damages formula, "Total Cost" recovery formula, or any other such formula.

c. Claims for Additional Time.

1. If the Contractor wishes to make claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's claim shall include an estimate probable effect of delay on progress of the Work. In the case of a continuing delay only one claim is necessary.
2. If adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.
3. The Agency shall not be liable for any damages on account of any reasonable delay or hindrance of others.

However, Contractor shall be entitled to an extension of time for any delay or hindrance caused by the Agency. Any delay or hindrance by the Agency which is unreasonable and not within the contemplation of the parties may subject the Agency to a claim for damages. Contractor shall make any claims in writing within the time set forth in Paragraph a., above, for any unreasonable delay or hindrance caused by the Agency, and specifying the cause thereof as required in paragraph d., below.

d. Submittal of Claims. Any disputes relating to this contract, or its breach, which is not imposed on by agreement shall be promptly submitted as a claim to and decided by the Agency's representative who shall issue a written decision on the dispute. Claims shall be submitted by the Contractor to the Agency's Representative with adequate supporting data and include a demand for the Agency's Representative's decision. Adequate supporting data shall include, but is not limited to: a statement of the reasons for the asserted entitlement, the certified payroll, an invoice for material and equipment rental, and an itemized breakdown of any adjustment sought.

e. Submission Under Penalty of Perjury. The Contractor shall certify, at the time of submission of a claims, as follows: "I certify under penalty of perjury under the laws of the State of California, that the claim is made in good faith, that the supporting data are accurate reflects the adjustments for which the City is liable."

By: _____
(Contractor's signature)

f. Continue Work During Dispute. In the event of any dispute between the Agency and the Contractor, the Contractor will not stop work but will prosecute the work diligently to completion in the manner directed by

the Agency, and the dispute shall be resolved by a court of law after completion of work. However, all disputes must be submitted by the Contractor in accordance with the provisions of Section 3-15.

g. Agency's Review of Claim. The Agency's Representative shall review the facts pertinent to the claim, secure assistance from legal and other advisors, coordinate with the contract administrators, and within the time stipulated in paragraph h. Below, render a written decision on the claim. A copy of the decision shall be furnished to the Contractor by certified mail, return receipt requested, or any other method that provides evidence of receipt. The decision of the Agency's Representative shall be final and conclusive except as is otherwise provided herein.

h. Requirement for Filing a Claim. For any claim subject to this Article, the following requirement applies: the claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for a filing of claims.

1. For claims of less than fifty thousand dollars (\$50,000), the Agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claims or relating to defenses or claims the Agency may have against the claimant. If additional information is hereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Agency and claimant. The Agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

2. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the Agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the Agency may have against the claimant. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the Agency and the claimant. The Agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further document, or a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

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

4. If, following the meet and confer conference, the claim or any portion remains in dispute, the claimant may file a claim pursuant to Part 3, Chapter 1, Article 1.5, commencing with Section 20104 et seq. of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference.

i. Claims Exempt from Review. The procedures and remedies provided in Section 3-15 do not apply to:

1. Any claims by the Agency;

2. Any claim for or respecting personal injury or death or reimbursement or other compensation arising from or resulting from liability for personal injury or death;

3. Any claim or dispute relating to stop payment requests or stop notices;

4. Any claim related to the approval, refusal to approval, refusal to approve, or substitution of subcontractors, regardless to tier, and suppliers.

j. Procedure to Resolve Civil Claims. The Agency and claimant shall follow procedures established for all civil actions filed to resolve claims pursuant to Section 20104.4 of the Public Contract Code.

k. Payment of Undisputed Portion of Claim; Interest on Arbitration Award or Judgment:

1. Agency shall pay claimant such portion of a claim which is undisputed except as otherwise provided in the contract.

2. In any suit filed under Section 20104.4, of the Public Contract Code, the Agency, if applicable, shall be liable for interest at 7% per annum. The interest shall begin to accrue on the date the judgment is filed in a court of law.

l. Suit in Tulare County Only. Any litigation arising out of this Contract shall be brought in Tulare County, and Contractor hereby waives the removal provisions of California Code of Civil Procedure Section 394.

3-16. Protection of Existing Facilities.

The Contractor shall be responsible for any loss or damage that may occur to any of the existing facilities or to any new materials or equipment stored at the site of the work, during the life of the contract.

3-17. Protection of Persons and Property.

The Contractor shall adopt every practical means and comply with all laws, ordinances, and regulations in order to minimize interferences to traffic, and inconveniences, discomfort, and damage to the public, including the provision of adequate dust control measures. All obstructions to traffic shall be guarded.

The Contractor shall not trespass upon private property and shall be responsible for all injury or damage to persons or property, directly or indirectly, resulting from his operations in completing this work. He shall comply with the laws and regulations of the Agency, County and State, relating to the safety of persons and property, and will be held responsible and required to make good any injury or damage to persons or property caused by carelessness or neglect on the part of the Contractor or subcontractors, or any agent or employee of either during the progress of the work and until its final acceptance.

The Contractor shall protect against injury to any pipe's conduits, electrical conduits, lawns, gardens, shrubbery, trees, fences, or other structures or property, public and/or private, encountered in this work except as stipulated elsewhere herein. The Contractor shall be responsible and liable for any injury to such pipe, structures, and property.

3-18. Cultural Resources.

In accordance with the National Historic Preservation Act of 1966, (16 U.S.C.470) and PRM 75-27, the following procedures are implemented to ensure historic preservation and fair compensation to the Contractor for delays attendant to cultural resources investigations.

In the event potential Historical, Architectural, Archaeological, or Cultural Resources (hereinafter cultural resources) are discovered during subsurface excavations at the site of construction, the following procedures shall be instituted:

1. The Engineer shall issue a “Stop Work Order” directing the Contractor to cease all construction operations at the location of such potential cultural resources find.
2. Such “Stop Work Order” shall be effective until such time as a qualified archaeologist can be called to assess the value of these potential cultural resources and make recommendations to the Engineer. Any “Stop Work Order” shall contain the following:
 - a. A clear description of the work to be suspended;
 - b. Any instructions regarding issuance of further orders by the Contractor for material services;
 - c. Guidance as to action to be taken on subcontractors;
 - d. Any suggestions to the Contractor as to the minimization of his costs;
 - e. Estimated duration of the temporary suspension.

If the archaeologist determines that the potential find is a bonafide cultural resource, the Engineer shall extend the duration of the “Stop Work Order” in writing, and the Contractor shall suspend work at the location of the find.

Equitable adjustment of the construction contract shall be made in the following manner:

1. Time Extension. If the work temporarily suspended is on the “critical path”, the total number of days for which the suspension is in effect shall be added to the number of allowable contract days.

3-19. Taxes.

All bid prices shall include an allowance for all applicable taxes.

3-20. Examination of Specifications and Site of Work. The Bidder is required to examine the site of work, the proposal, the Plans and Specifications very carefully. He shall satisfy himself as to the character and quantities of the work to be performed, the materials to be furnished and the requirements of the contract documents. It is not to be inferred that all of the conditions as shown on the Plans are actually existent, nor shall the Agency or any of its officers be liable for any loss sustained by the Contractor as a result of any variance between conditions shown on the Plans and actual conditions revealed during examination or progress of the work. The submission of a proposal shall be prima facie evidence that the Bidder has made such an examination.

3-21. State Nondiscrimination Clause.

- a. During the performance of this contract, Contractor and its subcontractors shall not lawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. Contractors and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 728.5.0 et seq).

The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code, are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

b. This Contract shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.