

AGREEMENT FOR THE PURCHASE OF GOODS AND SERVICES

This Agreement for the emergency demolition of the Earle Hotel ("Agreement") located at 735 East Main Street, Stockton, CA is made _____, 2014, between FERMA Corporation ("Contractor"), whose address is 1265 Montecito Avenue, Mountain View, CA, and telephone number is 650-961-2742 and the City of Stockton, a municipal corporation ("City").

WHEREAS, the Earle Hotel was destroyed by fire and necessitated an emergency demolition which was authorized by the City Manager,

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. Goods to be provided and services to be performed. Contractor shall provide the goods and perform the services as set forth in the attached Exhibit A, incorporated herein by this reference. Contractor shall begin providing the goods/performing the services by June 9, 2014 and complete the provision of the goods/performing of services by July 30, 2014; provided, however, the parties may agree in writing to change the beginning or ending date(s) provided herein.
2. Compensation. For the provision of goods and performance of services under this Agreement, City shall pay Contractor the sum of \$ 1,176,400 .
3. Method of Payment. City shall pay Contractor within 30 days from the date Contractor's invoices are approved by the City Manager. Contractor shall submit monthly invoices.
4. Warranty. Contractor warrants that for one year, the goods installed shall be free of defects in materials and workmanship. The one year period shall begin on the date the City, by writing, accepts the goods. The warranty under this section shall provide coverage equal to or greater than those warranties that are customary in the industry and, at a minimum, include all parts and labor,
5. Indemnification. Contractor shall indemnify, save and hold harmless from and defend the City, members of the City Council and employees, agents and volunteers, against any and all claims, costs, demands, causes of action, suits, losses, and expense, including attorneys fees, arising from or out of acts or omissions of Contractor, its officials, employees, agents or sub-contractors, in connection with the goods and services that the Contractor is to provide/perform under this Agreement, except where caused by the active or sole negligence of City, or City's willful misconduct.

6. Insurance. During the term of this Agreement, Contractor shall maintain in full force and effect, at its own cost and expense, the insurance coverage set forth in the attached Exhibit A and shall otherwise comply with all of the provisions in Exhibit B.

7. Business License. Prior to its execution of this Agreement, Contractor shall obtain a City business license.

8. Audit. City reserves the right to periodically audit all charges for goods and services provided by Contractor.

9. Ownership of Goods. All goods accepted by the City shall be the property of the City.

10. Changes to the Agreement. This Agreement may not be modified except in a writing signed by both parties.

11. Applicable Law. This Agreement shall be governed by the laws of the State of California and the venue for any action brought in state court shall be in the Superior Court, County of San Joaquin, Stockton Branch or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.

12. Non-Assignability. Contractor shall not assign or transfer this Agreement or any interest or obligation contained in this Agreement without the prior written consent of the City and then only upon such terms and conditions as City may set forth in writing.

13. Notices. All notices herein required shall be in writing and shall be sent certified or registered mail, postage prepaid, addressed as follows:

To Contractor: FERMA Corporation
1265 Montecito Ave, #200
Mountain View, CA
94043-4506

To City: City Manager
City of Stockton
425 N. El Dorado St.
Stockton, CA 95202

14. Conformance to Applicable Laws. Contractor shall comply with all applicable Federal, State and Municipal laws, rules and ordinances. Contractor shall not discriminate in the employment of persons or in providing services under this Agreement on the basis of any legally protected classification including, but not limited to: race, color, national origin, sex or religion of such person.

15. Miscellaneous Provisions.

a. City may terminate this Agreement at any time by mailing notice to Contractor at the address first stated above. Contractor shall be paid for that portion of goods/ services provided when notice is received.

b. Contractor shall not assign or transfer this Agreement.

c. In the performance of this Agreement, Contractor, its employees and agents shall have the status of an independent contractor and nothing in this Agreement shall be deemed to constitute employment, partnership, joint venture, agency relationship or otherwise between the parties for any purpose.

d. If either City or Contractor waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.

e. If any part, term, or provision of this Agreement is held to be invalid or illegal, or unenforceable, neither the validity or enforceability of the remainder of this Agreement shall be affected.

f. This Agreement constitutes the entire understanding of the parties relating to the subject matter hereof and supersedes all prior representations, writings, negotiations or understandings with respect hereto.

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

CITY OF STOCKTON**CONTRACTOR**

KURT O. WILSON
CITY MANAGER

By: _____

Print Name: _____

ATTEST:

Title: _____

City Clerk

[If Contractor is a corporation, signatures must comply with Corporations Code §313]

APPROVED AS TO FORM:

By: _____

City Attorney

Print Name: _____

Title: _____



"Clearing the way for the future"™

EXHIBIT 1

EXHIBIT A

June 5, 2014
14286

City of Stockton
Economic Development Department
City Hall-3rd Floor
425 N. El Dorado
Stockton, CA 950202

Attention: Joe Mulligan

RE: Demolition – 735 E Main St., Stockton

Dear Mr. Mulligan:

Ferma Corporation is pleased to provide the following quotation for the building demolition, per our meeting of 6-5-14, walk through and field observation and described in the following scope of work:

Scope of Work:

- Mobilization of crews and equipment
- Demolition, loading and removal including utilizing properly trained asbestos workers, equipment, material, our salvage value, transportation, legal disposal and disposal fees described as follows:
 - Building protection at the roofs of the adjacent structures (includes placing tires and plywood on the roofs of the adjacent structures)
 - Protect adjacent streets, parking lots and sidewalks
 - A combination of hand demolition and mechanical demolition of the building down to street elevation. Leave basement walls and floor in place. Care will be taken to leave access for the fire inspectors.
 - All debris will be hauled and disposed of as friable asbestos debris. All loads will be double lined and shipped to a certified asbestos landfill
 - Notify underground service alert
 - Provide dust control using onsite fire hydrants as water source.
 - Provide pedestrian and traffic control as required – limited to flagmen and signage
- Obtain City of Stockton Building Permit for Demolition (\$20,600)
- Obtain CALOSHA and San Joaquin Air Quality Management District notification
- Provide Labor and Performance Bond to City of Stockton (\$11,000)
- Provide certified payroll for all trades

We are excluding the following items:

- Off-site work (city sidewalks)
- Demolition beyond the property line
- Backfill of the basement-see alternate
- Any other hazardous materials other than asbestos
- Shoring or bracing
- Utility cuts and caps
- Temporary fence, pedestrian barricades
- Dewatering

1265 Montecito Avenue, Suite 200 • Mountain View, CA 94043-4506
Phone (650) 961-2742 • Fax (650) 968-3945

City of Stockton
Demolition – 735 E Main St, Stockton,

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Ferma Corporation proposes to perform the described work for a total bid price of **\$990,000.00**

Qualifications:

- We have included the disposal of all debris as friable asbestos. This is typical for a burnt building. If the Air Quality Management District allows, some of the brick walls may be separated from the asbestos waste stream and left on site to backfill the basement.
- We would accept a time and materials contract to demolish and dispose the building as well. The City could save significant money if we were allowed to separate some of the brick from the asbestos impacted debris. The City may also elect to partially demolish the burnt structure down to a certain elevation

Add alternate #1 – Backfill the basement \$171,000.00

- Per the Siegfried structural plans dated FEB 2011 – install concrete retaining wall, backfill and compact the basement using clean, imported dirt fill.

Add alternate #2 – Install Wall ties and bracing \$15,400.00

Schedule

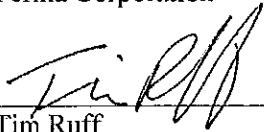
Demolition 10-15 days

Backfill 5 days

Please do not hesitate to call our office if you have any questions.

Sincerely,

Ferma Corporation



Tim Ruff

INSURANCE REQUIREMENTS
DEMOLITION CONTRACTORS

CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against all 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, its agents, representatives, volunteers, or employees.

1. **INSURANCE** Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:
 - A. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence.
 - B. **WORKERS' COMPENSATION** insurance as required under the California Labor Code and Employers Liability Insurance with limits not less than \$1,000,000 per accident/injury/disease.
 - C. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY AND MISCELLANEOUS SUPPLEMENTARY INSURANCE;**

FOR ADDITIONAL REQUIREMENT(S):

- (i) **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverage's, Bodily Injury and Property Damage Liability insurance with combined single limits of not less than \$1,000,000 per occurrence, and \$2,000,000 Aggregate limit. Contractors with excavation and underground risks shall have coverage for and exclusions removed for "x, c, and u."
- (ii) **ENVIRONMENTAL IMPAIRMENT/POLLUTION LIABILITY**, to include liability for Lead & Asbestos projects, Groundwater contamination, Explosion, Sudden and Accidental and Environmental cleanup, etc. Same minimum limits as Commercial General Liability

Deductibles and Self-Insured Retentions must be declared and are subject to approval by the CITY.

The Policy(s) shall also provide the following:

- 1 The Commercial General Liability insurance shall be written on ISO approved occurrence form with additional insured endorsement naming: *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are additional insureds.* ISO form CG 20 37 10 01 edition shall be used as the Additional Insured Endorsement. This form must be used with either ISO form CG 20 10 10 01, or CG 20 33 10 01.
2. All insurance required by this Agreement shall be with a company acceptable to the CITY and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.
3. For any claims related to services or products provided under this contract, the Contractor's insurance coverage shall be primary insurance as respects the City of Stockton its officers, agents, and employees. Any coverage maintained by the CITY shall be excess of the Contractor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against the CITY.
4. Each insurance policy required by this clause shall have a provision that coverage shall not be cancelled by either party, except after thirty (30) days' prior to written notice by certified mail, return receipt requested, has been given to the CITY. Further, the thirty (30) day notice shall be unrestricted, except for workers' compensation, or non-payment of premium, which shall permit ten (10) days advance notice. The insurer

and/or the contractor and/or the contractor's insurance agent shall provide the CITY with notification of any cancellation, major change, modification or reduction in coverage.

5. Regardless of these contract minimum insurance requirements, the Contractor and its insurer shall agree to commit the Contractor's full policy limits and these minimum requirements shall not restrict the Contractor's liability or coverage limit obligations.
6. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.
7. The Company shall furnish the City of Stockton with the Certificates and Endorsement for all required insurance, prior to the CITY's execution of the Agreement and start of work.
8. Proper address for mailing certificates, endorsements and notices shall be:

City of Stockton
Attention: Risk Services
425 N. El Dorado Street
Stockton, CA 95202

9. Upon notification of receipt by the CITY of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall immediately file with the CITY a certified copy of the required new or renewal policy and certificates for such policy.

Any variation from the above contract requirements shall only be considered by and be subject to approval by the CITY's Risk Manager (209) 937-8617. Our fax is (209) 937-8558.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Contract.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.