

## DRAFT EXHIBIT 1

**SECTION 00500 – PROGRESSIVE DESIGN-BUILD CONTRACT**

THIS CONTRACT ("Contract") is made and entered into on \_\_\_\_\_, by and between NAME OF CONTRACTOR, a (INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP), with a business address of ADDRESS/CITY/STATE/ZIP, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

W I T N E S S E T H:

WHEREAS, plans and specifications for the construction of PROJECT NAME (PROJECT NO. xx), hereinafter called "PROJECT," were regularly adopted by Council Motion –OR- Council Resolution No. \_\_\_\_\_, on \_\_\_\_\_; and

WHEREAS, the Contract for said work was regularly awarded to CONTRACTOR, by Council Motion –OR- Council Resolution No. \_\_\_\_\_, on \_\_\_\_\_.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

1. CONTRACTOR agrees:

(a) To do and perform the design and construction work and services and furnish all the labor, materials, tools, equipment, and insurance pursuant to the terms and conditions of the Contract Documents (as defined in Article 1(k) below) required for the Progressive Design-Build Services for the South Stockton Groundwater Well Rehabilitation at Well SSS8 Project ("Project"), subject to CITY and CONTRACTOR agreeing to a Phase 2 Guaranteed Maximum Price (GMP) or Lump Sum Contract Price and Phase 2 Contract Time (as defined in Articles 1(f) and (g) below, respectively) for the Phase 2 portion of the Work. CITY is contracting with CONTRACTOR, whose key personnel and key subcontractors are set forth in Exhibit A, for the following Work: design, permitting and construction of a progressive design build project consisting of groundwater treatment components ("Facilities") of the Project. The Work includes development and preparation of all design documents and construction of the Project, including construction administration and management services in two Phases, and the Work shall comply with and meet the Performance Requirements as set forth in Exhibit B hereto. Phase 1 of the Work shall consist of the initial design of the Project and negotiation of the Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time. Phase 2 of the Work shall consist of the final design and construction of the Project, which shall take effect only if CITY and CONTRACTOR agree to a Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time, and CITY exercises the OPTION under Article 5 below.

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The general description of the Work which will be performed in Phases, shall include, but not be limited to, the following:

**Phase 1 – Design Development and Construction Documents**

- Project management for the duration of Phase 1
- Conceptual and a significant degree of detailed design of the Facilities, including technology selection and equipment and materials specification; the Facilities design criteria shall ensure compliance with the Performance Requirements as described and identified in this Contract and Exhibit B.
- Evaluation of alternatives for groundwater treatment technologies, equipment, and other elements as necessary of the Project that affect construction and life cycle costs, Contract performance, and CITY goals for the Project
- Review of background and reference documents and preparation of Basis of Design Reports (“BDRs”) and other work products as defined in this Contract, with major milestones at 25% and 60-75% completion, and sufficient process and instrumentation diagrams (“P&IDs”), site plans, specifications, and other supporting documents to facilitate preparation of a Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time Proposal at 60-75% completion of design packages
- Advising the CITY and facilitating CITY participation in all material decision making about the Facilities as such decision making may affect the Project scope and value, including CITY participation in select meetings and communications
- Preparation of the Supervisory Controls and Data Acquisition (“SCADA”) system and security/surveillance system design for the Facilities in conformance with the City’s SCADA system
- Necessary environmental documentation for compliance with California Environmental Quality Act (“CEQA”) requirements
- Preliminary preparation of all necessary permit applications and facilitation of regulatory agency approval of all permits that are CONTRACTOR’s responsibility (CITY will sign the permit applications, furnish permit application fees, and attend permitting coordination and review meetings with regulatory agencies as necessary). City will maintain a lead role with the State Water Resources Control Board, Division of Drinking Water.
- Preparation of unified sets of plans and specifications for use by the City to solicit competitive bids for construction of the Facilities if Contractor’s performance is unsatisfactory, Contract amendment negotiations for Phase 2 are unsuccessful, or the Contractor otherwise fails to perform under the terms of the Contract; it is anticipated in this event that Contractor shall

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assume responsibilities as the Engineer of Record and provide engineering services during construction by others

- Development of a startup, commissioning and testing plans that will demonstrate facility compliance with design parameters developed in Phase 1 and constructed in Phase 2
- Solicitation of competitive proposals for the major trades, design packages, and material and equipment procurement, preparation of a firm Phase 2 GMP or Lump Sum and Contract Price and Phase 2 Contract Time, as defined and required in Articles 1(f) and (g) below, and negotiation of the Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time with CITY in accordance with the Contract
- Negotiation of the Contract amendment, as defined in Article 1(f) below, for Phase 2
- In addition to the services identified above, CONTRACTOR will also perform all Phase 1 services identified in and reasonably inferred by this Contract, the RFP, and all Contract Documents for the Project. In particular, see the scope of services set forth in Exhibit C hereto.

**Phase 2 – Final Design and Construction Phase (contingent upon satisfactory completion of Phase 1 services and successful negotiation of and agreement on a Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time):**

- Completion of final design packages as necessary for physical construction of the Facilities
- Completion of permitting services including obtainment of building and operating permits
- Procurement of equipment and materials separately from construction contracts as necessary to achieve project delivery schedule
- SCADA and security/surveillance system integration with the City's SCADA system
- Compliance with all permitting terms and conditions
- Compliance with all environmental mitigation requirements if required
- Site safety and security during construction including coordination of site visits
- Completion of start-up and all required acceptance tests, including provision of chemicals and utilities during start-up
- Provision of an operations and maintenance ("O&M") manual, as-built drawings and other project documentation in searchable Adobe Acrobat format and integrated into a computerized maintenance management system ("CMMS"); as-built drawings also provided on Mylar sheets and in AutoCAD files
- Training of the CITY-designated and licensed O&M workforce to explain the Facilities design intent, the Operations Manual, SOP, the equipment manufacturers' recommendations, and the CMMS

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- Completion of the project within the Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract time and in accordance with all Contract requirements
- Provision of QA/QC plan for Phase 2

In addition to the services identified above, CONTRACTOR will also perform all Phase 2 services and Work identified in and reasonably inferred by this Contract, the RFP, and the Contract Documents for the Project. In particular, see the scope of services identified in Section 3.5 of the RFP. The final scope of services for which will be identified by Contract Amendment following successful negotiation of a Phase 2 GMP or Lump Sum Price.

(b) To do and perform the work and services contemplated hereby in a good and professional manner to the complete satisfaction of the Municipal Utilities Director (“Director”) of the City of Stockton.

(c) CONTRACTOR shall, during the life of the contract, take out and maintain insurance coverage as required herein under and by the General Conditions and all other Contract Documents with insurance carriers authorized to transact business in the State of California as will protect CONTRACTOR or any subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable from claims for damages because of bodily injury, sickness, disease, or death of its employees or any other persons, or for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

The minimum limits of liability for such insurance coverage, which shall include comprehensive general and automobile liability, including contractual liability assumed under the contract, shall be in the minimum amounts mandated by Section 00820 – Liability and Insurance Requirements of the Front End Contract Documents. Front End Contract Documents are Division 0 (Sections 00100 through 00820) and Division 1 (01010-01700). Defined terms are included in this Contract and in Section 01090 of the Division 1 Front End Contract Documents.

Such liability insurance policies shall name CITY as an additional insured by separate endorsement and shall agree to defend and indemnify CITY against loss arising from operations performed under the Contract and shall provide that written notice of any changes or cancellation in coverage shall be provided to CITY at least thirty (30) days prior to the effective date of such change or cancellation.

CONTRACTOR shall obtain, and keep in full force and effect, Workers’ Compensation Insurance necessary in connection with the performance of this Contract to protect itself and employees under the Workers’ Compensation Insurance and Safety Act and CONTRACTOR shall supply CITY with a suitable statement certifying to the protection and defining the terms of the policy prior to undertaking the work contemplated herein.

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Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained as may be applied to each subcontractor's work. The CONTRACTOR may adjust the Subcontractors' coverage limits based on the size and scope of Subcontractor services or work.

(d) CITY and all officers and employees thereof connected with the work, including but not limited to the Municipal Utilities Director and/or the Director's designee, shall not be answerable or accountable in any manner, for any loss or damage that may happen to the Work or any part thereof, for any loss or damage to any of the materials or other things used or employed in performing the Work, for injury to or death of any person, either workers or the public, or for damage to property from any cause which might have been prevented by CONTRACTOR or CONTRACTOR's workers, or anyone employed by CONTRACTOR.

CONTRACTOR shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the Work or any time before its completion and final acceptance.

The duty of CONTRACTOR to indemnify and save harmless, as set forth in the Contract Documents, shall include the duty to defend, as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require CONTRACTOR to indemnify CITY against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

(e) The Contractor's indemnity obligations wherever referred to or identified in the Contract Documents are to be read in conjunction with, and shall not supersede, the indemnity provision stated in Section 00820 – LIABILITY AND INSURANCE REQUIREMENTS.

(f) To do and perform the Phase 1 Work contemplated hereby and set forth in Exhibit C to furnish all labor, services, materials, tools and equipment necessary therefor at the prices herein specified, to wit: Subject to the provisions of the Contract Documents, CITY shall pay to CONTRACTOR, for performance of the Phase 1 Work, DOLLAR AMOUNT (\$X,XXX,XXX), the "Phase 1 Lump Sum Contract Price" as set forth in Exhibit D.

CITY shall pay for the performance of the Work for Phase 2, in an amount that CITY and CONTRACTOR will negotiate and agree to at the conclusion of Phase 1 ("Phase 2 GMP or Lump Sum Contract Price") if the City agrees to exercise the OPTION under Article 5 below. CONTRACTOR agrees that the portion of its Phase 2 GMP or Lump Sum Contract Price for Phase 2 design/engineering services as set forth in Exhibit E shall not exceed 5.00% of the Phase 2 GMP or Lump Sum Contract Price, as set forth in Exhibit F, and that Phase 2 Construction

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Management/Inspection services as set forth in Exhibit G shall not exceed 6.90% of the Phase 2 Lump Sum Contract Price as set forth in Exhibit H.

CONTRACTOR shall solicit and procure at least three competitive proposals from pre-qualified companies for all major subcontract packages, trades, and material and equipment procurements, in preparing and negotiating the final Phase 2 GMP or Lump Sum Contract Price. "Major" is defined as a trade, design package, and/or material and equipment procurement whose costs, respectively, exceed one-half (1/2) of one percent (1%) of the Phase 2 GMP or Lump Sum Contract Price.

Contractor shall provide the bids to CITY during the negotiation of the Phase 2 GMP or Lump Sum Contract Price. If CONTRACTOR is unable to procure at least three bids as required hereinabove, it shall provide to the CITY written detail on the steps taken by CONTRACTOR to obtain the bids, including, but not limited to, showing that CONTRACTOR solicited bids from at least three qualified subcontractors or suppliers, and a written explanation for why it is reasonable for CONTRACTOR not to have obtained the required three bids.

For Work that CONTRACTOR intends to self-perform, CONTRACTOR shall provide, in addition to its detailed bid/estimate for its self-performed work, evidence that the CONTRACTOR'S bid/estimate is at current market value. This shall be accomplished by providing actual estimates, costs, and labor production rates utilized in other similar CONTRACTOR constructed projects, or at the sole discretion of the City, by obtaining from CONTRACTOR, two comparable bids from other contractors for the self-performed work to allow the CITY to compare and evaluate the CONTRACTOR's self-performance work price.

The above identified bidding requirements shall not preclude CONTRACTOR from requesting from the CITY permission to seek sole-source procurement of equipment, materials and subcontractors should CONTRACTOR prove to CITY, in CITY's sole discretion that said procurement is in the best interests of the City. Further, for each instance in which CONTRACTOR does not use the lowest monetary bid obtained for each major design package, trade and/or equipment and material procurement, CONTRACTOR must provide to the CITY a written explanation showing why it is in the best interests of the CITY for CONTRACTOR not to use the lowest monetary bid. CONTRACTOR may also provide an allowance for certain major design packages, trades and/or equipment and material procurements, pursuant to Section 01210 – Allowances, found in the Front End Documents, but, if an allowance is provided, CONTRACTOR must provide to the CITY, for the CITY's acceptance, written detail on why an allowance was provided in lieu of CONTRACTOR procuring and providing to the CITY the required three bids.

If CONTRACTOR does not provide proof to CITY that it has taken all reasonable efforts to bid all major design packages, trades, and equipment and material procurements, or

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provide to the CITY an acceptable written explanation for why CONTRACTOR is either not using lowest monetary bid(s) or is providing an allowance in lieu of bids, CITY reserves the right not to exercise the OPTION as identified below.

The final Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time shall be incorporated into this Contract by amendment, and the Work for Phase 2 shall be performed pursuant to the terms of this Contract.

For each subcontractor or supplier whose contract value will exceed 3% of the total Phase 2 GMP or Lump Sum Contract price, CONTRACTOR shall provide acceptable qualifications information at the time CONTRACTOR provides its Phase 2 GMP or Lump Sum Contract Price to CITY.

(g) To begin the Work contemplated hereby after this Contract has been approved as to form by the City Attorney of the City of Stockton and after receipt by CONTRACTOR of the Notice to Proceed.

CONTRACTOR shall commence the Work for Phase 1 on the date specified in the Notice to Proceed for Phase 1, and shall fully complete the Work within ninety (105) calendar days as set forth in Exhibit I. The time for CONTRACTOR to complete Phase 1 Work is the "Phase 1 Contract Time." The Phase 1 Contract Time is defined when CONTRACTOR achieves Substantial Completion of Phase 1 pursuant to General Conditions Section 00700-8.6. The "Phase 2 Contract Time" is defined as the number of calendar days for the CONTRACTOR to achieve Substantial Completion of Phase 2 pursuant to General Conditions Section 00700-8.6.

Assuming the CITY exercises the OPTION described herein below and issues a Notice to Proceed for Phase 2 to CONTRACTOR, the CONTRACTOR shall commence the Work for Phase 2 on the date specified in the Notice to Proceed for Phase 2, and shall achieve Substantial Completion of the Phase 2 Work in the Phase 2 Contract Time. The Phase 2 Contract Time will be incorporated into this Contract by amendment.

By signing this agreement, CONTRACTOR represents to CITY that (i) the Phase 1 Contract Time and Phase 2 Contract Time are reasonable for completion of the Work of the respective Phases; and (ii) CONTRACTOR will complete the Work within the Phase 1 Contract Time and Phase 2 Contract Time, as applicable.

If CITY decides not to exercise the OPTION for CONTRACTOR to perform Phase 2 Work, CONTRACTOR shall complete all final design documents, in accordance with Exhibit J hereto and Article 5(b)(i) below, to allow for competitive bidding of the Phase 2 construction work in the Final Design Documents Contract Time. The "Final Design Documents Contract Time" is defined as the calendar days necessary for CONTRACTOR to complete the design in accordance with Exhibit J and Article 5(b)(i) below. The Final Design Documents Contract Time shall be within XXX DAYS (X)

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calendar days of a formal Notice to Proceed by CITY that it is taking the “off-ramp” pursuant to Article 5 below, and requests that CONTRACTOR complete the final design documents. The Notice to Proceed by CITY that it is taking the “off-ramp” pursuant to Article 5 below shall be provided by CITY no later than XXX DAYS (X) calendar days after the expiration of time the CITY can exercise the OPTION under Article 5 below (which is XX DAYS (X) calendar days from the expiration of the Phase 1 Contract Time).

It is agreed by the parties to the Contract that in case all the work called for under the Contract in all parts and requirements, is not finished or completed within the number of calendar days as set forth herein, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the following sums:

If CONTRACTOR fails to complete the Work for Phase 1 within the Phase 1 Contract Time, CONTRACTOR shall pay to CITY, as liquidated damages and not as a penalty, the amount indicated below as “Liquidated Damages Daily Rate for Phase 1” of each calendar day after expiration of Contract Time that Work for Phase 1 remains incomplete.

If CONTRACTOR fails to complete the Work for Phase 2, within the Phase 2 Contract Time, CONTRACTOR shall pay to CITY, as liquidated damages and not as a penalty, the applicable amount(s) indicated below as “Liquidated Damages Daily rate for Phase 2 Substantial Completion” for each calendar day after the expiration of the Phase 2 Contract Time that Work for Phase 2 remains incomplete.

If CONTRACTOR fails to achieve Phase 2 Final Completion (as defined in General Conditions Section 00700-8.9), CONTRACTOR shall pay to CITY, as liquidated damages and not as a penalty the applicable amount(s) indicated below as “Liquidated Damages Daily Rate for Phase 2 Final Completion” for each calendar day that CONTRACTOR fails to achieve Phase 2 Final Completion.

If CITY does not exercise the OPTION for Phase 2, and CONTRACTOR fails to meet the Final Design Documents Contract Time, CONTRACTOR shall pay to CITY as liquidated damages and not as a penalty the applicable amount(s) indicated below as “Final Design Documents Liquidated Damages Daily Rate” for each calendar day that CONTRACTOR fails to achieve the Final Design Documents Contract Time.

CITY and CONTRACTOR agree that if the Work is not completed within the above defined contract times, CITY’s damages would be extremely difficult or impracticable to determine and that said amounts indicated below are reasonable estimates of and reasonable sums for such damages. CITY may deduct any liquidated damages due from CONTRACTOR from any amounts



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otherwise due to CONTRACTOR under the Contract Documents. This provision shall not limit any right or remedy of CITY in the event of any other default of CONTRACTOR other than failing to complete the Work within the Contract Time.

Liquidated Damages Daily Rate for Phase 1: \$300

Liquidated Damages Daily Rate for Phase 2 Substantial Completion: \$1,000

Liquidated Damages Daily Rate for Phase 2 Final Completion: \$1,000

Final Design Documents Liquidated Damages Daily Rate: \$1,000

Except as otherwise specifically provided herein, such delay liquidated damages shall constitute the sole and exclusive remedy for delay regardless of legal theory. In addition, the CONTRACTOR's liability for liquidated damages in Phase 1 shall not exceed 20% of the Phase 1 Lump Sum Contract Price and liquidated damages in Phase 2 shall not exceed 5% of the Phase 2 Contract Price, provided however that this limitation shall not limit the City's recovery of non-delay related damages otherwise due under this Contract as a result of CONTRACTOR's default or termination for cause. The limitation shall be included under the aggregate limitation of liability included under Section 6 below.

It is further agreed that in case the Work called for under the Contract is not finished and completed in all parts and requirements within the number of calendar days specified, the City Council shall have the right to increase the number of calendar days or not, as may best to serve the interest of CITY, and if they decide to increase the said number of calendar days, they shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work liquidated damages set forth above.

A calendar day shall not include, nor shall CONTRACTOR be assessed with liquidated damages during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, delays caused by permitting agencies/entities, epidemics, quarantine restrictions, strikes, and freight embargoes, or delays of subcontractors due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within ten (10) days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive, unless appealed under the dispute provisions.

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If CONTRACTOR is delayed by reason of alterations made to the specifications, or by any act of the Director or of the CITY, not contemplated by the Contract, and said delay is deemed to be an Excusable Delay pursuant to General Conditions Section 00700-6.3, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties.

If CONTRACTOR is entitled to an increase in the Contract Sum as a result of a Compensable Delay, determined pursuant to General Conditions Section 00700-6.0, the Contract Sum will be increased by the sum indicated below per calendar day for each day for which such compensation is payable. The below daily delay rates shall include all delay damages sought by CONTRACTOR, its design professionals, its subcontractors/suppliers of every tier, and all other entities or persons CONTRACTOR contracts with to perform Work under this Contract, and General Conditions Section 00700-6.4.3. This Article will apply only to the extent that the CONTRACTOR fulfills requisites proving entitlement to Compensable Delay. The delay daily rate for Phase 1 is the rate provided by CONTRACTOR in its Proposal. The delay daily rates for Phase 2 shall be provided by CONTRACTOR when it submits its Phase 2 proposal, and shall be incorporated into this Contract by the same Contract amendment which will include and add the Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time.

Compensable delay daily rate for Phase 1: \$200 for first 15 calendar days, \$300 per calendar day thereafter.

(h) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 (\$25.00) DOLLARS for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours in violation of the provisions of the Labor Code of the State of California.

(i) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(j) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the hourly prevailing wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8,

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apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the City of Stockton, Municipal Utilities Department, 2500 Navy Drive, Stockton, California, 95206. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to ensure that the prevailing wage rate of concern is current and paid to the employee.

(k) Without superseding, limiting, or restricting any other representation or warrant set forth elsewhere in the Contract Documents, or implied by operation of law, the CONTRACTOR makes the following covenants and representations to CITY:

CONTRACTOR, including its design professionals and subcontractors, is properly certified, licensed and qualified to perform the Work required by the Contract Documents, and CONTRACTOR shall procure a City of Stockton Business License to be in effect during the entirety of the Project.

CONTRACTOR accepts the relationship of trust and confidence with the CITY established by the Contract Documents. CONTRACTOR will cooperate with CITY.

CONTRACTOR, including its design professionals, has carefully examined the site of the Project and the adjacent areas, have suitably investigated the nature and location of the Work and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions at the site and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground and (6) the character and availability of the equipment and facilities which will be needed prior to and during the performance of Work.

CONTRACTOR, including its design professionals, has suitably reviewed proposal documents, environmental documents and any other documentation furnished by CITY in the Contract Documents.

In Phase 1, CONTRACTOR shall submit to CITY design work products at 25% and 60-75% completion for scope compliance review by CITY as stated and delineated in Exhibit B. The 25% and 60-75% design work product submissions shall also include a cost estimate for all Work to be performed in Phase 2.

In Phase 1, CONTRACTOR shall submit to CITY design documents that are sufficient for CONTRACTOR to provide to CITY its proposed Phase 2 GMP or Lump Sum Contract Price and Phase 2 Contract Time. The design document submission shall include the information

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required in Section 3.2.7 of the RFP, and shall be delivered to the CITY concurrently with the proposed Phase 2 GMP or Lump Sum Contract Price and all bidding documents required by Article 1(f) of this Contract.

CONTRACTOR agrees that (1) it will manage, coordinate and fully complete the design; (2) CONTRACTOR will cause its design professionals to describe and depict the final design for the Project, as approved by the CITY, in Contract Documents which will include all information required by the building trades to complete the construction (other than such details customarily developed by others during construction) and (3) it will manage and timely construct the Project in consideration for the CITY's payment of the Phase 1 and 2 GMP or Lump Sum Contract Prices.

CONTRACTOR, including its design professionals, has reviewed the milestones identified in the Request for Proposals and agree that the design and construction tasks and milestones are reasonable and feasible, except as modified by CONTRACTOR's Proposed Contract Schedule, approved by CITY. CONTRACTOR also agrees that the time is of the essence for the performance of the Work.

CONTRACTOR agrees that all Contract Documents will be completed, coordinated, and accurate. "Contract Documents" means the Request for Qualifications, Request for Proposals, Contractor's Proposal, this Contract, Front End Contract Documents, including General Conditions and Supplemental Conditions, Exhibits, City of Stockton Standard Specifications, Specifications, List of Drawings, Drawings, Addenda, Notice to Proceed, Change Orders, Notice of Completion, and all other documents identified in this Contract of which together form the Contract between CITY and CONTRACTOR for the Work (the "Contract"). The Contract constitutes the complete agreement between CITY and CONTRACTOR and supersedes any previous agreements or understandings.

The design development documents to be prepared by CONTRACTOR shall include drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the civil, structural, geotechnical, architectural, mechanical, environmental, process, instrumentation, and electrical systems. The design development documents set forth in detail the requirements for the construction of the Work, and shall be based on codes, laws, or regulations enacted at the time of their preparation.

CONTRACTOR agrees that all materials, equipment and furnishings incorporated into or used in the construction work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. If required by the CITY, CONTRACTOR will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings.

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CONTRACTOR agrees that the construction work will be of good quality, free of defects and will conform with the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the CITY in advance, may be considered defective.

CONTRACTOR agrees to correct any error(s), omission(s), or deficiencies in the Contract Documents at no additional cost to CITY; however, this provision in no way limits the liability of Contractor.

CONTRACTOR shall furnish a surety bond in an amount equal to one hundred percent (100%) of the Phase 2 GMP or Lump Sum Contract Price as security for faithful performance of Phase 2 of this Contract, and shall furnish a separate bond in an amount equal to one hundred percent (100%) of the Phase 2 GMP or Lump Sum Contract Price as security for payment to persons performing labor and furnishing materials in connection with Phase 2 of this Project. Bonds shall be in the form set forth and attached to this Contract.

(I) CONTRACTOR and each of its subcontractors shall comply with Stockton Municipal Code Section 3.68.095 (Local Employment—Public works contractors) (hereinafter “Local Employment Ordinance”), which is incorporated herein by this reference. CONTRACTOR and each of its subcontractors shall complete and maintain all documentation, reports and records required by, and necessary for monitoring their compliance with, the Local Employment Ordinance. The failure of CONTRACTOR or any of its subcontractors to comply with any of the requirements of the Local Employment Ordinance shall be deemed a material breach of the Contract or subcontract.

2. CITY agrees:

(a) To pay CONTRACTOR for the work herein contemplated in the following manner:

For Phase 1, progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to one hundred percent (100%) of the proportional Phase 1 Lump Sum Contract Price, upon the basis of the progress certificate of the Municipal Utilities Director as to the amount of work done and the proportional amount of the contract price represented therefor; and all of the remaining part of the Phase 1 Lump Sum Contract Price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days in accordance with General Conditions Section 00700-8.0. Payments shall be made in accordance with the drawdown schedule required by Section 3.2.1 of the RFP.

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For Phase 2, progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional Phase 2 GMP or Lump Sum Contract Price, upon the basis of the progress certificate of the Municipal Utilities Director as to the amount of work done and the proportional amount of the Phase 2 GMP or Lump Sum Contract Price represented therefor; and all of the remaining part of the Phase 2 GMP or Lump Sum Contract Price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the filing of the Notice of Completion of said work of construction. Payments shall be made in accordance with the drawdown schedule required by Section 4.5.3 of the RFP, and to be provided by CONTRACTOR in its Phase 2 Proposal. CITY retains the discretion to reduce retention from ten percent (10%) to five percent (5%) when CONTRACTOR has completed fifty percent (50%) of the Work for Phase 2 and pay retention by joint check(s) during the Work for Phase 2 to CONTRACTOR and any Subcontractor or Supplier who have completed their work in the Project.

Pursuant to the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. The costs of such escrow shall be paid by the CONTRACTOR. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

CONTRACTOR shall have the obligation of ensuring that such securities deposited are sufficient so as to maintain, in total fair market value, an amount equal to the cash amount of the sums to be withheld under the Contract. If, upon written notice from CITY, or from the appropriate escrow agent, indicating that the fair market value of the securities has dropped below the dollar amount of monies to be withheld by CITY to ensure performance, CONTRACTOR shall, within five (5) days of the date of such notice, post additional securities as necessary to ensure that the total fair market value of all such securities held in escrow is equivalent to the amount of money to be withheld by CITY under the Contract.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer and/or City Representative to be necessary or advisable and to require such extra work as may be determined by the Engineer and/or City Representative to be required for the proper completion of the whole work contemplated.

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Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the authorized CITY official executing this contract and/or the City Council.

Cumulative change orders which exceed the charter limit [\$75,000 as of March 1, 2015] and is adjusted annually on July 1st of each year) plus ten percent of the initial contract price over one hundred thousand dollars (\$100,000) require CITY Council approval. Change orders not meeting the above criteria require approval by the CITY official executing this contract. the dollar amounts of change orders approved by specific city council actions, plus the dollar amounts of any change orders which predate such specific CITY Council action, shall not be counted in computing the authority limits set forth above for CITY officials to approve change orders hereunder. In emergency situations, the authorized CITY official may issue a change order beyond the authority limits described above in order to:

- (i) Prevent interruption of the work which would result in a substantial increase in the costs to, or liability of, CITY; or
- (ii) Protect the work, equipment, materials to be used in the work, human safety, or the environment at or near the work from substantial and immediate danger or injury; or
- (iii) Protect, where damage or injury has occurred, the work, equipment or materials to be used in the work, human safety, or the environment at or near the site of the work from further or additional damage or injury or deterioration.

The authorized CITY official shall have the authority to issue change orders in such sums as is reasonably necessary for such emergency purposes. After issuing a change order in an emergency situation described above, the authorized CITY official shall report such action and the reasons therefor to the City Council in writing not later than its next regularly scheduled meeting or as soon thereafter as is practicable.

Upon receipt of an approved contract change order, CONTRACTOR shall proceed with the ordered work. If ordered in writing by the Engineer and/or City Representative, CONTRACTOR shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefor. In such cases, the Engineer will, as soon as practicable, issue an approved contract change order for such work and the provisions in General Conditions Section 00700-7.1.1, "Procedure and Protest," (Specifications) shall be fully applicable to such subsequently issued contract change order.

When the compensation for an item of work is subject to adjustment under the provisions of General Conditions Section 00700-7.1, "Changes," (Specifications) CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

## DRAFT EXHIBIT 1

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

5. OPTION

(a) The CITY may exercise its option for performance of the Phase 2 Work if CITY and CONTRACTOR agree to a Phase 2 GMP or Lump Sum Contract Price and Phase Contract Time by the end of the Phase 1 Contract Time, and by providing a written Notice to Proceed to the CONTRACTOR for performance under Phase 2. The Option for Phase 2 may be exercised not later than 90 days after the expiration of Phase 1 Contract Time. If CONTRACTOR has complied with all other terms of the Contract and the CITY fails to exercise its Option for Phase 2 by such calculated date, it shall be deemed that the CITY has decided not to exercise the OPTION.

(b) If CITY decides not to exercise the OPTION under this Article, and CITY notifies CONTRACTOR that CONTRACTOR is not required to perform construction services for Phase 2, it is anticipated that the CITY will take the “off-ramp” as identified in Section 3.4 and Appendix C\_ of the RFP for the Project, and CONTRACTOR will perform, at CITY’s discretion and option, and after a Notice to Proceed is issued pursuant to Article 1(g) hereinabove, two separate scopes of work/services:

(i) Upon receipt of the Notice to Proceed identified above in Article 1(g), CONTRACTOR will complete the design of the Project by preparing unified sets of plans and specifications for use by the CITY to solicit competitive bids for construction of the Facilities in accordance with the scope of work set forth in Appendix J, and within the Final Design Documents Contract Time (as identified above in Article 1(g)). The performance of the final design services under this paragraph shall be performed for the Lump Sum Contract price of \$X,XXX,XXX, as set forth in Exhibit K.

(ii) Upon receipt of a Notice to Proceed from the CITY at a time after CONTRACTOR has completed the services required under Article 5(b)(i) above, CONTRACTOR, pursuant to the terms of the Contract Documents, shall remain the Engineer of Record, and will provide engineering services during construction as set forth in Exhibit L, for the Lump Sum Contract price of \$X,XXX,XXX, as set forth in Exhibit M.



## DRAFT EXHIBIT 1

(c) The CITY's "OPTION" rights under this Article 5 are independent of the "Termination for Convenience" rights set forth in General Conditions Section 00700-7.2.5. As such, if the CITY opts to not proceed with Phase 2 after the completion of Phase 1, CONTRACTOR's right of recovery is limited to the Phase 1 Lump Sum Contract Price.

(d) The CITY retains the right to terminate this Contract for convenience at any time in accordance with General Conditions Section 00700-6.7.

6. Limitation of Remedies and Allocation of Risks. (a) The Contractor and City waive claims against each other for consequential damages arising out of or relating to this Contract. This waiver shall survive completion of or termination of the Contract.

The waiver of consequential damages set forth above specifically does not include any and all damages recoverable as liquidated damages as set forth in this contract; all damages arising from claims made by third parties, including, but not limited to, the parties' obligations under the indemnity obligations of this contract; fines or penalties, including those relating to environmental issues; all costs or damages to complete the work contemplated by this contract or to repair or correct defective work; damages incurred to require complete and full compliance with the terms of this contract; and all damages required to ensure that the Work meets the performance requirements of the contract. The waiver of consequential damages will not preclude a party from asserting such damages as an offset to any claim for damages made by the other party, provided that the City may not offset retainage owed to Contractor.

In recognition of the relative risks and benefits of the Project to both City and Contractor, City agrees, to the fullest extent permitted by law and notwithstanding any other provision in this Agreement, that any liability created by or arising out of this Agreement on the part of Contractor to City and any person or entity claiming by, through or under City, for any and all claims, liabilities, losses, costs, damages of any nature whatsoever, or claims expenses from any cause or causes (including without limitation any attorneys' fees under this Agreement), shall not exceed 50% of the Contract Sum, inclusive of the limitation on liquidated damages above. This limitation of liability shall not reduce the availability of, or the ability of the City or any other party to pursue and recover amounts from, insurance required to be provided by Contractor, nor shall this limitation of liability limit be applicable to recovery under the performance and payment bonds provided for the Project; to the extent City has a right to recover under such performance and/or payment bonds, Contractor and the sureties under the bonds shall remain liable in the full amount of such bonds without regard to or reduction by the limitation of liability set forth herein.

7. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

DRAFT EXHIBIT 1

8. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

DRAFT

DRAFT EXHIBIT 1

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:

BY \_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

John Luebberke  
CITY ATTORNEY

By \_\_\_\_\_  
CITY ATTORNEY

CITY OF STOCKTON, a municipal corporation

By \_\_\_\_\_  
CITY MANAGER  
"CITY"

LIST NAME OF CONTRACTOR

By \_\_\_\_\_  
NAME OF CONTRACTOR REPRESENTATIVE  
"CONTRACTOR"

\_\_\_\_\_

\_\_\_\_\_  
Tax Identification No.

## DRAFT EXHIBIT 1

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, a (INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP), as Principal and \_\_\_\_\_, a corporation, organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of SPELL OUT CONTRACT AMOUNT AND xx/100 DOLLARS (\$xxx enter dollar amount), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

NAME OF PROJECT  
(PROJECT NO. xxx)

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise, to remain in full force and effect.

## DRAFT EXHIBIT 1

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on \_\_\_\_\_.

APPROVED AS TO SURETY:

By \_\_\_\_\_  
"PRINCIPAL"

\_\_\_\_\_  
DIRECTOR OF FINANCE

\_\_\_\_\_  
SURETY

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

John Luebberke  
CITY ATTORNEY

By \_\_\_\_\_  
ATTORNEY-IN-FACT

By \_\_\_\_\_  
CITY ATTORNEY

## DRAFT EXHIBIT 1

**BOND FOR LABOR AND MATERIAL**

KNOW ALL MEN BY THESE PRESENT:

That we, NAME OF CONTRACTOR, a (INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP), as Principal and \_\_\_\_\_, corporation, organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of SPELL OUT DOLLAR AMOUNT AND xx/100 DOLLARS (\$xxx enter dollar amount), in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

NAME OF PROJECT  
(PROJECT NO. xxx)

NOW THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be Lump Sum as costs in said suit, and to be included in the judgment therein rendered.

## DRAFT EXHIBIT 1

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on \_\_\_\_\_.

APPROVED AS TO SURETY:

By \_\_\_\_\_  
"PRINCIPAL"

\_\_\_\_\_  
DIRECTOR OF ADMINISTRATIVE  
SERVICES/CFO

\_\_\_\_\_  
SURETY

APPROVED AS TO FORM:

Dated \_\_\_\_\_

By \_\_\_\_\_  
ATTORNEY-IN-FACT

John Luebberke  
CITY ATTORNEY

By \_\_\_\_\_  
CITY ATTORNEY