

CONSTRUCTION CONTRACT

This contract is made and entered into on _____, by and between **JOHN F. OTTO, INC., DBA OTTO CONSTRUCTION**, a **STATE OF CA CORPORATION**, with a business address at **1717 2ND STREET, SACRAMENTO, CA 95811**, hereinafter called "CONTRACTOR," and **CITY OF STOCKTON**, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of **MCKINLEY PARK RENOVATION (PROJECT NO. WR21017)**, hereinafter called "PROJECT," were regularly adopted by **Council Resolution No. _____**, on _____; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by **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:

CONTRACTOR agrees:

1. SCOPE OF SERVICES. To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications adopted on _____, by **Council Resolution No. _____**. The "contract documents," which include the bid documents, project plans, specifications, all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

2. COMPENSATION. To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefore at the prices specified in Exhibit A, attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton. Total compensation for services and reimbursement for costs shall not exceed **\$11,394,400.00**, or as otherwise mutually agreed to in a Contract Change Order.

3. INSURANCE. CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in Exhibit B, which is attached to this contract and incorporated by this reference, and as provided in the "contract documents" including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27, effective September 27, 2016.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the CONTRACTOR's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as ISO CG 20 01 04 13.

The limits of insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to the CITY's Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or the CITY.

The CITY reserves the right to obtain a full certified copy of any insurance policy and endorsements.

Failure to exercise this right shall not constitute a waiver of right to exercise later.

CONTRACTOR shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

CONTRACTOR agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by CONTRACTOR agree to be bound to CONTRACTOR and the CITY in the same manner and to the same extent as CONTRACTOR is bound to the CITY under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the CITY Contract Document Indemnity

and Insurance provisions will be furnished to the Subcontractor upon request. The General CONTRACTOR shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and contractor will provide proof of compliance to the City.

4. INDEMNITY AND HOLD HARMLESS. With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, protect, defend with counsel approved by City and at Contractor's sole cost and expense, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, State, or municipal law or ordinance, or City Policy, by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Contractor to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Contractor under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Contractor to a greater extent than permitted under the public policy of the State of California, the parties agree that Contractor's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. Contractor shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Contractor for amounts paid in excess of Contractor's proportionate share of responsibility for the damages within 30 days after Contractor provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the

parties that this reimbursement provision assures Contractor is not obligated to defend or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against all claims, losses, expenses, and costs including, but not limited to, attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Contractor, regardless of whether such claim may be covered by any applicable workers compensation insurance. Contractor's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts.

The City's acceptance of the insurance certificates required under this Agreement does not relieve the CONTRACTOR from its obligation under this paragraph. The indemnification obligations of this section shall survive the termination of this agreement. Any exceptions to this language may result in a proposal being deemed non-responsive. CONTRACTOR/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. If any section, subsection, sentence, clause or phrase of this indemnification is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this indemnification.

5. STANDARD PLANS AND SPECIFICATIONS. The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.04B of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016, and the provisions of the issued project specifications.

The Director of Public Works will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

6. WORKING DAYS. This work shall be diligently prosecuted to completion before the expiration of 250 WORKING DAYS beginning on the tenth calendar day after

the date shown on the Notice to Proceed. 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 days as set forth, 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 sum of FOUR THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$4,800.00) per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

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 days as specified, the CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if the CITY decides to increase the said number of days, the CITY 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, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection 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, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director of Public Works, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director of Public Works in writing of the causes of delay within five (5) working 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.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director of Public Works or of the CITY, not contemplated by the contract, 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. CONTRACTOR shall have no claim for any other compensation for any such delay.

7. 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 the provision of services under this

Contract on the basis of any legally protected classification, including race, color, national origin, ancestry, sex or religion of such person.

a. TITLE VI

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d)
<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

b. DISCRIMINATION AND HARASSMENT POLICY

The City of Stockton has a Discrimination and Harassment Policy (Exhibit C). The purpose of this policy is to reaffirm the CITY’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

c. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.
https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2.

d. PREVAILING WAGE

CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly 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 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. 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 rates of concern is current and paid to the employee.

- i. The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- ii. Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. 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 DOLLARS (\$25.00) 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 and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. 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.
- iii. The CONTRACTOR to whom the contract is awarded shall ensure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- iv. The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval

by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

e. LOCAL EMPLOYMENT ORDINANCE

Pursuant to Stockton Municipal Code Section 3.68.095 the CONTRACTOR and all subcontractors shall make a good faith effort to employ at least 50 percent of the workforce on this project from local residents, as measured by total labor work hours. Failure of any CONTRACTOR or subcontractor to comply with these requirements shall be deemed a material breach of the contract or subcontract. CONTRACTORS and subcontractors shall maintain records necessary for monitoring their compliance with section 3.68.095.

f. COMMUNITY WORKFORCE TRAINING AGREEMENT

Pursuant to the implementation of the Community Workforce Training Agreement (CWTA) adopted by the City Council on July 26, 2016, the successful bidder shall be required to comply with the provisions of CWTA. For any project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the project (EXHIBIT D).

g. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

CITY agrees:

8. COMPENSATION. To pay CONTRACTOR for the work herein contemplated in the following manner: 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-five percent (95%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.

9. SECURITIES. Pursuant to Section 22300 of 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. 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. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

10. 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 to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

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 City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.05A of the City of Stockton Standard Specifications and Plans as adopted by Council on September 27, 2016, by Resolution No. 2016-09-27-1213, effective September 27, 2016, or as otherwise amended by Council. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.05A, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

11. AUDITS. 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.

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.

12. **WAIVER.** 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.

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

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

ATTEST:
ELIZA R. GARZA, CMC
CITY CLERK

CITY:

By: _____

By: _____
HARRY BLACK
CITY MANAGER

APPROVED AS TO FORM & CONTENT:
LORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
JOHN F. OTTO, INC., DBA
OTTO CONSTRUCTION

By: _____
DEPUTY CITY ATTORNEY

Tax Identification No.

**MCKINLEY PARK RENOVATIONS PROJECT
WR21017**

BIDDING SCHEDULE

Each bidder shall bid each item, including all alternate bid(s). Failure to bid an item shall be just cause for considering the bid as non-responsive. Line item costs should include all Contractor's overhead and profit and indirect costs. Bids not presented on City forms shall be cause for considering the bid as non-responsive. The basis of contract award will be the lower bidder for the Base Bid. It is the City's sole discretion to add, or not add, the Alternative Bid(s) to the Base Bid contract.

Base Bid

Item	Description	Unit	Quantity	Total Price
1	BASE BID: TCC Grant Funding Items	LS	1	\$ 546,800
2	BASE BID: All other base bid items and work shown on the plans and indicated in the specifications for the McKinley Park Renovation Project. Prop 68 and other State funded items.	LS	1	\$ 10,800,600
Total Base Bid				\$ 11,347,400

Bid Alternates

A1	<u>ADD ALTERNATE NO. 1</u> Grind, Overlay and restriping of basketball court. Install new concrete pavement and mowband.	LS	1	\$ 20,300.00
A2	<u>ADD ALTERNATE NO. 2</u> Install fog coat and restripe existing sports court.	LS	1	\$ 26,700.00

Insurance Requirements

(McKinley Park Renovation Project WR21017)

Contractor shall procure and maintain for the duration of the contract, *and for 5 years thereafter*, 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.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Builder's Risk** (Course of Construction) insurance utilizing an "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
5. **Surety Bonds** as described below.
6. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Builder's Risk (Course of Construction) Insurance

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City of Stockton as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City of Stockton, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City of Stockton's site.

Claims Made Policies (Professional & Pollution only)

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

Umbrella or Excess Policies

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance

coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

Waiver of Subrogation

Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

Verification of Coverage

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and **a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Subcontractors

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

Duration of Coverage

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

Surety Bonds

Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond
4. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

Certificate Holder Address

The address for mailing certificates, endorsements and notices shall be:

City of Stockton
Its Officers, Officials, Employees and Volunteers
400 E Main Street, 3rd Floor – HR
Stockton, CA 95202

CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE

Subject: DISCRIMINATION AND HARASSMENT POLICY	Directive No. HR-15	Page No. 1 of 14
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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98
 PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

I. PURPOSE

The purpose of this policy is to reaffirm the City’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

II. POLICY

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care “Market Place” or “Exchange.”
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.

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III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
 2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
 3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.

C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made a term or condition of employment; or
2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.
- D. Affordable Care Act (ACA) Anti-Retaliation
Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:
1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
 2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
 3. Testifies in a proceeding concerning such violation;
 4. Assists or participates in a proceeding concerning a violation; or
 5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

IV. REPORTING AND COMPLAINT PROCEDURES

A. Immediate Action Required

The City’s reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
 - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
 - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
 - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.

2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment

- a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
- b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
- c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.

- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.

- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.

V. INVESTIGATION PROCEDURES

A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

B. Investigative Guidelines

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially

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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

VI. RESPONDING TO THE COMPLAINT

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
 - 1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
 - 2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

VII. DISCIPLINE

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

VIII. ALTERNATIVE REMEDIES

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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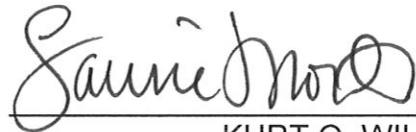
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

IX. COMMUNICATION OF POLICY

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON
CITY MANAGER

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COMMUNITY WORKFORCE AND TRAINING AGREEMENT FOR THE CITY OF STOCKTON

INTRODUCTION/FINDINGS

The purpose of this Agreement is to promote efficiency of construction operations performed for and within the City of Stockton and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects subject to this Agreement, and to support the efforts of the City to increase employment opportunities for workers who reside in Stockton, to help increase training and employment opportunities for the City's students in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools.

WHEREAS, the City adopts a five-year Capital Improvement Plan that identifies the public projects necessary to maintain and improve the physical properties of the City, including buildings, parks, entertainment venues, golf courses, utility systems, the transportation system and other facilities; and

WHEREAS, the City undertakes and anticipates undertaking many of the projects identified in the current and proposed Capital Improvement Plan and other City public works projects that involve significant construction costs in excess of threshold set forth in this Agreement; and

WHEREAS, the City Council has determined that the successful and cost-effective completion of these Capital Improvement Plan projects and other major City public works projects is of the utmost importance to the City and its taxpayers and the residents it serves; and

WHEREAS, the City has determined that applying the same Agreement to the Capital Improvement Plan and other public works construction projects that exceed the threshold set forth in this Agreement during the term of this Agreement will provide efficiencies for the City and its contractors; and

WHEREAS, large numbers of workers of various skills will be required in the performance of the construction work, including those workers represented by Unions affiliated with the San Joaquin Building and Construction Trades Council ("the Council") and employed by contractors and subcontractors who are signatory to agreements with said labor organizations; and

WHEREAS, it is recognized that projects with multiple contractors and bargaining units on the job site at the same time over an extended period of time, the potential for work disruption is substantial without an overriding commitment to maintain continuity of work; and

2016-07-26-1501 P

Attachment A

WHEREAS, the interests of the general public, the City and the Contractor(s)/Employer(s) would be best served if the construction work proceeded in an orderly manner without disruption due to labor disputes; and

WHEREAS, the Contractor(s)/Employer(s) and the Unions desire to mutually establish and stabilize wages, hours and working conditions for the workers employed on the construction projects subject to this Agreement in order to promote a satisfactory, continuous and harmonious relationship among the parties to this Agreement; and

WHEREAS, unemployment rates in Stockton have been consistently higher than in California as a whole and statistics indicate that the higher unemployment level in Stockton correlates to a higher number of families living in poverty and to a higher crime rate; and

WHEREAS, due to the lack of jobs, much of the work force residing in Stockton is forced to commute long distances to find work, causing increased traffic, increased pollution, and other serious environmental impacts; and

WHEREAS, because of the shortage of local jobs, many residents of Stockton must leave for work very early in the morning and return late in the evening, often leaving children and teenagers alone and unsupervised during the day; and

WHEREAS, absentee parents and unsupervised youth can result in increased problems for families, communities, and the City as a whole; and

WHEREAS, the contracts for the construction of the projects will be awarded in accordance with the applicable provisions of the California State Public Contract Code and state, local and federal laws and regulations; and

WHEREAS, the City has the absolute right to select the lowest responsive and responsible bidder for the award of construction contracts on the projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards mutually satisfactory completion of the Capital Improvement Plan projects and other major City public works projects that will be subject to this Agreement; and

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

ARTICLE I
DEFINITIONS

- 1.1 "Agreement" means this Community Workforce and Training Agreement.
- 1.2 "City" means the City of Stockton and its public employees, including managerial personnel.

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1.3 "Contractor(s)/Employer(s)" or "Contractor" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, that is an independent business enterprise and has entered into a contract with the City or Project Manager or any of its contractors or subcontractors of any tier, with respect to the construction of any part of the Project under contract terms and conditions approved by the City and which incorporate this Agreement.

1.4 "Construction Contract" means a contract awarded by the City for public work within the meaning of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.

1.5 "Project" means any construction project of the City whose value as determined by the higher of the engineer's estimate of the total cost of the project or the actual cumulative bid amounts submitted by the contractor or contractors awarded the Construction Contracts for the Project, exceeds one million dollars (\$1,000,000). By mutual consent of the City and the Council, this threshold amount may be reduced to an amount not below two hundred and fifty thousand dollars (\$250,000) after one year from the effective date of this Agreement.

1.6 "Union" or "Unions" means the San Joaquin Building and Construction Trades Council, AFL-CIO ("the Council") and any other labor organization, including those affiliated with the Council, signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organization whose names are subscribed hereto and who have through their officers executed this Agreement ("Local Unions").

1.7 "Stockton Resident" means a resident of the City of Stockton as defined by Stockton Municipal Code Section 3.68.095(I)(3).

1.8 "Local Area Resident" means any Stockton Resident or any individual domiciled within the boundaries of San Joaquin County according to the criteria set forth in Stockton Municipal Code Section 3.68.095(I)(3) for Stockton Residents.

1.9 "Project Manager" means the business entity or City employee designated by the City to oversee all phases of construction on the Project.

1.10 "Master Agreement" or "Schedule A" means the Master Collective Bargaining Agreement of each craft union signatory hereto, which shall be on file with the City.

1.11 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch List" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Project may be completed in phases and Completion of any such phase may occur prior to Completion of the Project.

ARTICLE II
SCOPE OF AGREEMENT

2.1 **Parties:** The Agreement shall apply and is limited to the City and all Contractor(s)/Employer(s) performing construction contracts on the Project, including surveying and on-site testing and inspection where such work is traditionally covered by a Master Agreement with a Union, and the Council and any other labor organization signatory to this Agreement, acting in their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 **Project Description:** The Agreement shall govern the award of all Construction Contracts identified by the City as part of the Project. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Project. Should the City suspend or remove any individual contract from the Project and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.11 of this Agreement.

2.3 **Covered Work:** This Agreement covers, without limitation, all site preparation, surveying, on-site construction, alteration, demolition, installation, improvement, painting or repair of buildings, structures, modular furniture installations, and other works and related activities for the Project that is within the craft jurisdiction of one of the Unions and that is part of the Project, including, without limitation to the following examples, geotechnical and exploratory drilling, temporary HVAC, landscaping and temporary fencing, pipelines (including those in linear corridors built to serve the Project), pumps, pump stations, on-site soils and material inspection and testing, and demolition of any existing structures required to be performed to complete the Project. This Agreement shall apply to any start-up, calibration, commissioning, performance testing repair, and operational revisions to systems and/or subsystems for the Project performed after completion, unless it is performed by City employees. On-site work includes work done for the Project in temporary yards or areas adjacent to the Project, and at any on-site or off-site batch plant constructed solely to supply materials to the Project. This Agreement covers all onsite fabrication work over which the City or any Contractor(s)/Employer(s) possess the right of control (including work done for the Project in any temporary yard or area established for the Project.) This Agreement also covers all off-site work, including fabrication traditionally performed by the Unions, that is part of the Project, provided such off-site work is covered by a current "Master Agreement" or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement. The furnishing of supplies, equipment or materials which are stockpiled for later use shall not be considered Covered Work; however, the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill, material and/or mud shall be covered by the terms and conditions of this Agreement. Contractor(s)/Employer(s), including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) days of a written request or as required by bid specifications.

2.4 Exclusions from Covered Work

2.4.1 The Agreement shall be limited to construction work on the Project and is not intended to, and shall not affect or govern the award of public works contracts by the City which are not a part of the Project.

2.4.2 The Agreement shall not apply to a Contractor's/Employer's non-construction craft employees, including but not limited to executives, managerial employees, engineering employees and supervisors above the level of General Foreman (except those covered by existing Master Agreements), staff engineers or other professional engineers, administrative and management personnel.

2.4.3 This Agreement shall not apply to work by employees of the City.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county, City or other governmental bodies or their contractors; or by public or private utilities or their contractors that is not part of the Project.

2.4.5 This Agreement shall not apply to the Project where the Agreement is prohibited by state or federal law or where the express conditions for the receipt of non-de minimis state or federal funding prohibit the City from applying this Agreement to the Project.

2.5 Project Labor Disputes: All Project labor disputes involving the application or interpretation of the Master Agreement to which a signatory Contractor(s)/Employer(s) and a signatory Union are parties shall be resolved pursuant to the resolution procedures of the Master Agreement. All disputes relating to the interpretation or application of this Agreement shall be subject to resolution by the Grievance Committee and the Grievance and Arbitration Procedure set forth in Article XII.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the National Transient Lodge ("NTL") Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles IV, XII, XIII of this Agreement shall apply to such work.

2.7 Award of Contracts. It is understood and agreed that the City has the absolute right to select any qualified bidder for the award of contracts under this Agreement. The bidder need only be willing, ready and able to execute and comply with this Agreement. It is further agreed that this Agreement shall be included in all invitations to bid or solicitations for proposals from contractors or subcontractors for work on the Project that are issued on and after the effective date of this Agreement.

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ARTICLE III
EFFECT OF AGREEMENT

3.1 By executing the Agreement, the Unions and the City agree to be bound by each and all of the provisions of the Agreement.

3.2 This Agreement shall be included as a condition of the award of Construction Contracts for the Project. By accepting the award of a Construction Contract for the Project, whether as contractor or subcontractor, the Contractor(s)/Employer(s) agrees to be bound by each and every provision of the Agreement and agrees that it will evidence its acceptance prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.3 At the time that any Contractor(s)/Employer(s) enters into a subcontract with any subcontractor providing for the performance of a Construction Contract, the Contractor(s)/Employer(s) shall provide a copy of this Agreement to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree in writing, to be bound by each and every provision of this Agreement prior to the commencement of work by executing the Agreement to be Bound in the form attached hereto as Addendum A.

3.4 This Agreement shall only be binding on the signatory parties hereto, their successors and assigns, and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any such party. Each Contractor shall alone be liable and responsible for its own individual acts and conduct and for any breach or alleged breach of this Agreement. Any dispute between the Union(s) and the Contractor(s) respecting compliance with the terms of the Agreement, shall not affect the rights, liabilities, obligations and duties between the signatory Union(s) and other Contractor(s)/Employer(s) party to this Agreement.

3.5 It is mutually agreed by the parties that any liability by a signatory Union to this Agreement shall be several and not joint. Any alleged breach of this Agreement by a signatory Union shall not affect the rights, liabilities, obligations and duties between the signatory Contractor(s) and the other Union(s) party to this Agreement.

3.6 The provisions of this Agreement, including the Master Agreements of the Local Unions having jurisdiction over the work on the Project, incorporated herein by reference, shall apply to the work covered by this Agreement, notwithstanding the provisions of any other local, area and/or national agreements which may conflict with or differ from the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Master Agreement, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a Schedule A and is not covered by this Agreement, the provisions of the Master Agreement shall prevail.

ARTICLE IV
WORK STOPPAGES, STRIKES, SYMPATHY
STRIKES AND LOCKOUTS

4.1 The Unions, City and Contractor(s)/Employer(s) agree that for the duration of the Project:

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(1) There shall be no strikes, sympathy strikes, work stoppages, picketing, hand billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or employees employed on the Project, at the job site of the Project or at any other facility of the City because of a dispute on the Project. Nor shall the Unions or any employees employed on the Project participate in any strikes, sympathy strikes, work stoppages, picketing, hand billing, slowdowns, or otherwise advising the public that a labor dispute exists at the jobsite of the Project because of a dispute between Unions and Contractor(s)/Employer(s) on any other project. It shall not be considered a violation of this Article if labor is withheld by a Union due to lack of payments to a Trust Fund or failure to make payroll on the Project. Nothing stated in this Agreement shall prevent Unions from participating in the actions mentioned in this section on jobsites other than the Project jobsite because of disputes between the Unions and Contractor(s)/Employer(s) on projects other than the Project.

(2) As to employees employed on the Project, there shall be no lockout of any kind by a Contractor(s)/Employer(s) covered by the Agreement.

(3) If a Master Agreement between a Contractor(s)/Employer(s) and the Union expires before the Contractor(s)/Employer(s) completes the performance of a Construction Contract for work covered under this Agreement and the Union or Contractor(s)/Employer(s) gives notice of demands for a new or modified Master Agreement, the Union agrees that it will not strike the Contractor(s)/Employer(s) on said contract for work covered under this Agreement and the Union and the Contractor(s)/Employer(s) agree that the expired Master Agreement shall continue in full force and effect for work covered under this Agreement until a new or modified Master Agreement is reached between the Union and Contractor(s)/Employer(s). If the new or modified Master Agreement reached between the Union and Contractor(s)/Employer(s) provides that any terms of the Master Agreement shall be retroactive, the Contractor(s)/Employer(s) agrees to comply with any retroactive terms of the new or modified Master Agreement which is applicable to employees employed on the Project within seven (7) days after the effective date of the new or modified Master Agreement.

4.1.1. Notification: If the City contends that any Union has violated this Article, it will notify in writing (including email) the Senior Executive of the Council and the Senior Executive of the Union, setting forth the facts alleged to violate the Article, prior to instituting the expedited arbitration procedure set forth below. The Senior Executive of Council will immediately use his/her best efforts to cause the cessation of any violation of this Article. The Senior Executive of the Union will immediately inform the membership of their obligations under this Article. A Union complying with this obligation shall not be held responsible for unauthorized acts of employees it represents.

4.2 Expedited Arbitration: Any party to this Agreement shall institute the following procedure, prior to initiating any other action at law or equity, when a breach of this Article is alleged to have occurred:

(1) A party invoking this procedure shall notify Robert Hirsch, as the permanent arbitrator, or, William Riker, as the alternate under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate will be contacted. If neither is available, then a selection shall be made from the list of arbitrators in Article XII. Notice to the arbitrator shall be

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by the most expeditious means available, with notices by facsimile, electronic mail or telephone to the party alleged to be in violation, to the City, to the Council and to the involved Local Union if a Union is alleged to be in violation.

(2) Upon receipt of said notice, the City will contact the designated arbitrator named above or his alternate who will attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

(3) The arbitrator shall notify the parties by facsimile or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

(4) The sole issue at the hearing shall be whether or not a violation of Article IV, Section 4.1 of the Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

(5) Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2 of this Article, all parties waive the right to a hearing and agree that such proceedings may be *ex-parte*. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

(6) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure, or which interfere with compliance, are waived by the parties.

(7) The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligation under this Article.

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ARTICLE V
PRE-CONSTRUCTION CONFERENCE

5.1 The Project Manager shall convene a pre-construction conference to be held at least fourteen (14) days prior to the commencement of each construction phase, at a time and location mutually agreeable to the Council. Such conference shall be attended by a representative each from the participating Contractor(s)/Employer(s) and Union(s) and the Project Manager.

5.2 Review Meetings: In order to ensure the terms of this Agreement are being fulfilled and all concerns pertaining to the City, the Unions, and the Contractors are addressed, the Project Manager, General Contractor and Senior Executive of the Council or designated representatives thereof shall meet on a periodic basis during the term of construction. The City and the Council shall have the right to call a meeting of the appropriate parties to ensure the terms of this Agreement are being fulfilled.

ARTICLE VI
NO DISCRIMINATION

6.1 The Contractor(s)/Employer(s) and Unions agree to comply with all anti-discrimination provisions of federal, state and local law, to protect employees and applicants for employment, on the Project.

ARTICLE VII
UNION SECURITY

7.1 The Contractor(s)/Employer(s) recognize the Union(s) as the sole bargaining representative of all craft employees working within the scope of this Agreement.

7.2 All employees performing work covered by this Agreement shall, as a condition of employment on or before the eighth (8th) cumulative day of employment on the Project, be responsible for the payment of the applicable periodic working dues and fees uniformly required for union membership in the Local Union that is a signatory to this Agreement for the duration of his or her employment on the Project. Nothing in this Agreement is intended to prevent any non-union employees from joining the Local Union.

7.3 Authorized representatives of the Unions shall have access to the Project whenever work covered by this Agreement is being, has been, or will be performed on the Project.

ARTICLE VIII
REFERRAL

8.1 Contractor(s)/Employer(s) performing construction work on the Project described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Local Unions ("Job Referral System"). Such Job Referral System shall be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require

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equal employment opportunities and non-discrimination. The Contractor(s)/Employer(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.2 The Contractor(s)/Employer(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Union(s).

8.3 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s)/Employer(s) for employees within a forty-eight (48) hour period (Saturdays, Sundays and Holidays excluded) after such requisition is made by the Contractor(s)/Employer(s), the Contractor(s)/Employer(s) shall be free to obtain work persons from any source. A Contractor who hires any personnel to perform covered work on the Project pursuant to this Section shall immediately provide the appropriate Union with the name and address of such employee(s) and shall immediately refer such employee(s) to the appropriate Union to satisfy the requirements of Article VII of this Agreement.

8.4 Unions will exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s)/Employer(s). Recognizing the special needs of the Project and the acute shortage of skilled craftspeople, the Unions shall consider a Contractor's request to transfer key employees to work on this Project in a manner consistent with the Union's referral procedures.

8.5 The parties to this Agreement support the development of increased numbers of skilled construction workers from the City of Stockton and San Joaquin County. To the extent allowed by law, and consistent with the Local Union's hiring hall provisions, and as long as they possess the requisite skills and qualifications, Local Area Residents, including journeymen and apprentices, shall be referred for Project work covered by this Agreement.

ARTICLE IX WAGES AND BENEFITS

9.1 All Contractors/Employers agree to pay contributions to the established vacation, pension and other form of deferred compensation plan, apprenticeship, and health benefit funds established by the applicable Master Agreement for each hour worked on the Project in the amounts designated in the Master Agreements of the appropriate Local Unions.

9.2 By signing this Agreement, the Contractor(s)/Employer(s) adopts and agrees to be bound by the written terms of the legally established Trust Agreements, as described in section 9.1, specifying the detailed basis on which payments are to be made into, and benefits paid out of, such Trust Funds established by such appropriate local agreements. The Contractor(s)/Employer(s) authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratify and accept the trustees so appointed as if made by the Contractor(s)/Employer(s).

9.3 Wages, Hours, Terms and Conditions of Employment: The wages, hours and other terms and conditions of employment on the Project shall be governed by the Master Agreement of the respective crafts, copies of which shall be on file with the City to the extent such Master

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Agreement is not inconsistent with this Agreement. All employees covered by this Agreement shall be classified and paid in accordance with the classification and wage scales contained in the appropriate local agreements which have been negotiated by the historically recognized bargaining entity and in compliance with the applicable general prevailing wage determination made by the Director of Industrial Relations pursuant to the California Labor Code.

9.4 During the period of construction on this Project, the Contractor(s)/Employer(s) agrees to recognize and put into effect such increases in wages and recognized fringe benefits as shall be negotiated between the various Unions and the historically recognized local bargaining entity on the effective date as set forth in the applicable agreement. The Unions shall notify the Contractor(s)/Employer(s) in writing of the specific increases in wages and recognized fringe benefits and the date on which they become effective.

9.5 Holidays: Holidays shall be in compliance with the applicable Schedule A agreement.

ARTICLE X
EMPLOYEE GRIEVANCE PROCEDURE

10.1 All disputes involving discipline and/or discharge of employees working on the Project shall be resolved through the grievance and arbitration provision contained in the Master Agreement for the craft of the affected employee. No employee working on the Project shall be disciplined or dismissed without just cause.

ARTICLE XI
COMPLIANCE

11.1 It shall be the responsibility of the Contractor(s)/Employer(s) and Unions to investigate and monitor compliance with the provisions of the Agreement contained in Article IX. Nothing in this agreement shall be construed to interfere with or supersede the usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Employers on the Project. The City shall monitor and enforce compliance with the prevailing wage requirements of the state and Contractors'/Employers' compliance with this Agreement.

ARTICLE XII
GRIEVANCE ARBITRATION PROCEDURE

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party (Local Union or City on its own behalf, or on behalf of an employee whom it represents, or a contractor on its own behalf) provides notice in writing to the signatory party with whom it has a dispute within five (5) days after becoming aware of the dispute but in no event more than thirty (30) days after it reasonably should have become aware of the event giving rise to the dispute. The time limits in this Section 12.1 may be extended by mutual written agreement of the parties.

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12.2 Grievances shall be settled according to the following procedures:

- Step 1: Within five (5) business days after the receipt of the written notice of the grievance, the Business Representative of the involved Local Union or City, or his/her designee, or the representative of the employee, and the representative of the involved Contractor(s)/Employer(s) shall confer and attempt to resolve the grievance.
- Step 2: In the event that the representatives are unable to resolve the dispute within the five (5) business days after the meeting to resolve the dispute in Step 1, the International Union Representative and the Contractor(s)/Employer(s) involved shall meet within seven (7) working days of the referral of the dispute to this second step to arrive at a satisfactory settlement thereof. Meeting minutes shall be kept by the Contractor. In the event that these representatives are unable to resolve the dispute after its referral to Step 2, either involved party may submit it within three (3) business days to the Grievance Committee, which shall meet within five (5) business days after such referral (or such longer time as is mutually agreed upon by all representatives on the Grievance Committee), to confer in an attempt to resolve the grievance. The Grievance Committee shall be comprised of two (2) representatives of the City; and one (1) representative of the Project Manager, and three (3) representatives of the San Joaquin Building & Construction Trades Council. If the dispute is not resolved within such time (five (5) business days after its referral or such longer time as mutually agreed upon) it may be referred within five (5) business days by either party to Step 3.
- Step 3: If the grievance is not settled in Step 2 within five (5) business days, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. Within five (5) business days after referral of a dispute to Step 3, the representatives shall choose a mutually agreed upon arbitrator for final and binding arbitration. If the parties are unable to agree on an arbitrator, an arbitrator shall be selected by the alternate striking method from the list of five (5) below. The order of striking names from the list of arbitrators shall be determined by a coin toss, the winner of which shall decide whether they wish to strike first or second. If any of the arbitrators listed below or in Article 4 is no longer working as a labor arbitrator at the time of selection, the City and the Council shall mutually agree to a replacement. In addition, the City and the Council may mutually agree to add additional arbitrators to those listed below.

1. William Riker
2. Barry Winogard
3. Thomas Angelo
4. Robert Hirsch
5. William Engler

12.3 The Arbitrator shall arrange for a hearing on the earliest available date from the date of his/her selection. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the presiding arbitrator. The decision of the Arbitrator shall be

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final and binding on all parties. The Arbitrator shall have no authority to change, amend, add to or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.4 The time limits specified in any step of the Grievance Procedure set forth in Section 12.2 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without an agreed upon extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes. In order to encourage the resolution of disputes and grievances at Steps 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent setting.

ARTICLE XIII
WORK ASSIGNMENTS AND JURISDICTIONAL DISPUTES

13.1 The assignment of Covered Work will be solely the responsibility of the Employer performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of the Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the building and construction trades Unions and the Employers parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Employers and Unions parties to this Agreement.

13.3 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch, and Thomas Pagan, and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California within fourteen (14) days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

13.4 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature and the Employer's assignment shall be adhered to until the dispute is resolved. Individual employees violating this section shall be subject to immediate discharge. Each Employer will conduct a pre-job conference with the Council prior to commencing work. The Project Manager and City will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Employers may be held together.

**ARTICLE XIV MANAGEMENT
RIGHTS**

14.1 The Contractor(s)/Employer(s) shall retain full and, exclusive authority for the management of their operations, including the right to direct their workforce in their sole discretion. Except as provided by Section 2.3 and by the lawful manning provisions in the applicable Master Agreement, no rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of employees.

**ARTICLE XV
HELMETS TO HARDHATS**

15.1 The Contractor(s)/Employer(s) and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans and members of the National Guard and Reserves who are interested in careers in the building and construction industry. The Contractor(s)/Employer(s) and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center"), a joint Labor-Management Cooperation Trust Fund, established under the authority of Section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. Section 175(a), and Section 302(c)(9) of the Labor-Management Relations Act, 29 U.S.C. Section 186(c)(9), and a charitable tax exempt organization under Section 501(c)(3) of the Internal Revenue Code, and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

15.2 The Unions and Contractor(s)/Employer(s) agree to coordinate with the Center to participate in an integrated database of veterans and members of the National Guard and Reserves interested in working on the Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

15.3 Nothing in this Article shall be interpreted to preclude any Contractor(s)/Employer(s) that is not signatory to a Master Agreement to utilize an alternative plan or program for recruiting, training and facilitating construction industry employment opportunities for military veterans and members of the National Guard and Reserves. Before utilizing such alternative program on the Project, such Contractor(s)/Employer(s) shall provide the City with a description of such plan or program.

**ARTICLE XVI
DRUG & ALCOHOL TESTING**

16.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

16.2 The Parties agree to recognize and use the Substance Abuse Program contained in each applicable Union's Schedule A.

ARTICLE XVII
TERM SAVINGS CLAUSE

17.1 The parties agree that in the event any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction, the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by a court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or work in question.

17.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of the Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

17.3 If a court of competent jurisdiction determines that all or part of the Agreement is invalid and/or enjoins the City from complying with all or part of its provisions and the City accordingly determines that the Agreement will not be required as part of an award to a Contractor(s)/Employer(s), the unions will no longer be bound by the provisions of Article IV.

ARTICLE XVIII
LOCAL HIRE, PRIORITY APPRENTICE AND WORKFORCE
DEVELOPMENT PROGRAM

18.1 The objective of the City in creating this Local Hire, Priority Apprentice and Workforce Development Program is to enhance and encourage employment opportunities for Stockton residents and to enable effective construction career pathways for Local Area Residents through California State approved Joint Apprenticeship Programs. To that end, as part of the Agreement, the City establishes goals for the hiring, training and retention of Local Area Residents.

18.2 Local Hire. The City establishes the following Local Hire goals and commitments:

18.2.1 The parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the applicable Union, qualified and available, Local Area Residents for Project work. The parties agree to a goal that Stockton residents shall perform a minimum of 50% of the hours worked on the Project by the Contractors' total construction workforce. In the event that a sufficient number of Stockton residents are not available to fulfill the 50% local hire requirement, the next tier of residents shall come from anywhere in San Joaquin County. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of Stockton resident workers and in utilizing their hiring hall procedures to facilitate this 50% goal.

18.2.2 The parties also recognize and support the City's commitment to provide opportunities for participation on the Project to Stockton businesses through the City's Local Business Preference Ordinance. In furtherance of this commitment, the parties agree that such

Attachment A

Stockton contractors and subcontractors awarded work on the Project may request by name, and the Local Union will honor, referral of persons who have applied to the Local Union for Project work, and who demonstrate the following qualifications:

- (1) possess any license required by state or federal law for the Project work to be performed;
 - (2) have worked a total of at least two thousand (2,000) hours in the construction craft during the prior two (2) years;
 - (3) were on the Contractor's active payroll for at least ninety (90) out of the one hundred and twenty (120) calendar days prior to the contract award;
 - (4) have the ability to perform safely the basic functions of the applicable trade;
- and
- (5) are Stockton residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core" employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work, the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

18.2.3 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall and comply with Article VII before commencing Project work. If there is any question regarding an employee's eligibility under Section 18.2, the City, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

18.3 Priority Apprenticeship and Workforce Development

18.3.1 Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s)/Employer(s) shall employ apprentices of a California State approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

18.3.2 The parties agree to a goal that 50% of apprentices employed on the Project shall be residents of the City of Stockton or other Local Area Residents. In achieving this goal, at-risk youth who reside in the following zip codes within the City of Stockton, shall be given priority in the apprenticeship recruitment process: 95202, 95203, 95204, 95205, and 95206. If sufficient numbers of Stockton residents are not available, then a good faith effort will be made by the Unions to utilize residents of San Joaquin County. All apprentices referred to Contractors under this

Attachment A

Agreement shall be enrolled in State of California approved Joint Apprenticeship Programs. Subject to any legal restrictions, the parties agree to a goal that apprentices will perform twenty percent (20%) of the total craft hours worked on the Project unless an applicable Master Agreement provides for a greater percentage. The Unions agree to cooperate with the Contractors in furnishing apprentices as requested and they shall be properly supervised and paid in accordance with the provisions of the applicable Master Agreement.

18.3.3 The Contractors and Unions shall make good faith efforts to reach the apprenticeship goals set forth in this Section 18.3 through the utilization of normal hiring hall and apprentice procedures and, when appropriate, the identification of potentially qualified apprentices through community-based organizations working in collaboration with the apprentice programs. The Unions are committed to working with the Contractors and community based organizations to achieve these goals. At least annually, the Unions and the City will each conduct a Community Career Fair to provide at-risk youth, veterans and others an opportunity to learn about each craft and the process for entering their apprenticeship program.

18.4 Good Faith Efforts. A Contractor or subcontractor must take the following good faith steps to demonstrate that it has made every effort to reach the Local Hire, Priority Apprenticeship and Workforce Development Program goals of the City. The Contractor or subcontractor shall attend scheduled Pre-Job meetings held under this Agreement and shall submit written workforce projections and projected work hours on a craft-by-craft basis.

18.4.1 Within seven (7) calendar days after Notice to Proceed, the Contractor or subcontractor shall meet with the Unions and the City to present its plan for reaching the Local Hire, Priority Apprenticeship and Workforce Development Program goals.

18.4.2 The Contractor or subcontractor shall notify the Project Manager of the City by U.S. Mail or electronic mail if a Union hiring hall cannot, upon request by the Contractor or subcontractor, dispatch Local Area Residents to the Project. It shall be the responsibility of the Contractor or subcontractor to retain all evidence of such good faith efforts.

18.4.3 The Contractor or subcontractor may use the "Name Call", "Rehire" or other available hiring hall procedures to reach the goals of this Article XVIII.

18.5 Enforcement, Compliance and Reporting

18.5.1 Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this Article. At a minimum, the monthly reports must include: 1) data on Stockton and Local Area Residents work hour utilization on the Project and Local Area Residents; and 2) documentation showing any requests made to the Union dispatchers for Stockton residents and the Union's response to the request.

18.5.2 The City staff shall monitor the operation of the Local Hire, Priority Apprenticeship and Workforce Development Program and shall consider allegations of non-compliance with the goals stated in this Article. If there is a determination by the City that a Contractor or subcontractor has not complied with the goals or demonstrated good faith efforts to

Attachment A

do so, the City and the Contractor or subcontractor shall meet and confer in order to identify necessary actions to resolve the issue and ensure a good faith effort to achieve the objectives of this Article.

18.5.3 For any Project subject to this Agreement, the Local Hire, Priority Apprentice and Workforce Development Program requirements of this Article shall apply in lieu of the requirements of Stockton Municipal Code Section 3.68.095 and no separate compliance with Section 3.68.095 will be required of the Contractors/Employers working on the Project.

**ARTICLE
XIX TERM**

19.1 This Agreement shall become effective 30 days after the day the City Council takes action to authorize its execution, and it shall continue in full force and effect for a period of three (3) years, at which time this Agreement may be considered for extension or renewal. The terms of this Agreement shall apply to any Project that is bid or solicited after the effective date and before the expiration of this Agreement. The Agreement shall continue to apply to any Project subject to this Agreement until the completion of all Covered Work on the Project.

CITY OF STOCKTON

[Signature]
Name: KURT O. WILSON
Title: CITY MANAGER

Date: 8/24/16

ATTEST:

By: [Signature]
BONNIE PAIGE, CITY CLERK



APPROVED AS TO FORM

By: [Signature]
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: [Signature]
DANIEL CARDOZO

Title: ATTORNEY AT SAN JOAQUIN BTC

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL

Name:
Title:

Date: _____

Attachment A

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XIX TERM

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CITY OF STOCKTON

Name: KURT O. WILSON
Title: CITY MANAGER

Date: _____

ATTEST:

APPROVED AS TO FROM

By: _____
BONNIE PAIGE, CITY CLERK

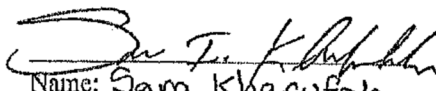
By: _____
JOHN M. LUEBBERKE
CITY ATTORNEY

APPROVED AS TO FORM

By: _____
DANIEL CARDOZO

Title: _____

SAN JOAQUIN BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO COUNCIL


Name: Sam Kharoufeh
Title: Secretary/Treasurer

Date: 8/24/16

Attachment A

UNIONS

Daniel D. Chivello
Electrical Workers # 595.

Paul
Sheet Metal Workers # 104

Mark L. Sloan
Boilermakers # 549

John
Cement Masons # 400

John
District Council # 16

John
Heat & Frost Insulators & Asbestos # 16

John
Iron Workers # 378

Miguel
Underground Utility/Landscape #355

Joseph D. Torack
Sign & Display # 510

James
Operation Engineers # 3

John Bell
Northern California Carpenters Regional Council on behalf of itself and its affiliated local Unions

Keith
Plasterers and Cement Masons # 300

William
Plumbers and Pipefitters # 442
ON BEHALF OF BUSINESS MANAGER SHAWN
CARRICK, BUSINESS AGENT
Road Sprinkler Fitters # 669

John
Roofers and Water proofers # 81

Karl
Iron Workers # 176

John
Laborers #73

John
Teamsters #439

Addendum A

CITY OF STOCKTON COMMUNITY WORKFORCE AND TRAINING AGREEMENT

AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor, including construction material trucking company/entity, (CONTRACTOR) on the City of Stockton Project, (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in this Community Workforce and Training Agreement (hereinafter AGREEMENT), a copy of which was received and is acknowledged, hereby:

(1) Accepts and agrees to be bound by the terms and conditions of the AGREEMENT for this Project, together with any and all amendments and supplements now existing or which are later made thereto:

(2) The CONTRACTOR agrees to be bound by the legally established local trust agreements designated in the applicable Schedule A as set forth in Article IV of this AGREEMENT.

(3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;

(4) Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said AGREEMENT.

(5) Agrees to secure from any CONTRACTOR(S) (as defined in said AGREEMENT) which is or becomes a subcontractor (of any tier) to it, a duly executed Agreement to be Bound in form identical to this document.

(6) This Agreement to be Bound constitutes a subscription agreement to the extent of its terms. However, the undersigned agrees to execute a separate Subscription Agreement(s) or contributing employer agreement for Trust Funds when such Trust Fund(s) requires such document(s).

Date: _____

Name of Contractor

(Name of Contractor Representative)

(Authorized Officer & Title)

CSLB # or Motor Carrier Permit

BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, **JOHN F. OTTO, INC., DBA OTTO CONSTRUCTION**, a **STATE OF CA CORPORATION**, 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, 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 **ELEVEN MILLION THREE HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$11,394,400.00)**, 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 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:

**MCKINLEY PARK RENOVATION
(PROJECT NO. WR21017)**

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 fixed as costs in said suit, and to be included in the judgment therein rendered.

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

SURETY

APPROVED AS TO FORM & CONTENT:
LORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
ATTORNEY-IN-FACT

By: _____
DEPUTY CITY ATTORNEY

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENTS:

That we, **JOHN F. OTTO, INC., DBA OTTO CONSTRUCTION**, a **STATE OF CA CORPORATION**, 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 **ELEVEN MILLION THREE HUNDRED NINETY-FOUR THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$11,394,400.00)**, 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:

**MCKINLEY PARK RENOVATION
(PROJECT NO. WR21017)**

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.

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

SURETY

APPROVED AS TO FORM & CONTENT:
JOHN M. LUEBBERKELORI M. ASUNCION
OFFICE OF THE CITY ATTORNEY

By: _____
ATTORNEY-IN-FACT

By: _____
DEPUTY CITY ATTORNEY