

**CONSTRUCTION CONTRACT
WILSON WAY SUBWAY PUMP STATION IMPROVEMENTS – PROJECT M15011
AND ***BID ADDITIVE*** HARDING WAY SUBWAY PUMP STATION
IMPROVEMENTS – PROJECT M15010**

THIS CONTRACT is made and entered into on _____, by and between AMERINE SYSTEMS, INC., with a business address at 10866 CLEVELAND AVENUE, OAKDALE, CA, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

WITNESSETH:

WHEREAS, plans and specifications for the construction of Wilson Way Subway Pump Station Improvements (Project No. M15011) and Bid Additive Harding Way Subway Pump Station Improvements (Project No. M15010), hereinafter called "PROJECT," were regularly adopted by Council Resolution # _____ on October 17, 2017; and

WHEREAS, the contract for said work was regularly awarded to AMERINE SYSTEMS, INC., by Council Resolution # _____, on October 17, 2017.

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

1. CONTRACTOR agrees:

(a) To do the work and furnish all the labor, materials, tools, equipment and insurance required for the Wilson Way Subway Pump Station Improvements (Project No. M15011) and Harding Way Subway Pump Station Improvements (Project No. M15010) in accordance with the plans and specifications therefore regularly adopted on October 17, 2017, by Council Resolution # _____. Said Plans and Specifications are incorporated herein by this reference to the same extent as if fully set forth.

(b) To do and perform the work contemplated hereby in a good and professional 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 Municipal Utilities Director (Director) of the City of Stockton.

(c) CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this agreement the policies of insurance specified in Exhibit "B", which is attached to this agreement and incorporated by reference.

Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been

issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

(d) 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 CITY, its Mayor, Council, officials, representatives, agents 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 contractor 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 the 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 contractor 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 CITY its Mayor, Council, officials, representatives, agents 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.

(e) The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.03 of the City of Stockton Standard Specifications and Plans as adopted on November 25, 2003, by Council Motion No. 03-0707, effective December 1, 2003, and the provisions of the issued project specifications.

The Director 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.

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 **THREE HUNDRED AND NO/100 DOLLARS (\$300.00)** 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, inability to get materials ordered by CONTRACTOR or subcontractor due to such causes provided that CONTRACTOR shall notify the Director 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 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.

(f) To conform strictly to 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.

(g) 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.

(h) 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.

(1) 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% 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.

2. CITY agrees:

(a) 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 Municipal Utilities 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 Municipal Utilities of such completion.

Pursuant to Section 22300 of the Public Contract Code, the 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. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer 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 4-1.03 of the City of Stockton Standard Specifications and Plans as adopted by Council on November 25, 2003, by Resolution No. 03-0707, effective December 1, 2003, except that the \$23,578 limit shown in Section 4-1.03 shall be increased to \$75,000. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.03, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

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

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

5. 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.

6. 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:
BONNIE PAIGE
CITY CLERK

CITY OF STOCKTON, a municipal
corporation

By _____

By

KURT O. WILSON
CITY MANAGER
"CITY"

APPROVED AS TO FORM & CONTENT:

JOHN LUEBBERKE
CITY ATTORNEY

AMERINE SYSTEMS, INC.
10866 CLEVELAND AVENUE
OAKDALE, CA 95361

By

Amy D. Amrine
"CONTRACTOR"

By: _____
City Attorney

Corporation
(Indicate status: corporation,
partnership or sole proprietorship)

94-2458533
Tax Identification No.

EXHIBIT A

CITY OF STOCKTON
MUNICIPAL UTILITIES DEPARTMENTBASE BID
Wilson Way Subway Pump Station
Project No. M15011

Each bidder shall bid each item. Failure to bid an item shall cause the bid to be considered non-responsive, and it will be rejected.

All applicable sales taxes, state and/or federal taxes, and any other special taxes, patent rights, or royalties are included in the prices quoted in this proposal. All bid items listed below are an estimated quantity. This shall be the responsibility of the Contractor to make their own estimate based on what are shown and called for in the contract Plans and Specifications.

Item #	Description	Est. Quantity	Unit	Unit Price	Total Price
1.	Mobilization	1	LS		7678.00
2.	Equipment Removal/Demolition	1	LS		8680.00
3.	Supply and Install New Storm Drain Pumps and Associated Equipment	2	EA	12,950.00	25,900.00
4.	Supply and Install New Electrical Equipment	1	LS		73,120.00
5.	Supply and Install New Storm Drain Inlet Filters	8	EA	1640.00	13,120.00
6.	Demobilization	1	LS		8,240.00
7.	Training	1	LS		6,140.00
8.	O&M Manuals	1	LS		4500.00
9.	Record Drawings	1	LS		4500.00
	TOTAL BASE BID: The sum of Items 1 through 9				151,878.00

One hundred fifty one thousand, eight hundred seventy eight,
Total Base Bid - Words *dollars and 00/100*

*****BID ADDITIVE*****
HARDING WAY SUBWAY PUMP STATION
Project No. M15010

Item #	Description	Est. Quantity	Unit	Unit Price	Total Price
A1	Mobilization	1	LS		8,800 ⁰⁰
A2	Equipment Removal/Demolition	1	LS		16,240 ⁰⁰
A3	Supply and Install New Storm Drain Pumps and Associated Equipment	3	EA	11,146. ⁶⁶	33,440 ⁰⁰
A4	Supply and Install New Electrical Equipment	1	LS		99,600 ⁰⁰
A5	Supply and Install New Access Hatch	1	EA		13,120 ⁰⁰
A6	Supply and Install New Storm Drain Inlet Filters	7	EA	1874.23	13,120 ⁰⁰
A7	Demobilization	1	LS		8,560 ⁰⁰
A8	Training	1	LS		6,120 ⁰⁰
A9	O&M Manuals	1	LS		4,500 ⁰⁰
A10	Record Drawings	1	LS		4,500 ⁰⁰
TOTAL ADDITIVE BID: The sum of Items A1 through A10					208,000⁰⁰

Two hundred eight thousand dollars and 00/100
 Total Additive Bid - Words

Three hundred fifty nine thousand dollars eight hundred
 Total Bid (Base + Additive) - Words
 seventy eight dollars and 00/100
\$ 359,878⁰⁰

Exhibit B:
Insurance Requirements
(Services & Products)

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, their 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 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 **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

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

Other Insurance Provisions

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

- ***Additional Insured Status***
The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers are to be covered as additional insureds on the CGL and AL 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. 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 if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
- ***Primary Coverage***
For any claims related to this contract, the Contractor's insurance coverage shall be endorsed as primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers shall be excess of the Contractor's insurance and shall not

contribute with it. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

- **Notice of Cancellation**

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

- **Waiver of Subrogation**

Contractor hereby grants to the City of Stockton a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

- **Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

- **Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

- **Claims Made Policies**

If any of the required policies provide claims-made coverage:

- The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
- If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

- **Verification of Coverage**

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. 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, for any reason or no reason.

Contractor shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

- **Special Risks or Circumstances**

The 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**

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

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

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

- **Maintenance of Insurance**

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

- **Subcontractors**

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

END OF SECTION