# ATTACHMENT 2:

# Original Public Works Contract

# PUBLIC WORKS CONSTRUCTION CONTRACT

**THIS PUBLIC WORKS CONSTRUCTION CONTRACT** ("**Contract**") is made and entered into as of the date executed by the City Manager, by and between Mesa Energy Systems, Inc., a California corporation doing business as EMCOR Services Mesa Energy ("**Contractor**") and the City of Perris, a California municipal corporation ("**City**") for a total amount of $1,327,074.00 consisting of $1,105,895.00 as set forth in Contractor's bid (the "**Contract Amount**") and up to $221,179.00 in a Construction Contingency amount if approved by the City pursuant to this Contract.

## RECITALS

**WHEREAS**, City sought bids pursuant to the Perris Municipal Code for the Project (defined below); and

**WHEREAS,** City did accept the bid of Contractor dated October 28, 2024 ("**Contractor's Bid**"); and

**WHEREAS**, the City Council has authorized the City Manager to enter into a written contract with Contractor for furnishing labor, equipment, and material for the construction of:

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|---|---|
| JOB NO.: | 11-2024-23-035559-Solar Project |
| DESCRIPTION: | Solar Photovoltaic Project |
| LOCATION: | City Hall Campus<br>101 North D Street, Perris CA 92570 |

(hereinafter referred to as the "**Project**").

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, it is agreed:

1. GENERAL SCOPE OF WORK

a. Work. Contractor shall furnish all necessary labor, tools, materials, appliances, and equipment for and do the work for the Project (collectively, the "**Work**"). Said Work shall be performed in accordance with (i) all of the Contract Documents incorporated herein, (ii) the bid prices contained in the Contractor's Bid, and (iii) the instructions of the City Manager or his/her designee (the "Project Manager"). By executing this Contract, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of Work to be performed, (ii) has carefully considered how the Work should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the Work under this Contract. If the Work involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of the Work hereunder.

b. Warranty. Contractor warrants all work under the Contract (which for purposes of this Section shall be deemed to include unauthorized work which has not been

removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Contract or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Contract, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

c. Final Acceptance. Acceptance of the Project shall only be by action of the City Manager or his or her designee. Neither the acceptance nor any prior inspections or failure to inspect shall constitute a waiver by City of any defects in the work. From and after acceptance, the Project shall be owned and operated by City. As a condition to acceptance, Contractor shall certify to City in writing that all of the work has been performed in strict conformity with the Contract and that all costs have been paid or supplied to City for security required herein, satisfactory to City, guaranteeing such performance.

2. CONTRACT DOCUMENTS INCORPORATED

This Contract includes and hereby incorporates in full each of the following documents, including all exhibits, drawings, plans and specifications, attachments and addenda thereto

(collectively, the "**Contract Documents**"):

i. The scope of work set forth in Contractor's Bid

ii. Technical Specifications

iii. Project Plans

iv. Performance and Payment Bonds

v. All change orders authorized after execution of this Contract.

This Contract is intended to require a complete and finished Project and anything necessary to complete the Work properly. Further, Contractor shall perform the Work in accordance with applicable law and lawful governmental regulations (including, but not limited to, all State and Federal laws, codes and regulations, and Municipal Ordinances and Regulations of City), whether set out specifically in this Contract or not. Should it be ascertained that any inconsistency exists between the Contract Documents and this Contract, the provisions of this Contract shall control, except as required and specified under law.

3. CONSTRUCTION START AND COMPLETION DATE

a. Start and Completion

The mandatory start construction date shall be the date stipulated in the Notice to Proceed issued by the Project Manager ("**Start Date**"). Contractor shall complete the Project within _____ (_____) Calendar Days from the Start Date ("**Completion Date**"). City and Contractor acknowledge and agree that at the time of execution of this Contract it is impracticable and extremely difficult to fix the actual damages that will be incurred by City if Contractor fails to complete the Project by the Completion Date. Accordingly, City and Contractor agree that liquidated damages in the amount of One Thousand Dollars ($1,000.00) for each calendar day the Project remains incomplete beyond the Completion Date is a reasonable sum to assess as liquidated damages due to City by reason of the failure of Contractor to complete the Project. City may deduct the amount of liquidated damages from any payment due or that may become due to Contractor under this Contract. Progress payments made after the Completion Date shall not constitute a waiver of liquidated damages.

Contractor's Initials: _____

b. Force Majeure

The time period(s) specified in the Contract Documents for performance of the Work rendered pursuant to this Contract shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the

City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Work for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. The Project Manager's determination shall be final and conclusive upon the Parties to this Contract. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Contract, however caused, Contractor's sole remedy being extension of the Contract pursuant to this Section.

4. INSURANCE AND BONDS

a. Insurance

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Contract including any extension thereof, the following policies of insurance:

i. Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than $2,000,000 per occurrence, $4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. The Product and Completed Operations coverage under the policy shall extend a minimum of three (3) years after completion of the Project. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using subcontractors, the policy must include work performed "by or on behalf" of the insured. The policy shall contain no language that would invalidate or remove the insurer's duty to defend or indemnify for claims or suits expressly excluded from coverage. The policy shall specifically provide for a duty to defend on the part of the insurer.

ii. Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases carrying out the work or service contemplated in this Contract. At a minimum, Contractor shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least $1,000,000).

iii. Business Automobile Insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Services to be performed

under this Contract, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than $1,000,000 combined single limit for each accident.

iv. Builder's Risk Insurance. Contractor shall maintain 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 or provisional limit provisions. The policy must include: (1) coverage for any ensuing loss from faulty workmanship, nonconforming work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) ordinance or law coverage for contingent rebuilding, demolition, and increased costs of construction; (5) transit coverage (unless insured by the supplier or receiving contractor), with sub-limits sufficient to insure the full replacement value of any key equipment item; (6) ocean marine cargo coverage insuring any Project materials or supplies, if applicable; (7) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Project site or any staging area.

v. Professional Liability Insurance (Errors & Omissions). Contractor shall maintain professional liability insurance that covers the services to be performed in connection with this Contract, in the minimum amount of $1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Contract and Contractor agrees to maintain continuous coverage through a period no less than three (3) years after completion of the services required by this Contract.

vi. Pollution Liability Insurance. Contractor shall maintain Environmental Impairment Liability insurance, written on a Contractor's Pollution Liability form or other form acceptable to City providing coverage for liability arising out of sudden, accidental, and gradual pollution and remediation. The policy limit shall be no less than $1,000,000 per claim and in the aggregate. All activities contemplated in this Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites.

vii. General Insurance Requirements.

(1) Primary/noncontributing; Waiver of Subrogation. All of the above policies of insurance shall be primary insurance. All insurance coverage maintained or procured pursuant to this Contract shall be endorsed to waive subrogation against City, its officers, employees

and agents, and its insurers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Contractor hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subcontractors.

(2) Evidence of Insurance. No work or service under this Contract shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverage and said Certificates of Insurance or binders are approved by the City. In the event any of the above policies of insurance are canceled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section to the Project Manager or the Project Manager's designee, as defined in the Contract Documents and incorporated herein.

(3) Not Limiting. Contractor agrees that the provisions of this Section 3.b(a) shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or person for which the Contractor is otherwise responsible.

(4) Subcontractors. In the event the Contractor subcontracts any portion of the Work pursuant to this Contract, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to this Section.

(5) Duration of Coverage. Contractor shall procure and maintain for the duration of this Contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors.

(6) City's Rights of Enforcement. In the event any policy of insurance required under this Contract does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Contractor or City will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, City may cancel this Contract.

(7) Enforcement of Contract Provisions (non-estoppel). Contractor

acknowledges and agrees that any actual or alleged failure on the part of the City to inform Contractor of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

(8) Requirements Not Limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Contractor maintains higher limits than the minimums shown above, the City 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.

(9) Notice of Cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

(10) Additional Insured Status. General and auto liability policies shall provide or be endorsed to provide that City and its officers, officials, employees, and agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

(11) Prohibition of Undisclosed Coverage Limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

(12) Separation of Insureds. A severability of interests provision must apply for all additional insureds ensuring that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

(13) Pass Through Clause. Contractor agrees to ensure that its subconsultants, subcontractors, and any other party involved with the Project who is brought onto or involved in the project by Contractor, provide the same minimum insurance coverage and

endorsements required of Contractor. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Contractor agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

(14) Agency's Right to Revise Specifications. The City reserves the right at any time during the term of the Contract to change the amounts and types of insurance required by giving the Contractor ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Contractor, the City and Contractor may renegotiate Contractor's compensation.

(15) Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

(16) Timely Notice of Claims. Contractor shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Contract, and that involve or may involve coverage under any of the required liability policies.

(17) Additional Insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

b. Performance and Payment Bonds

Concurrently with execution of this Contract, Contractor shall deliver to the City the following bonds:

i. Payment Bond. Concurrently with the execution of this Contract, Contractor shall deliver to City a Payment Bond in a sum not less than one hundred percent (100%) of the total Contract Amount which secures payments to persons furnishing labor, subcontractors, and suppliers in the event of default by Contractor. The payment bond shall be unconditional and remain in force during the entire term of the Contract and shall be null and void only if the Contractor completely and faithfully pays all persons furnishing labor, subcontractors, and suppliers that have been approved in writing to perform in whole or part the services required herein.

ii. Performance Bond. Concurrently with execution of this Contract, Contractor shall deliver to City a Performance Bond in the sum of not less

than one hundred percent (100%) of the total Contract Amount which secures the faithful performance of this Contract, unless such requirement is waived by the Project Manager or the Project Manager's designee. The bond shall be unconditional and remain in force during the entire term of the Contract and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Contract.

All bonds shall each contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his/her power of attorney. All bonds shall be unconditional and remain in force during the entire term of this Contract. All bonds shall be in substantially the form as provided in **Exhibit "A"**.

City shall release the Payment Bond and the Performance Bond when the following have occurred: (1) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under this Contract, (2) the work for the Project has been finally accepted by the City, and (3) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Payment Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law

c. Sufficiency of Insurer and Surety

Insurance and bonds required by this Contract shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or higher in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or larger, unless otherwise approved by the City's Risk Manager due to unique circumstances. In addition, the insurance carrier must be currently authorized by the Insurance Commissioner to transact business of insurance or be on the List of Approved Surplus Line Insurers issued by the State of California. If the City determines that the work to be performed under this Contract creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the bonds required this Contract may be changed accordingly upon receipt of written notice from the City.

5. COORDINATION OF WORK

a. Representatives and Personnel of Contractor

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act on its behalf with respect to the work specified herein and make all decisions in connection therewith:

~~Robert Lake~~ _____ ~~President~~ _____

| | |
|---|---|
| Ronald Hickey | President |
| Name | Title |
| Ken Riley | Sr. Director of Solar |
| Name | Title |
| | |
| Name | Title |

The Principals shall be responsible during the term of this Contract for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Contract, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Contract. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Contract, prior to and during any such performance.

b. Status of Contractor

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Contract or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

c. City's Project Manager

It shall be the Contractor's responsibility to assure that the Project Manager is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Project Manager. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Project Manager. The Project Manager shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Contract.

d. Independent Contractor

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

6. PROHIBITION AGAINST SUBCONTRACTING OR ASSIGNMENT

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Contract. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Contract. In addition, neither this Contract nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Contract shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

7. COMPLIANCE WITH LABOR AND WAGE LAWS

a. Prevailing Wages.

In accordance with the provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 and 2, Contractor and any subcontractor under Contractor is required to pay not less than the general prevailing rate of per diem wages to all workmen employed in the performance of this Contract, for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work. In that regard, pursuant to the California Labor Code, the Director of the Department of Industrial Relations of the State of California has determined such general prevailing rates of per diem wages. Copies of such prevailing rates of per diem wages are on file in the office of the City's Public Works Department, located at 1015 South G Street, Perris, CA 92570_____, and are available to any interested party upon request; or may be obtained online from the Department of

Industrial Relations website at https://www.dir.ca.gov/Public-Works/Prevailing-Wage.html. Contractor shall cause a copy of such determinations to be posted at the job site.

Contractor and any subcontractor under Contractor is subject to forfeiture of penalties to City, as provided under the provision of Section 1775 of the California Labor Code for each worker employed, for each calendar day or portion thereof, if such worker is paid less than the general prevailing rate of wages hereinbefore stipulated for any work done under this Contract, by him or by any subcontractor under him, in violation of the provisions of the California Labor Code. Penalties shall be in addition to civil penalties, restitution of wages, liquidated damages to the employee, and any other applicable penalties imposed by the Labor Commissioner pursuant to the California Labor Code, or court of law.

By entering into this Contract, Contractor certifies that neither it nor any person or firm that has an interest in Contractor's firm is a person or firm that is barred from being awarded Public Works contracts by virtue of Section 1777.1 of the California Labor Code.

Contactor and any subcontractor under him shall submit, not less than monthly to the City and to the Labor Commissioner (or at a greater frequency as may be required by the Project Manager), certified copies of the payroll records for all workmen employed in the performance of this Contract for the preceding month's pay periods, and shall comply with all statutory requirements relating to certified copies of payroll records, including the maintenance of the records, their certification, and their availability for inspection as required by Labor Code Section 1776 and the Contract Documents. Contractor and any subcontractors must furnish electronic certified payroll records directly to the Labor Commissioner (aka Division of Labor Standards Enforcement) in a format prescribed by the Labor Commissioner not less than monthly.

b. Apprenticeship Employment.

In accordance with the provisions of Section 1777.5 of the California Labor Code as amended, and in accordance with the Regulations of the California Apprenticeship Council, properly indentured apprentices may be employed in the prosecution of the Work.

Attention is directed to the provisions in Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code concerning the employment of apprentices by Contractor or any subcontractor under him.

Contractor and subcontractors under Contractor shall comply with all requirements of Sections 1777.5 and 1777.6 of the California Labor Code in the employment of apprentices.

c. Legal Hours of Work.

Eight (8) hours of labor shall constitute a legal day's work for all workers employed in the execution of this Contract, and Contractor, and any subcontractor under him, shall comply with and be governed by the laws of the State of California having to do with working hours set forth in Division 2, Part 7, Chapter 1, Article 3 of the Labor Code of the State of California as amended.

Contractor and any subcontractor under Contractor shall forfeit, as a penalty to City, twenty-five dollars ($25) for each worker employed in the execution of this Contract, by him or any subcontractor under him, upon any of the work hereinbefore mentioned, for each calendar day during which said worker is required or permitted to labor more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of California Labor Code Section 1813, as amended.

d. Workers' Compensation.

California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

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

e. Public Works Contractor Registration.

Pursuant to California Labor Code Division 2, Part 7, Chapter 1, Article 2, a contractor or subcontractor shall not be qualified to engage in the performance of any contract for public work with City, as defined in said chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the same. It is not a violation of this Section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

This Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Contractor shall cause job site notices to be posted as prescribed by regulation.

f. Contractor's Responsibility for Subcontractors.

For every subcontractor who will perform work under this Contract, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Contract. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages. Contractor shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

8. DISCOVERY OF UNKNOWN CONDITIONS

a. Pursuant to Public Contract Code Section 7104, Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface or latent physical conditions at the site, materially different from those indicated by information about the site made available to bidders prior to the deadline for submitting bids on the project; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

b. City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order in accordance with this Contract.

c. In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Contract. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

9. UNIDENTIFIED UTILITIES

To the extent required by Government Code Section 4215, City will compensate Contractor for the cost of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating utility facilities not identified by City in the Contract Documents with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Nothing herein shall be deemed to require City to

indicate the presence of existing service laterals or appurtenances whenever the presence of such utilities on the project site can be inferred from the presence of other visible facilities, such as buildings, meters, and junction boxes, on or adjacent to the site of the construction; provided, however, nothing herein shall relieve City from identifying main or trunklines in the plans and specifications. If Contractor, while performing the work, discovers utility facilities not identified by City in the plans or specifications, Contractor shall immediately notify City and the utility in writing. This Contract is subject to Government Code Sections 4126 through 4216.9. Contractor must notify utilities and obtain an identification number before excavation or be subject to liability for damages to subsurface installations.

10. TRENCH EXCAVATION

Pursuant to Labor Code Section 6705, if this Contract is for more than $25,000 and requires the excavation of any trench or trenches five feet or more in depth, Contractor shall submit, in advance of such excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. The plan shall be reviewed and accepted by the City, or a registered civil or structural engineer employed by the City to whom authority has been delegated, prior to the excavation. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. This Section shall not be deemed to allow the use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders. This Section shall not be construed to impose tort liability on the City or any of its employees. Full compensation for sheeting, shoring, bracing, sloping, and all other provisions required for worker protection shall be considered as included in the contract price shown in the appropriate Bid Item, and no additional compensation will be allowed therefor.

11. NON-DISCRIMINATION

No discrimination shall be made in the employment of persons upon public works because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons, except as provided in Section 12940 of the Government Code, and every Contractor and subcontractor under Contractor for public works violating this Section is subject to all of the penalties imposed for a violation of Chapter I of the Labor Code in accordance with the provisions and of Section 1735 of said Code.

12. LICENSES, PERMITS, FEES AND ASSESSMENTS

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Contract. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Contract, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or

imposed against City hereunder.

13. CONTRACTOR'S LIABILITY; INDEMNIFICATION

a. Non-Liability of City.

City, its elected and appointed officials, officers, agents and employees, shall not be answerable or accountable in any manner for any loss or damage that may happen to the Work or any part thereof, or for any of the materials or other things used or employed in performing the Work, or for injury or damage to any person or persons, either worker, employees of Contractor or his subcontractors or the public, or for damage to adjoining or other property from any cause whatsoever arising out of or in connection with the performance of the Work. Contractor shall be responsible for any damage or injury to any person or property resulting from defects or obstructions or from any cause whatsoever, except the active negligence or willful misconduct of City, its employees, servants, or independent contractors who are directly responsible to City during the progress of the Work, or at any time before its completion and final acceptance.

b. Indemnification.

Contractor shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers (each, an "Indemnitee") from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work under this Contract or its failure to comply with any of its obligations contained in this Contract, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and Contractor, or should City otherwise find Contractor's legal counsel unacceptable, then Contractor shall reimburse the City its costs of defense, including without limitation reasonable legal counsels fees, expert fees and all other costs and fees of litigation. The Contractor shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) with respect to claims determined by a trier of fact to have been the result of the Contractor's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Contract.

Contractor obligations under this Section apply regardless of whether or not such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active

negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

14. SUBCONTRACTOR COMPLIANCE

Contractor shall be responsible for ensuring compliance by any subcontractor or lower tier subcontractor under it with this Contract, all State and Federal laws, codes and regulations, and Municipal Ordinances and Regulations of City.

15. THIRD PARTY CLAIM

Contractor shall notify City within 72 hours of the receipt of any third-party claim relating to this Contract.

16. CONTRACT PRICE AND PAYMENT

City shall pay Contractor for furnishing the material and doing the prescribed Work per the unit prices set forth in the Contractor's Bid. Contractor agrees to monthly progress payments as described in the Contract Documents.

No expenditure from the Construction Contingency ("**Contingency**") for any labor, equipment, materials, or any other article or service whatsoever, provided in relation to the Work shall be made without the prior written approval of City. Such expenditures and/or payments from the Contingency shall be made only pursuant to a Change Order signed by both parties. Verbal authorization to proceed with additional work shall not satisfy the requirement for a signed Change Order. No Change Orders combined shall exceed the Contract Amount plus the Contingency. The Contingency is for the sole and exclusive benefit and use of City for adjustments to the Contract Amount. The establishment of the Contingency is not to be construed as a promise, representation, or guarantee of the amount of compensable changes that may occur, which may be substantially more or less than the Contingency. Upon final completion and final payment, any portion of the Contingency that has not been expended by City for compensable changes expressly authorized by Change Order shall not be part of the total Contract Amount and shall not be payable or owed to Contractor.

a. Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Contract, Contractor is certifying compliance with all provisions of this Contract.

All invoices shall include a copy of Contractor's Certified Payroll and proof that Certified Payroll has been submitted to the Department of Industrial Relations.

Contractor shall also submit a list of the prevailing wage rates (including federal prevailing wage rates, if applicable) for all employees and subcontractors providing services under this Contract, as applicable, with Contractor's first invoice. If these rates change at any time during the term of this Contract, Contractor shall submit a new list of rates to the City with its first invoice following the effective date of the rate change.

Upon receipt and approval of an invoice by the City, City shall pay Contractor in a manner consistent with City's normal procedures for handling accounts payable, but not to exceed thirty (30) days from date received by City, unless otherwise directed by the labor compliance officer. Progress payments shall be issued upon successful completion of items listed on the Bid Schedule of Values contained in the Contract Documents, and inspection made by the City, unless otherwise directed by the Project Manager, the Project Manager's designee, or labor compliance officer. Payment to Contractor for work performed pursuant to this Contract shall not be deemed to waive any defects in work performed by Contractor.

b. Retention of Funds.

City will deduct a five percent (5%) retention from all progress payments in accordance with Public Contract Code Sections 22300 and 7201, which are hereby incorporated into this Contract. City shall permit the substitution of securities for any moneys withheld by City to ensure performance under this Contract. The retention held by the City shall be released within sixty (60) days after the date of completion of the work and the Project, as required by Public Contract Code 7107, which is hereby incorporated into this Contract. In the event of a dispute between City and Contractor, City may withhold from the final payment an amount not to exceed one hundred fifty percent (150%) of the disputed amount. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

17. ADDITIONAL SERVICES

a. City shall have the right at any time during the performance of the Work, without invalidating this Contract, to order extra work beyond that specified in the General Scope of Work, set forth in Section 1 of this Contract, or make changes to the Work by altering, adding to or deducting from said Work. No such extra work may be undertaken unless a written change order is first given by the Project Manager or the Project Manager's designee to the Contractor, incorporating therein any adjustment in (1) the Contract Amount, and/or (2) the time to perform this Contract, which said adjustments are subject to the written approval of the Contractor ("**Change Order(s)**"). Written Change Orders shall be made on forms prescribed by the Project Manager in accordance with the Contract Documents. Within ten (10) days after submission to the Project Manager of a Change Order that impacts the Contract Amount or the time for performance of the Work, the Contractor's

representative shall provide the City's representative a written estimate of the effect of the proposed Change Order upon the Contract Amount and the actual cost of services that would be required for the change, which shall include a complete itemized cost breakdown of all labor and material showing actual quantities, hours, unit prices and wage rates and the effect upon time for performance of the work for such Change Order. All Change Orders must be signed by the Contractor and the Project Manager (or his or her designee) prior to commencing the extra work thereunder.

b. Any increase in compensation of up to ten percent (10%) of the Contract Amount or $25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (120) days may be approved by the Project Manager, provided that such increase does not materially affect the Work in a detrimental manner or materially and detrimentally affect the interest of the City. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

c. Any adjustment in the Contract Amount for a Change Order must be in accordance with the rates set forth in the Contractor's Bid and the Bid Schedule of Values. If the rates in the Contractor's Bid do not cover the type of work or materials in the Change Order, the cost of such work or materials shall not exceed an amount agreed upon in writing and signed by Contractor and the Project Manager. Contractor is solely responsible for timely performance of the work as changed by written direction. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order that is completed to the satisfaction of the City, as follows:

i. Labor: The cost of labor shall be the actual cost for the wages of workers and subcontractors performing the work for the Change Order at the time such work is performed. The use of labor classifications that would increase the cost of such work shall not be permitted.

ii. Materials and Equipment: The cost of materials and equipment shall be at cost to Contractor or the lowest current price for which such materials and equipment are reasonably available at the time the work is performed, whichever is lower.

iii. Daily Reporting: Contractor must provide a daily report that includes all invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include the following: (1) list of names of workers, classifications, and hours worked; (2) description and list of quantities of materials used; (3) type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; (4) description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights to payment for the work performed for that day.

d. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Contract or the Work, while City seeks estimates from third party contractors to perform additional services.

e. No claim for an increase in the Contract Amount or time for performance shall be valid unless the procedures established in this Section are followed.

18. RIGHTS, TITLE, INTEREST

Pursuant to California Public Contract Code Section 7103.5(b), in entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

19. DEFECTIVE WORK

City's inspection of the Work and the Project shall not relieve Contractor of any obligations to fulfill this Contract and complete the Project in accordance with the Contract Documents. Defective work and materials shall be made good. Failure of City to identify a defect, or failure of an inspector to reject any portion of the Work, is not acceptance or a waiver of poor workmanship notwithstanding payments or release of any retention in whole or in part, and shall not be construed to waive any of City's rights or remedies under this Contract.

20. TERMINATION

City may terminate this Contract in whole or in part for cause or convenience by giving ten (10) calendar days' written notice to Contractor. Where Contractor's services have been so terminated by City, said termination shall not affect any right or remedy of City against Contractor or the surety, then existing or accrued thereafter.

a. Termination for Cause

It is City's right to terminate this Contract upon Contractor's failure to comply with the provisions of this Contract, which includes, but not limited to, (1) Contractor's

refusal or failure to perform the Work required under this Contract with diligence to ensure substantial completion of the Project by the Completion Date. Termination shall be effective if Contractor does not cure its failure to perform in a manner acceptable to City within ten (10) calendar days of notice of termination; (2) Contractor fails to comply with the provisions of this Contract; (3) Contractor violates any ordinance, regulation, State or Federal Law which applies to its performance under this Contract; (4) Contractor files bankruptcy or otherwise becomes insolvent; (5) Contractor makes a general assignment for the benefit of creditors; (6) a trustee or receiver is appointed for the Contractor or his property; (7) Contractor repeatedly fails to supply sufficient skilled workers or suitable materials or equipment; (8) Contractor has abandoned the Work or the Project, and/or; (9) Contractor disregards proper directives of the architect, inspector, or Project Manager under the Contract Documents. It will be at City's sole discretion to allow Contractor to remedy each cause for the termination without waiving City's right to terminate this Contract or restricting any other right or remedy under this Contract or law.

In the event that this Contract is terminated for cause, City may take over the Work and may exclude Contractor from the Project site. In exercising the right to complete the Project, City, at its sole discretion, may pursue such completion in a manner that is cost effective, timely, and beneficial to City, including but not limited to demanding that the Surety take over and complete the Work. City may demand that the Surety not utilize Contractor in said performance of completing the Work. Upon failure of the Surety to begin completion of the Work, within fifteen (15) calendar days after demand thereof, City may take over the Work and pursue its completion.

Contractor and the Surety shall be liable for damages sustained by City from the termination of this Contract under this clause, including, without limitation all cost necessary for repair and completion of the work.

City shall have the right to withhold monies otherwise payable to Contractor until the Project is complete. If City incurs additional costs, expenses, or other damages due to the failure of Contractor to perform the Work pursuant to this Contract, said expenditures shall be deducted from the amounts withheld. Should there be a balance of monies held after all expenses have been paid, the balance will be paid to Contractor upon completion of the Project.

b. Termination for Convenience

City may terminate this Contract at any time for environmental considerations, its convenience, or when it is in the best interest of City.

Upon such termination, payment to Contractor shall be the actual cost of the Work completed, suitable storage and protection of materials and equipment delivered to the Project site, but not yet incorporated into the Work, and other costs actually incurred as permitted by this Contract and approved by City up to the effective date

of termination. Ten percent (10%) of the actual cost of Work completed shall be allowed for overhead and profit providing that such payments do not exceed the total Contract Amount. The amount of any payments made to Contractor prior to the effective termination date shall be deducted from the actual costs of completed Work. Contractor shall not be entitled to any claim or lien against City for any additional compensation or damages in the event of termination of this Contract.

c. Discontinuation of Work

Upon receipt of the termination notice, Contractor shall immediately discontinue the Work and placement of orders for materials, facilities and supplies in connection with the performance of this Contract, unless otherwise directed in the notice. Contractor shall promptly deliver to City all completed work, including plans, as-builts, forms, reports, and products. Any dispute regarding the amount owed to Contractor shall not diminish the right of City to receive and use such documents or materials.

21. DISPUTE RESOLUTION PROCESS

Section 20104 et seq. of the California Public Contract Code prescribes a process utilizing informal conferences, non-binding judicial-supervised mediation, and judicial arbitration to resolve disputes on construction claims of $375,000 or less. Section 9204 of the Public Contract Code prescribes a process for negotiation and mediation to resolve disputes on construction claims. The intent of this Section is to implement Sections 20104 et seq. and Section 9204 of the California Public Contract Code. This Section shall be construed to be consistent with said statutes.

For purposes of these procedures, "claim" means a separate demand by the Contractor, after the City has denied Contractor's timely and duly made request for payment for extra work and/or a time extension, for (A) a time extension, (B) payment of money or damages arising from work done by or on behalf of the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or the Contractor is not otherwise entitled to, or (C) an amount the payment of which is disputed by the City.

The following requirements apply to all claims to which this Section applies:

a. Claim Submittal. The claim shall be in writing and include the documents necessary to substantiate the claim. Claims governed by this procedure must be filed on or before the date of final payment. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided in the Contract for the filing of claims, including all requirements pertaining to compensation or payment for extra work, disputed work, and/or changed conditions. Failure to follow such contractual requirements shall bar any claims or subsequent lawsuits for compensation or payment thereon.

b. Supporting Documentation. The Contractor shall submit all claims in the following format:

i. Summary of the claim, including references to the specific Contract Document provisions upon which the claim is based.

ii. List of documents relating to claim: (a) Specifications, (b) Drawings, (c) Clarifications (Requests for Information), (d) Schedules, and (e) Other.

iii. Chronology of events and correspondence related to the claim.

iv. Statement of grounds for the claim.

v. Analysis of the claim's cost, if any.

vi. Analysis of the claim's time/schedule impact, if any.

c. City's Response. Upon receipt of a claim pursuant to this Section, City shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 days after the City issues its written statement.

i. If the City needs approval from the City Council to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the City Council does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City shall have up to three days following the next duly publicly noticed meeting of the City Council after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

ii. Within 30 days of receipt of a claim, the City may request in writing additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual Contract of City and the Contractor.

iii. The City's written response to the claim, as further documented, shall be submitted to the Contractor within 30 days (if the claim is less than $50,000, within 15 days) after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater.

d. Meet and Confer. If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within 15 days of receipt of the City's response or within 15 days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute.

Upon receipt of a demand, the City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

e. Mediation. Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City shall provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the City issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing, unless the parties agree to select a mediator at a later time.

i. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

ii. For purposes of this Section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this Section.

iii. Unless otherwise agreed to by the City and the contractor in writing, the mediation conducted pursuant to this Section shall excuse any further obligation under Public Contract Code Section 20104.4 to mediate after litigation has been commenced.

iv. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

f. City's Responses. The City's failure to respond to a claim from the Contractor within the time periods described in this Section or to otherwise meet the time requirements of this Section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this Section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility of qualifications of the Contractor. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

g. Government Code Claims. If following the mediation, the claim or any portion remains in dispute, the Contractor must comply with the claim procedures set forth

in Government Code Section 900 et seq. prior to filing any lawsuit against the City. Such Government Code claims and any subsequent lawsuit based upon the Government Code claims shall be limited to those matters that remain unresolved after all procedures pertaining to extra work, disputed work, construction claims, and/or changed conditions, including any required mediation, have been followed by Contractor. If no such Government Code claim is submitted, or if the prerequisite contractual requirements are not satisfied, no action against the City may be filed. A Government Code claim must be filed no earlier than the date that Contractor completes all contractual prerequisites to filing a Government Code claim, including any required mediation. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted. For purposes of Government Code Section 900 et seq., the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits his or her written claim to the City until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation that does not result in a complete resolutions of all claims.

h. Civil Actions for Claims of $375,000 or Less. The following procedures are established for all civil actions filed to resolve claims totaling $375,000 or less:

i. Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties or unless mediation was held prior to commencement of the action in accordance with Public Contract Code Section 9204 and the procedures in this Section. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, either party may petition the court to appoint the mediator.

ii. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

iii. Upon stipulation of the parties, arbitrators appointed for these purposes shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of

arbitration where the arbitrator, for good cause, determines a different division.

iv. In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

22. NOTICES

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Project Manager (with her/his name and City title), City of Perris, 101 N. D Street, Perris, CA 92570 and in the case of the Contractor, to the person(s) at the address designated on the execution page of this Contract. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

23. ATTORNEYS' FEES

In the event that any action or proceeding is brought by either party to enforce any term or provision of this Contract, the prevailing party shall recover its reasonable attorney's fees and costs incurred with respect thereto.

24. VENUE; CALIFORNIA LAW

Legal actions concerning any dispute, claim or matter arising out of or in relation to this Contract shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Contractor agrees to submit to the personal jurisdiction of such court in the event of such action. This Contract shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California.

25. WAIVER

Waiver by any party to this Contract of any term, condition, or covenant of this Contract shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Contract shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Contract. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Contract. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other

provision of this Contract.

26. RIGHTS AND REMEDIES ARE CUMULATIVE

Except with respect to rights and remedies expressly declared to be exclusive in this Contract, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

27. UNFAIR BUSINESS PRACTICES CLAIMS

Pursuant to Public Contract Code Section 7103.5, in entering into this Contract, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Contract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor without further acknowledgment by the Parties.

28. UNAUTHORIZED ALIENS

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Contract, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

29. ACCOUNTS, RECORDS, REPORTS, AND RELEASE OF INFORMATION

a. Records.

Contractor shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Contract and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City or any authorized representative and will be retained for three (3) years after the expiration of this Contract, unless permission to destroy them is granted by the City. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public

Records Act.

b. Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Contractor, its employees, subcontractors and agents in the performance of this Contract shall be the property of City and shall be delivered to City upon request of the Project Manager or upon the termination of this Contract, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

c. Reports.

Contractor shall periodically prepare and submit to the Project Manager such reports concerning the performance of the services required by this Contract as the Project Manager shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Contract. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein, Contractor shall promptly notify the Project Manager of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto.

d. Confidentiality and Release of Information.

i. Information gained or work product produced by Contractor in performance of this Contract shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Project Manager.

ii. Contractor, its officers, employees, agents or subcontractors, shall not,

without prior written authorization from the Project Manager or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Contract. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

iii. If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Contract, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys' fees, caused by or incurred as a result of Contractor's conduct.

iv. Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Contract and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

30. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No elected or appointed official, officer, agent or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Contract.

31. INTERPRETATION

The terms of this Contract shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Contract or any other rule of construction which might otherwise apply.

32. COUNTERPARTS

This Contract may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

33. INTEGRATION; AMENDMENT

This Contract including the attachments hereto is the entire, complete and exclusive

expression of the understanding of the parties. It is understood that there are no oral Contracts between the parties hereto affecting this Contract and this Contract supersedes and cancels any and all previous negotiations, arrangements, Contracts and understandings, if any, between the parties, and none shall be used to interpret this Contract. No amendment to or modification of this Contract shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

34. SEVERABILITY

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or Sections contained in this Contract shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or Sections of this Contract which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Contract meaningless.

35. CONFLICT OF INTEREST

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of work under this Contract. Contractor further covenants that in the performance of this Contract, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Project Manager. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Contract.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Contract nor shall any such officer or employee participate in any decision relating to the Contract which affects his or her financial interest or the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Contract.

36. WARRANTY & REPRESENTATION OF NON-COLLUSION

No elected or appointed official, officer, agent or employee of City has any financial interest, direct or indirect, in this Contract, nor shall any official, officer, or employee of City participate in any decision relating to this Contract which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent

with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City elected or appointed official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any Contract. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any Contract. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Contract void and of no force or effect.

37. AUTHORITY TO EXECUTE

The persons executing this Contract on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Contract on behalf of said party, (iii) by so executing this Contract, such party is formally bound to the provisions of this Contract, and (iv) the entering into this Contract does not violate any provision of any other Contract to which said party is bound.

**IN WITNESS WHEREOF**, the parties hereto have caused this Contract to be duly executed with all the formalities required by law on the respective dates set forth opposite their signatures.

[SIGNATURES ON FOLLOWING PAGE]

**CITY OF PERRIS,**
**a California municipal corporation**

**BY:** _____

**Clara Miramontes, City Manager**

**DATE:** 3/5/25

**ATTEST:**

_____

**Nancy Salazar, City Clerk**

**APPROVED AS TO FORM:**
**ALESHIRE & WYNDER, LLP**

_____

**Sunny K. Soltani, City Attorney**

**[SIGNATURES CONTINUE ON NEXT PAGE]**

## CONTRACTOR

| CONTRACTOR NAME: | CONTRACTOR'S ADDRESS: |
|---|---|
| Mesa Energy Systems, Inc., a California corporation doing business as EMCOR Services Mesa Energy | 2 Cromwell, Irvine, CA 92618 |
| STATE OF CALIFORNIA CONTRACTOR'S LICENSE NUMBER: | CONTRACTOR'S LICENSE EXPIRATION DATE: |
| 611215 | 1/31/25 |
| CONTRACTOR'S BUSINESS TELEPHONE NUMBER: | EMERGENCY TELEPHONE NUMBER: |
| 949-460-0460 | 949-460-0460 |
| BY: | BY: |
| NAME: Claire Maugham | NAME: RONALD DICKEY |
| TITLE: CFO | TITLE: PRESIDENT |
| DATE: 12/20/24 | DATE: 12.20.2024 |

***Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.**

[END SIGNATURES]

Bond No. 108197838 / K42018491

JOB NO.: 11-2024-23-035559-Solar Project, Solar Photovoltaic Project

**PERFORMANCE BOND**

We, Mesa Energy Systems, Inc., a California corporation doing business as EMCOR Services Mesa Energy, as Principal, and *_____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Perris ("City") for payment of the penal sum of **One Million One Hundred Five Thousand Eight Hundred Ninety-Five Dollars and Zero Cents ($1,105,895.00)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal.

* Travelers Casualty and Surety Company of America & Federal Insurance Company

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Principal shall in all things stand to and abide by, and well and truly keep and perform all of the covenants, conditions, and provisions in said agreement, and any alteration thereof made as therein provided, on Principal's part to be kept and performed at the time and in the manner therein specified, and shall indemnify and save harmless the City, City's engineer, and their consultants, and each of their officials, directors, officers, employees and agents, as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety agrees that should it fail to take over and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement, Surety will promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall exist, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement, and payment by Surety should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligations herein and shall be deemed proper payment as between Principal and Surety.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder or the plans and specifications, or any matters unknown to Surety which may affect Surety's risk shall in any wise affect its obligation on this bond, and it does thereby waive notice thereof.

Principal and Surety agree that if the City is required to engage the services of an attorney in connection with the enforcement of this bond, each shall pay City's reasonable attorneys' fees incurred, with or without suit, in addition to the above sum.

Executed this 6th day of February, 2025.

Seal of Corporation

Ken Rieley

Mesa Energy Systems, Inc., dba EMCOR Services Mesa Energy
2 Cromwell, Irvine, CA 92618

By: _____
Authorized Representative of Principal

Title: Ronald Hickey, President

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)**

Any claims under this bond may be addressed to: (check one)

**Surety's agent for service of process in California:**

Alliant Insurance Services, Inc.
Charlene K. Nakamura
Name
333 S. Hope Street, Suite 3750
Street Number
Los Angeles, CA 90071
City and State
213-443-2467
Telephone Number

Travelers Casualty and Surety Company of America &
(X) Federal Insurance Company
[name of surety company]

One Tower Square (TR) & 202B Hall's Mill Road (FE)
Street Number
Hartford, CT 06183 (TR) & Whitehouse Station, NJ 08889 (FE)
City and State
732-321-5615 (TR), 908-666-7312 (FE)
Telephone Number

By: _____
Attorney in Fact or other
Representative Camille Maitland, Attorney-In-Fact

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

Furnish the name, address and phone number of the company agent as well as the surety company.

Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.

Bond No. 108197838 / K42018491

JOB NO.: 11-2024-23-035559-Solar Project, Solar Photovoltaic Project

# PAYMENT BOND

We, Mesa Energy Systems, Inc., a California corporation doing business as EMCOR Services Mesa Energy, as Principal, and * _____, as Surety, jointly and severally, firmly bind ourselves, our heirs, representatives, successors and assigns, as set forth herein, to the City of Perris ("City") and those for whose benefit this bond insures in the sum of **One Million One Hundred Five Thousand Eight Hundred Ninety-Five Dollars and Zero Cents ($1,105,895.00)**. City and Principal have entered into an agreement, or are about to enter into the agreement attached hereto and incorporated by reference herein, for completion of public works for the property(ies) referenced in said agreement. Surety herein approves of the terms and conditions of said agreement and binds itself to faithfully perform the obligations of Principal therein if Principal fails to so perform. Surety acknowledges that the agreement herein referenced shall be that document as executed by City and Principal. If Principal or any of Principal's contractors or subcontractors, fails to pay any of the persons named in Section 9000 *et seq.* of the California Civil Code employed in the performance of the agreement for materials furnished or for labor thereon of any kind, or for amounts due under the Unemployment Insurance Code with respect to such work or labor, then Surety shall pay the same in an amount not exceeding the sum specified above, and also shall pay, in case suit is brought upon this bond, such reasonable attorneys' fees as shall be fixed by the court.

* Travelers Casualty and Surety Company of America & Federal Insurance Company

Surety agrees that it shall pay the amounts due the persons above named and diligently perform the agreement upon Principal's default after notice and within the time specified in the agreement. If Surety fails to perform within the times specified in the agreement, Surety shall promptly on demand deposit with City such amount as City may reasonably estimate as the cost of completing all of Principal's obligations. Surety's obligation for payment herein shall extend, notwithstanding any controversy between Principal and City regarding Principal's failure under the agreement. Principal and Surety agree that any payment by Surety pursuant to this paragraph should be conclusively presumed between the parties herein to relieve, as demanded, Surety's obligation herein and shall be deemed proper payment as between Principal and Surety.

This bond shall insure to the benefit of any and all of the persons named in Section 9000 *et seq.* of the California Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Surety agrees that no change, extension of time, alteration, or addition to the terms of the agreement, or the work to be performed thereunder, or the plans and specifications, or any matters unknown to Surety which might affect Surety's risk, shall in any way affect its obligation on this bond, and it does hereby waive notice thereof.

Principal and Surety agree that should City become a party to any action on this bond, that each will also pay City's reasonable attorneys' fees incurred therein in addition to the above sums.

Executed this 6th day of February, 2025. Sr. Director of Solar

Seal of Corporation

Mesa Energy Systems, Inc., dba EMCOR Services Mesa Energy
2 Cromwell, Irvine, CA 92618

By: _____
Authorized Representative of Principal

Title: Ronald Hickey, President

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVES)**

**Any claims under this bond may be addressed to: (check one)**

**Surety's agent for service of process in California:**

Alliant Insurance Services, Inc.
Charlene K. Nakamura
**Name**

333 S. Hope Street, Suite 3750
**Street Number**

Los Angeles, CA 90071
**City and State**

213-443-2467
**Telephone Number**

(X) Travelers Casualty and Surety Company of America & Federal Insurance Company
**[name of surety]**

One Tower Square (TR) & 202B Hall's Mill Road (FE)
**Street Number**

Hartford, CT 06183 (TR) & Whitehouse Station, NJ 08889 (FE)
**City and State**

732-321-5615 (TR), 908-666-7312 (FE)
**Telephone Number**

By: _____
Attorney in Fact or other Representative Camille Maitland, Attorney-In-Fact

**(ATTACH ACKNOWLEDGEMENT OF AUTHORIZED REPRESENTATIVE)**

**Furnish the name, address and phone number of the company agent as well as the surety company.**

**Sureties must be authorized to do business in and have an agent for service of process in California and be on the accredited list of the United States Treasury Department (their bonds will be limited to such amounts as would be acceptable to the Treasury Department), and otherwise meet the requirements of the agreement.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT Civil Code § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )
) ss
County of ORANGE )

On February 7, 2025, before me, Lauren Ashlee Barbarino, Notary Public, personally appeared Ronald Hickey, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

LAUREN ASHLEE BARBARINO
Notary Public - California
Orange County
Commission # 2439173
My Comm. Expires Feb 25, 2027

Signature: _____, Notary Public

(Seal)

TRAVELERS

**Travelers Casualty and Surety Company of America**
**Travelers Casualty and Surety Company**
**St. Paul Fire and Marine Insurance Company**

## POWER OF ATTORNEY

Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and the Companies do hereby make, constitute and appoint **Camille Maitland** of **UNIONDALE**, **New York**, their true and lawful Attorney(s)-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**IN WITNESS WHEREOF**, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **16th** day of **February, 2024.**

SEAL SEAL SEAL

State of Connecticut

By: _____
Bryce Grissom, Senior Vice President

City of Hartford ss.

On this the **16th** day of **February, 2024**, before me personally appeared **Bryce Grissom**, who acknowledged himself to be the Senior Vice President of each of the Companies, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of said Companies by himself as a duly authorized officer.

**IN WITNESS WHEREOF**, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2026**

NOTARY PUBLIC CONNECTICUT

_____
Anna P. Nowik, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of each of the Companies, which resolutions are now in full force and effect, reading as follows:

**RESOLVED,** that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

**FURTHER RESOLVED,** that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

**FURTHER RESOLVED,** that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

**FURTHER RESOLVED,** that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of each of the Companies, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 6th day of February, 2025.

SEAL SEAL SEAL

_____
Kevin E. Hughes, Assistant Secretary

***To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.***
***Please refer to the above-named Attorney(s)-in-Fact and the details of the bond to which this Power of Attorney is attached.***

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK }

COUNTY OF NASSAU }

On this FEB 0 6 2025, before me personally came Camille Maitland to me known, who, being by me duly sworn, did depose and say; that he/she resides in Nassau County, State of New York that he/she is the Attorney-In-Fact of the Travelers Casualty and Surety Company of America the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has pursuant to Section 1111 of the Insurance Law of the State of New York, issued to Travelers Casualty and Surety Company of America (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

Notary Public

NY acknowledgement

Amy Tarazona
Notary Public-State of New York
No. 01TA0013151
Qualified in Nassau County
Commission Expires 09/06/2027

TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA

HARTFORD, CONNECTICUT 06183

FINANCIAL STATEMENT AS OF DECEMBER 31, 2023

CAPITAL STOCK $ 6,480,000

| ASSETS | | LIABILITIES & SURPLUS | |
|---|---|---|---|
| BONDS | $ 5,104,395,801 | LOSSES | $ 1,496,036,900 |
| STOCKS | 119,333,643 | LOSS ADJUSTMENT EXPENSES | 146,791,770 |
| CASH AND INVESTED CASH | 30,541,808 | COMMISSIONS | 55,734,579 |
| OTHER INVESTED ASSETS | 8,355,939 | OTHER EXPENSES | 55,546,499 |
| SECURITIES LENDING REINVESTED COLLATERAL ASSETS | 13,350,613 | TAXES, LICENSES AND FEES | 15,857,431 |
| INVESTMENT INCOME DUE AND ACCRUED | 43,617,243 | CURRENT FEDERAL AND FOREIGN INCOME TAXES | 5,300,838 |
| PREMIUM BALANCES | 325,304,977 | UNEARNED PREMIUMS | 1,515,112,686 |
| REINSURANCE RECOVERABLE | 27,997,684 | ADVANCE PREMIUM | 4,091,249 |
| NET DEFERRED TAX ASSET | 72,421,341 | POLICYHOLDER DIVIDENDS | 21,388,522 |
| GUARANTY FUNDS RECEIVABLE OR ON DEPOSIT | 1,798,901 | CEDED REINSURANCE NET PREMIUMS PAYABLE | 62,914,516 |
| OTHER ASSETS | 618,309 | AMOUNTS WITHHELD / RETAINED BY COMPANY FOR OTHERS | 21,072,858 |
| | | REMITTANCES AND ITEMS NOT ALLOCATED | 7,201,721 |
| | | PROVISION FOR REINSURANCE | 9,891,783 |
| | | PAYABLE FOR SECURITIES LENDING | 13,350,613 |
| | | OTHER ACCRUED EXPENSES AND LIABILITIES | 409,380 |
| | | TOTAL LIABILITIES | $ 3,429,701,342 |
| | | CAPITAL STOCK | $ 6,480,000 |
| | | PAID IN SURPLUS | 433,803,780 |
| | | OTHER SURPLUS | 1,877,950,956 |
| | | TOTAL SURPLUS TO POLICYHOLDERS | $ 2,318,234,716 |
| TOTAL ASSETS | $ 5,747,936,058 | TOTAL LIABILITIES & SURPLUS | $ 5,747,936,058 |

STATE OF CONNECTICUT )

COUNTY OF HARTFORD ) SS.

CITY OF HARTFORD )

MICHAEL J. DOODY, BEING DULY SWORN, SAYS THAT HE IS VICE PRESIDENT – FINANCE, OF TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA, AND THAT TO THE BEST OF HIS KNOWLEDGE AND BELIEF, THE FOREGOING IS A TRUE AND CORRECT STATEMENT OF THE FINANCIAL CONDITION OF SAID COMPANY AS OF THE 31ST DAY OF DECEMBER, 2023.

Michael J. Doody
VICE PRESIDENT – FINANCE

NOTARY PUBLIC

SUSAN M. WEISSLEDER
*Notary Public*
*My Commission Expires November 30, 2027*

SUBSCRIBED AND SWORN TO BEFORE ME THIS
15TH DAY OF MARCH, 2024

CHUBB

# Power of Attorney

## Federal Insurance Company | Vigilant Insurance Company | Pacific Indemnity Company
## Westchester Fire Insurance Company | ACE American Insurance Company

**Know All by These Presents**, that **FEDERAL INSURANCE COMPANY**, an Indiana corporation, **VIGILANT INSURANCE COMPANY**, a New York corporation, **PACIFIC INDEMNITY COMPANY**, a Wisconsin corporation, **WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** corporations of the Commonwealth of Pennsylvania, do each hereby constitute and appoint Katherine Acosta, Thomas Bean, George O. Brewster, Desiree Cardlin, Colette R. Chisholm, Dana Granice, Susan Lupski, Gerard S. Macholz, Camille Maitland, Robert T. Pearson, Karolynne Ramirez, Nelly Renchiwich, Vincent A. Walsh and Michelle Wannamaker of Uniondale, New York ----------

each as their true and lawful Attorney-in-Fact to execute under such designation in their names and to affix their corporate seals to and deliver for and on their behalf as surety thereon or otherwise, bonds and undertakings and other writings obligatory in the nature thereof (other than bail bonds) given or executed in the course of business, and any instruments amending or altering the same, and consents to the modification or alteration of any instrument referred to in said bonds or obligations.

**In Witness Whereof**, said **FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY** and **ACE AMERICAN INSURANCE COMPANY** have each executed and attested these presents and affixed their corporate seals on this 5th day of **April, 2024**.

Rupert HD Swindells, Assistant Secretary

Warren Eichhorn, Vice President

STATE OF NEW JERSEY
County of Hunterdon ss.

On this 5th day of **April, 2024** before me, a Notary Public of New Jersey, personally came Rupert HD Swindells and Warren Eichhorn, to me known to be Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY, the companies which executed the foregoing Power of Attorney, and the said Rupert HD Swindells and Warren Eichhorn, being by me duly sworn, severally and each for himself did depose and say that they are Assistant Secretary and Vice President, respectively, of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY and know the corporate seals thereof, that the seals affixed to the foregoing Power of Attorney are such corporate seals and were thereto affixed by authority of said Companies; and that their signatures as such officers were duly affixed and subscribed by like authority.

Notarial Seal

Albert Contursi
NOTARY PUBLIC OF NEW JERSEY
No 50202369
Commission Expires August 22,2027

Notary Public

## CERTIFICATION

Resolutions adopted by the Boards of Directors of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, and PACIFIC INDEMNITY COMPANY on August 30, 2016; WESTCHESTER FIRE INSURANCE COMPANY on December 11, 2006; and ACE AMERICAN INSURANCE COMPANY on March 20, 2009:

"RESOLVED, that the following authorizations relate to the execution, for and on behalf of the Company, of bonds, undertakings, recognizances, contracts and other written commitments of the Company entered into in the ordinary course of business (each a "Written Commitment"):

(1) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise.

(2) Each duly appointed attorney-in-fact of the Company is hereby authorized to execute any Written Commitment for and on behalf of the Company, under the seal of the Company or otherwise, to the extent that such action is authorized by the grant of powers provided for in such person's written appointment as such attorney-in-fact.

(3) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to appoint in writing any person the attorney-in-fact of the Company with full power and authority to execute, for and on behalf of the Company, under the seal of the Company or otherwise, such Written Commitments of the Company as may be specified in such written appointment, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(4) Each of the Chairman, the President and the Vice Presidents of the Company is hereby authorized, for and on behalf of the Company, to delegate in writing to any other officer of the Company the authority to execute, for and on behalf of the Company, under the Company's seal or otherwise, such Written Commitments of the Company as are specified in such written delegation, which specification may be by general type or class of Written Commitments or by specification of one or more particular Written Commitments.

(5) The signature of any officer or other person executing any Written Commitment or appointment or delegation pursuant to this Resolution, and the seal of the Company, may be affixed by facsimile on such Written Commitment or written appointment or delegation.

FURTHER RESOLVED, that the foregoing Resolution shall not be deemed to be an exclusive statement of the powers and authority of officers, employees and other persons to act for and on behalf of the Company, and such Resolution shall not limit or otherwise affect the exercise of any such power or authority otherwise validly granted or vested."

I, Rupert HD Swindells, Assistant Secretary of FEDERAL INSURANCE COMPANY, VIGILANT INSURANCE COMPANY, PACIFIC INDEMNITY COMPANY, WESTCHESTER FIRE INSURANCE COMPANY and ACE AMERICAN INSURANCE COMPANY (the "Companies") do hereby certify that

(i) the foregoing Resolutions adopted by the Board of Directors of the Companies are true, correct and in full force and effect,
(ii) the foregoing Power of Attorney is true, correct and in full force and effect.

Given under my hand and seals of said Companies at Whitehouse Station, NJ, this 6th day of February, 2025.

Rupert HD Swindells, Assistant Secretary

IN THE EVENT YOU WISH TO VERIFY THE AUTHENTICITY OF THIS BOND OR NOTIFY US OF ANY OTHER MATTER, PLEASE CONTACT US AT:
Telephone (908) 903-3493 Fax (908) 903-3656 e-mail: surety@chubb.com

ACKNOWLEDGMENT OF SURETY COMPANY

STATE OF NEW YORK }

COUNTY OF NASSAU }

On this FEB 0 6 2025, before me personally came Camille Maitland to me known, who, being by me duly sworn, did depose and say; that he/she resides in Nassau County, State of New York that he/she is the Attorney-In-Fact of the Federal Insurance Company the corporation described in which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that is was so affixed by the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order; and the affiant did further depose and say that the Superintendent of Insurance of the State of New York, has pursuant to Section 1111 of the Insurance Law of the State of New York, issued to Federal Insurance Company (Surety) his/her certificate of qualification evidencing the qualification of said Company and its sufficiency under any law of the State of New York as surety and guarantor, and the propriety of accepting and approving it as such; and that such certificate has not been revoked.

Notary Public

Amy Tarazona
Notary Public-State of New York
No. 01TA0013151
Qualified In Nassau County
Commission Expires 09/06/2027

NY acknowledgement

## FEDERAL INSURANCE COMPANY

### STATEMENT OF ASSETS, LIABILITIES AND SURPLUS TO POLICYHOLDERS

**Statutory Basis**

**December 31, 2023**

**(In thousands)**

| *ASSETS* | | *LIABILITIES AND SURPLUS TO POLICYHOLDERS* | |
|---|---|---|---|
| Cash, Cash Equivalents, and ST Investments | $ 258,260 | Outstanding Losses and Loss Expenses | $ 9,827,827 |
| United States Government, State and Municipal Bonds | 3,248,130 | Reinsurance Payable on Losses and Expenses | 1,716,382 |
| Other Bonds | 7,765,958 | Unearned Premiums | 2,898,835 |
| Stocks | 283,737 | Ceded Reinsurance Premiums Payable | 344,849 |
| Other Invested Assets | 1,763,284 | Other Liabilities | 516,090 |
| TOTAL INVESTMENTS | 13,319,369 | TOTAL LIABILITIES | 15,304,663 |
| Investments in Affiliates: | | Capital Stock | 20,000 |
| Great Northern Ins. Co | 433,797 | Paid-In Surplus | 2,711,474 |
| Vigilant Ins. Co. | 360,848 | Unassigned Funds | 2,079,218 |
| Chubb Indemnity Ins. Co. | 166,514 | SURPLUS TO POLICYHOLDERS | 4,811,672 |
| Chubb National Ins. Co. | 189,440 | | |
| Other Affiliates | 117,568 | | |
| Premiums Receivable | 2,262,901 | | |
| Other Assets | 3,215,928 | | |
| TOTAL ADMITTED ASSETS | $ 20,116,355 | TOTAL LIABILITIES AND SURPLUS | $ 20,116,355 |

Investments are valued in accordance with requirements of the National Association of Insurance Commissioners. At December 31, 2023, investments with a carrying value of $565,024,973 were deposited with government authorities as required by law.

STATE OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

John Taylor, being duly sworn, says that he is Senior Vice President of Federal Insurance Company and that to the best of his knowledge and belief the foregoing is a true and correct statement of the said Company's financial condition as of the 31 st day of December, 2023

Sworn before me this December 11, 2024

Senior Vice President

Notary Public

My commission expires August 8, 2027

Commonwealth of Pennsylvania - Notary Seal
Diane Wright, Notary Public
Philadelphia County
My commission expires August 8, 2027
Commission number 1235745
Member, Pennsylvania Association of Notaries

**CALIFORNIA ACKNOWLEDGMENT** **CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of ORANGE }

On JANUARY 7, 2025 before me, LAUREN Ashlee Barbarino, Notary Public
*Date* *Here Insert Name and Title of the Officer*

personally appeared Claire Maugham + Ronald Hickey
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LAUREN ASHLEE BARBARINO
Notary Public - California
Orange County
Commission # 2439173
My Comm. Expires Feb 25, 2027

*Place Notary Seal and/or Stamp Above*

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
*Signature of Notary Public*

**OPTIONAL**

*Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: _____ | Signer's Name: _____ |
| ☐ Corporate Officer – Title(s): _____ | ☐ Corporate Officer – Title(s): _____ |
| ☐ Partner – ☐ Limited ☐ General | ☐ Partner – ☐ Limited ☐ General |
| ☐ Individual ☐ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: _____ | ☐ Other: _____ |
| Signer is Representing: _____ | Signer is Representing: _____ |

# Subcontract Addendum

City of Perris ("City") and Mesa Energy Systems, Inc. ("Subcontractor") hereby agree that this Subcontract Addendum is incorporated into the parties' Public Works Construction Contract, dated December 2, 2024, (the "Agreement"), and shall form a part thereof, whether referenced in the agreement or not.

1. With specific regard to section 1.a.ii., the section shall be amended to read: "the bid prices and scope contained in the Contractor's Proposal #23-035559 Dated 10/18/2024."

2. With specific regard to section 1.b., the section shall be amended to read: "Warranty. Contractor warrants all work under the Contract to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Contract, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors under control of Contractor) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Contract. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City, during Contractor's workmanship period. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Contract, to the reasonable satisfaction of the City, after written notice and upon expiration of fifteen (15) day cure period, the City shall have the right to correct and replace any defective or non- conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand."

3. With specific regard to section 2, the "Contract Documents" shall be limited to: "i. The scope of work set forth in Contractor's Proposal #23-035559 Dated 10/18/2024; ii. Project Plans (defined as cutsheets and interconnect diagrams); iii. Performance and Payment Bonds; iv. All change order authorized after execution of this Contract."

4. With specific regard to section 3.b., the section shall be amended to read: "The time period(s) specified in the Contract Documents for performance of the Work rendered pursuant to this Contract shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Project Manager in writing of the causes of the delay. The Project Manager shall ascertain the facts and the extent of delay, and extend the time for performing the Work for the period of the enforced delay when and if in the judgment of the Project Manager such delay is justified. Contractor shall be entitled to seek relief as set forth herein if the scope, schedule, and/or sequence of work change after execution of the Agreement. Contractor shall be entitled to assert a claim for additional compensation and/or time arising from delays/disruptions, acceleration, and productivity that are due to City's actions or directions, except to the proportionate extent caused by Contractor's negligent acts or breach of the Agreement."

5. With specific regard to section 4.a.vii.15., the section shall be amended to read: "Self-Insured Retentions. Any self-insured retentions must be declared to and approved by City." EMCOR's Professional Liability and Pollution Liability both have an SIR of $500,000 each claim. EMCOR is a publicly traded company with revenue of over $12B per year and has never had an issue meeting their SIR or Deductible obligations to their insurers.

6. With specific regard to section 20.b., the allowable mark up for overhead and profit shall be fifteen percent (15%) of the actual cost of Work completed.

[SIGNATURE PAGE FOLLOWS]

| CITY | | SUBCONTRACTOR | |
|---|---|---|---|
| By: | | By: | |
| Its: | | Its: | CFO |
| Print Name: | Clara Miramontes, City Manager | Print Name: | Claire Maughan |
| Date: | 3/5/2025 | Date: | 2/18/25 |