



**City of St. Helena
Regular City Council Meeting
Tuesday, November 24, 2020 @ 6:00 PM**

In accordance with Executive Order N-29-20, and guidance from the California Department of Public Health on gatherings, remote public participation is allowed. We will address the Order in the following ways: Members of the public may not physically attend meetings. The City Council meeting will be live-streamed on Comcast Channel 28 and on the City's website, barring technical difficulties. Those members of the public wishing to participate must do so remotely via Zoom electronic meetings in the following ways; by either logging onto the Zoom link located on the meeting agenda (please download the app to your computer or mobile device) and enter the meeting ID or by calling a listed number and enter the meeting ID. Public comment for City Council meetings will be accepted via email to publiccomment@cityofstheleena.org. All public comments must be emailed by 4:00 PM prior to the meeting. Emailed public comments will not be read out loud but will be publicly available and attached to the on-line City Council agenda.

Please see the end of the agenda for detailed PUBLIC PARTICIPATION instructions. Spanish translation for this meeting will be offered. To access Spanish translation, you will need to join the meeting using the Zoom app from a computer, iPad or Iphone. You will see an icon on the screen that will allow you to choose Spanish translation. To learn how to use Zoom, please see the instructions below.

Please click the link below to join the meeting: <https://us02web.zoom.us/j/88227539703>

Or iPhone one-tap: US: +16699006833,,82899935720# or +12532158782,,82899935720#
Or Telephone: Dial(for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or +1 929 205 6099 or +1 301 715 8592

Meeting ID: 882 2753 9703

International numbers available: <https://us02web.zoom.us/j/kcUr5kW1Lu>

PLEASE NOTE: Any person who wishes to speak regarding an item on the agenda or make a comment under the "public comment" portion of the agenda may do so, but please observe the time limit of four minutes.

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Ciudad de Santa Helena Reunión Especial del Ayuntamiento Jueves, 10 de November 2020  
@ 6:00 PM

De acuerdo con las órdenes ejecutivas N-25-20, N-29-20, y la orientación del Departamento de Salud Pública de California sobre reuniones, se permite la participación pública virtual. Seguiremos la Orden de la siguiente manera: Los miembros del público no pueden asistir

físicamente a las reuniones. La reunión del Ayuntamiento de la Ciudad se transmitirá en vivo por el Canal 28 de Comcast y en el sitio web de la Ciudad, salvo dificultades técnicas. Aquellos miembros del público que deseen participar deben hacerlo de forma virtual a través de las reuniones electrónicas de Zoom de las siguientes maneras; iniciando sesión en el enlace Zoom ubicado en la agenda de la reunión (descargue la aplicación en su computadora o dispositivo móvil) e ingrese la ID de la reunión o llamando al número ubicado en la agenda e ingrese la ID de la reunión. Se aceptarán comentarios públicos para la reunión del Ayuntamiento por correo electrónico a [publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org). Todos los comentarios públicos se harán públicos y se adjuntarán a la agenda y no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la

**agenda al díasiguiente.**

Consulte el final de la agenda para obtener instrucciones detalladas de PARTICIPACIÓN PÚBLICA. Se ofrecerá traducción al español para esta reunión. Para acceder a la traducción al español, deberá unirse a la reunión utilizando la aplicación Zoom desde una computadora, iPad o Iphone. Verá un icono en la pantalla que le permitirá elegir la traducción al español. Para aprender a utilizar Zoom, consulte las instrucciones a continuación.

Habrà traducción en español durante la junta

Haga clic en el enlace a continuación para participar en la reunión:

<https://us02web.zoom.us/j/88227539703>

O por iPhone one-tap: US: +16699006833,,89590375822# or +12532158782,,89590375822#

O por Teléfono: Marque(para mejor calidad, marque número basado en su ubicación actual):

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 929 205 6099 or +1 301 715 8592 or +1 312 626 6799

ID de la Reunión: ID: 882 2753 9703

Números Internacionales

Disponibles:

<https://us02web.zoom.us/j/kcUr5kW1Lu>

TENGA EN CUENTA: Cualquier persona que desee hablar sobre un tema en la agenda o hacer un comentario en la sección de "comentario público" de la agenda puede hacerlo, pero por favor observe el límite de tiempo de cuarto minutos.

Page

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

Mayor: Geoff Ellsworth, Vice Mayor: Paul Dohring, City Council Members: Anna Chouteau, David Knudsen and Mary Koberstein

4. PUBLIC FORUM:

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Forum. Each person's comments shall be limited to 4 minutes. Each person is entitled to speak on any non-agendized item only once at any meeting. Brief questions by Council Members for clarifications may be posed and answered, and Council Members may make requests that items be placed on future agendas, but in accordance with state law, no substantive discussion or action may take place unless and until the matter properly appears on the agenda.

4.1. [Public Comment.Chris Benz](#)

17

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, AND AB 1234 REPORTS:  
Reports by staff and/or Council Members on items of general interest. Brief questions for clarification may be posed and answered, and Council Members may request that items be placed on a future agenda. Except under certain circumstances, the Brown Act prohibits any other discussion or action by the City Council.
6. PRESENTATIONS AND PUBLIC RECOGNITIONS
  - 6.1. None
7. STAFF BRIEFING
  - 7.1. Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer
  - 7.2. Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer
  - 7.3. City Manager COVID-19 update
8. CONSENT ITEMS  
Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)
  - 8.1. Consideration and proposed approval of Regular Meeting Minutes of November 10, 2020 (Provided prior to the meeting) 19 - 23  
  
CEQA Determination: Not a CEQA project  
Prepared By: Cindy Tzafoopoulos, City Clerk  
Recommendation:  
Approve  
[11-10-20 Regular City Council - Minutes](#)
  - 8.2. Consideration and proposed adoption of a Resolution accepting the work and final CIP Project C19-02 Rehabilitate Crane Park Tennis Courts construction costs of \$227,130 and directing the filing of the Notice of Completion 25 - 32  
  
CEQA Determination: Class I Categorical Exemption under Section 15301 of CEQA  
Prepared By: Edrees Argand, Assistant Engineer  
Recommendation:  
Adopt the attached Resolution accepting the work and final project construction costs of \$227,130 and directing the filing of the Notice of Completion for CIP Project C19-02 Rehabilitate Crane Park Tennis Courts.  
[Staff Report - Pdf](#)
  - 8.3. Consideration and proposed adoption of a Resolution accepting the work and final CIP Project No. R21-03 2020 LNU Emergency Fire Clearing construction costs of \$51,024.63 and directing the filing of the 33 - 40

## Notice of Completion

CEQA Determination: This work will be conducted under a Statutory Exemption identified under Sections(s) 15269, 15282 and 15284 of the California Environmental Quality Act

Prepared By: Edrees Argand, Assistant Engineer

Recommendation:

Adopt the attached Resolution accepting the work and final project construction costs of \$51,024.63 and directing the filing of the Notice of Completion for CIP Project R21-03 2020 Emergency Fire Clearing.

[Staff Report - Pdf](#)

- 8.4. Consideration and proposed adoption of a resolution authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees. 41 - 70

CEQA Determination: CEQA will be completed as part of project design

Prepared By: Edrees Argand, Assistant Engineer

Recommendation:

Staff recommends City Council adopt a Resolution authorizing the City Manager execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

[Staff Report - Pdf](#)

- 8.5. Consider approval and grant of authorization to City Manager to enter into agreements for the acceptance of trail easements with Treasury Wine Estates Americas Company and C. Mondavi & Family in furtherance of the Napa Valley Vine Trail project. 71 - 112

CEQA Determination: Acceptance of the easements is simply a step the implementation of the Vine Trail project, for which the Napa Valley Transportation Authority (NVTa) is the lead agency for purposes of CEQA. NVTa approved a Final Mitigated Negative Declaration (SCH 2020060572) and adopted a Mitigation Monitoring and Reporting Program for the portion of the Vine Trail project extending from St. Helena to Calistoga on August 19, 2020. Any environmental impacts of this portion of the Vine Trail project were addressed in the MND adopted by NVTa.

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Adopt the Resolution approving an Amendment to and Ratification of



Agreement Granting Bicycle Pathway Easement between the City and Treasury Wine Estates Americas Company and adopt the Resolution approving a Trail Easement Agreement between C. Mondavi & Family and the City.

[Staff Report - Pdf](#)

- 8.6. Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract amount. 113 - 213

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Approval of a resolution resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract amount.

[Staff Report - Pdf](#)

- 8.7. Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following Construction Contracts: (a) up to \$138,155.82 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency Fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$238,155.82, (b) up to \$46,253.32 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$146,253.32. 215 - 393

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: Martin Beltran, Management Analyst

Recommendation:

Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following

Construction Contracts: (a) up to \$138,155.82 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$238,155.82, (b) up to \$46,253.32 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency Fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$146,253.32.

[Staff Report - Pdf](#)

- 8.8. Consideration and proposed adoption of a Resolution approving an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C20-06 Emergency Back-up Power an amount not-to-exceed \$314,544.97. (~~Staff report forthcoming~~. Provided 11-22-20) 395 - 456

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Adopt the Resolution approving an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$314,544.97.

[Staff Report - Pdf](#)

9. PUBLIC HEARINGS

9.1. None

10. OLD BUSINESS

10.1. None

11. NEW BUSINESS

- 11.1. Consideration and approval of a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City. 457 - 469

CEQA Determination: Exempt

Prepared By: April Mitts, Finance Director

Recommendation:

Staff recommends City Council adopt a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

[Staff Report - Pdf](#)

12. ITEMS LIKELY TO BE PLACED ON THE NEXT OR FUTURE MEETING AGENDA:

- 12.1. 

|                                                                                |
|--------------------------------------------------------------------------------|
| <b><u>December City Council Meetings:</u></b><br><b>12/3 6pm Diversity Mtg</b> |
|--------------------------------------------------------------------------------|

**12/76pm After action report townhall**  
**12/8 (Staff reports due 11/20)**  
**12/22 Cancelled**  
**TBD Governance Mtg**  
**TBD Goal Setting (January or February)**

**STAFF BRIEFING:**

11/24 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer

11/24 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer

12/8 Monthly Water Update

12/8 & 12/22-cancelled City Manager COVID-19 update

**CONSENT:**

12/8 Consideration and proposed approval of a resolution duly approving and adopting publicly available pay schedules in accordance with the requirement of California Code of Regulations, Title 2, Section 570.5 which includes revised salary schedule for all part-time Casual Worker classification

12/8 NVTa Amendment 12

1/12 Surplus property policy

12/8 NOC of Upper York Creek

Glass fire termination of emergency

12/8 Approve resolution supporting merger of PARSAC and REMIF into one JPA called CIRA (California Intergovernmental Risk Agency)

12/8 Certify the November 3, 2020 and City Council transition

12/8 PSPS Grant purchase of generators

12/8 Amendment to Oscar Larson Contract

**PH or OLD / NEW BUSINESS:**

12/8 Hunt Avenue Check in

**PH** 12/8 - CDBG Grant discussion-planning technical assistance

**PH** 12/8- CDBG Grant request from OTSH

OB 12/8 Water Emergency Phase II Discussion

OB 12/8 – Elm Tunnel Tree Assessment

12/8 Vice Mayor selection

12/8 2021 City Council assignments to various City and Napa County Committees, Boards and Commissions

**January City Council Meetings:**

**1/12 (Staff reports due 12/23)**

**1/26 (Staff reports due 1/8)**

**Presentation**

**STAFF BRIEFING:**

1/12 & 1/26 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer

1/12 & 1/26 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer

|                                                                   |
|-------------------------------------------------------------------|
| 1/12 Monthly Water Update                                         |
| 1/12 & 1/26 City Manager COVID-19 update                          |
| <b>CONSENT:</b>                                                   |
| Fire Department - Approving Sale of Surplus Apparatus (Rescue-17) |
| Glass fire termination of emergency                               |
| 1/12 Employee handbook                                            |
| <b>PH or OLD / NEW BUSINESS:</b>                                  |
| 1/12 Appoint Water Advisory Board Members                         |

13. ADJOURNMENT

The next Regular City Council meeting is scheduled for December 8, 2020, at 6:00 p.m.

I do hereby certify that a copy of the foregoing agenda was posted on the City website on November 19, 2020



Cindy Tzaferopoulos, City Clerk

In Compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please call the City Clerk's Office (707) 967-2792. Notification 72 hours prior to the meeting as required by Section 202 of the Americans with Disabilities Act will enable the City to make reasonable arrangements to ensure accessibility to this meeting

CHALLENGING DECISIONS OF CITY ENTITIES

The time limit within which to commence any lawsuit or legal challenge to any quasi-adjudicative decision made by the City of St. Helena is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-adjudicative decision made by the City must be filed no later than the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing.

If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of St. Helena, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

## SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this Agenda, after the posting of the Agenda, will be available for public review in the City Clerk's Office located at 1480 Main Street, St. Helena, California, during normal business hours. In addition, such writings or documents will be made available on the City's web site at <https://sthelena.civicweb.net> and will be available for public review at the respective meeting.

## THE CITY OF ST. HELENA ENCOURAGES ONLINE PUBLIC PARTICIPATION IN VIRTUAL CITY COUNCIL MEETINGS

St. Helena, CA– The City of St. Helena is committed to public participation in City government in a manner that is consistent with guidance provided by the Napa County Public Health Official and Governor Newsom's Executive Order N-25-20. These guidelines relate to social distancing, and are intended to protect everyone by limiting the spread of COVID-19 in our community. In adherence to these guidelines, the St. Helena City Council will host a Virtual Council Meeting on Zoom; a free teleconferencing tool that enables users to watch and/or call into the meeting from their computers or phones. This meeting will be open to public and allows for live public comment. The meeting will also be recorded, livestreamed, and posted on the City's website after the adjournment of the meeting if technical difficulties occur: <https://sthelena.civicweb.net/Portal/>

**The ZOOM web link, meeting ID, and phone number will be listed at the top of the City Council Meeting Agenda. You will be required to enter the meeting ID, but there will be no password or participant ID.**

### How to Watch or Listen to Council Meetings:

1. Watch on Comcast Channel 28
2. Watch the livestreaming video on the City's website
3. Watch and Listen on Zoom.us by clicking on the link in the Council Agenda
4. Listen only by calling the Zoom number listed on the Council Agenda

### Watch Council Meeting by Joining the Zoom Meeting:

#### 1. **By Computer, Tablet, or Smart Phone:**

1. Before joining the virtual City Council Meeting, it is highly encouraged that you download the Zoom App. To sign up for your own free account, visit [zoom.us/signup](https://zoom.us/signup) and enter your email address. You will receive an email from Zoom (no-reply@zoom.us). In this email, click Activate Account.
2. If you are logged into your account, Enter the **Meeting ID** listed on the City Council Agenda. If you have not created an account go to: <https://zoom.us/join> and enter the **Meeting ID**
3. Select if you would like to connect audio and/or video and tap **Join Meeting**.
4. For specific instructions for your device, go to: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

#### 1. **Listen Only by Telephone:**

1. **Dial** the number listed on the Council Agenda.
2. At the prompt, enter the **Meeting ID** provided on the top of the City Council Meeting Agenda and **Press #. A participate ID is not required.**
3. To disconnect from the meeting, hang up the phone.

### Ways to Provide Public Comment:

While attending the virtual City Council Meeting, the public will have the opportunity to provide live

public comment during Public Forum and after each agenda item. When it is the appropriate time for public comment the Mayor will verbally open public comment. At this time each individual is permitted 4 minutes to speak.

1. **Send a Public Comment in by 4:00 PM Prior to the Meeting to:**  
[publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org)

The easiest way to provide public comment is to email your public comment. Public comments may be emailed to [publiccomment@cityofsthelena.org](mailto:publiccomment@cityofsthelena.org). Please include in the subject line "COMMENT TO COUNCIL and the AGENDA ITEM". Any public comment is required to be submitted no later than 2 hours before the scheduled meeting and will be included as an attachment to the agenda. All public comments will be made publicly available and attached to the agenda item and will not be read out loud. All public comments that are received after 4:00 PM will be attached to the agenda the following day.

2. **Provide Comment through Zoom meeting from a computer, tablet, or smart phone**

This option allows the public to virtually attend the meeting as a muted 'attendee' with no video or screen sharing capabilities. You will be able to see and hear those participating in the meeting, but they will not be able to hear you until the host unmutes you.

If you wish to provide public comment during a specific agenda item or during public forum, you can use the **"raise hand"** feature located in the control panel at the bottom of your screen. The icon is a small blue hand. In Windows you can also use the Alt+Y keyboard shortcut to raise or lower your hand. In Mac you can also use the Option+Y keyboard shortcut to raise or lower your hand.

The host will be notified that you've raised your hand and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. To be removed from the queue, just click the **'raise hand'** button again.

3. **Call in to the ZOOM meeting from a cell phone or landline phone only**

This option allows the member of the public with the opportunity to verbally participate in public comment.

If you wish to speak during public comment time dial **\*9** on your telephone.

The host will be notified that you would like to speak and you will be placed in a queue with all incoming requests.

When it is your turn to speak, you will be notified that the host has unmuted you. You may press **\*9** again if you wish to be removed from the queue.

You will be notified at the end of your statement that you have been muted.

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En cumplimiento de la Ley de Estadounidenses con Discapacidades, si necesita asistencia especial para participar en esta reunión, llame a la Oficina del Secretaría de la Ciudad (707) 967-2792. La notificación 72 horas antes de la reunión, como lo requiere la Sección 202 de la Ley de Estadounidenses con Discapacidades, permitirá a la Ciudad hacer arreglos razonables para garantizar la accesibilidad a esta reunión.

LA CIUDAD DE ST. HELENA ALIENTA LA PARTICIPACIÓN PÚBLICA EN LÍNEA EN REUNIONES VIRTUALES DEL CONSEJO DE LA CIUDAD

St. Helena, CA– La Ciudad de St. Helena está comprometida con la participación pública en el gobierno de la Ciudad de manera que sea consistente con la guía proporcionada por el Oficial de Salud Pública del Condado de Napa y la Orden Ejecutiva N-25-20 del Gobernador Newsom. Estas pautas se relacionan con el distanciamiento social y están destinadas a proteger a todos al limitar la propagación de COVID-19 en nuestra comunidad. En cumplimiento de estas pautas, el Ayuntamiento de St. Helena organizará una Reunión del Consejo Virtual sobre Zoom; Una herramienta de teleconferencia gratuita que permite a los usuarios mirar y / o llamar a la reunión desde sus computadoras o teléfonos. Esta reunión estará abierta al público y permite comentarios públicos en vivo. La reunión también se grabará, se transmitirá en vivo y se publicará en el sitio web de la Ciudad después de la clausura de la reunión si se presentan dificultades técnicas: <https://sthelena.civicweb.net/Portal/>

El enlace web de ZOOM, la identificación de la reunión y el número de teléfono se enumerarán en la parte superior de la Agenda de la reunión del Ayuntamiento. Se le pedirá que ingrese la ID de la reunión, pero no habrá contraseña ni ID de participante.

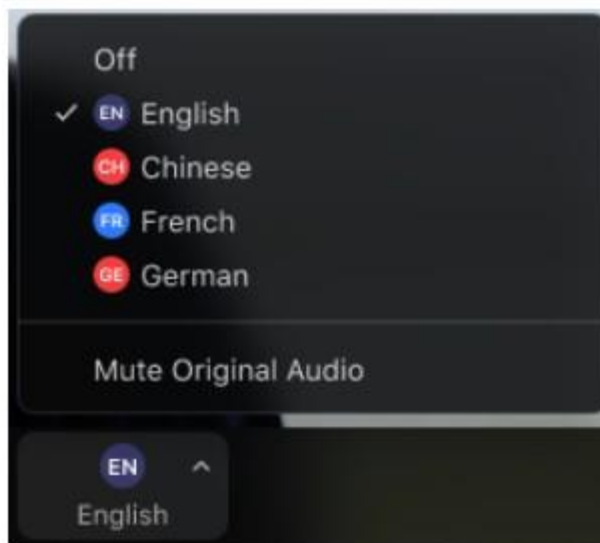
Cómo escuchar la interpretación de un idioma



1. En los controles de la reunión o el seminario web, haga clic en **Interpret**



2. Haga clic en el idioma que desee escuchar.



3. (Opcional) Para escuchar solo el idioma interpretado, haga clic en **Silenc**



1. En los controles de la reunión, toque ... Más.



2. Toque **Interpretación de idiomas**.

3. Toque el idioma que desee escuchar.



4. (Opcional) Toque el botón de alternancia **Silenciar audio original**.



5. Haga clic en **Finalizado**.

Cómo ver o escuchar las reuniones del Consejo:

1. Veala a través del canal 28 de Comcast
2. Vea el video de transmisión en vivo en el sitio web de la ciudad
3. Mire y escuche en Zoom.us haciendo clic en el enlace en la Agenda del Consejo
4. Escuche llamando al número de Zoom listado en la Agenda del Consejo

Vea la reunión del Consejo uniéndose a la reunión Zoom:

1. **Por computadora, tableta o teléfono:**
 - a. Antes de unirse a la reunión virtual del Ayuntamiento, le recomendamos que descargue la aplicación Zoom. Para registrarse en su propia cuenta gratuita, visite zoom.us/signup e ingrese su dirección de correo electrónico. Recibirá un correo electrónico de Zoom (no-reply@zoom.us) . En este correo electrónico, haga clic en Activar cuenta.
 - b. Si ha iniciado sesión en su cuenta, ingrese la ID de la reunión que figura en la Agenda del Ayuntamiento. Si no ha creado una cuenta, vaya a: <https://zoom.us/join> e ingrese la ID de la reunión
 - c. Seleccione si desea conectar audio y / o video y toque Unirse a la reunión. re. Para

obtener instrucciones específicas para su dispositivo, vaya a:
<https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

2. Escuche solo por teléfono:

- a. **Marque** el número que figura en la Agenda del Consejo.
- b. Cuando se le solicite, ingrese la **ID de la reunión** provista en la parte superior de la Agenda de la reunión del Concejo Municipal **y presione #. No se requiere una identificación de participación.**
- c. Para desconectarse de la reunión, cuelgue el teléfono

Formas de proporcionar comentarios públicos:

Mientras asiste a la reunión virtual del Ayuntamiento, el público tendrá la oportunidad de proporcionar comentarios públicos en vivo durante el Foro Público y después de cada tema de la agenda. Cuando sea el momento apropiado para comentarios públicos, el Alcalde abrirá verbalmente los comentarios públicos. En este momento, cada individuo tiene permitido 4 minutos parahablar.

1. Envíe un comentario público por adelantado a publiccomment@cityofsthelena.org

La forma más fácil de proporcionar comentarios públicos es enviar su comentario público por correo electrónico. Los comentarios públicos pueden enviarse por correo electrónico a publiccomment@cityofsthelena.org. Incluya en la línea de asunto "COMENTARIO AL CONSEJO y el PUNTO DEL PROGRAMA". Cualquier comentario público debe presentarse a más tardar 2 horas antes de la reunión programada y se incluirá como un archivo adjunto a la agenda. Todos los comentarios públicos se harán públicos y se adjuntarán al artículo de la agenda y no se leerán en voz alta. Todos los comentarios públicos que se reciban después de las 4:00 PM se adjuntarán a la agenda al día siguiente.

- 2. Proporcione comentarios a través de la reunión Zoom desde una computadora, tableta o teléfono inteligente

Esta opción permite que el público asista virtualmente a la reunión como un "asistente" silenciado sin capacidades de video o pantalla compartida. Podrá ver y escuchar a los participantes en la reunión, pero no podrán escucharlo hasta que el anfitrión de permiso.

Si desea proporcionar comentarios públicos durante un elemento específico de la agenda o durante un foro público, puede usar la función "levantar la mano" ubicada en el panel de control en la parte inferior de la pantalla. El icono es una pequeña mano azul. En Windows también puede usar el atajo de teclado Alt + Y para subir o bajar la mano. En Mac también puedes usar el atajo de teclado Alt + Y para subir o bajar la mano.

Se le notificará al anfitrión que ha levantado la mano y se lo colocará en fila con todas las solicitudes entrantes

Cuando sea su turno de hablar, se le notificará que el anfitrión le ha dado permiso de hablar. Para ser retirado de la fila, simplemente haga clic de nuevo el botón "levantar la mano".

3. Llame a la reunión de ZOOM desde un teléfono fijo o móvil solamente

Esta opción le permite al miembro del público la oportunidad de participar verbalmente en comentarios públicos.

Si desea hablar durante el tiempo de comentarios públicos, marque * 9 en su teléfono.

Se le notificará al anfitrión que le gustaría hablar y se colocará en fila con todas las solicitudes entrantes.

Cuando sea su turno de hablar, se le notificará que el anfitrión le ha dado permiso de hablar. Puede presionar * 9 nuevamente si desea ser eliminado de la fila.



November 17, 2020

To: St. Helena City Council members
St. Helena Active Transportation and Sustainability Committee members

Dear City Council and AT&S Committee members,

We are writing on behalf of the Napa Sierra Club to add our support to the St. Helena Redwood Forest project proposed by Paul Asmuth. We heard a presentation by Mr. Asmuth on this project and were very impressed with the benefits it will bring to St. Helena including:

- A working forest on currently fallow land
- A recreational and education resource for the community
- Expanded forest habitat with concurrent ecosystem and climate benefits

In addition, this project would support the following policies and implementing actions in the 2040 St. Helena General Plan update:

- Open Space Policy 4.1: Protect and enhance tree resources in developed and undeveloped areas.
- Open Space Implementing Action 2.E: Explore the possibility of public use or agricultural option of the waste-water treatment plant spray field in the form of trails and passive open space or other agricultural option.
- Climate Change Implementing Action 4.C: Establish programs and plans that create and enhance urban forests and greenways.

St. Helena is fortunate that two private citizens have used their resources to initiate this project which will benefit us all into the far future. In these times of increasing damage to our forests and woodlands due to climate change, planting a redwood forest using readily available treated wastewater is wonderful step forward. We ask that you support this project in every way possible.

Thank you,
Sierra Club Napa Group Executive Committee
Chris Benz, Chair
Chris Sauer, Vice Chair
Patricia Damery
Nick Cheranich

PO Box 5531, Napa, CA 94581
napavalleyssierraclub@gmail.com

www.sierraclub.org/redwood/napa

MINUTES
City of St. Helena
Regular City Council Meeting
Tuesday, November 10, 2020 @ 6:00 PM

A complete video recording of this meeting, except for closed session, can be found at <https://sthelena.civicweb.net/Portal/> or by calling the City Clerk at (707) 968-2742. The City Council video is the official record of the Council meeting.

Present: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

Absent: None

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. PUBLIC FORUM:

No public comment was received.

5. REPORTS BY STAFF AND CITY COUNCIL, FUTURE AGENDA ITEMS, and AB 1234 REPORTS:

Reports by Staff and City Council Members were made.

6. PRESENTATIONS AND PUBLIC RECOGNITIONS

6.1 Special Congressional Resolution Presentation to the City Council & Staff by Congressman Mike Thompson

7. STAFF BRIEFING

7.1 City Manager COVID-19 Emergency Update (Oral Report)

City Manager Mark Prestwich provided an update.

8. CONSENT ITEMS

Members of the Council or the public may ask that any items be considered individually for purposes of considering alternative action, for extended discussion, or for public comment. Unless that is done, one motion may be used to adopt all recommended actions. (Roll Call Vote)

Regular City Council
November 10, 2020

- 8.1 Consideration and proposed approval of Regular Meeting Minutes of October 13, 2020 and October 27, 2020 and Special Meeting Minutes of October 22, 2020. (Minutes forthcoming)
Prepared By: Cindy Tzaopoulos, City Clerk
- 8.2 Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire and (2) ratifying Amendment #1 to Professional Services Agreement STH Contract: FY2021-030 with Envirocheck, Inc. in an amount of \$7,150 adding Pre and Post Combustion By-Product Survey Testing for the Robert Louis Stevenson Museum located at 1428 Library Lane and ratifying Amendment #2 in an amount of \$3,895 for pre and post combustion air quality survey for 11 City-owned facilities for a total not-to-exceed amount of \$104,340.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: April Mitts, Finance Director

Recommendation:

Approval of a resolution: (1) ratifying an emergency public project without public bidding relating to the Glass Fire and (2) ratifying Amendment #1 to Professional Services Agreement STH Contract: FY2021-030 with Envirocheck, Inc. in an amount of \$7,150 adding Pre and Post Combustion By-Product Survey Testing for the Robert Louis Stevenson Museum located at 1428 Library Lane and ratifying Amendment #2 in an amount of \$3,895 for pre and post combustion air quality survey for 11 City-owned facilities for a total not-to-exceed amount of \$104,340.

Vice Mayor Paul Dohring moved to approve Consent as presented. The motion was seconded by Council Member Mary Koberstein and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

9. PUBLIC HEARINGS

- 9.1 None

10. OLD BUSINESS

- 10.1 Consideration and proposed approval of a Resolution authorizing: (1) the payment of in-lieu fees to achieve water neutrality to accommodate a 5 unit

Regular City Council
November 10, 2020

affordable housing project at 963 Pope Street; (2) use of Affordable Housing Trust Funds in an amount not-to-exceed \$109,002 to fulfill a request from Our Town St. Helena (OTSH) to waive planning application fees, to waive in-lieu fees to achieve water neutrality, and to waive building permit/development impact fees in order to accommodate a 5 unit affordable housing project at 963 Pope Street in the Medium Density Residential district; and (3) a budget increase of \$109,002 to 751-4000-2412.

CEQA Determination: Exempt

Prepared By: Aaron Hecock, Senior Planner

Recommendation:

Approval of a Resolution authorizing: (1) the payment of in-lieu fees to achieve water neutrality to accommodate a 5 unit affordable housing project at 963 Pope Street; (2) use of Affordable Housing Trust Funds in an amount not-to-exceed \$109,002 to fulfill a request from OTSH to waive planning application fees, to waive in-lieu fees to achieve water neutrality, and to waive building permit/development impact fees in order to accommodate a 5 unit affordable housing project at 963 Pope Street in the Medium Density Residential district; and (3) a budget increase of \$109,002 to 751-4000-2412.

Senior Planner Aaron Hecock reported on this item.

Mary Stephenson addressed the City Council.

Vice Mayor Paul Dohring moved to approve staff's recommendation with further direction to review if the development impact fees for the project could to be paid from the housing trust fund, could instead be waived or reduced and that action can be brought back for future approval. The motion was seconded by Council Member Anna Chouteau and on roll call carried by the following vote:

AYES: Mayor Geoff Ellsworth, Vice Mayor Paul Dohring, Council Member Anna Chouteau, Council Member David Knudsen, and Council Member Mary Koberstein

NOES: None

ABSENT: None

ABSTAIN: None

RECUSE: None

Item 10.2 was removed and not heard.

- 10.2 Discussion and direction on the construction schedule for Capital Improvement Project R18-81 Downtown Sidewalk Improvements

CEQA Determination: CEQA will be completed as part of project design

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Recommendation:

Regular City Council
November 10, 2020

Discussion and direction by City Council.

10.3 Review and Discussion of City Council Three Year Goals and 2020 Workplan

CEQA Determination: Not a CEQA project

Prepared By: Mark T. Prestwich, City Manager

Recommendation:

Discuss and provide direction to the City Manager.

City Manager Mark Prestwich reported on this item and provided an update.

Nancy Dervin addressed the City Council.

11. **NEW BUSINESS**

11.1 None

12. **ITEMS LIKELY TO BE PLACED ON THE NEXT OR FUTURE MEETING AGENDA:**

12.1	<u>November City Council Meetings:</u> 11/24 (staff reports due 10/6)
	<i>STAFF BRIEFING:</i> 11/24 Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer 11/24 Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer
	<i>CONSENT:</i> 11/24 BKF Amendment 1(Crane & Grayson street rehab) 11/24 PSPS Grant purchase of generators 11/24 HMGP Generator Purchase and installation 11/24 NOC tennis courts rehab 11/24 Amendment to Oscar Larson Contract 11/24 Ratification of emergency contract – McCullough
	<i>PH or OLD / NEW BUSINESS:</i> 11/24 Donation policy 11/24 CDBG Grant discussion-planning technical assistance 11/24 CDBG Grant request from OTSH
	<u>December City Council Meetings:</u> 12/8 (Staff reports due 11/20) 12/22 Cancelled
	<i>STAFF BRIEFING:</i> Upper York Creek Dam Project Update by Erica Ahmann Smithies, Public Works Director and City Engineer Update on Waste Water Treatment Plant Upgrade Project by Erica Ahmann Smithies, Public Works Director and City Engineer

Regular City Council
November 10, 2020

12/8 Monthly Water Update
12/8 City Manager COVID-19 update
CONSENT:
12/8 Fire Department - Approving Sale of Surplus Apparatus (Rescue-17)
12/8 NOC of Upper York Creek
Glass fire termination of emergency
12/8 Approve resolution supporting merger of PARSAC and REMIF into one JPA called CIRA (California Intergovernmental Risk Agency)
PH or OLD / NEW BUSINESS:
12/8 Hunt Avenue Check in
12/8 - CDBG Grant discussion-planning technical assistance
12/8 - CDBG Grant request from OTSH

13. ADJOURNMENT

Mayor Ellsworth adjourned the meeting at 7:29 p.m.

The regular meeting minutes of November 10, 2020 was adopted at the November 24, 2020 regular City Council meeting.

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution accepting the work and final CIP Project C19-02 Rehabilitate Crane Park Tennis Courts construction costs of \$227,130 and directing the filing of the Notice of Completion

CEQA Determination: Class I Categorical Exemption under Section 15301 of CEQA

Prepared By: Edrees Argand, Assistant Engineer

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On February 12, 2018, the Parks and Recreation Commission developed a prioritization list for potential Capital Improvement Projects (CIP). The top priority of the Commission was the resurfacing of the Crane Park tennis courts. This project was established in the FY 2018-19 CIP budget as C19-02 Rehabilitate Crane Park Tennis Courts with a budget of \$25,000. The proposed project originally included the resurfacing of the center four courts, which have visible cracks in the playing surface and, if not addressed, will continue to deteriorate and could pose a safety risk for tennis players.

On October 29, 2018, the Parks and Recreation Commission discussed and endorsed the use of additional Park Impact Fees for CIP Project C19-02, Rehabilitate Crane Park Tennis Courts for a total not-to-exceed amount of \$170,000. On November 27, 2018, City Council approved the recommended increase via Resolution No. 2018-167.

The project included the installation of a slip-sheet system for the center tennis courts and resurfacing of the two single courts, along with an additive alternate bid item for upgrading of tennis court amenities, such as the lowering of the side fencing for the courts and installation of new chain-link fencing material.

On March 23, 2020, City Council approved the plans and specifications and authorized staff to advertise for bids.

On Wednesday, May 6, 2020, at 1:15 PM, one bid was uploaded electronically to the BPXpress planroom which was read aloud via an online Zoom meeting.

On May 12, 2020, City Council (1) awarded the C19-02 Project to Vintage Contractors, Inc. in the amount of \$217,975 for the base bid and additive alternative bid; (2) authorized the City Manager to execute the Construction Contract with Vintage Contractors, Inc.; (3) authorized the Director of Public Works to approve Change Orders not to exceed 15% of the contract amount; (4) Authorized a budget increase to CIP C19-02 of \$80,671 for a not-to-exceed amount of \$250,671; and (5) Authorized use of Park Impact Fee Funds for an additional \$80,671 for a not-to-exceed amount of \$250,671

DISCUSSION

The Director of Public Works was authorized a construction contingency for unforeseen conditions not to exceed 15% (\$32,696) of the construction contract. The Director authorized four contract change orders during the project. The change orders and under-runs are summarized below:

Number	Description	Amount
CCO #1	Switch to 20' long fence wing of 12' high fence around the tennis court corners (all courts) instead of 10" long fence wing	\$925.00
CCO #2	Provide an additional 80 LF of 12' high fence fabric for the single court on the west side Re-install existing fiberglass backboard	\$1,850.00
CCO #3	1.Remove middle rail, undo wire and 2.Dig and set 3 x 3" 12' tall line posts to reinforce the existing fence structure. 3.Furnish and install 4 - 2x4 support beams across the back of the fence. 4.Reinstall backboard	\$3,580.00

	secured to new frame. 5.Reinstall top rail and fence wire.	
CCO #4	Assemble and install 4 cabanas with bench.	\$2,800.00
	Contract Change Order	
	Total	\$9,155.00

The Public Works Department has inspected the work and found the work to be completed satisfactorily. Following the acceptance of the project, City Staff will file a Notice of Completion for the project with the Napa County Recorder's Office. If no liens or claims have been filed within 35 days of filing the Notice of Completion, the retained payment funds (5% of construction invoices) and any amount due will be released to Vintage Contractors, Inc.

FISCAL IMPACT

The total approved budget for the C19-02 Rehabilitate Crane Park Tennis Courts Project is \$250,671. Including the Change Order, the total construction cost of the project is within the allocated budget. The Project is summarized below.

C19-02 Rehabilitate Crane Park Tennis Courts

Construction Contract	\$217,975
Change Order No. 1	\$9,155.00
Total Cost	\$227,130

RECOMMENDED ACTION

Adopt the attached Resolution accepting the work and final project construction costs of \$227,130 and directing the filing of the Notice of Completion for CIP Project C19-02 Rehabilitate Crane Park Tennis Courts.

ATTACHMENTS

[Attachment 1 C19-02 Notice of Completion Resolution](#)

[Attachment 2: C19-02 Notice of Completion](#)

CITY OF ST. HELENA

RESOLUTION NO. 2020-

Resolution accepting the work and final project construction costs of \$227,130 and directing the filing of the Notice of Completion for CIP Project C19-02 Rehabilitate Crane Park Tennis Courts

RECITALS

- A. The Rehabilitate Crane Park Tennis Courts, Project C19-02, includes the installation of a slip-sheet system for the center tennis courts and resurfacing of the two single courts, along with an additive alternative bid item for upgrading tennis court amenities, such as the lowering of the side fencing for the courts and installation of new chain-link fencing material; and
- B. The plans have been completed to City standards and approved by the Director of Public Works/City Engineer; and
- C. The Rehabilitate Crane Park Tennis Courts Project is a minor alteration to an existing facility. The project site is not located in an environmentally sensitive area and there are no cumulative impacts, unusual circumstances or other factors that would make the exemption inapplicable; and
- D. The adopted Fiscal Year 2019-2020 CIP budget includes Project funding from 734 - Park Impact Fees; and
- E. On May 6, 2020, one (1) bid was received by the Public Works Director and opened in accordance with applicable law; and
- F. The lowest responsive and responsible bidder for the Project was Vintage Contractors, Inc. of San Francisco, CA in the amount of \$162,400 for the bid base and an additional \$55,575 for the bid alternate; and
- G. On May 12, 2020, The City of St. Helena Council awarded the Rehabilitate Crane Park Tennis Courts Project, Capital Improvement Project C19-02 to Vintage Contractors, Inc. in the amount of \$217,975 for the base bid and the additive alternative bid; (2) Authorizing the City Manager to execute the Construction Contract with Vintage Contractors, Inc.; (3) Authorizing the Director of Public Works to approve Change Orders not to exceed 15% of the contract amount; (4) Authorizing a budget increase to CIP C19-02 of \$80,671 for a not-to-exceed amount of \$250,671; and (5) Authorizing use of Park Impact Fee Funds for an additional \$80,671 for a not-to-exceed amount of \$250,671.
- H. The Public Works Director/City Engineer authorized four contract change order (CCO) during the project as follows:

Number	Description	Amount
CCO#1	Switch to 20' long fence wing of 12' high fence around the tennis court corners (all courts) instead of 10" long fence wing	\$925.00
CCO#2	Provide an additional 80 LF of 12' high fence fabric for the single court on the west side	\$1,850.00
CCO#3	Re-install existing fiberglass backboard 1. Remove middle rail, undo wire and 2. Dig and set 3 x 3" 12' tall line posts to reinforce the existing fence structure. 3. Furnish and install 4 – 2 x 4 support beams across the back of the fence. 4. Reinstall backboard secured to new frame. 5. Reinstall top rail and fence wire.	\$3,580.00
CCO#4	Assemble and install 4 cabanas with bench	\$2,800.00
	Total Change Orders:	\$9,155.00
I. The final construction contract amount is \$227,130, which includes all four Contract Change Orders totaling \$9,155.00; and		
J. The project has been inspected and Vintage Contractors Inc. has completed the work in accordance with the contract documents for the project; and		
K. If no liens or claims have been filled within 35 days of filing the Notice of Completion, the retained payment funds and any amount due will be released to Central Roofing Inc.		

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The contract entitled C19-02 Rehabilitate Crane Park Tennis Courts with the final contract amount of \$227,130, is accepted as complete, subject to the Contractor, Vintage Contractors Inc., completing the punch list work prior to the release of the retention, and the Contractor's continuing warranty and other obligations pursuant to the contract.
2. The Public Works Director/City Engineer is authorized to prepare a Notice of Completion and the City Clerk is directed to file a Notice of Completion with the Napa County Recorder.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020,
by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Recording Requested By:

City of St Helena
1480 Main Street
St Helena, CA 94574

**Exempt From Recording Fees Per
Government Code Sec. 27383**

When Recorded Mail To:

City Clerk
City of St Helena
1480 Main Street
St Helena, CA 94574

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1 The undersigned is an owner of an interest of estate in the hereinafter described real property, the nature of which interest or estate is: fee simple.

2 The full name and address of the undersigned owner and of any and all co-owners are:

Name	Street and No.	City	State
City of St Helena	1480 Main Street	St Helena	CA

3 Work or Improvement on the property hereinafter described as the C19-02 Rehabilitate Crane Park Tennis Courts Project was completed and accepted by the City of St. Helena City Council on November 24, 2020.

4 The work done was: installation of a slip-sheet system for the center tennis courts and resurfacing of the two single courts, along with an additive alternate bid item for upgrading of tennis court amenities, such as the lowering of the side fencing for the courts and installation of new chain-link fencing material.

5 The name of the original contractor for the work of improvement as a whole was: Vintage Contractors Inc.

6 The real property herein referred to is situated in the City of St Helena, County of Napa, State of California, and described as follows: 360 Crane Avenue.

By: _____

Owner's Authorized Agent's Signature

Erica Ahmann Smithies, PE Public Works Director/City Engineer

VERIFICATION

I, the undersigned, say:

I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under the penalty of perjury that the above is true and correct.

Executed at St. Helena, California, this 24th day of November, 2020.

City of St. Helena

Erica Ahmann Smithies, Public Works Director



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution accepting the work and final CIP Project No. R21-03 2020 LNU Emergency Fire Clearing construction costs of \$51,024.63 and directing the filing of the Notice of Completion

CEQA Determination: This work will be conducted under a Statutory Exemption identified under Sections(s) 15269, 15282 and 15284 of the California Environmental Quality Act

Prepared By: Edrees Argand, Assistant Engineer

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The Hennessey Fire, which started on Monday, August 17, 2020, and combined with other fires in Napa, Sonoma, Solano, and Yolo Counties formed the LNU Lightning Complex.

On Wednesday, August 19, 2020, due to the conditions of extreme peril to the safety of persons and property that had arisen within the City as a result of the LNU Lightning Complex Fires, the City Manager, as the Director of Emergency Services for the City of St. Helena, issued an Emergency Proclamation, proclaiming the existence of a local emergency.

During the emergency, the City Manager, acting as the Director of Emergency Services, furnishes information, promulgates orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, may enter into agreements, and take all actions necessary to implement preventive

measures to protect and preserve the residents of the City within the scope of the local emergency proclaimed.

Due to the progression and scale of the fires and the threat they posed to several of the City's critical facilities, the City had an urgent need for emergency fire mitigation services. The immediate need was to create additional defensible space at the Louis Stralla Water Treatment Plant (LSWTP), which treats surface water stored in Bell Canyon Reservoir and is the primary source of potable water for the City and surrounding areas.

The LSWTP is a critical asset as it supplies the greatest percentage of water to the City and the surrounding areas (40% in non-drought years and 46% in drought years). If this water plant was lost due to fires, the ability to provide water to the City and surrounding areas would be severely compromised. The LSWTP has a value of over \$7.5 million which includes the building value as well as the contents.

Due to the close proximity of the LNU Lightning Complex, on Thursday, August 20, 2020, the City's Public Works crews, in conjunction with the City's Fire Department, began work in the areas around the LSWTP. It was determined additional resources were necessary to help clear an optimal defensible space around this essential facility to mitigate a greater loss.

Pursuant to St. Helena Municipal Code (SHMC) Section 3.04.170 (Emergencies), bidding procedures may be dispensed within the case of an emergency. The City Council delegates to the City Manager the authority to declare a public emergency and enter into contracts for purchase in accordance with Section 3.04.175 and is subject to confirmation by the City Council at its next meeting for any purchase in excess of \$25,000. SHMC Section 3.04.175 modifies the City's normal purchasing practices during a proclaimed emergency. Further, SHMC Section 3.04.175 C.1. gives the City Manager, or designee, the authority to make single purchases up to \$100,000 and SHMC Section 3.04.175 E.1. establishes that purchases of \$250,000 or less shall not be required to be formally bid.

In seeking assistance on clearing an optimal defensible space around the LSWTP, as well as other City facilities, the City reached out to McCullough Construction, Inc. (McCullough), who was recently awarded a Construction Contract for the Upper York Creek Dam restoration project. McCullough was contacted because their contract was recently awarded (June 23, 2020), the City had recently verified McCullough meets the City's insurance requirements, and McCullough was mobilized within the City limits working on the Upper York Creek Dam restoration project and provides emergency services. Having McCullough already established in St. Helena allowed heavy equipment (e.g. bulldozers) and staff to quickly mobilize to critical areas which saved both valuable time and was available at a lower cost.

On August 20, 2020, CIP Project No. R21-03 *2020 Emergency Fire Clearing* was established with a budget of \$150,000 and on August 21, 2020, Construction Contract STH Contract: FY 2021-017 was awarded to McCullough Construction, Inc., in an amount not-to-exceed \$100,000 to assist with emergency fire clearing needs due to close proximity of the LNU Lightning Complex. The first, and immediate, work task requested was fire mitigation clearing at the LSWTP, with a focus on clearing an optimal defensible space around essential water treatment plant facilities starting August 21, 2020. The LSWTP was in the evacuation zone for the LNU Lightning Complex Fires, specifically the Aetna Springs area. STH Contract: FY 2021-017 also allowed the continuation of emergency work, if necessary, at other locations designed by the City to mitigate fire risk/damage from the LNU Lightning Complex.

The emergency fire clearing work performed by McCullough Construction, Inc. at the LSWTP was critical to the successful defense of the Water Treatment Plant less than a month later when the Glass Fire reached the facility.

DISCUSSION

The R21-03 2020 Emergency Fire Clearing Project was completed within the allocated budgets. The Public Works Department has inspected the work and found the work to be completed satisfactorily. Following the acceptance of the project, City Staff will file a Notice of Completion for the project with the Napa County Recorder's Office.

FISCAL IMPACT

The total project cost for the R21-03 2020 Emergency Fire Clearing Project is \$51,024.63. The total approved project budget for the R21-03 Project is \$150,000.

RECOMMENDED ACTION

Adopt the attached Resolution accepting the work and final project construction costs of \$51,024.63 and directing the filing of the Notice of Completion for CIP Project R21-03 2020 Emergency Fire Clearing.

ATTACHMENTS

[Attachment 1 Resolution](#)

[Attachment 2: Notice of Completion](#)

CITY OF ST. HELENA

RESOLUTION No. 2020-

**Resolution accepting the work and final project
construction costs of \$51,024.63 and directing the filing
of the Notice of Completion for CIP Project R21-03 2020
LNU Emergency Fire Clearing**

RECITALS

- A. The Hennessey Fire, which started on Monday, August 17, 2020, and combined with other fires in Napa, Sonoma, Solano, Yolo, and Lake counties formed the LNU Lightning Complex Fires; and
- B. On Wednesday, August 19, 2020, due to the conditions of extreme peril to the safety of person and property that had arisen within the City as a result of the LNU Lightning Complex Fire, the City Manager, as the Director of Emergency Services for the City of St. Helena, issued an Emergency Proclamation, proclaiming the existence of a local emergency related to the Hennessey Fire and the LNU Lightning Complex fires; and
- C. During the emergency, the City Manager, acting as the Director of Emergency Services, furnishes information, promulgate orders and regulations necessary to provide for the protection of life and property pursuant to California Government Code section 8634, enter into agreements, and take all actions necessary to obtain State emergency assistance to implement preventive measures to protect and preserve the residents of the City within the scope of the local emergency proclaimed; and
- D. The City of St. Helena had an urgent need for emergency work due to the progression of these fires and the threat they posed to critical City structures. The immediate need was to create defensible space at the Louis Stralla Water Treatment Plant (LSWTP), which treats surface water stored in Bell Canyon Reservoir and is the primary source of potable water for the City and surrounding areas. Property east of Silverado Trail from Hwy 128 north to Dutch Henry Canyon Road, including the LSWTP facility, was subject to a CalFIRE mandatory evacuation order on the evening on August 19, 2020 and, as of August 21, 2020, remains under this order; and
- E. The LSWTP is a critical asset and as it supplies the greatest percentage of water to the City and the surrounding areas (40% in non-drought years and 46% in drought years). If this water plant is lost due to fires, the ability to provide water to the City and surrounding areas will be compromised. The LSWTP has a value of over \$7.5 million which includes the building value as well as the contents; and
- F. Due to the close proximity of the LNU Lightning Complex fires, on Thursday, August 20, 2020, the City's Public Works crews, in conjunction with the City's Fire

Department, began work in the areas around the LSWTP. It was determined additional resources were necessary to help clear an optimal defensible space around this essential facility; and

- G. Pursuant to St. Helena Municipal Code (SHMC) Section 3.04.170 (Emergencies), bidding procedures may be dispensed within the case of an emergency. The City Council delegates to the City Manager the authority to declare a public emergency and enter into contracts for purchase in accordance with Section 3.04.175 and is subject to confirmation by the City Council at its next meeting for any purchase in excess of \$25,000. SHMC Section 3.04.175 modifies the City's normal purchasing practices during a proclaimed emergency. Further, SHMC Section 3.04.175 C.1. gives the City Manager, or designee, the authority to make single purchases up to \$100,000 and SHMC Section 3.04.175 E.1. establishes that purchases of \$250,000 or less shall not be required to be formally bid; and
- H. In seeking assistance on clearing an optimal defensible space around the LSWTP, as well as other City facilities, the City reached out to McCullough Construction, Inc. (McCullough), who was recently awarded a Construction Contract for the Upper York Creek Dam restoration project. McCullough was contacted because their contract was recently awarded (June 23, 2020), the City has recently verified McCullough meets the City's insurance requirements, and McCullough is currently mobilized within the City limits working on the Upper York Creek Dam restoration project. Having McCullough already established in St. Helena allowed heavy equipment (e.g. bulldozers) and staff to quickly mobilize to critical areas. Which saved both valuable time and is available at a lower cost; and
- I. On August 20, 2020, CIP Project No. R21-03 *2020 Emergency Fire Clearing* was established with a budget of \$150,000 and on August 21, 2020, Construction Contract STH Contract: FY 2021-017 was awarded to McCullough Construction, Inc., in an amount not-to-exceed \$100,000 to assist with emergency fire clearing needs due to close proximity of the LNU Lightning Complex fires. The first, and immediate, work task requested was fire clearing at the LSWTP, with a focus on clearing an optimal defensible space around essential water treatment plant facilities starting August 21, 2020. The LSWTP was in the evacuation zone for the LNU Lightning Complex fire, specifically the Aetna Fire. STH Contract: FY 2021-017 also allows to continue emergency work at other locations designed by the City to mitigate fire risk/damage from the LNU Lightning Complex fires.
- J. The final construction contract amount is \$51,024.63; and
- K. The project has been inspected and McCullough Construction, Inc. has completed the work in accordance with the contract documents for the project; and

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The contract entitled R21-03 2020 Emergency Fire Clearing with the final contract amount of \$51,024.63, is accepted as complete, subject to the Contractor, McCullough Construction, Inc., and the Contractor's continuing warranty and other obligations pursuant to the contract.
2. The Public Works Director/City Engineer is authorized to prepare a Notice of Completion and the City Clerk is directed to file a Notice of Completion with the Napa County Recorder.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Knudsen:	_____
Councilmember Chouteau:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

Recording Requested By: City of St Helena 1480 Main Street St Helena, CA 94574	
Exempt From Recording Fees Per Government Code Sec. 27383	
When Recorded Mail To: City Clerk City of St Helena 1480 Main Street St Helena, CA 94574	

SPACE ABOVE THIS LINE FOR RECORDERS USE ONLY

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1 The undersigned is an owner of an interest of estate in the hereinafter described real property, the nature of which interest or estate is: fee simple.

2 The full name and address of the undersigned owner and of any and all co-owners are:

Name	Street and No.	City	State
City of St Helena	1480 Main Street	St Helena	CA

3 Work or Improvement on the property hereinafter described as the R21-03 2020 Emergency Fire Clearing Project was completed and accepted by the City of St. Helena City Council on November 24, 2020.

4 The work done was: Assist with emergency fire clearing needs due to close proximity of the LNU Lightning Complex fires. The first, and immediate, work task requested is fire clearing at the LSWTP, with a focus on clearing an optimal defensible space around essential water treatment plant facilities as early as August 21, 2020.

5 The name of the original contractor for the work of improvement as a whole was: McCullough Construction, Inc.

6 The real property herein referred to is situated in the City of St Helena, County of Napa, State of California, and described as follows: 410 Crystal Springs Road.

By: _____
 Owner's Authorized Agent's Signature
 Erica Ahmann Smithies, PE Public Works Director/City Engineer

VERIFICATION

I, the undersigned, say:

I am the person who signed the foregoing notice. I have read the above notice and know its contents, and the facts stated therein are true of my own knowledge.

I declare under the penalty of perjury that the above is true and correct.

Executed at St. Helena, California, this 24th day of November, 2020.

City of St. Helena

Erica Ahmann Smithies, Public Works Director



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a resolution authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

CEQA Determination: CEQA will be completed as part of project design

Prepared By: Edrees Argand, Assistant Engineer

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The City of St. Helena is responsible for the maintenance of public streets within the City limits. On May 8, 2018, City Council adopted the Capital Improvement Plan (CIP) which included Grayson Avenue and South Crane Avenue Rehabilitation, Capital Improvement Project R19-05. The City of St. Helena requires engineering services to provide plans, specifications, and construction estimates in order to bid the future street improvement project.

On October 3, 2019, a Request for Proposals (RFP) was released to find qualified consultant(s) to provide engineering, design, and environmental services for Capital Improvement Plan project R19-05 Grayson Avenue and South Crane Avenue Rehabilitation. Per the City's pavement management software program, Streetsaver, both Grayson Avenue and South Crane Avenue are due for complete reconstruction with PCI's as low as 33 and 24 respectively.

The project scope includes at a minimum: preservation of all existing survey monuments, full reconstruction (preferred design options are recycle in place, full depth reconstruction, etc. as applicable), installation of new pavement markers and striping, adjustment of existing utilities to pavement finished grade, installation of traffic detector loops, incorporating elements from the City's adopted General Plan, incorporating elements from the City's adopted bike and pedestrian plan as feasible, installation of ADA compliant curb ramps as necessary, and removal and reconstruction of failed curb, gutter and sidewalk segments.

The project is currently funded with Measure T funds and the adopted CIP budget is for the design and environmental phase with the anticipation that additional funds will be programmed as well as grant funding applied for once construction costs are identified based on 100% design.

On November 13, 2019, two responsive proposals were received for the Grayson Avenue and South Crane Avenue Rehabilitation, Design Services R19-05 project: RSA+ and BKF. On April 28, 2020, City Council authorized the City Manager to execute a Professional Services Agreement with BKF for design of the R19-05 project for an amount not to exceed \$175,139.

DISCUSSION

The R19-05 project is a perfect opportunity to install a new recycled water main (purple pipe) in Grayson Avenue between the west side of Highway 29 to South Crane Avenue. The new recycled water main will connect to recycled water infrastructure that the recently approved Farmstead Hotel Project will be required to install along Mills Lane ending on the west side of Highway 29.

The design by BKF will include new services to the St. Helena High School and Crane Park. BKF will update their drawings, technical specifications, and cost estimate to include the additional work.

FISCAL IMPACT

The Grayson Avenue and South Crane Avenue Rehabilitation, Project No. R19-05 is included in the May 2019 adopted five-year Capital Improvement Plan (CIP) and is included as Attachment 4.

The Grayson Avenue and South Crane Avenue Rehabilitation, CIP Project No. R19-05 adopted in May 2019 included the total design costs allocated in FY 2020 at \$200,000 which is being funded by Measure T. On April 28, 2020, STH Contract: FY 2020-086 with BKF was executed for a total design contract for a not-to-exceed amount of \$175,139. Amendment No. 1 is for an additional \$15,000 for a total design contract for a not-to-exceed amount of \$190,139.

Measure T funds cannot fund work on recycled pipelines, but Sewer Impact Fees collected from development projects can fund recycled pipeline design and construction. Therefore, staff is recommending a budget transfer from Fund 774 Sewer Impact Fees, which has an unallocated fund balance of \$54,960, to CIP Project R19-05 in the amount of \$15,000.

RECOMMENDED ACTION

Staff recommends City Council adopt a Resolution authorizing the City Manager execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

ATTACHMENTS

[Attachment 1: Resolution](#)

[Attachment 2: Amendment No. 1 BKF_Signed](#)

[Attachment 3: STH Contract FY2020-086](#)

[Attachment 4: Capital Improvement Plan](#)

CITY OF ST. HELENA

RESOLUTION No. 2020 -

Authorizing the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139 and authorizing a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

RECITALS

- A. On April 28, 2020, City Council authorized the City Manager to execute a Professional Service Agreement with BKF for design of the R19-05 project for an amount not to exceed \$175,139.
- B. The Agreement's current Scope of Services does not include the funds or the additional work needed to allow BKF to update their drawings, technical specification, and cost estimate to include the design of a new recycled water main in Grayson Avenue;
- C. Amendment No.1 is for an additional \$15,000 to design the recycled water main for a total design contract for a not-to-exceed amount of \$190,139.
- D. The Grayson Avenue and South Crane Avenue Rehabilitation, CIP Project No. R19-05 is included in the May 2019 adopted five-year Capital Improvement Plan (CIP) which is being funded by Measure T; and
- E. Measure T funds cannot fund work on recycled pipelines, but Sewer Impact Fees collected from development projects can fund recycled pipeline design and construction; and
- F. There is adequate funds in Fund 774 Sewer Impact Fees to fund the recycled water main design in the amount of \$15,000.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

1. Authorizes the City Manager to execute Amendment No. 1 to STH Contract: FY2020-086 in the amount of \$15,000, to the Professional Service Agreement with BKF for designing Capital Improvement Project R19-05 Grayson and South Crane Avenue Rehabilitation for an amount not to exceed \$190,139.

2. Authorize a budget increase of \$15,000 to CIP Project R19-05 with available funding transferred from Fund 774 Sewer Impact Fees.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:	_____
Vice Mayor Dohring:	_____
Councilmember Koberstein:	_____
Councilmember Chouteau:	_____
Councilmember Knudsen:	_____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

AMENDMENT NO. 1

**TO PROFESSIONAL SERVICES AGREEMENT WITH BKF; STH CONTRACT NO: 2020-086
FOR DESIGN SERVICES, CAPITAL IMPROVEMENT PROJECT: R19-05 GRAYSON AND
SOUTH CRANE AVENUE REHABILITATION FOR AN ADDITIONAL \$15,000 FOR A TOTAL
CONTRACT AMOUNT NOT-TO-EXCEED \$190,139.**

This First Amendment to Professional Services Agreement STH Contract: 2020-086 dated September 17, 2020 ("Agreement") is made as of this ____ day of _____, 2020 by and between the City of St. Helena, a municipal corporation ("City"), and BKF. ("Consultant").

RECITALS

- A. On April 28, 2020, the City and Consultant entered into the Agreement for Consultant to provide professional services in connection with the project described as R19-05 Grayson Avenue and South Crane Avenue Rehabilitation; and
- B. The Agreement's current Scope of Services does not include the funds or the additional work needed to allow BKF to update their drawings, technical specification, and cost estimate to include the design of a new recycled water main in Grayson Avenue; and
- C. The additional funding is necessary to allow BKF to provide additional consulting services to the City; and

AGREEMENT

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein contained, for good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

- 1. Section 1. Basic Services
Parties agree to amend Section 1, "Basic Services" of the Agreement to provide additional services, as outlined in Exhibit A, "Scope of Work" attached hereto.
- 2. Section 4. Compensation, is amended to read as follows:
"Total compensation shall not exceed \$190,139.00..."

All other terms of the Agreement shall remain in full force and effect.

Entered as of the day and year first above stated.

CONSULTANT:

Signatures of Authorized Persons:

By:  _____

Print Name: Jason Kirchmann

Title: Vice President

CITY OF ST. HELENA
a Municipal Corporation

By: _____

Print Name: Mark T. Prestwich

Title: City Manager

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

ATTEST:

City Clerk

Attachments:

Exhibit A: "Scope of Work"

Exhibit B: "Compensation"

Exhibit A

"Scope of Work"

BKF have prepared the following fee and scope for the request to amend the original contract to allow BKF to update their drawings, technical specification, and cost estimate to include the design of a new recycled water main in Grayson Avenue

Design Services –

TASK 4: Utility Plan

BKF will develop utility plan sheets within the Grayson Avenue and South Crane Pavement Rehabilitation drawing set to illustrate the City-requested recycled water main improvements along Grayson Avenue. While the exact size and location of the recycled water main is not yet know, we anticipate the improvements will include the installation of approximately 2,700 feet of new 6-inch to 12-inch water main under Grayson Avenue. We understand this water main will be connected to existing recycled water infrastructure in Highway 29 and will include new services to the St. Helena High School and South Crane Park. In addition to updating the drawings with this new water line, BKF will also prepare technical specifications for the water line, and will add this additional work to the current Engineer's Estimate of Probable Construction Costs.

TASK 5: Caltrans Encroachment Permit Support

BKF will support the City with their Encroachment Permit application to Caltrans to allow work within the State Right of Way to install and connect the new recycled water main to the existing infrastructure in Highway 29. Anticipated support services include preparing the Encroachment Permit application form, preparing a Utility Policy Certification, and developing an abbreviated set of permit drawings showing only the work to be performed within the State Right of Way. We assume that the City will be responsible for submitting the application materials to Caltrans. This task includes budget to respond to two (2) rounds of plan review comments from Caltrans.

The estimated fee for Amendment No. 1 work is \$15,000.

Original Contract	\$175,139
Amendment #1	<u>\$15,000</u>
 Total	 \$190,139

BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE
JANUARY 1, 2020 – DECEMBER 31, 2020

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager Senior Technical Manager	\$214.00
Project Manager Technical Manager	\$209.00
Engineering Manager Surveying Manager Planning Manager	\$193.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$179.00
Project Engineer Project Surveyor Project Planner	\$157.00
Design Engineer Staff Surveyor Staff Planner	\$137.00
BIM Specialist I, II, III	\$137.00 - \$157.00 - \$179.00
Technician I, II, III, IV	\$130.00 - \$139.00 - \$152.00 - \$164.00
Drafter I, II, III, IV	\$102.00 - \$112.00 - \$121.00 - \$135.00
FIELD SURVEYING	
Survey Party Chief	\$179.00
Instrumentman	\$154.00
Survey Chainman	\$116.00
Utility Locator I, II, III, IV	\$93.00 - \$132.00 - \$158.00 - \$180.00
Apprentice I, II, III, IV	\$71.00 - \$95.00 - \$105.00 - \$111.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$234.00
Senior Construction Administrator	\$203.00
Resident Engineer	\$151.00
Field Engineer I, II, III	\$137.00 - \$157.00 - \$179.00
ASSISTANTS	
Project Assistant	\$84.00
Engineering Assistant Surveying Assistant Planning Assistant	\$82.00
Clerical Administrative Assistant	\$70.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.

Page 4 of 4

First Amendment to Professional Services Agreement
Consultant: BKF

STH CONTRACT FY 2020-084

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, made and entered into on April 28, 2020 by and between the City of St. Helena, located in the County of Napa, State of California (City), and BKF (Consultant).

RECITALS:

A. City desires to employ Consultant to furnish professional services in connection with the project described as Capital Improvement Plan Project No. R19-05 Grayson Avenue and South Crane Avenue Rehabilitation, Design Services.

B. Consultant has represented that Consultant has the necessary expertise, experience, and qualifications to perform the required duties.

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

SECTION 1 – BASIC SERVICES

Consultant agrees to perform the services set forth in **Exhibit A, “Scope of Services”** and made part of this Agreement.

SECTION 2 – ADDITIONAL SERVICES

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in this Agreement or **Exhibit A, “Scope of Services”** (the “Services”), unless such additional Services and compensation are authorized in advance and in writing by the City Council or City Manager of the City.

SECTION 3 – TIME FOR COMPLETION

The time for completion of Services shall be as identified in **Exhibit A, “Scope of Services”**. The parties expressly agree that time is of the essence in the performance of this Agreement.

SECTION 4 – COMPENSATION AND METHOD OF PAYMENT

A. Subject to any limitations set forth in this Agreement, City agrees to pay consultant the amount specified in Exhibit B, “Compensation” attached hereto and made a part hereof. Total compensation shall not exceed \$175,139.00 (One Hundred Seventy-five Thousand One Hundred Thirty-nine Dollars and Zero Cents), unless additional compensation is approved in accordance with Section 2.

B. Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories if applicable: labor (by sub-category), travel, materials, equipment, supplies,

Page 1 of 20

BKF – R19-05 Grayson and South Crane Rehab

subconsultant contracts, and miscellaneous expenses. Each original invoice furnished shall include the expenses incurred during the preceding month, the cumulative Agreement amount, and the amount remaining on the Agreement. City shall independently review each invoice submitted to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. If no charges or expenses are disputed, the invoice shall be approved, and City will use its best efforts to cause Consultant to be paid within 30 days of receipt of invoice. If the City disputes any charges or expenses, the City will return the original invoice to Consultant for correction and resubmission. If the City reasonably determines, in its sole judgment, that the invoiced charges and expenses exceed the value of the Services performed to date and that it is probable that the Agreement will not be completed satisfactorily within the contract price, City may retain all or a portion of the invoiced charges and expenses. Within thirty (30) days of satisfactory completion of the project, City shall pay the retained amount, if any, to Consultant.

C. Payment to the Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5 – STANDARD OF PERFORMANCE

A. Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the Services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all Services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons in the same or similar geographical area engaged in providing Services similar to those required of Consultant under this Agreement.

B. In order to induce City to enter into this Agreement, Consultant represents that it is duly organized, existing and in good standing under applicable state law; Consultant is licensed to perform all aspects of the Services; Consultant will employ only persons and Subconsultants with all required licenses and certifications; that Consultant is duly qualified to conduct business in the State; that Consultant has duly authorized the execution, delivery and performance of this Agreement and the Services to be performed herein; and that the Agreement does not violate or create a default under any instrument, agreement, order or decree binding on Consultant.

SECTION 6 – INSPECTION AND FINAL ACCEPTANCE

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City, unless the parties mutually agree to extend such deadline. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects and fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections pertaining to indemnification and insurance.

SECTION 7 – INSURANCE REQUIRED

Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees, as indicated:

- A. Minimum Scope of Insurance. Coverage shall be at least as broad as:
1. Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).
 2. Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, code 1 (any auto).
 3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

- B. Minimum Limits of Insurance. Consultant shall maintain limits no less than:
1. General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
 2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
 3. Employer's Liability: \$2,000,000 per accident for bodily injury or disease.

C. Professional Liability Insurance. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, environmental engineer or other professional engineer, or land surveyor ("design professional"), Consultant shall maintain at least \$2,000,000 of professional liability insurance.

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

E. Primary Coverage. For any claims related to this contract the Consultants insurance coverage shall be primary insurance as respects to City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of Consultants insurance and shall not contribute with it.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions of \$25,000 or greater must be declared to and approved by the City.

G. Other Insurance Provisions. The commercial general liability and automobile liability

Page 3 of 20

BKF – R19-05 Grayson and South Crane Rehab

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

1. The City, its agent, officers, officials, employees, and volunteers are to be covered as additional insured as respects: liability arising out of work or operations performed by the Consultant or Consultant's subconsultants; or automobile owned, leased, hired or borrowed by the Consultant.
2. For any claims related to Consultant's conduct while performing the work of this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its agents, officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its agents, officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subsection (b) of Section 2782 of the Civil Code.

H. Waiver of Subrogation. Consultant's commercial general liability, automobile liability, workers' compensation, and employer's liability policies shall be endorsed with a waiver of subrogation. The insurance company, in its endorsement, agrees to waive all rights of subrogation against the City, its agents, officers, officials, employees and volunteers for losses paid under the terms of this policy which arises from the work performed by the named insured for the City.

I. The Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the City.

J. Verification of Coverage. Consultant shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on forms that conform to City requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

SECTION 8 – INDEMNIFICATION

A. To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), as may be applicable, Consultant shall indemnify, defend, and hold harmless City, its agents, officers, officials, employees, representatives, and volunteers from any and all claims, demands, suits, loss, damages, injury, and/or liability (including any and all costs and expenses in connection therewith, including legal fees and expert witness costs) (collectively, "Liabilities"), incurred by reason of any negligent or otherwise wrongful act or omission of Consultant, its officers, agents, employees, subconsultants, and subcontractors, or any of them, under or in connection with this Agreement; and Consultant agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought

Page 4 of 20

BKF – R19-05 Grayson and South Crane Rehab

or instituted against City, its agents, officers, officials, employees and volunteers, or any of them, arising out of, pertaining to, or relating to such negligent or otherwise wrongful act or omission, and to pay and satisfy any resulting judgments.

B. When Consultant under this Agreement is duly licensed under California Business and Professions Code as an architect, landscape architect, professional engineer, or land surveyor (i.e., a “design professional,” pursuant to Civil Code § 2782.8(c)), the provisions of this section regarding Consultant’s duty to defend and indemnify apply only to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant.

C. If any action or proceeding is brought against Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify Indemnitees as provided above, Consultant, upon notice from City, shall defend Indemnitees at Consultant’s expense by counsel acceptable to City, such acceptance not to be unreasonably withheld. Indemnitees need not have first paid for any of the matters to which Indemnitees are entitled to Indemnification in order to be so indemnified. The insurance required to be maintained by Consultant shall ensure Consultant’s obligations under this section, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

D. The provisions of this section do not apply to claims to the extent occurring as a result of the City’s sole negligence, active negligence, or willful acts or misconduct.

E. Duty to Cooperate. Each party shall notify the other party immediately in writing of any claim or damage related to activities or Services performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of all Liabilities arising out of the activities or Services under this Agreement.

F. In the event that Consultant executes any subconsulting agreements in connection with the Services performed under this Agreement, Consultant shall place in all such subconsulting agreements, and cause its subconsultants to agree to, the indemnity and insurance obligations in favor of City and other Indemnitees, as provided herein, in the exact form and substance of those contained in this Agreement.

SECTION 9 – INDEPENDENT CONTRACTOR STATUS

A. Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner or to incur an 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 Agreement or is otherwise expressly conferred in writing by City.

B. The personnel performing the Services under this Agreement on behalf of Consultant shall at all times be under Consultant’s exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant’s officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that

Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City.

C. Neither Consultant, nor any of Consultant'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. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 10 – CONFLICTS OF INTEREST AND ANTI-FRAUD AND ANTI-CORRUPTION POLICIES

A. Consultant 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 Consultant's performance of Services under this Agreement. Consultant further covenants that in the performance of this Agreement, 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 City Manager. Consultant agrees to at all times avoid conflicts with the interests of City in the performance of this Agreement.

B. City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related Services for other governmental agencies and private parties. Consultant is aware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

C. Consultant understands and acknowledges City maintains an anti-fraud and anti-corruption policy to protect the City, its operations, and its employees from and against financial risks, operational breaches, and unethical, fraudulent and corrupt activities. Consultant represents and warrants that Consultant, its subcontractor(s) / subconsultant(s) and their respective employees providing Services pursuant to the Agreement are (1) in good standing; (2) have not been previously investigated, convicted, or debarred for fraudulent or corrupt activities; (3) will not participate in fraudulent or corrupt activities, and (4) will take steps to ensure that its employees and subcontractor(s) / subconsultant(s) employees do not participate in any fraudulent or corrupt activities. Consultant acknowledges and agrees further that it has a duty to and will report to City any information or incident(s) about possible fraudulent or corrupt activities Consultant may discover, and will cooperate in any fraud or corruption investigation conducted, with respect to Consultant's service provided pursuant to this Agreement.

SECTION 11 – OWNERSHIP OF DOCUMENTS

A. All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by Consultant in the course of providing any Services pursuant to this Agreement shall become the sole property of City and may be used, reused or otherwise disposed of by City without the permission of the Consultant. When requested by City, but no later than three years after project completion, Consultant shall deliver to City all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

Page 6 of 20

BKF – R19-05 Grayson and South Crane Rehab

B. All copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, techniques, inventions, processes, improvements, developments, works of authorship, or other products developed or created by Consultant during the course of providing Services (collectively the “Work Product”) shall belong exclusively to City. The Work Product shall be considered a “work made for hire” within the meaning of Title 17 of the United States Code. Without reservation, limitation, or condition, Consultant hereby assigns, at the time of creation of the Work Products, without any requirement of further consideration, exclusively and perpetually, any and all right, title, and interest Consultant may have in the Work Product throughout the world, including without limitation any copyrights, patents, trade secrets, or other intellectual property rights, all rights of reproduction, all rights to create derivative works, and the right to secure registrations, renewals, reissues, and extensions thereof.

SECTION 12 – CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION

A. All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

B. Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided consultant gives City notice of such court order or subpoena.

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

D. Consultant shall promptly notify City should Consultant, 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 Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite such response.

SECTION 13 – SUSPENSION OF WORK

City may, at any time, by ten (10) days written notice suspend further performance by Consultant. All suspensions shall extend the time schedule for performance in a mutually

satisfactory manner and Consultant shall be paid for Services performed and reimbursable expenses incurred prior to the suspension date.

SECTION 14 – COMPLIANCE WITH LAW

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the Services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 15 – COMPLIANCE WITH CIVIL RIGHTS

During the performance of this contract, Consultant agrees as follows:

A. Equal Employment Opportunity. In connection with the execution of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, color, ancestry, age, sexual orientation, gender, gender identity and gender expression as protected categories specifically and expressively in that category, physical handicap, medical condition, marital status, sex, or national origin. Such actions shall include, but not be limited to, the following: employment, promotion, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training including apprenticeship.

B. Nondiscrimination Civil Rights Act of 1964. Consultant will comply with all federal regulations relative to nondiscrimination to federally-assisted programs.

C. Solicitations for Subcontractors including Procurement of Materials and Equipment. In all solicitations, either by competitive bidding or negotiations, made by Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor, supplier, or lessor shall be notified by Consultant of Consultant's obligations under this Agreement and the regulations relative to nondiscrimination.

SECTION 16 – AUDIT AND INSPECTION OF RECORDS

A. Records of Consultant's direct labor costs, payroll costs, and reimbursable expenses pertaining to this project covered by this Agreement will be kept on a generally recognized accounting basis and made available to City if and when required for a period of up to 3 years from the date of Consultant's final invoice.

B. Consultant shall maintain all documents and records prepared by or furnished to Consultant during the course of performing the Services for at least three (3) years following completion of the Services. Such records include, but are not limited to, correspondence, internal memoranda, technical reports and investigations, calculations, books and accounts, accounting records documenting its work under its Agreement, and invoices, payrolls, records and all other data related to matters covered by this Agreement.

C. Consultant shall permit City to audit, examine and make copies, excerpts and transcripts from such records, and the Consultant shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for three (3) years after City makes the final or last payment or within three (3) years after any pending issues between City and Consultant with respect to this Agreement are closed, whichever is later.

SECTION 17 – LIMITATION OF LIABILITY

A. Consultant agrees that any liability of City arising in connection with this Agreement shall be limited exclusively to the City-entity identified as the “City” under this Contract. Under no circumstance shall any other City-entity be liable to Consultant under any theory, whether in contract, tort, or otherwise, and Consultant waives unconditionally any such claims. Consultant hereby waives and release other City-entities from any liability under this Agreement.

B. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement or the Services performed hereunder.

SECTION 18 – COOPERATION BY CITY

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit A, “Scope of Services”, shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 19 – NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by facsimile or first class mail, addressed as follows:

To City: City Manager
 1480 Main Street
 St. Helena, California 94574

To Consultant: BKF
 200 4th Street, Suite 300
 Santa Rosa, CA 95401

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile, or, if mailed, three (3) days after deposit in the custody of the U.S. Postal Service.

SECTION 20 – TERMINATION

A. City may terminate this Agreement, with or without cause, at any time by giving ten (10) days written notice of termination to Consultant. If such notice is given, Consultant shall cease immediately all work in progress.

B. If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

C. Upon termination of this Agreement by either Consultant or City, all property belonging to City which is in Consultant's possession shall be delivered to City. Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in this Agreement.

SECTION 21 – ATTORNEYS' FEES

If litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorneys' fees, costs and expenses, in addition to any other relief to which it may be entitled. In addition, any legal fees, costs and expenses incurred to enforce the provisions of this Agreement shall be reimbursed to the prevailing party.

SECTION 22 – ENTIRE AGREEMENT

This Agreement, including the attached Exhibits, is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 23 – SUCCESSORS AND ASSIGNS

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties. However, this Agreement shall not be assigned by Consultant without written consent of the City.

SECTION 24 – CONTINUITY OF PERSONNEL

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the Services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff assigned to perform the Services required under this Agreement, prior to any such performance.

SECTION 25 – DEFAULT

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to Consultant.

SECTION 26 – WAIVER

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision, or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 27 – LAW TO GOVERN; VENUE

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Napa. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in San Francisco.

SECTION 28 – SEVERABILITY

If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

SECTION 29 – THIRD PARTY BENEFICIARIES

Consultant's subconsultants shall agree to be bound to the terms of the Agreement to the extent of their scope of Services, including but not limited to, terms regarding indemnity and dispute resolution, and shall agree that City is deemed an express third party beneficiary of their subconsultant agreements. Nothing contained in this Agreement, however, shall operate to confer such or similar rights or benefits on persons or entities not party to this Agreement.

SECTION 30 – STATUTES OF LIMITATION

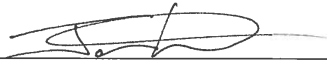
As between the parties to this Agreement, any applicable statute of limitations for action arising out of, pertaining to, or relating to any act or failure to act in connection with this Agreement shall commence to run on the date of City's issuance of the final Certificate for Payment, or termination of this Agreement, whichever is earlier, except for latent defects and/or deficiencies, for which the applicable statute of limitation shall begin to run upon discovery of the defect and/or deficiency and its cause.

SECTION 31 – SPECIAL PROVISIONS

This Agreement is subject to the following special provisions: none.

IN WITNESS WHEREOF, the parties hereto have accepted, made, and executed this Agreement upon the terms, conditions, and provisions above stated, the day and year first above written.

Consultant:

By: 
Name: Jason Kirchmann
Title: Vice President

City:

By: Mark T. Prestwich
Name: Mark T. Prestwich
Title: City Manager

Approved as to Form:

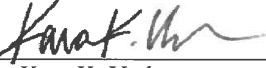
By: 
Name: Kara K. Ueda
Title: City Attorney

Exhibit A Scope of Services

PROJECT UNDERSTANDING

Grayson Avenue and South Crane Avenue (from Grayson Avenue to Sulphur Springs Road) provide access to St. Helena High School, St Helena Primary School, residences, small businesses, Crane Park and boutique wineries. Due to its age, underlying soil conditions, maintenance schedule and drainage characteristics, the roadway's current surface of is in poor condition, with Pavement Condition Index's (PCI) of 33 and 24. Several pavement design techniques, such as full depth reconstruction, use of paving fabrics or cold-in-place recycling, will need to be considered and deployed strategically throughout the corridor to improve vehicular mobility and safety.

To enhance the non-motorized transportation experience, the City is interested in implementing bicycle and pedestrian facilities along portions of both streets. Along the westerly side of Grayson Avenue (adjacent to the current vineyard, across from St Helena Primary School) has programmed a multi-use class I pathway. Grayson Avenue (adjacent to the current vineyard, across from St Helena Primary School) and along the south side of South Crane Avenue (within the City's urban limits) the City is seeking to close sidewalk gap closures by installing new contiguous curb, gutter and sidewalk where necessary.

PROVEN APPROACH

Based on BKF's experience working on pavement rehabilitation and multi-use pathway projects, BKF has developed a 4 point approach to complete the scope of work. This method has been refined and proven over decades of experience and ensures BKF will meet the required delivery schedule, including grant requirements, while being flexible:

- 1. Manage** the process to address stakeholders and meet the City's project goals and grant funding requirements;
- 2. Define** opportunities and constraints to ensure the design meets the project's intended goal and grant requirements, as well as minimize risk;
- 3. Develop** coordinated design documents;
- 4. Validate** that the designs are both constructible and sustainable over the long term.

COMPONENT 1: MANAGING THE PROCESS

- 1. Project Work Program:** BKF will develop a detailed project work program that identifies tasks and deliverables necessary to deliver the project. BKF will update the task and deliverables regularly and share with City staff to reflect the progress of the project.
- 2. Defined Schedule:** BKF will develop a work program with reference to a schedule in Microsoft Project. BKF's Project Manager will update the schedule with the completion of each phase and discuss the implications with the City.
- 3. Design Fee:** BKF has developed a fee for design services based on the work plan and schedule. This fee will be time and materials not to exceed per the defined rate schedule. BKF manages internal and external labor expenses in the Deltek computer application. This system allows BKF to track budgets daily, weekly, and monthly. BKF will not to exceed their allowed fee unless there is a change in the scope of work that is approved by the City of St. Helena in writing prior to additional expenditures.

4. Managing Issues: BKF will prepare a formal report for the City regarding schedule and status updates. BKF will highlight items requiring feedback from project partners. BKF can establish an Intranet site where consulting and City staff members can post updates, obtain information, and share ideas. Additionally, BKF finds that biweekly video conferencing meetings are a great way to coordinate the team and resolve issues.

COMPONENT 2: DEFINING OPPORTUNITIES & CONSTRAINTS

- 1. Field Review and Documenting Existing Conditions:** BKF will review the site to understand constraints that may affect the design. BKF believes that defining the locations of underground utilities and surface improvements is essential to avoiding conflicts during construction.
- 2. Alternatives Analyses:** Leveraging tools and techniques to consider alternatives and create flexibility into the design and bid options is fundamental to BKF's approach to project implementation.
- 3. Stakeholder Outreach:** BKF will document the concerns of the project's stakeholders at the earliest stage in the design process is essential to preventing delays, conflicts, or expanded scope. BKF will coordinate and attend meetings to understand concerns.
- 4. Funding Requirements:** BKF understands the City is currently funding the project design with local funds and intends to apply for grants to assist with future construction.
- 5. Defining Construction Risk:** Risk assessment is critical to managing the overall construction budget. BKF will characterize subsurface soils and utilities to prevent as many unknowns as possible that could otherwise lead to contractor change order and/or delays.
- 6. Accessibility and Right of Way:** Many driveways and sidewalks along the westerly portion of Grayson Avenue do not meet accessibility requirements. Because most of the design is widening of sidewalks into the public right-of-way, encroachments onto private property to make the driveways compliant should be minimal. If necessary, as with similar projects, BKF will assist with negotiating a Right to Enter process.

COMPONENT 3: DEVELOPING COORDINATED PLANS

- 1. Plan Design and Reports:** BKF will develop plans at intermediate submittals appropriate to the task. For each submittal, BKF will provide an engineer's estimate, specifications, plans, and reports for the City review. Specifications will be coordinated with City staff.
- 2. Coordination:** BKF's Project Manager and lead designers will be responsible for solving technical challenges while developing the design in accordance with the City goals. BKF will coordinate the work with other consultants, staff, and other agencies to ensure collaboration and obtain project approvals.
- 3. Facilitating Communication with Other Agencies:** BKF will provide clear, direct communication and be accessible at all times during critical project stages.

COMPONENT 4: VALIDATING IMPLEMENTATION

- 1. Quality Begins with a Thorough Work Plan:** Critical to the development and timely completion of quality documents is the development of a thorough methodology or work plan. Through initial scheduling and planning efforts, BKF will develop a clear, concise work plan that identifies the critical key issues.
- 2. Quality is confirmed through a Quality Assurance Program:** BKF's Quality Assurance Program requires independent review of all documents by an engineer other than the design engineers prior to the signing and stamping of plans by the project manager. The quality assurance engineer will be involved early in the project to review the documents for concept and

Page 14 of 20

BKF – R19-05 Grayson and South Crane Rehab

compatibility to standards and requirements. In monitoring the project throughout, changes in scope will be identified immediately and discussed with the City. Early identification of changes and obstacles allows for corrections to be incorporated with limited consequence. In addition to BKF's independent plan checking, BKF will conduct constructability and bid-ability reviews at the completion of the Preliminary Engineering phase. The reviews will focus on the implementation of the design plans and specifications from the point of view of qualified construction administration personnel.

Recommendations will be provided to ensure that the proposed design considers construction procedures and methods that can be implemented to maximize the efficiency of the stage construction and cost benefit of the Project.

Using the process and approach, BKF will provide the City of St. Helena with quality service and help to facilitate local funds as well as seek other grant funds to enhance the community and create a safe, long lasting street.

DETAILED WORK PLAN

BKF's approach to completing the design of improvements to the St. Helena Grayson Avenue and South Crane Avenue Rehabilitation Project includes the following elements:

PROGRAM MANAGEMENT & MEETINGS

BKF will manage the design team as well as track progress, schedule, and budget. BKF will be responsible for documenting all design decisions and keeping an official record of the project. Furthermore, BKF will submit monthly progress reports identifying tasks completed, budget status, and issues status. A senior member of BKF will perform an independent quality control review of BKF's documents prior to each submittal. The review will evaluate constructability, cost, and discrepancies between the disciplines. BKF believe that at appropriate phases of the project, meetings are essential to convey ideas and resolve issues.

Kickoff Meeting. BKF will conduct a kickoff meeting with St. Helena City staff to define communication protocols and reaffirm project scope goals, schedule and budget.

TASK 1 - DATA COLLECTION

Record Data Collection and Field Review. BKF will research and collect available records from the City of St. Helena, Napa County, Caltrans and the public utilities to obtain property line, utility data, geotechnical information and traffic information. BKF will field walk the site to create a photographic log along the roadway.

BKF will take notes of any potential public/private conflicts within rights-of-way. While BKF understand that it is the City's intent to construct the project within existing public rights-of-way, should a conflict occur, BKF will address the need for easements. BKF will also define the Caltrans right-of-way for coordination and presentation during the Caltrans encroachment process.

Topographic Survey. BKF will complete field surveys along the roadway, acquiring cross sections at 25 foot intervals. BKF will create base maps including topographic, utility, and boundary information that will be based on existing as-builts, right-of-way and easement maps as provided by the City. Individual properties within the project area will be identified by tax

Page 15 of 20

BKF – R19-05 Grayson and South Crane Rehab

assessor number. Based on information provided by the City, it is understood and assumed that all rights-of-way appear on survey maps of record and sufficient monumentation exists to retrace said surveys. If during the course of BKF's survey, it appears that section 8762 of the California Professional Land Surveyor's Act will be triggered, requiring a Record of Survey, BKF will notify the City and discuss the right of way mapping options. Formal boundary determination and a record of survey can be provided as an additional service.

Public Utilities Coordination. Older streets often times have shallow utilities which may conflict with full depth replacement paving or other designs implemented with this project. Additionally, in order to prolong the finished streets lifespan, it is important to coordinate any planned utility projects prior to final paving. BKF will meet with PG&E, Comcast, AT&T, the County of Napa, and the City of St. Helena Public Works Utilities Division to coordinate relocations and potential upgrades to their facilities.

Public Outreach. BKF will coordinate a community meeting to inform the public (i.e. St. Helena Unified School District, residences, small businesses, and boutique wineries) of the forthcoming project and to obtain initial feedback. It is anticipated that in addition to a general wish list from the public, this meeting will focus on understanding pedestrian accessibility and transportation concerns and needs.

Implementation of Planning Documents. BKF will review current planning documents which may impact the project limits such as the General Plan and NVTAs Countywide Pedestrian and Bicycle plans where applicable. BKF will coordinate the proposed design for general conformance with these planning documents.

Geotechnical Investigation. A site investigation and report prepared by a Geotechnical Engineer is highly recommended for paving rehabilitation projects with complex existing conditions and several potential solutions. BKF, through a subconsultant, RGH Consultants (RGH) will provide soil borings and a geotechnical investigation to describe existing conditions and recommended reconstruction improvements. BKF also have allocated time for RGH to consult during the design process. RGH is very familiar with soil and pavement conditions throughout St. Helena due to the extensive experience in the general area as well as through services they provided to the City in the past.

Deliverables. Base mapping including topography, boundary, and utility information. BKF will provide the City an electronic and hard copy (1). The data collected and studies performed under this Task will be delivered in a package entitled **Task 1, Background Data for Grayson and South Crane Rehabilitation Project.**

TASK 2: PRELIMINARY ENGINEERING PLANS

Using the data collected during Task 1 above and upon authorization by the City to move forward with the conceptual design of the project. BKF will develop a conceptual plan and commence with a City coordination meeting to review potential design cross sections, sidewalk/pathway limits and site constraints. BKF will prepare a preliminary design based on the conceptual plan. BKF's objectives during this Task include:

- Complete preliminary engineering based on the Basis of Design to further refine construction cost

- Resolve conflicts between existing conditions and proposed streetscape design
- Confirm utilities that the project may relocate or that utility companies may want to upgrade prior to paving

Preliminary Plans. The preliminary (35%) design will serve as the basis to move into final engineering the project. The plan will include drainage and stormwater quality considerations (should the City wish to pursue sustainable stormwater solutions as defined in the BASMAAA Design Guidelines); horizontal layout plan; typical cross sections; pavement plan; striping and signage plan; special provisions in an outline format; right-of-way locations; public utility relocation exhibits; cost estimate; and photometric Analysis (BKF will complete a final photometric analysis in conformance to the IESNA standards)

Confirm Utility Conflicts and Resolutions. If authorized by the City, BKF will retain a licensed general engineering contractor to pothole underground utilities at strategic locations to define the horizontal and vertical locations. Additionally, depending on the pavement rehabilitation strategy, BKF may acquire additional data in the roadway to confirm utilities are not located within the proposed structural section. BKF will acquire the location using traditional survey techniques.

Active Transportation and Sustainability Committee Meeting. To inform stakeholders and community members of the project, BKF will host a meeting with the City's Active Transportation and Sustainability Committee to discuss the proposed project to review and potentially modify or approve the Preliminary Documents. BKF will modify the documents based on comments from this meeting, with direction from City Staff.

Deliverables: BKF will provide an electronic and hardbound copy (1) of the Preliminary Engineering Plans and any supplemental reports prepared during this Task. The documents prepared will be delivered in a package entitled **Task 2, Preliminary Engineering Plans for Grayson and South Crane Rehabilitation Project.**

TASK 3: FINAL ENGINEERING

Plans, Specifications, and Estimate. The objective of this task is to develop the documents, including plans and specifications, to a level necessary for bid and construction of the project. BKF will prepare construction documents, including plans and specifications, in accordance with the City's standards for formal submittals at the 75%, 90%, and 100% level of completeness. Upon approval, BKF will include a final 100% set for bidding. Each submittal will contain the following plans: title and key map sheet; horizontal layout plan; typical cross sections; pavement repair plan; utility relocation plan (if necessary); striping and street signage plan; street lighting plan; construction details; special provisions in an outline format; temporary construction easement plats and legals (if necessary); and final Engineer's Opinion of Probable Construction Costs (cost estimate).

In the 75% submittal, BKF will incorporate the City's front end specifications into the special provisions as well as provide an engineer costs estimate.

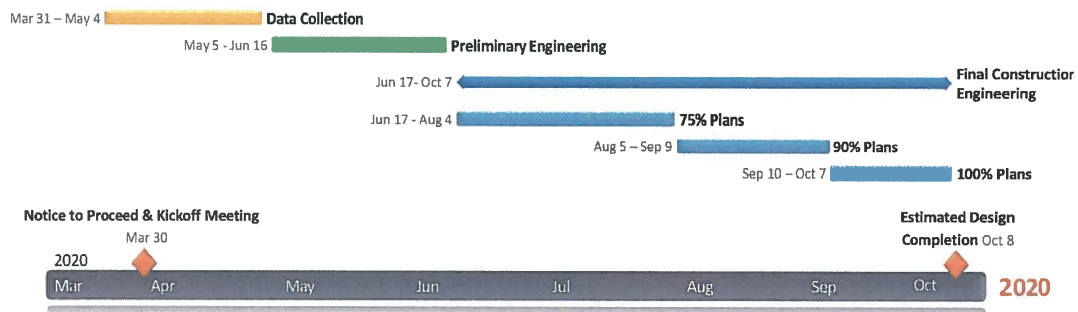
At the 90% Final Engineering Plans and cost estimate submittal stage, BKF will schedule a follow-up meeting with the community and the City's Active Transportation and Sustainability

Committee to discuss the project developments since the meetings outlined in Task 1 and Task 2 above.

CEQA. It is anticipated that the project will receive a Categorical Exemption designation as part of the CEQA process and as defined in Article 19, Chapter 3 (Guidelines for Implementation of the California Environmental Quality Act) under Title 14 of the California Code of Regulations. BKF will assemble the necessary supportive data and studies to complete CEQA as it relates to a Class I Categorical Exemption.

Deliverable. Each progress submittal will include hard copies of plans, specifications, and construction cost estimate. BKF will additionally provide an electronic version of the submittal in both AutoCAD and Adobe Acrobat format. Upon approval of the final design documents by City Staff, BKF will provide a digital and hardbound signed copy of the documents prepared for the project, including the documents for bid and construction. The package will be delivered and entitled Task 3, Final Engineering Plans for Grayson and South Crane Rehabilitation Project.

Project Schedule. It is anticipated that final construction documents will be completed by October 2020. However, this agreement will remain in effect until completed or per the terms set forth in the recitals.



**Exhibit B
Compensation**

 Grayson Avenue and South Crane Avenue Rehabilitation Fee Proposal	BKF Engineers						Total BKF Hours	BKF Fee	RGH Consultants Geotechnical Engineer		Total Fee
	Project Executive	Project Manager	Sr. Project Engineer	Project Engineer	Staff Engineer	Field Crew			Principal	Staff	
Published Billing Rates	\$251	\$209	\$179	\$148	\$137	\$295					
Grayson Avenue and South Crane Avenue Rehabilitation											
Task 1 Data Collection											
a Property Base Map	1	4	16		24	24	69	\$14,319			\$14,319
b Fixed improvements mapping		3	5		60	40	10	\$21,542			\$21,542
c Utility Upgrades and Mapping		4	16		16		36	\$5,892			\$5,892
d Conflict/Clash Detection		4	8	8			20	\$3,452			\$3,452
e Topography of Curb, gutter and Buildings	1	1	2		32	16	52	\$9,922			\$9,922
f Temporary Construction Easements/Caltrans Encroachment Permitting		2			2		4	\$692			\$692
g Address Bike/Ped improvements with Planning Documents	1	2	8				11	\$2,101			\$2,101
h Public Outreach (incl. Community Meeting)	4	4		4			12	\$2,432			\$2,432
i Soil Samples and Geotechnical Investigation		1					1	\$209	\$13,200		\$13,409
j Deliverable: Background Data for Grayson Avenue and South Crane Avenue					2		2	\$274			\$274
Task 1 Subtotal:	7	25	55	12	136	80	31	\$60,835	\$13,200		\$74,035
Task 2 Preliminary Engineering Plans											
a Prepare Preliminary Engineering Plans	4	16	24	40	40		12	\$20,044	\$2,750		\$22,794
b Identify and Resolve Conflicts between Rehabilitation and Existing Conditions	1	2	8		8		19	\$3,197			\$3,197
c Identify Construction Easements and Engage Caltrans		4	6				10	\$1,910			\$1,910
d Utility Relocations and Upgrades		2	4		10		16	\$2,504			\$2,504
e Prepare Preliminary Engineer's Estimate	1	2	6		10		19	\$3,113			\$3,113
f City Review Meeting		4					4	\$836			\$836
g Active Transportation and Sustainability Committee Meeting	4	4					8	\$1,840			\$1,840
h Deliverable: Preliminary Engineering Plans for Grayson Av and South Crane Ave					4		4	\$548			\$548
Task 2 Subtotal:	10	34	48	40	72	0	20	\$33,992	\$2,750		\$36,742
Task 3 Final Construction Engineering											
a Prepare Final Engineering Plans, Specifications and Estimate											
75% Submittal	2	16	30	60	80		18	\$29,056	\$2,750		\$31,806
90% Submittal	2	12	12	24	48		98	\$15,286	\$2,200		\$17,486
100% Submittal	2	4	6	16	20		48	\$7,520	\$1,650		\$9,170
b Community and Active Transportation and Sustainability Committee Meeting	4	4					8	\$1,840			\$1,840
c CEQA - Categorical Exemption	1	4	4				9	\$1,803			\$1,803
f Deliverable: Final Engineering Plans for Grayson Av and South Crane Ave					4		4	\$548			\$548
Task 3 Subtotal:	11	40	52	100	152	0	35	\$56,053	\$6,600		\$62,653
Subtotal Labor Fee								\$150,880	\$22,550		\$173,430
Reimbursable Expenses											
Printing, Postage, and Travel								\$1,509	\$200		\$1,709
Subtotal Reimbursable Expenses								\$1,509	\$200		\$1,709
Total Labor Plus Reimbursable Expenses								\$152,389	\$22,750		\$175,139



**BKF ENGINEERS
PROFESSIONAL SERVICES RATE SCHEDULE**

JANUARY 1, 2020 – DECEMBER 31, 2020

<u>CLASSIFICATION</u>	<u>HOURLY RATE</u>
PROJECT MANAGEMENT	
Principal/Vice President	\$251.00
Senior Associate/Vice President	\$225.00
Associate	\$219.00
Senior Project Manager Senior Technical Manager	\$214.00
Project Manager Technical Manager	\$209.00
Engineering Manager Surveying Manager Planning Manager	\$193.00
TECHNICAL STAFF	
Senior Project Engineer Senior Project Surveyor Senior Project Planner	\$179.00
Project Engineer Project Surveyor Project Planner	\$157.00
Design Engineer Staff Surveyor Staff Planner	\$137.00
BIM Specialist I, II, III	\$137.00 - \$157.00 - \$179.00
Technician I, II, III, IV	\$130.00 - \$139.00 - \$152.00 - \$164.00
Drafter I, II, III, IV	\$102.00 - \$112.00 - \$121.00 - \$135.00
FIELD SURVEYING	
Survey Party Chief	\$179.00
Instrumentman	\$154.00
Survey Chainman	\$116.00
Utility Locator I, II, III, IV	\$93.00 - \$132.00 - \$158.00 - \$180.00
Apprentice I, II, III, IV	\$71.00 - \$95.00 - \$105.00 - \$111.00
CONSTRUCTION ADMINISTRATION	
Senior Consultant	\$234.00
Senior Construction Administrator	\$203.00
Resident Engineer	\$151.00
Field Engineer I, II, III	\$137.00 - \$157.00 - \$179.00
ASSISTANTS	
Project Assistant	\$84.00
Engineering Assistant Surveying Assistant Planning Assistant	\$82.00
Clerical Administrative Assistant	\$70.00

Expert witness rates are available upon request.

Subject to the terms of a services agreement:

- Charges for outside services, equipment, materials, and facilities not furnished directly by BKF Engineers will be billed as reimbursable expenses at cost plus 10%. Such charges may include, but shall not be limited to: printing and reproduction services; shipping, delivery, and courier charges; subconsultant fees and expenses; agency fees; insurance; transportation on public carriers; meals and lodging; and consumable materials.
- Allowable mileage will be charged at the prevailing IRS rate per mile.
- Monthly invoices are due within 30 days from invoice date. Interest will be charged at 1.5% per month on past due accounts.

Page 20 of 20

BKF – R19-05 Grayson and South Crane Rehab

Grayson and South Crane Rehab

Project No: 0207-R19-05

Category: Streets

Project Location: Grayson and South Crane



PROJECT PURPOSE & DESCRIPTION: This project will reconstruct Grayson and South Crane Avenues. Accessibility improvements to sidewalks and curb ramps will be included as part of the project whenever applicable.

NOTES: Resolution 2020-36 - PSA with BKF for design for \$175,139

EXPENDITURE ACCOUNTS:

Fund: 741 **Dept:** 5014

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design		200,000						200,000
EXPENDITURE TOTALS		200,000						200,000
FUNDING SOURCES								
240-Measure T		200,000						200,000
FUNDING TOTALS		200,000						200,000



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consider approval and grant of authorization to City Manager to enter into agreements for the acceptance of trail easements with Treasury Wine Estates Americas Company and C. Mondavi & Family in furtherance of the Napa Valley Vine Trail project.

CEQA Determination: Acceptance of the easements is simply a step the implementation of the Vine Trail project, for which the Napa Valley Transportation Authority (NVTa) is the lead agency for purposes of CEQA. NVTa approved a Final Mitigated Negative Declaration (SCH 2020060572) and adopted a Mitigation Monitoring and Reporting Program for the portion of the Vine Trail project extending from St. Helena to Calistoga on August 19, 2020. Any environmental impacts of this portion of the Vine Trail project were addressed in the MND adopted by NVTa.

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

The Napa Valley Vine Trail (the "Vine Trail") is envisioned as a 47-mile Class 1 mixed-use path for pedestrians and cyclists that will run the length of the Napa Valley (Calistoga to American Canyon) and connect to the Vallejo ferry terminal in Vallejo, providing a crucial link to the City of San Francisco and the larger Bay Area. The proposed project is to construct a bike and pedestrian trail adjacent to the State Route (SR) 29 corridor which will encourage bicyclists and pedestrians to take alternative modes of transportation. The project will enhance the accessibility and connectivity of the community in surrounding neighborhoods and will eventually complete all segments of the Vine Trail planned for the region. The project has broad based community

support from a coalition representing over 20 private and public sector organizations, all involved in its planning, design and funding. Project funding for the Calistoga to St. Helena Segment has been established from federal, state, local and private (philanthropic) sources.

The Calistoga to St. Helena Vine Trail Segment will construct a 9.4 mile Class 1 bicycle/pedestrian path within the public right of way from the intersection of Fair Way and Lincoln Avenue in Calistoga on the northern end to Pratt Avenue in St. Helena along State Route 29. The City has contributed both financial and staff support to the planning process for this segment of the Vine Trail. The design of the Calistoga to St. Helena segment is nearly complete, with construction planned to start and complete in 2021. Portions of the Vine Trail will extend across private property, and the Vine Trail coalition has worked with those private property owners to secure the grant of easements to allow for the extension of the Vine Trail across private property. The trail easements will be granted by the private landowner to the jurisdiction in which the private property is located (i.e., the County of Napa, or the applicable cities).

DISCUSSION

The portion of this segment of the Vine Trail that extends through St. Helena includes private property owned by two separate land owners: Treasure Wine Estates Americas Company ("TWE"), which owns the Beringer Winery property, and C. Mondavi & Family ("C. Mondavi"), which owns the Charles Krug Winery property. Each of the property owners have agreed to grant an easement across their property to facilitate the completion of this segment of the Vine Trail

A prior owner of the Beringer Winery property previously conveyed a bicycle pathway easement to the City across the subject property with an alignment consistent with the Vine Trail and, so rather than enter into a new easement agreement, the City and TWE plan to enter into an Amendment to and Ratification of the existing Easement Agreement to make clear that the easement area will be used as part of the Vine Trail, and to amend the termination provisions to make them consistent with the other easement agreements for the Vine Trail.

A new easement agreement is also proposed between the City and C. Mondavi & Family, the form of which is consistent with the form of easement agreement extending along this full segment of the Vine Trail. The Vine Trail coalition has been coordinating the negotiation of easement agreements with multiple land owners in an effort to develop a consistent form of easement agreement for the Vine Trail, to the greatest extent possible. The proposed easement agreement with C. Mondavi & Family is consistent with this form.

FISCAL IMPACT

There will be no direct fiscal impact as a result of the acceptance of these easements. The City will have ongoing maintenance responsibilities in connection with the segment of the Vine Trail extending through the City, but those costs have been factored into the City's decision to be involved in and support the development of the Vine Trail.

RECOMMENDED ACTION

Adopt the Resolution approving an Amendment to and Ratification of Agreement Granting Bicycle Pathway Easement between the City and Treasury Wine Estates Americas Company and adopt the Resolution approving a Trail Easement Agreement between C. Mondavi & Family and the City.

ATTACHMENTS

[RevDraft St. Helena TWE-Beringer 009-010-026 Amendment to 1992 Easement Agreement \(2020 11 08\)-c1](#)

[REVFINAL St. Helena CMF 009-010-022 Easement Agreement \(Charles Krug 2 .. - c1](#)

[Resolution Approving Amended Easement with TWE-c1-c1](#)

[Resolution Approving Easement Amendment with TWE-c1-c1](#)

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attn: City Clerk

The City of St. Helena is Exempt from Recording Fees
(Government Code §27383), Documentary Transfer Tax
and City Transfer Tax (Rev. & Taxation Code §11922
and St. Helena Municipal Code §3.20.050), and Building
Homes & Jobs Trust Fund Fee (Govt. Code
§27388.1(a)(2)(D)).

Assessor's Parcel #(s): 009-010-026

Space above this line reserved for County Recorder's use

AMENDMENT TO AND RATIFICATION OF AGREEMENT GRANTING BICYCLE PATHWAY EASEMENT

THIS AMENDMENT TO AND RATIFICATION OF AGREEMENT
GRANTING BICYCLE PATHWAY EASEMENT (this "**Amendment**") is made by the
City of St. Helena, a California municipal corporation ("**City**"), and Treasury Wine
Estates Americas Company, a Delaware corporation ("**TWE**"), as successor-in-interest to
Wine World Estates Company (the "**Original Grantor**"). TWE and the City are
sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**"
The effective date of this Amendment is _____, 2020

Recitals

WHEREAS, pursuant to that certain Agreement Granting Bicycle Pathway
Easement dated June 25, 1992 and recorded in the Napa County Official Records on
August 12, 1992 as Instrument No. 1992-026994 (the "**Easement Agreement**"), the
Original Grantor granted the City a non-exclusive easement in gross (the "**Trail
Easement**") in, on, over, and across that certain real property described in Exhibit A to
the Easement Agreement (the "**Property**"); and

WHEREAS, the purpose of the Trail Easement was to permit the City to
construct, maintain, and make available for public use a bicycle trail in the Trail
Easement area, which Trail Easement area (the "**Existing Easement Area**") is described
in and depicted at Exhibits B and C to the Easement Agreement; and

WHEREAS, the City supports creating recreational trails for public use,
including but not limited to a 47-mile walking and biking trail system to physically,
artistically, and culturally connect the entire Napa Valley, from the City of Vallejo to the
City of Calistoga (hereinafter, the "**Vine Trail**"); and

WHEREAS, Napa Valley Transportation Authority (“NVT”) has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services for completion of the Vine Trail; and

WHEREAS, the Trail Easement and existing pathway thereon will be used for and incorporated into the Vine Trail, with reconstruction and other improvements to the existing pathway to be performed by contractors whose services NVT will procure; and

WHEREAS, TWE and the City desire to amend the Easement Agreement to delete expiration provisions and incorporate new termination provisions, and otherwise acknowledge, affirm, and ratify the Trail Easement, on the terms and conditions set forth in the Easement Agreement, as modified and amended by, and incorporating therein, the terms and conditions set forth below.

Agreement

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals. The foregoing Recitals are true and correct and are hereby incorporated into this Agreement.

2. Improvements to Existing Pathway. The Parties acknowledge that certain reconstruction and improvements to the existing pathway within the Existing Trail Easement Area are required to improve the condition of the existing pathway and maintain continuity among all segments of the Vine Trail. Such reconstruction and improvement activities will be performed by contractors procured by NVT and pursuant to a separate Temporary Construction Agreement by and between TWE and Grantor.

3. Amendments to Easement Agreement.

3.1. All references to the Original Grantor (*i.e.*, “*Wine World*”) contained in the Easement Agreement are hereby deleted and replaced with the term “*Grantor*”. For purpose of interpreting the Easement Agreement as amended by this Amendment, the term “*Grantor*” shall be read to refer to TWE, or its successors or permitted assigns, or the successor owner of the Property, as applicable under the circumstances.

3.2. All reference to the “*agreement*” in the Easement Agreement shall be read to refer to the Easement Agreement as amended by this Amendment and all reference to the “*easement*” therein shall be read to refer to the Trail Easement as defined herein.

3.3. The term “*Easement Property*” as used in the Easement Agreement is synonymous with the Existing Easement Area as used herein and refers to the area of the

Trail Easement described at and depicted in Exhibits B and C to the Easement Agreement.

3.4. Paragraph 8 of the Easement Agreement that would establish a term for the Trail Easement is hereby deleted in its entirety and replaced with the following:

“8. Termination.

A. For Lack of Use. If after the initial reconstruction and improvement of the pathway within the Easement Property, the easement is not, at any time in the future, used by the general public as a pedestrian and bicycle trail for a continuous year as supported by substantial documentary evidence, then Grantor shall have the right to provide City notice of its intent to terminate the easement (“**Notice of Intent to Terminate the Easement**”) for lack of use by giving sixty (60) days prior written notice to the City. If the easement thereafter remains unused by members of the general public for a period of (60) days after City receives a Notice of Intent to Terminate the Easement, accompanied with such substantial documentary evidence, then the easement shall be deemed abandoned and City shall, upon request by Grantor, execute, acknowledge and deliver to Grantor a quitclaim deed to relinquish any further interest of City in the easement. Closure of, or cessation of use upon, the Easement Property at times for repairs, maintenance, reconstruction, or other improvement shall not be deemed abandonment nor count towards said one year period. If initial reconstruction of the pathway in the Easement Property is not substantially complete within ten (10) years from _____, 2020, the easement will be deemed abandoned and City will, upon Grantor’s request, execute, acknowledge, and deliver to grantor a quitclaim deed relinquishing any interest in the easement.

B. Upon Default. Upon City’s default in the performance of any material term or obligation of City’s set forth in the agreement, Grantor may terminate the easement by delivering a Notice of Intent to Terminate the Easement that sets forth in reasonable detail the nature of City’s default and manner by which such default may be cured. Any such termination will be on no less than sixty (60) days prior written notice; *provided* that the easement will not terminate if City’s default is cured within that cure period or if reasonable efforts to cure the default are commenced promptly within that period for a default that cannot reasonably be cured in that time. Following delivery of a Notice of Intent to Terminate the Easement by reason of City’s default, Grantor may temporarily block public access to the Easement Property.

4. Ratification of Easement Agreement and Trail Easement. The Parties hereby acknowledge, affirm, and ratify the Easement Agreement and Trail Easement on the terms and conditions contained therein, as amended by this Amendment. Except as modified and amended by this Amendment, the Easement Agreement and Trail Easement remain in full force and effect as of the effective date of this Amendment.

5. Notices. Any notices required under the Easement Agreement or this Amendment, or any correspondence between the Parties shall be addressed as follows, unless the Parties shall provide written notice of a change:

GRANTOR:

Treasury Wine Estates Americas Company
P.O. Box 4500
Attn: Legal Dept.
Napa, CA 94558

CITY:

Public Works Director
City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574

With a copy to (which shall not constitute notice):

City Clerk
City Of St. Helena
1480 Main Street
St. Helena, CA 94574

Notice shall be delivered personally, including by messenger or courier, or by certified mail, return receipt requested, postage prepaid. Notices shall be deemed to have been duly given (a) if delivered personally, on the date of delivery; (b) if transmitted by certified mail, on the earlier of (i) the second (2nd) business day after the date of such mailing, or (ii) the date of receipt. The addresses and addressees may be changed by giving written notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee as stated by written notice, or as provided herein if no written notice or change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

6. Dispute Resolution; Legal and Equitable Relief.

6.1. Dispute Resolution. With respect to any dispute arising out of or related to this Agreement, the Parties shall first make a good-faith effort to resolve the dispute without resort to litigation. In the event of a dispute, the Parties agree to meet informally within fifteen (15) days after notice from one Party requesting such a meeting. Should the dispute not be resolved by said informal discussions, the Parties agree to attempt in good faith to resolve their differences in confidential, non-binding mediation, using an experienced mediator with at least five (5) years of relevant experience who is an attorney or retired judge and who is mutually agreed upon by the Parties. If the Parties are unable to agree upon a mediator, JAMS will suggest three (3) mediators meeting the above qualifications and each Party will strike one. A mediation session shall be scheduled within thirty (30) days after the failure of informal discussions to resolve the dispute. Costs of the mediation shall be borne equally by the Parties. The mediation will be held under the rules of JAMS and will be conducted in Napa County, California. The Parties will participate in the mediation process in good faith, and will have a representative in attendance throughout the mediation with authority to settle the dispute. The Parties may be represented by counsel at both the informal discussions and the

mediation session. Statements made during the mediation process shall be considered to be made in the context of settlement discussions, and shall not be admissible in any subsequent judicial proceeding. If mediation fails to resolve the dispute, the Parties may resort to any form of dispute resolution, including litigation within the California courts.

6.2. Legal and Equitable Relief. Each Party shall, subject to compliance with Section 6.1 hereof, have the right (but not the obligation) to prosecute any proceedings, either in California courts or arbitration, at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in the Easement Agreement or this Amendment in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of the Easement Agreement or this Amendment by any Party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. The remedies available shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of the Easement Agreement or this Amendment. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any Party.

7. Waiver. No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of the Easement Agreement or this Amendment shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions thereof or hereof.

8. Counterparts. The Parties hereto agree that this Amendment may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Amendment, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

9. Attorneys' Fees. In the event that any action is brought, or arbitration initiated, by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of the Easement Agreement or this Amendment, venue for such proceeding shall be in the Superior Court of the County of Napa, State of California, and the prevailing Party shall be entitled to recover, and the other Party agrees to pay (in addition to any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

10. Recordation. This Amendment evidencing the ratification of the Trail Easement and Easement Agreement shall be recorded in the official records of Napa County.

11. Third Party Beneficiaries. Notwithstanding anything in the Easement Agreement or this Amendment to the contrary, including rights of the general public to use the Trail Easement Area, nothing herein is intended to create any third party benefit, and there are no third party beneficiaries of the Easement Agreement or this Amendment.

12. Definitions; Conflicts. Defined terms that are used but not defined herein have the meaning ascribed to them in the Easement Agreement. The Easement Agreement and this Amendment are intended to be read together, with this Amendment modifying, amending, and incorporating certain additional terms into that Easement Agreement. In the event of a conflict between the Easement Agreement and this Amendment, this Amendment will control.

13. Authority. Each person executing this Amendment on behalf of a party hereto has all requisite consent, power and authority to execute this Amendment on behalf of that party and any other agreements or instruments required hereunder and that party has all requisite consent, power, and authority to enter into and perform its obligations under the Easement Agreement and this Amendment and all other agreements and instruments entered into in connection therewith and herewith.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Trail Easement Agreement was executed by the Parties hereto as of the date indicated below, and effective as of the date of the latest signature.

TREASURY WINE ESTATES AMERICAS
COMPANY, a Delaware corporation

By:

Its:

Date: _____, 2020

CITY OF ST. HELENA, a California municipal
corporation

By _____
Mark T. Prestwich, City Manager

Date: _____, 2020

ATTEST:

Cindy Tzaferopoulos, City Clerk

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

CITY OF ST. HELENA

CERTIFICATE OF ACCEPTANCE

This Certificate of Acceptance pertains to the interests in real property conveyed by the Trail Easement to which this Certificate of Acceptance is attached,

From: _____ (**“Grantor”**)

To: The City of St. Helena, a municipal corporation of the State of California (**“Grantee”**)

Said Trail Easement is hereby accepted by the undersigned officer on behalf of Grantee pursuant to authority conferred by the Grantee’s City Council, and Grantee hereby consents to recordation of said Grant of Easement.

Dated: _____

CITY OF ST. HELENA, a municipal corporation

By: _____
Mark T. Prestwich, City Manager

ATTEST:

Cindy Tzaopolous, City Clerk

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

City of St. Helena
1480 Main Street
St. Helena, CA 94574
Attn: City Clerk

The City of St. Helena is Exempt from Recording Fees (Government Code §27383), Documentary Transfer Tax and City Transfer Tax (Rev. & Taxation Code §11922 and St. Helena Municipal Code §3.20.050), and Building Homes & Jobs Trust Fund Fee (Govt. Code §27388.1(a)(2)(D)).

Assessor's Parcel #(s): 009-010-022

Space above this line reserved for County Recorder's use

TRAIL EASEMENT AGREEMENT

This TRAIL EASEMENT AGREEMENT (the “**Agreement**”) is made by C. Mondavi & Family, a California corporation (“**Grantor**”) and the City of St. Helena, a California municipal corporation (hereinafter referred to as “**City**” or “**Grantee**”), with an effective possession date of _____, 2020. Grantor and City, or Grantee, are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

Recitals

WHEREAS, the City supports creating recreational trails for public use, including but not limited to a 47-mile walking and biking trail system to physically, artistically, and culturally connect the entire Napa Valley, from the City of Vallejo to the City of Calistoga (hereinafter, the “**Vine Trail**”); and

WHEREAS, Grantor is the owner of the property identified as Napa County Assessor's Parcel No. 009-010-022 and more fully described in Exhibit A, which is attached hereto and incorporated herein by this reference (the “**Property**”); and

WHEREAS, Grantor has granted or will be granting to PG&E an easement over the Property for the purpose of installing a natural gas pipeline (the “**PG&E Easement**”), and Grantor has agreed to grant Grantee the surface-level easement described in Paragraph 2 below to facilitate completion of the Vine Trail between Calistoga and Yountville; and

WHEREAS, Napa Valley Transportation Authority (“**NVTA**”) has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services, which activities will require a Temporary Construction Easement in the form attached hereto as Exhibit D; and

WHEREAS, during the environmental review all alternative alignments of the Vine Trail will be studied and considered, and this Agreement will not influence the environmental assessment of the Vine Trail, including the need for the Vine Trail project and the selection of the location of the Vine Trail; and

WHEREAS, the Grantor has agreed to provide an easement over the Property to City on the terms and conditions set forth in this Agreement for the purpose of facilitating completion of the Vine Trail.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Recitals.** The foregoing Recitals are true and correct and are hereby incorporated into this Agreement.

2. **Trail Easement.** Grantor, for itself, its successors and assigns and all those taking by, under or through Grantor (each, a “**Grantor Party**”), hereby grants to City, its successors and assigns, all those taking by, under or through City, permanent nonexclusive easements in gross to enter in, on, over, under and upon, exit from, traverse, and otherwise use the area legally described and depicted in Exhibit B attached hereto and incorporated herein by this reference (the “**Easement Area**”) for Access Purposes and Construction and Maintenance Purposes (collectively, the “**Easement**”). Notwithstanding the foregoing, the Easement and this Agreement may be terminated in accordance with Paragraph 4 below.

A. **Right to Relocate.** To accommodate future construction and installation of improvements on the Property, Grantor retains the right to relocate the Easement and Easement Area, at its own cost, to another location on the Property, provided such relocated Easement and Easement Area (i) would maintain a contiguous Vine Trail and (ii) would not result in a manifestly unreasonable trail alignment. Grantor will use its best efforts to minimize the period of time in which the portion of Vine Trail along the Easement Area is unavailable for use and will endeavor to return the relocated Easement Area to use at the earliest reasonable opportunity. Any such relocation will be subject to prior City approval, which approval will not be unreasonably withheld if the foregoing conditions are met. In the event of any such relocation, the Parties will amend this Agreement to incorporate a revised Exhibit B describing the new Easement Area.

3. **Scope.** The Easement Area shall be used only for Access Purposes and Maintenance Purposes (collectively, “**Easement Rights**”). “**Access Purposes**” means use of the Easement Area as a public pedestrian and bicycle corridor and right of way for a pedestrian, bicycle and associated uses, and monitoring of the Easement Area with public safety officers or other security patrol. “**Maintenance Purposes**” means use of the Easement Area for Construction and Maintenance Work or Routine Maintenance Work as defined herein. “**Construction and Maintenance Work**” means installing, constructing, improving, repairing, replacing, reconstructing, inspecting, and maintaining

(and any work performed in connection therewith), a paved and/or gravel trail for public pedestrian and bicycle access, ingress and egress, related drainage improvements, any and all underground utility lines and fixtures, including for utilities such as water, lighting, emergency telephone call boxes, or other telecommunications, and other improvements. “**Routine Maintenance Work**” means litter removal, graffiti removal, cleaning, power washing, painting, bulb replacement and electrical repairs. All improvements within the Easement Area shall be designed, constructed, installed and maintained in accordance with all applicable codes and regulations.

4. **Termination.**

A. For Lack of Use. If after the initial construction of the Vine Trail within the Easement Area, the Easement is not, at any time in the future, used by the general public as a pedestrian and bicycle trail for a continuous year as supported by substantial documentary evidence, then Grantor shall have the right to provide City notice of Grantor’s intent to terminate the Easement (“**Notice of Intent to Terminate the Easement**”) for lack of use by giving sixty (60) days prior written notice to the City in the manner set forth in Paragraph 15 (Notices). If the Easement Area remains unused by members of the general public for a period of (60) days after City receives Grantor’s Notice of Intent to Terminate the Easement, accompanied with such substantial documentary evidence, then the Easement shall be deemed abandoned and City shall, upon request by Grantor, execute, acknowledge and deliver to Grantor a quitclaim deed to relinquish any further interest of City in the Easement. Closure of, or cessation of use upon, the Easement Area at times for repairs, maintenance, reconstruction or other improvement shall not be deemed abandonment nor count towards said one year period. If initial construction of the Vine Trail in the Easement Area is not substantially complete within ten (10) years from the effective date of this Agreement, the Easement will be deemed abandoned and City will, upon Grantor’s request, execute, acknowledge, and deliver to grantor a quitclaim deed relinquishing any interest in the Easement.

B. Upon Default. Upon City’s default in the performance of any material term or obligation of City’s set forth in this Agreement, including without limitation, maintaining insurance as prescribed in Paragraph 9, Grantor may terminate the Easement by delivering a Notice of Intent to Terminate the Easement that sets forth in reasonable detail the nature of City’s default and manner by which such default may be cured. Any such termination will be on no less than sixty (60) days prior written notice; provided the Easement will not terminate if City’s default is cured within that cure period or if reasonable efforts to cure the default are commenced promptly within that period for a default that cannot reasonably be cured in that time. Following delivery of a Notice of Intent to Terminate the Easement by reason of City’s default, Grantor may temporarily block public access to the Easement Area.

C. Different Alignment. If the Easement is acquired by donation and the Easement is not needed for the alignment chosen for the Vine Trail following seven (7) years from completion of the environmental document for the Vine Trail project, Grantor may terminate the Easement by delivering a Notice of Intent to Terminate the Easement

to the City in the manner set forth in Paragraph 15 (Notices), which termination will be effective sixty (60) days from receipt thereof.

5. **Restrictions on Use.** Subject to Grantor's retained rights of use and access referenced in Paragraph 8 (Grantor's Use of the Easement Area) below, no motorized vehicles shall be permitted to use the Easement Area, save and except for public safety and emergency vehicles (police, fire and ambulance services), normal construction and maintenance vehicles, and in accordance with Vehicle Code Section 467, self-propelled wheelchairs, motorized tricycles, or motorized quadricycles used by physically disabled users of the Vine Trail. Electric bicycles, as defined in Section 312.5(a) of the California Vehicle Code, will be permitted in the Easement Area in accordance with California state law and/or local ordinance.

6. **Maintenance.** City shall operate, maintain and use the Vine Trail within the Easement Area with reasonable diligence and care, keep it free of graffiti and trash and in good condition and repair. City will in good faith take reasonable steps to resolve any damage or maintenance issue related to improvements constructed and installed on the Easement Area by City that Grantor brings to the City's attention.

7. **Grantor's Use of the Easement Area; Signage; and Fencing.**

A. Grantor's Use of the Easement Area. The grant of this Easement shall not restrict in any way any and all lawful operations on Grantor's property outside the Easement Area. Grantor may use the Easement Area as reasonably necessary to carry out lawful operations on the Property, including but not limited to, for access and turnarounds for farm vehicles and equipment. Subject to and without waiving any rights under Paragraph 10 (Indemnity), and without assuming an affirmative obligation to do so, Grantor, or Grantor's heirs, successors and assigns, may at any time temporarily block public access to the Easement Area when, in their sole judgment, they determine that it is appropriate to do so in order to facilitate prudent agricultural practices on the Property, or if they are engaged in abnormally dangerous activities on the Property that pose a threat to the health or safety of the users of the Easement Area.

B. Signage; Pedestrian Protection. City will post and maintain signs warning users of the Vine Trail that their use is at their own risk, that agricultural operations, including spraying, disking/plowing, burning and other operations are ongoing, that users must yield to farming vehicles and equipment, delivery vehicles and vehicles operated by Grantor's employees, guests and invitees, on or adjacent to the Easement Area, and must obey all laws at all times while using the Easement Area. Additionally, the project shall include stop and traffic crossing signage and bollards in the Vine Trail at the points at which the Vine Trail intersects the current driveway into the Property and shall also include a painted crosswalk to warn vehicular traffic of pedestrians and cyclists crossing such driveway.

C. Fencing. The project will include installation of a temporary construction fence, as described in Exhibit D, to separate construction activity from agricultural

operations on the Property. The temporary construction fence will be removed after construction is complete.

D. Access. City acknowledges that the Easement Area includes a portion of the Property driveway—Grantor’s primary point of access to the Property—and that use of the Easement Area is intended to be shared. Therefore, the Parties will cooperate to ensure that Grantor and Grantor’s employees, agents, guests, and invitees have reasonable access to the Property at all times including during construction, maintenance, and improvement of the Vine Trail in the Easement Area. City also acknowledges that Grantor may need to relocate the Easement and Easement Area in the event of a redesign of the Property’s entrance, which relocation will be subject to Paragraph 2A above.

8. **Warranty.** Grantor warrants to City that:

A. The Easement Area is not, as of the date this Agreement is executed, free and clear of all liens; however, Grantor shall use best efforts to obtain and record before or concurrently with the recording of this Agreement, a legally binding subordination of any mortgage, lien, or other encumbrance affecting the Easement Area as of the date of this Agreement, or such other reasonable approval of this Agreement satisfactory to the Parties. Additionally, as of the date of this Agreement and with the full knowledge of City, Grantor has granted or will grant the PG&E Easement which easement will have priority over this Easement for purposes of maintaining the PG&E facilities contained within the PG&E Easement.

B. To the best of Grantor’s actual knowledge, except for PG&E (if the PG&E Easement has been granted) and those utility and similar easements set forth in Exhibit C hereto and incorporated herein, no one has the legally enforceable right (for example, under a lease, easement or right-of-way agreement in existence as of the date this Agreement is executed by Grantor) to prevent the use of the Easement burdening the Easement Area for the purposes contemplated by City herein.

C. To Grantor’s actual knowledge without duty of due inquiry, other than any PG&E natural gas lines, the Easement Area is not contaminated with materials identified as hazardous or toxic waste under applicable federal or state law, and no such materials have been stored or generated within the Easement Area; nor does Grantor have a reasonable basis, as of this Agreement’s date, to suspect that such contamination may have occurred previously.

9. **Insurance.**

A. Insurance for Construction and Maintenance Work. Prior to utilizing the Easement Area for Construction and Maintenance Work, City shall obtain and maintain, or cause its contractor(s) to obtain and maintain, in full force for the time the Easement Area is being used for said purposes, at no expense to Grantor, insurance for the Construction and Maintenance Work against any and all claims which may arise out of or result from the performance of the Construction and Maintenance Work performed by

City, its contractor and subcontractors of any tier, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. All policies shall be written on an occurrence basis. All insurance shall be written by companies that are authorized to write business in the State of California and have, at all times, a Best's rating of "A- VIII" (A minus VIII) or better by AM Best & Company, and with coverage and policy limits as follows (unless otherwise specified herein):

(i) Commercial General Liability insurance written on Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death and mental anguish), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$1,000,000 per occurrence, \$2,000,000 in the annual aggregate, and \$2,000,000 for products / completed operations coverage. All coverage shall be written on a per location or per project basis. Products / completed operations coverage must be carried up to the applicable statute of limitations and / or repose in the state of California;

(ii) Comprehensive auto liability for all owned, hired and non-owned vehicles brought onto the Easement Area with combined single limits of not less than \$1,000,000 per occurrence;

(iii) Worker's Compensation insurance as required by the State of California;

(iv) Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per accident, \$1,000,000 per disease, and \$1,000,000 policy limit;

(v) Umbrella/excess liability written in amount of \$5,000,000 per occurrence and in the annual aggregate. Such insurance shall be written on a follow-form basis and shall be no more restrictive than the commercial general liability, automobile liability, and employer's liability policies referenced in Paragraph 9.A.(i), 9.A.(ii) and 9.A.(iv) of this Agreement. Such umbrella/excess liability policy shall by specific endorsement or otherwise cause such umbrella/excess policies to be first tier umbrella coverage and sit in excess of the primary coverage afforded within Paragraphs 9.A.(i), 9.A.(ii), and 9.A.(iv) of this Agreement. Such umbrella/excess liability policy(ies) must be endorsed or otherwise provide that such umbrella/excess liability policy(ies) is primary and non-contributory with any other insurance on which Grantor or Grantor's affiliates, subsidiaries, parent companies, and if applicable, mortgagee, is insured, whether such other insurance is primary, excess, self-insurance, or insurance on any other basis; and

(vi) Contractor's Pollution Legal Liability Insurance for liabilities caused by or resulting from a release of hazardous materials or other pollution conditions (including, but not limited to, remediation of soil, groundwater or other contaminants) in

connection with the Construction and Maintenance Work, whether such operations be by contractor, subcontractors, consultants or suppliers, with minimum liability limits of Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate with a deductible not to exceed One Hundred Thousand Dollars (\$100,000). The policy shall provide coverage for or be specifically endorsed to include coverage for pollution conditions resulting in, arising from or in connection with: (i) bodily injury (including death), property damage and environmental cleanup costs (on-site and off-site) resulting from any Construction and Maintenance Work; (ii) the use or operation of motor vehicles (whether owned, non-owned or leased) in connection with the Construction and Maintenance Work, including transportation of any hazardous materials to or from Grantor's Property, including any interim or temporary storage or transfer sites. The transportation coverage also shall include loading/unloading of materials; (iii) claims by third parties (other than disposal site owners) arising out of any disposal location or facility, both final and temporary, to which any waste is delivered that is generated in connection with the performance of any Construction and Maintenance Work; all such disposal locations/facilities, both final and temporary, shall be scheduled to the foregoing policy as non-owned disposal sites for coverage under the foregoing policy. The policy shall be written on an occurrence form and shall be maintained without lapse for, or contain an extended reporting period up to the applicable statute of limitations/repose. The policy definition of "Covered Operations" or any other such designation of services or operations performed by Contractor and its subcontractors, consultants and suppliers must include all work or services performed by contractor and its subcontractors, consultants, and suppliers under or in connection with the Construction and Maintenance Work.

(vii) The City and any contractors or subcontractors shall maintain all-risk property insurance for all personal property, tools, and equipment or other property utilized in conjunction with the Construction and Maintenance Work. The City, its contractors, and subcontractors shall be solely responsible for all such items and any insurance premiums, deductibles, claims, or any other cost related thereto.

Under the policies required in Paragraphs 9.A.(i), 9.A.(ii), 9.A.(v), and 9.A.(vi) of this Agreement the City shall name Grantor, and any of Grantor's heirs, successors, assigns, affiliates, subsidiaries, parent companies, or mortgagees ("Additional Insureds"), as additional insureds and with respect to Paragraph 9.A.(i) and 9.A.(v) included herein, such coverage shall be provided via endorsement CG 20 10 (04/13) or the equivalent thereof. All policies shall provide for (a) at least thirty (30) days written notice to Grantor prior to cancellation, and (b) at least ten (10) days written notice to Grantor for cancellation due to non-payment of applicable premiums. All policies of insurance shall contain full waivers of subrogation in favor of Grantor. City or its contractors' insurance coverage shall be the primary insurance with respect to any other insurance or self-insurance programs maintained by the Additional Insureds and such other insurance or self-insurance programs of the Additional Insureds shall be excess and non-contributory. Prior to the commencement of the Construction and Maintenance Work, City shall deliver to Grantor a certificate of insurance evidencing the coverage provided by each policy and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage. City shall include all subcontractors as insured under its policies or

shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein. All insurance required under this Agreement are considered to be minimum limits only and are not to restrict the liability of the City in any way. All limits, deductibles, terms, and conditions are subject to the approval of Grantor and Grantor, at its reasonable discretion, has the ability to require additional insurance or increased limits.

B. Insurance for Routine Maintenance Work and Access Purposes. Prior to commencing use of the Easement Areas for Access Purposes and Routine Maintenance Work, City shall obtain and maintain, in full force for the entire term of this Agreement, at no expense to Grantor, insurance against claims which may arise out of or result from Routine Maintenance Work and Access Purposes. All policies shall be written on an occurrence basis. All insurance shall be provided by and/or written by companies that are authorized to write business in the State of California and have, at all times, a Best's rating of "A- VIII" (A minus VIII) or better by AM Best & Company, and with coverage and policy limits as follows (unless otherwise specified herein):

(i) Commercial General Liability insurance written on ISO Commercial General Liability Coverage "occurrence" form CG 00 01 or another Commercial General Liability "occurrence" form providing equivalent coverage and including Broad Form Comprehensive General Liability coverage, blanket contractual liability coverage, Independent Contractors coverage, coverage for bodily injury (including death and mental anguish), property damage (including loss of use thereof) and products and completed operations with limits of not less than \$5,000,000 per occurrence, \$5,000,000 in the annual aggregate, and \$5,000,000 for products / completed operations coverage. All coverage shall be written on a per location or per project basis. Limits may be provided in a "layered" program utilizing primary, umbrella or excess liability policies;

(ii) Worker's Compensation insurance as required by the State of California; and

(iii) Employer's liability insurance on all employees, for occupational accidents or disease, with limits of not less than \$1,000,000 per accident, \$1,000,000 per disease, and \$1,000,000 policy limit.

C. Under the policies required in Paragraph 9.B.(i) of this Agreement the City shall name the Additional Insureds as additional insureds via endorsement CG 20 10 (04/13) or the equivalent thereof. All such policies shall provide for (a) at least thirty (30) days written notice to Grantor prior to cancellation, and (b) at least ten (10) days written notice to Grantor for cancellation due to non-payment of applicable premiums. All such policies shall contain full waivers of subrogation in favor of Grantor. City coverage shall be the primary insurance with respect to any other insurance or self-insurance programs maintained by the Additional Insureds and such other insurance or self-insurance programs of the Additional Insureds shall be excess and non-contributory. Prior to the commencement of use of the Easement Areas for Routine Maintenance Work and Access Purposes, City shall deliver to Grantor a certificate of insurance evidencing the coverage

provided by each policy and provide replacement certificates fifteen (15) days prior to the expiration of any required coverage. All coverage limits required under Paragraph 9.B. of this Agreement are considered to be minimum limits only and are not to restrict the liability of the City in any way.

D. Every five (5) years on the anniversary of the effective date of this Agreement, all policy limits required hereunder shall be adjusted to reflect the adjustment in the U.S. Consumer Price Index of the Bureau of Labor Statistics of the Department of Labor for All Urban Consumers (“CPI”) for San Francisco – Oakland – Hayward, based upon the prior sixty (60) months.

E. The Parties agree that City’s current program of self-insurance through the Redwood Empire Municipal Insurance Fund (REMIF) satisfies the requirements of this Section 9.

10. Indemnification.

A. City and its successors and assigns shall defend at its own expense, indemnify, and hold harmless Grantor and Grantor’s affiliates, officers, directors, shareholders, employees, agents, heirs, successors and assigns (collectively, the “Grantor Parties”) from and against any and all liabilities, costs, losses, orders, liens, judicial penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys’ fees (collectively “Losses”), arising out of the design, operation, repair, maintenance, condition or use of the Easement Area including, without limitation, any Losses that exceed the coverage limits of any insurance policy City is required to carry under this Agreement. The Grantor Parties shall have no responsibility for the design, operation, repair, maintenance, condition or use of the Easement Area, or warning of hazardous conditions on it, or the protection of the public or any third parties from risks relating to a condition of the Easement Area.

B. City’s obligations under this Paragraph 10 expressly exclude defending, indemnifying, and holding harmless a Grantor Party for any of the following:

- i. Losses founded on or resulting solely from the active negligence, negligence per se, or willful or malicious conduct of a Grantor Party.
- ii. Instances where permission to enter the Easement Area or Property was granted to the injured person by a Grantor Party for consideration given by the injured person or by others on that person’s behalf, other than any consideration given by City to Grantor pursuant to this Agreement.
- iii. Injuries to any persons who are expressly invited onto the Easement Area or Property by a Grantor Party, rather than merely permitted to come upon the Easement Area or Property by a Grantor Party.
- iv. The exclusions in subparagraphs (ii) and (iii) shall not apply to instances where a person was injured on the Property while using the Vine Trail to travel to

or from the Property, even after receiving an express invitation or permission for consideration to do so, such as by paying a tasting fee.

C. Intent. This section is intended to provide Grantor Parties with defense and indemnification against Losses where a defense against liability is available under Civil Code section 846 and/or Government Code section 831.4.

D. City and Grantor, or their respective successors or assigns, shall notify the other Party promptly in writing of any claim or assertion of Losses related to the entry or use of the Easement Area by members of the public. The Parties shall cooperate with each other in the investigation, defense, and disposition of any claim arising out of such entry or use, provided that nothing shall require either Party to disclose any documents, records, or communications that are protected under the peer review privilege, attorney-client privilege, or other applicable privilege, or which are considered attorney work product.

11. **Public Visitor Recreational and Trail Immunities.** Any permission given by Grantor for entry by public recreational visitors on or over the Easement Area is given only for recreational purposes as defined in Civil Code § 846, and the Grantor gives no assurance to public recreational visitors that such premises are safe for such purposes, nor confers upon the person to whom such permission has been granted the legal status of invitee or licensee to whom a duty of care is owed, nor assumes responsibility for or incurs any liability for any injury to person or property caused by any act of such person to whom permission has been granted except as otherwise provided in Section 846. It is the intent of this paragraph to preserve for the Grantor Parties any and all immunities provided for under Civil Code § 846, Government Code § 831.4, Public Resources Code § 5075.4, and under any other applicable laws or statutes, now or hereafter in effect, eliminating or limiting to the fullest extent permitted by law Grantor's liability for, or providing immunity from, claims against a Grantor Party by third parties. It is also the intent of this paragraph to preserve for City any and all immunities provided under Government Code Sections 831.4 and 831.7 and under any other applicable laws or statutes, now or hereafter in effect, eliminating or limiting City's liability for, or providing immunity from claims against City by third parties. This paragraph is not intended to, nor shall it be construed to, limit, affect, or restrict any rights of either Party or its officers, directors, agents, or employees to assert any claims against the other Party to which it may otherwise be entitled under this Agreement.

The Parties are directed to Civil Code § 846.1, which authorizes an owner of an estate in real property, whether possessory or non-possessor, and public entities to seek reimbursement from the California Department of General Services for reasonable attorneys' fees incurred in defending a claim alleging an injury or damages on real property used for a recreational trail where the claim is dismissed by the plaintiff or court, or where the Grantor or Grantee prevails in the civil action.

12. **Assignment of Rights.** Pursuant to County Agreement No. 190311 and NVT Agreement No. 19-12, as amended, NVT is responsible for procuring design and

construction services for construction of the Vine Trail within the Easement Area. City may assign and transfer this Agreement and the Easement, and its rights and obligations with respect thereto, including maintenance obligations, only with the prior written consent of Grantor or its heirs, successors, or assigns, which consent will not be unreasonably conditioned or withheld if the transferee agrees, in writing, to be bound by the terms and conditions of this Agreement and assumes City's obligations under this Agreement, which transfer will be effective upon the recording of a deed conveying the Easement to said transferee.

13. **Run With the Land.** The benefits and burdens of this Agreement shall run with the title to the Property and shall inure to the benefit of and bind the Parties hereto, and each of them, as well as their respective heirs, assigns and successors in interest. Grantor's successor in interest will be responsible for notifying City of its name(s), address(es), and status as Grantor's successor in interest.

14. **Entire Agreement.** This Agreement, together with the exhibits hereto, each of which are incorporated herein by this reference, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior oral or written agreements with respect thereto.

15. **Notices.** Any notices required by this Agreement or correspondence between the Parties shall be addressed as follows, unless the Parties shall provide written notice of a change:

GRANTOR:

C. Mondavi and Family,
Attn: CEO
2800 Main St.
Saint Helena, CA 94574

With a copy to (which shall not constitute notice):

GVM Law, LLP
Attn: Erik W. Lawrence, Esq.
1000 Main Street, 3rd floor
Napa, CA 94559

CITY:

Public Works Director
City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574

With a copy to (which shall not constitute notice):

City Clerk
City Of St. Helena
1480 Main Street
St. Helena, CA 94574

Notice shall be delivered personally, including by messenger or courier, or by certified mail, return receipt requested, postage prepaid. Notices shall be deemed to have been duly given (a) if delivered personally, on the date of delivery; (b) if transmitted by certified mail, on the earlier of (i) the second (2nd) business day after the date of such mailing, or (ii) the date of receipt. The addresses and addressees may be changed by giving written notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee as stated

by written notice, or as provided herein if no written notice or change has been sent or received, shall be deemed to continue in effect for all purposes hereunder.

16. **Interpretation.** The recitals above and exhibits attached hereto are incorporated herein by reference and comprise part of this Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no prior oral or written understanding shall be of any force or effect with respect to the matters covered herein. The titles to the sections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This Agreement shall be interpreted as though prepared jointly by both Parties. The laws of the State of California, without regard to conflict of laws principles, shall govern the interpretation and enforcement of this Agreement. Any general rule of construction to the contrary, this Easement shall be construed to effectuate the Easement Rights. This Agreement shall be interpreted as though jointly prepared by both Parties. No provision of this Agreement shall constitute governmental approval of any improvements, construction, or other activities that may be permitted under this Agreement.

17. **Severability.** If any term, provision, covenant, condition, or restriction of this Agreement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

18. **Relationship Between the Parties; Authority; Binding Effect.** This Agreement does not create any partnership or agency between the Parties, each of which is, and at all times shall remain, solely responsible for all acts of its officials, employees, agents, contractors and any subcontractors, including any negligent acts or omissions. Neither Party is an agent of the other, and has no authority to act on behalf of or to bind the other Party to any obligation whatsoever. Each Party executing this Agreement on behalf of a Party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind. Each of the terms, covenants and conditions of this Agreement shall extend to and be binding on and shall inure to the benefit the Parties and each of their respective successors and assigns and all those taking by, under or through it or them.

19. **Dispute Resolution; Legal and Equitable Relief.**

A. Dispute Resolution. With respect to any dispute arising out of or related to this Agreement, the Parties shall first make a good-faith effort to resolve the dispute without resort to litigation. In the event of a dispute, the Parties agree to meet informally within fifteen (15) days after notice from one Party requesting such a meeting. Should the dispute not be resolved by said informal discussions, the Parties agree to attempt in good faith to resolve their differences in confidential, non-binding mediation, using an

experienced mediator with at least five (5) years of relevant experience who is an attorney or retired judge and who is mutually agreed upon by the Parties. If the Parties are unable to agree upon a mediator, JAMS will suggest three (3) mediators meeting the above qualifications and each Party will strike one. A mediation session shall be scheduled within thirty (30) days after the failure of informal discussions to resolve the dispute. Costs of the mediation shall be borne equally by the Parties. The mediation will be held under the rules of JAMS and will be conducted in Napa County, California. The Parties will participate in the mediation process in good faith, and will have a representative in attendance throughout the mediation with authority to settle the dispute. The Parties may be represented by counsel at both the informal discussions and the mediation session. Statements made during the mediation process shall be considered to be made in the context of settlement discussions, and shall not be admissible in any subsequent judicial proceeding. If mediation fails to resolve the dispute, the Parties may resort to any form of dispute resolution, including litigation within the California courts.

B. Legal and Equitable Relief. Each Party shall, subject to compliance with Section 19A hereof, have the right (but not the obligation) to prosecute any proceedings, either in California courts or arbitration, at law or in equity against any other Party, or any other person or entity, violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Agreement in order to prevent such party, person or entity from violating or attempting to violate or defaulting in the performance of any of the provisions of this Agreement or to recover damages for any such violation or default. It is agreed that damages would be an inadequate remedy for violation of this Agreement by any Party and, therefore, injunctive or other appropriate equitable relief shall be available to the other Party. The remedies available shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, and actions for specific performance of this Agreement. The result of every action or omission whereby any covenant, condition or restriction herein contained is violated in whole or in part is hereby declared to be and to constitute a nuisance, and every remedy allowed by law or equity against any party, either public or private, shall be applicable against every such result and may be exercised by any Party.

20. **Waiver.** No waiver of any breach of any of the terms, covenants, agreements, restrictions or conditions of this Agreement shall be construed to be a waiver of any succeeding breach of the same or other terms, covenants, agreements, restrictions or conditions hereof.

21. **Counterparts.** The Parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the Parties hereto, notwithstanding all of the Parties are not signatories to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

22. **Attorneys' Fees.** In the event that any action is brought, or arbitration initiated, by either Party hereto as against the other Party for the enforcement or declaration of any right or remedy in or under this Agreement or for the breach of any covenant or condition of this Agreement, venue for such proceeding shall be in the Superior Court of the County of Napa, State of California, and the prevailing Party shall be entitled to recover, and the other Party agrees to pay (in addition to any other relief that may be granted) all fees and costs to be fixed by the court therein including, but not limited to, reasonable attorneys' fees.

23. **Recordation.** This Agreement evidencing the Easement shall be recorded in the official records of Napa County.

24. **Third Party Beneficiaries.** Notwithstanding anything in this Agreement to the contrary, including rights of the general public to use the Easement Area for Access Purposes, nothing herein is intended to create any third party benefit, and there are no third party beneficiaries of this Agreement or the Easement Rights.

25. **Relocation Assistance and Real Property Acquisition Policies Acts.** Grantor is donating the Easement for the purpose of facilitating completion of the Vine Trail, and hereby voluntarily and knowingly waives any and all payments, compensation, appraisals, entitlements and benefits to which Grantor may be entitled under the State of California Uniform Relocation Assistance and Real Property Acquisition Policies Act (Gov. Code § 7260 et seq.) and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (49 CFR Part 24) and any amendments thereto. It is agreed that the property conveyed by this Agreement is being donated to the City by the undersigned Grantor. Grantor, having initiated this donation, has been informed of the right to compensation for the property donated and hereby waives such right to compensation. Furthermore, Grantor has been informed of the right to an appraisal and hereby waives such right to an appraisal of the Easement Area.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Trail Easement Agreement was executed by the Parties hereto as of the date indicated below, and effective as of the date of the latest signature.

C. MONDAVI & FAMILY, a California corporation

By:

Its:

Date: _____, 20__

“Grantor”

CITY OF ST. HELENA, a California municipal corporation

By _____
Mark T. Prestwich, City Manager

Date: _____, 20__

ATTEST:

Cindy Tzafopoulos, City Clerk

APPROVED AS TO FORM:

Ethan Walsh, City Attorney

EXHIBIT A

Legal Description of Grantor's Property

TRACT ONE:

"The Lands of C. Mondavi & Sons of record 278 O.R. 478, N.C.R. & 633 O.R. 700, N.C.R.", as depicted on Map No. 2616 being a Record of Survey filed January 29, 1975 in Book 19 of Surveys at page 8, Napa County Records.

EXCEPTING THEREFROM the following:

- a) A strip of land conveyed by Charles Krug to Napa Valley Railroad Company, by Deed dated March 1, 1869 and recorded in Book L of Deeds, at page 356, Napa County Records.
- b) A strip of land conveyed by Charles Krug, et ux, to California Pacific R.R. Co., a corporation by Deed dated January 20, 1871 and recorded in Book N of Deeds at page 387, Napa County Records.
- c) The mineral estate underlying that certain strip of land containing 1.7 acres of land, more or less, conveyed by James Moffitt Estate Co., a corporation, to San Francisco, Napa and Calistoga Railway, a corporation by Deed recorded in Book 101 of Deeds at page 111, said Napa County Records, and as reserved in the Deed from Southern Pacific Company recorded July 18, 1961 in Book 633 at page 700, Napa County Records."

APN 009-010-022 and 022-200-016

TRACT TWO:

PARCEL ONE:

Commencing at a point on the southwestern line of the 3.039 acre parcel of land described in the Deed to the State of California, recorded in Book 661 at page 52 of Official Records of Napa County, which bears South 29° 08' 40" East 60.01 feet from the intersection of said southwestern line of the 3.039 acre parcel with the northwestern line of the 170.33 acre parcel described in the Judgment of Final Distribution on Waiver of Accounting in the matter of the Estate of Frances B. Volz, recorded in Book 814 at page 222 of Official Records of Napa County; running thence South 29° 08' 40" East 1018.89 feet to the most northern corner of the parcel of land described in the Deed to Roland E. Terwilliger, et al, recorded in Book 840 at page 242 of Official Records of Napa County; thence South 52° 47' 20" West 2131.23 feet to the most western corner of said Terwilliger parcel; thence South 31° 35' 52" East along the southwestern line of said Terwilliger parcel, 1319.78 feet to the northwestern line of the 7.68 acre parcel described in the Deed to Paul J. Lathrop, et ux, recorded in Book 710 at page 811 of Official Records of Napa County; thence South 45° 58' 20" West along the northwestern line of said 7.68 acre parcel, 368.30 feet to the northeastern line of the 79.05 acre parcel of land described in the Deed to Robert R. Hoffman, recorded in Book 140 at page 90 of Official Records of Napa County; thence North 29° 00' West 177.54 feet to the most northern corner of said 79.05 acre parcel; thence North 10° 06' West 258.78 feet; thence North 12° 18' West 148.19 feet; thence North 0° 59' 30" East 136.82 feet; thence North 19° 32' 30" West 113.07 feet; thence North 47° 01' 30" West 109.24 feet; thence North 55° 38' 30" West 94.12 feet; thence North 74° 36' 30" West 110.84 feet; thence South 71° 33' 30" West 161.84 feet; thence South 46° 57' 30" West 153.65 feet; thence South 23° 23' 30" West 142.02 feet; thence South 56° 00' East 138.70 feet; thence South 38° 30' West 78.01 feet; thence South 3° 30' West 300.00 feet; thence South 44° 30' West 50.00 feet; thence North 61° 30' West 60.00 feet; thence North 19° 00' West 190.00 feet; thence North 26° 00' West 110.00 feet; thence North 47° 30' West 120.00 feet; thence North 15° 00' East 100.00 feet; thence North 61° 21' West 173.58 feet; thence North 50° 45' West 54.88 feet; thence North 50° 45' West 153.51 feet; thence North 20° 18' East 91.71 feet; thence North 16° 36' West 103.95 feet; thence North 28° 34' 30" West 205.07 feet; thence North 86° 37' West 206.40 feet; thence North 18° 57' 30" West 191.22 feet; thence North 52° 29' East 233.08 feet; thence North 32° 23' East 155.32 feet; thence North 13° 24' East 150.48 feet; thence North 23° 09' West 118.43 feet; thence North 59° 31' West 121.47 feet; thence South 74° 45' West 185.02 feet; thence North 63° 40' 30" West 203.33 feet, more or less, to a point 60.00 feet southeasterly at right angles from said northwestern line of the 170.33 acre parcel; thence North 61° 01' East along a line, 60.00 feet southeasterly at right angles from and parallel with said northwestern line of the 170.44 acre parcel 3039.67 feet to the point of commencement.

APN 034-150-008

PARCEL TWO:

A non-exclusive 25 foot Right of Way along portions of the southwestern line of the tract above described, as said Right of Way is described in the Deed to C. Mondavi & Sons, recorded April 16, 1971 in Book 848 at page 137 of Official Records of Napa County.

EXHIBIT B**Legal Description of Easement Area**

A Public Trail Easement, in, on, over, across, under, and through a portion of the Lands of C. Mondavi & Sons Inc. described in the deed recorded in Book 633 of Official Records, Page 700, Napa County Records, State of California, said portion being that portion of the said Lands of C. Mondavi & Sons Inc. within the following described strip of land:

A strip of land varying in width being initially of the uniform width of 14.00 feet wide lying 7.00 feet on each side of the following described reference line:

Commencing at the point that bears South 37° 32' 03" West 168.50 feet from the Caltrans 2 inch Brass Disk marked "NAPA-10" located on Deer Park Road approximately 172 feet from California State Highway 29; thence South 55° 14' 18" East 58.59 feet to the beginning of a curve concave to the north having a radius of 5.00 feet; thence 4.83 feet along said curve through a central angle of 55° 23' 15"; thence changing the width to 17.00 feet lying 10.00 feet left and 7.00 feet right of said reference line and continuing North 69° 22' 27" East 11.41 feet to the beginning of a curve concave to the south having a radius of 20.00 feet; thence 0.25 feet along said curve through a central angle of 0° 43' 20"; thence changing the width to be 7.00 feet on each side of said reference line and, continuing along said curve 25.91 feet through a central angle of 74° 14' 26" to the beginning of a reverse curve concave to the northeast having a radius of 200.00 feet; thence 69.77 feet along said curve through a central angle of 19° 59' 12"; thence South 55° 38' 59" East 247.93 feet to the beginning of a curve concave to the southwest having a radius of 2875.00 feet; thence 317.73 feet along said curve through a central angle of 6° 19' 56"; thence South 49° 19' 04" East 157.32 feet to the beginning of a curve concave to the southwest having a radius of 50.00 feet; thence 16.31 feet along said curve through a central angle of 18° 41' 05" to the beginning of a reverse curve concave to the northeast having a radius of 50.00 feet; thence 6.52 feet along said curve through a central angle of 7° 28' 05"; thence changing the width to be 17.00 feet lying 7.00 feet left and 10.00 feet right of said reference line; thence continuing along said curve 9.74 feet through a central angle of 11° 09' 26"; thence South 49° 15' 29" East 65.26 feet; thence changing the width to be lying 7.00 feet on each side of said reference line; thence continuing South 49° 15' 29" East 65.00 feet to the point that bears North 83° 24' 40" East 17.47 feet from the Magnetic nail in the AC Berm on the south Krug Entrance approximately 8 feet from end of berm; thence changing the width to be 17.00 feet lying 7.00 feet left and 10.00 feet right of said reference line; thence South 49° 15' 29" East 43.89 feet to the beginning of a curve concave to the northeast having a radius of 50.00 feet; thence 15.89 feet along said curve through a central angle of 18° 12' 20" to the beginning of a reverse curve concave to the southwest having a radius of 50.00 feet; thence 15.57 feet along said curve through a central angle of 17° 50' 20"; thence changing the width to be lying 7.00 feet on each side of said reference line; thence South 49° 37' 30" East 92.32 feet to the beginning of a curve concave to the southwest having a radius of 2680.00 feet; thence 375.55 feet along said curve through a central angle of 8° 01' 44"; thence South 41° 35' 46" East 893.70 feet to the beginning of a curve concave to the west having a radius of 20.00 feet; thence 17.16 feet along said curve through a central angle of 49° 09' 05" to the beginning of a reverse curve concave to the east having a radius of 20.00 feet; thence 15.58 feet along said curve through a central angle of 44° 37' 40" to the beginning of a compound curve concave to the northeast having a radius of 2539.89 feet; thence 97.34 feet along said curve through a central angle of 2° 11' 45"; thence South 39° 16' 05" East 254.19 feet to the beginning of a curve concave

Page 1 of 2

to the northeast having a radius of 700.00 feet; thence 52.12 feet along said curve through a central angle of $4^{\circ} 15' 59''$; thence South $43^{\circ} 32' 04''$ East 17.57 feet to the beginning of a curve concave to the southwest having a radius of 300.00 feet; thence 18.52 feet along said curve through a central angle of $3^{\circ} 32' 10''$; thence South $39^{\circ} 59' 54''$ East 259.75 feet to the beginning of a curve concave to the southwest having a radius of 814.00 feet; thence 34.79 feet along said curve through a central angle of $2^{\circ} 26' 55''$; thence South $37^{\circ} 32' 58''$ East 95.71 feet to the beginning of a curve concave to the northeast having a radius of 300.00 feet; thence 19.13 feet along said curve through a central angle of $3^{\circ} 39' 15''$; thence South $41^{\circ} 12' 14''$ East 63.65 feet to the beginning of a curve concave to the southwest having a radius of 1000.00 feet; thence 28.81 feet along said curve through a central angle of $1^{\circ} 39' 03''$; thence South $39^{\circ} 33' 10''$ East 349.43 feet to the beginning of a curve concave to the west having a radius of 100.00 feet; thence 50.20 feet along said curve through a central angle of $28^{\circ} 45' 46''$ to the beginning of a reverse curve concave to the east having a radius of 50.00 feet; thence 23.77 feet along said curve through a central angle of $27^{\circ} 14' 00''$; thence South $38^{\circ} 01' 25''$ East 42.22 feet to the beginning of a curve concave to the southwest having a radius of 50.00 feet; thence 17.37 feet along said curve through a central angle of $19^{\circ} 54' 01''$ to the beginning of a reverse curve concave to the northeast having a radius of 50.91 feet; thence 18.90 feet along said curve through a central angle of $21^{\circ} 16' 30''$; thence South $39^{\circ} 23' 54''$ East 39.62 feet; thence South $55^{\circ} 01' 52''$ East 35.75 feet; thence South $35^{\circ} 32' 35''$ West 5.00 feet; thence South $54^{\circ} 27' 25''$ East 174.89 feet to the beginning of a curve concave to the north having a radius of 10.00 feet; thence 16.49 feet along said curve through a central angle of $94^{\circ} 30' 00''$ to the Point that bears North $65^{\circ} 11' 26''$ West 230.15 feet from the Caltrans monument found in the top of curb at south corner of the California State Highway 29 bridge at Post Mile 29.3 and also bears South $34^{\circ} 49' 00''$ West 311.91 feet from the Well Monument at the Intersection of Pratt Avenue & Park Street said Point being the **Point of Terminus**.

The sidelines of easement where widths change shall occur at right angles. The sidelines at Point of Beginning, Angle Points, and Point of Terminus shall be extended or shortened to intersect.

Basis of Bearing: The bearing between the 2" Brass disk monument marked 'Napa-10" found approximately 172' East of California State Highway 29 on Deer Park Road and the Caltrans monument found in the top of curb at the southeast corner of bridge at Post Mile 29.3 Measuring South $41^{\circ} 02' 54''$ East.

End Description

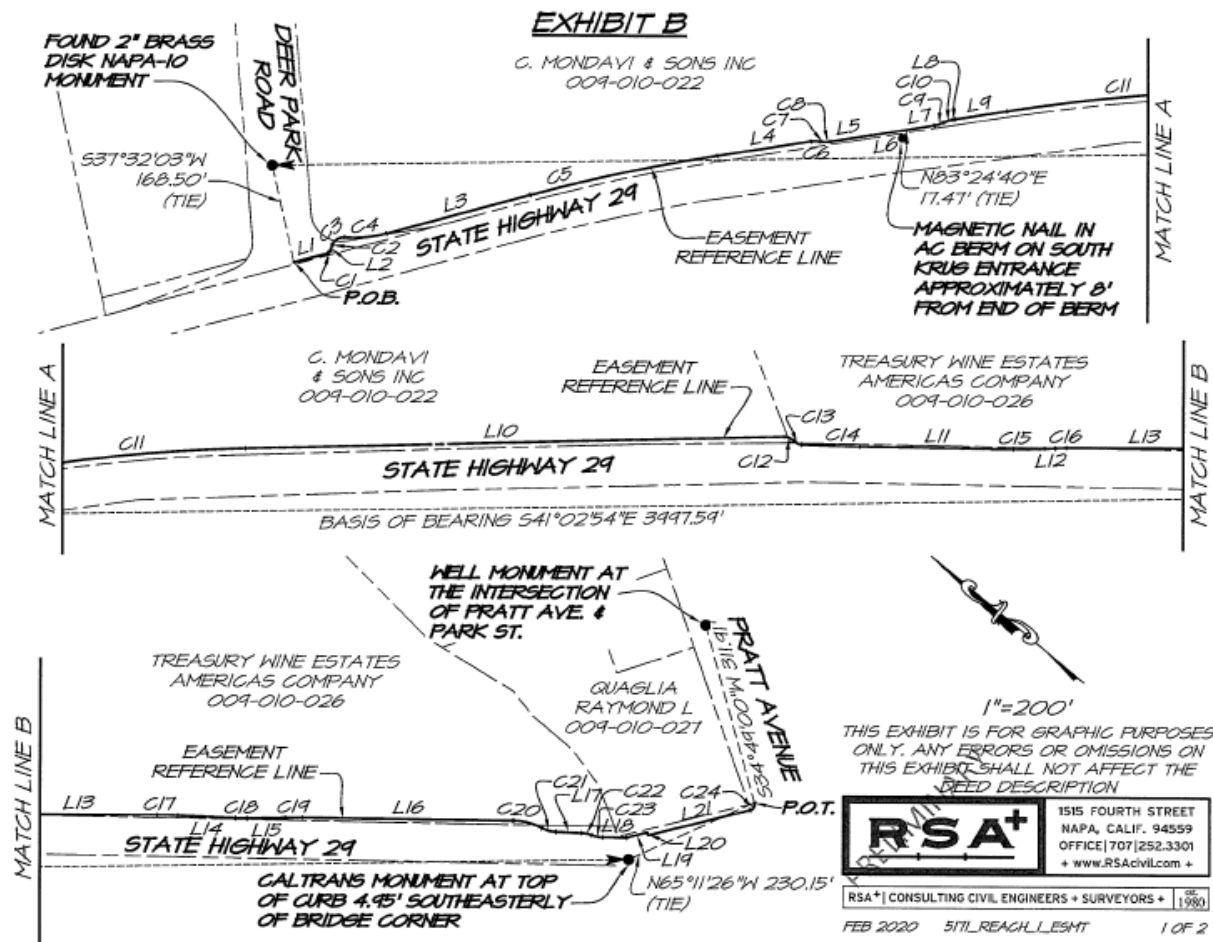


Exhibit B to Trail Easement Agreement – 3 of 4

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	58.54'	S55°14'0"E
L2	11.41'	N69°22'27"E
L3	247.93'	S55°30'54"E
L4	157.32'	S49°14'04"E
L5	65.26'	S44°15'24"E
L6	65.00'	S44°15'24"E
L7	43.84'	S44°15'24"E
L8	4.65'	S44°37'30"E
L9	87.67'	S44°37'30"E
L10	843.70'	S41°35'46"E
L11	254.14'	S39°16'03"E
L12	17.57'	S43°32'04"E
L13	254.75'	S39°54'54"E
L14	45.71'	S37°32'58"E
L15	63.65'	S41°12'14"E
L16	344.43'	S39°33'10"E
L17	42.22'	S38°01'25"E
L18	34.62'	S39°23'54"E
L19	35.75'	S55°01'52"E
L20	5.00'	S35°32'35"W
L21	174.84'	S54°27'25"E

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	4.83'	5.00'	Δ=55°23'15"
C2	0.25'	20.00'	Δ=0°43'20"
C3	25.91'	20.00'	Δ=74°14'26"
C4	64.77'	200.00'	Δ=19°54'12"
C5	317.73'	2875.00'	Δ=6°14'56"
C6	16.31'	50.00'	Δ=18°41'05"
C7	6.52'	50.00'	Δ=7°28'05"
C8	4.74'	50.00'	Δ=11°04'26"
C9	15.84'	50.00'	Δ=18°12'20"
C10	15.57'	50.00'	Δ=17°50'20"
C11	375.55'	2680.00'	Δ=8°01'44"
C12	17.16'	20.00'	Δ=44°04'05"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C13	15.58'	20.00'	Δ=44°37'40"
C14	47.34'	2534.84'	Δ=2°11'45"
C15	52.12'	700.00'	Δ=4°15'54"
C16	18.52'	300.00'	Δ=3°32'10"
C17	34.74'	814.00'	Δ=2°26'55"
C18	14.13'	300.00'	Δ=3°34'15"
C19	28.81'	1000.00'	Δ=1°34'03"
C20	50.20'	100.00'	Δ=28°45'46"
C21	23.77'	50.00'	Δ=27°14'00"
C22	17.37'	50.00'	Δ=19°54'01"
C23	18.91'	50.91'	Δ=21°16'30"
C24	16.44'	10.00'	Δ=44°30'00"

EXHIBIT C

List of Acknowledged Easements in the Easement Area

1. PG&E Easement.

EXHIBIT D**TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT**

THIS TEMPORARY CONSTRUCTION ACCESS EASEMENT AGREEMENT (this “*Agreement*”) is entered into this ____ day of _____, 2020, by **C. MONDAVI & FAMILY**, a California corporation, whose legal address is 2800 Main Street, Saint Helena, CA 94574 (the “*Grantor*”), and the **NAPA VALLEY TRANSPORTATION AUTHORITY**, a joint powers authority in the County of Napa, State of California, whose address is 625 Burnell Street, Napa, CA 94559 (“*NVTA*”) (collectively, the “*Parties*”).

For a valuable consideration set forth in the Easement Agreement defined below, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby conveys, transfers, and delivers to the NVTA, its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns (all referred to as only “*Grantee*”), a non-exclusive Temporary Construction Access Easement (the “*Temporary Construction Easement*”) that is three feet wider than the Easement Area depicted in Exhibit B of that Easement Agreement, a copy of which is attached and incorporated by this reference (the “*Temporary Easement Property*”), to facilitate Grantee’s construction of public bike and pedestrian pathway/trail and other related improvements in the vicinity of the Temporary Easement Property (the “*Project*”).

This Temporary Construction Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. Reference is made to that Trail Easement Agreement dated _____, 20____ (the “*Easement Agreement*”) and entered into by and between Grantor and the City of St. Helena, a California municipal corporation (“*City*”). Pursuant to NVTA Agreement 19-12 and County Agreement No. 190311, as amended, NVTA has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services. Consequently, and in addition to the covenants and conditions prescribed below, NVTA hereby assumes those obligations of City in the Easement Agreement governing the initial construction of the Project (referred to as the “*Vine Trail*” in that Easement Agreement) and agrees to adhere to the standards of care prescribed in such Easement Agreement as such standards relate to the initial construction of the Project.

2. The Temporary Construction Easement is granted for vehicular and pedestrian ingress and egress to and from the Temporary Easement Property and for Grantee’s use to do all things reasonably necessary to construct and install the Project including, but not limited to, the transport, stockpiling and storage of construction materials, soil, equipment and vehicles within the boundaries of the Temporary Easement Property; provided that Grantee shall to the extent reasonably possible store overnight equipment and vehicles at nearby off-site staging areas to allow for Grantor’s agricultural use of Grantor’s lands. Upon expiration of the Temporary Construction Easement, the

Exhibit D to Trail Easement Agreement – 1 of 5
(*Temporary Construction Access Easement Agreement*)

Grantee, at its sole cost and expense, shall restore the Temporary Easement Property to substantially the same condition it was in prior to Grantee's use. Grantee shall not leave any rubbish or debris on or about the Temporary Easement Property. The term of this Agreement shall begin five days after the date written notice is mailed by U.S. mail to Grantor by NVTa and shall extend therefrom for twenty-four months or until the Project has been completed, whichever first occurs. NVTa may extend the Temporary Construction Easement for two (2) additional six (6) month periods by giving written notice to Grantor on or before the expiration of the Temporary Construction Easement.

3. Upon termination of this Agreement, all covenants in this instrument are released (other than NVTa's restoration obligations set forth in Paragraph 2, NVTa's indemnification obligations set forth in Paragraph 4, all of which shall survive the expiration or termination of this Agreement) and the Temporary Easement Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Temporary Construction Easement set forth in this Agreement. NVTa will deliver written confirmation of this Agreement's termination promptly following completion of its activities within the Temporary Easement Property.

4. The Temporary Construction Easement shall allow NVTa and its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, and assigns thereof to use the Temporary Easement Property during the completion of the Project. Grantee shall use the Temporary Easement Property solely for the purpose described in Paragraph 2 and for no other purpose. In no event may any use of the Temporary Easement Property by Grantee violate any applicable law, rule or regulation relating to the Temporary Easement Property or materially impact Grantor's normal business operations in the adjacent property. To the extent allowed by law, NVTa shall indemnify and hold the Grantor harmless against any claim of liability or loss from personal injury or property damage resulting from or arising out of the negligence or willful misconduct of NVTa or its contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successors, or assigns thereof, except to the extent such claims or damages may be due to or caused by the negligence or willful misconduct of Grantor or its employees, contractors or agents.

5. Prior to commencement of the Project, NVTa shall install construction fencing, reasonably acceptable in design and location to Grantor, separating the Temporary Easement Property from the remainder of Grantor's lands. Such construction fencing shall be constructed of netting and shall be designed and installed in a manner such that it can be moved readily to accommodate any farming and agricultural operations of Grantor occurring in the immediate vicinity. NVTa shall maintain said construction fencing in good condition and repair during completion of the Project. Grantor shall have the right to use the Temporary Easement Property in connection with the above-described agricultural operations at all reasonable times, provided such use does not unreasonably impede or impair NVTa's Project construction activities occurring therein or otherwise endanger or risk harm to NVTa's contractors, subcontractors, agents, or representatives engage in such construction activities. The parties will cooperate with each other in good faith to accommodate any such Grantor

operations requiring use of the Temporary Construction Property.

6. At no time during the term of this Agreement, and at no time during construction of the “*Vine Trail*” (as that term is defined in the Easement Agreement), shall Grantee stockpile, store or otherwise place construction, testing or staging materials, soil, equipment, vehicles or any other items relating to the Project on any part or portion of the lands of Grantor except within the boundaries of the Temporary Easement Property—and then, only in those quantities necessary for trail construction and installation activities within the Temporary Easement Property as defined in this Temporary Construction Easement.

7. Grantor covenants and agrees that it is the fee owner of the Temporary Easement Property and that it has the authority to grant this Temporary Construction Easement to NVTa.

8. Subject to the PG&E Easement, as defined in the Easement Agreement, Grantor warrants that no building, structure, or other above or below ground improvement or obstruction that may interfere with the purposes for which this Temporary Construction Easement is granted may be placed, erected, installed or permitted upon the Temporary Easement Property during the term hereof except for existing improvements, if any. The Grantor further agrees that in the event the terms of this Temporary Construction Easement are violated, that such violation shall immediately be corrected by the Grantor at Grantor’s sole expense upon receipt of written notice from NVTa.

9. Grantor reserves all rights attendant to its ownership of the Temporary Easement Property, including but not limited to the use and enjoyment of the Temporary Easement Property for all purposes not inconsistent with the terms and conditions of this Agreement.

10. As a condition of this Agreement and of Grantor’s grant of the Temporary Construction Easement hereunder, Grantee, shall, at their respective cost and expense, insure their activities on the Temporary Construction Easement area, and each shall obtain, keep in force, and maintain at all times during the term of this easement: (a) Commercial Form General Liability Insurance with an insurance carrier qualified to do business in the State of California and rated at least [A], on an occurrence basis and with per-occurrence and general aggregate limits of liability at \$2,000,000 and \$4,000,000 respectively, and (b) Workers’ Compensation Insurance in accordance with California law and including Employer’s Liability Coverage with commercially reasonable limits of liability. All insurance policies required under this Paragraph 10 will name Grantor as an additional insured and such policies will be primary and non-contributory with any insurance carried by Grantor. Proof of the foregoing insurance will be provided to Grantor promptly on the reasonable request of Grantor.

11. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return

receipt requested, to the parties at the addresses given below or at such other address that may be specified by written notice in accordance with this paragraph:

If to Grantor:

C. Mondavi and Family,
Attn: CEO
2800 Main St.
Saint Helena, CA 94574

If to NVTa:

Napa Valley Transportation Authority
Attn: Executive Director
625 Burnell Street,
Napa, CA 94559

With a copy to:

GVM Law, LLP
Attn: Erik W. Lawrence, Esq.
1000 Main Street, 3rd floor
Napa, CA 94559

12. This Agreement represents the entire agreement between the Grantor and NVTa as relates to the Temporary Construction Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Agreement must be in writing and signed by both the Executive Director and the Grantor.

13. Each and every term, condition, or covenant of this Agreement is subject to and shall be construed in accordance with the provisions of California law. Venue for any action arising out of this Agreement shall be in the Superior Court of California located in the County of Napa.

14. The benefits and burdens of the Temporary Construction Easement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

15. This Agreement shall not be recorded, but shall nevertheless become effective upon full execution by all parties and delivery of same to the NVTa.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Temporary Construction Access Easement Agreement as of the day and year first set forth above.

GRANTOR:

C. MONDAVI & FAMILY, a California corporation

By:
Its:

GRANTEE:

Napa Valley Transportation Authority, Napa

By: _____
Catherine Miller, Executive Director,
Authorized pursuant to Resolution No.

CITY OF ST. HELENA

CERTIFICATE OF ACCEPTANCE

This Certificate of Acceptance pertains to the interests in real property conveyed by the Trail Easement to which this Certificate of Acceptance is attached,

From: _____ (**“Grantor”**)

To: The City of St. Helena, a municipal corporation of the State of California (**“Grantee”**)

Said Trail Easement is hereby accepted by the undersigned officer on behalf of Grantee pursuant to authority conferred by the Grantee’s City Council, and Grantee hereby consents to recordation of said Grant of Easement.

Dated: _____

CITY OF ST. HELENA, a municipal corporation

By: _____
Mark T. Prestwich, City Manager

ATTEST:

Cindy Tzaopolous, City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ST. HELENA APPROVING AN AMENDMENT TO AND
RATIFICATION OF AGREEMENT GRANTING BICYCLE
PATHWAY EASEMENT WITH TREASURY WINE
ESTATES AMERICAS COMPANY OVER THE PROPERTY
KNOWN AS APN 009-010-026**

WHEREAS, pursuant to that certain Agreement Granting Bicycle Pathway Easement dated June 25, 1992 and recorded in the Napa County Official Records on August 12, 1992 as Instrument No. 1992-026994 (the “**Easement Agreement**”), the Original Grantor granted the City a non-exclusive easement in gross (the “**Trail Easement**”) in, on, over, and across that certain real property known as the Beringer Winery property (the “**Property**”); and

WHEREAS, the purpose of the Trail Easement was to permit the City to construct, maintain, and make available for public use a bicycle trail in the Trail Easement area, which Trail Easement area (the “**Existing Easement Area**”) is described in and depicted at Exhibits B and C to the Easement Agreement; and

WHEREAS, the City supports creating recreational trails for public use, including but not limited to a 47-mile walking and biking trail system to physically, artistically, and culturally connect the entire Napa Valley, from the City of Vallejo to the City of Calistoga (hereinafter, the “**Vine Trail**”); and

WHEREAS, Napa Valley Transportation Authority (“**NVTA**”) has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services for completion of the Vine Trail; and

WHEREAS, the Trail Easement and existing pathway thereon will be used for and incorporated into the Vine Trail, with reconstruction and other improvements to the existing pathway to be performed by contractors whose services NVTA will procure; and

WHEREAS, the current owner of the Property, Treasury Wine Estates Americas Company (“**TWE**”) and the City desire to amend the Easement Agreement to delete expiration provisions and incorporate new termination provisions, and otherwise acknowledge, affirm, and ratify the Trail Easement, on the terms and conditions set forth in the Easement Agreement.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council of the City of St. Helena hereby approves the Amendment to and Ratification of Agreement Granting Bicycle Pathway Easement (the "Amendment") in substantially the form provided in the agenda materials for this Resolution, and authorizes the City Manager to execute the Amendment and any additional documentation as necessary to facilitate the acceptance and recordation of the Amendment.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Council Member Chouteau:

Council Member Knudsen:

Council Member Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
ST. HELENA APPROVING AND ACCEPTING A TRAIL
EASEMENT AGREEMENT WITH C. MONDAVI & FAMILY
OVER THE PROPERTY KNOWN AS APN 009-010-022**

WHEREAS, the City supports creating recreational trails for public use, including but not limited to a 47-mile walking and biking trail system to physically, artistically, and culturally connect the entire Napa Valley, from the City of Vallejo to the City of Calistoga (hereinafter, the **"Vine Trail"**); and

WHEREAS, C. Mondavi & Family (**"Grantor"**) is the owner of the property identified as Napa County Assessor's Parcel No. 009-010-022 and known as the Charles Krug Winery property (the **"Property"**); and

WHEREAS, Grantor has granted or will be granting to PG&E an easement over the Property for the purpose of installing a natural gas pipeline (the **"PG&E Easement"**), and Grantor has agreed to grant Grantee the surface-level easement to facilitate completion of the Vine Trail between Calistoga and Yountville; and

WHEREAS, Napa Valley Transportation Authority (**"NVTa"**) has committed to completing environmental review, obtaining rights of entry and construction easements, and procuring design and construction services for completion of the Vine Trail; and

WHEREAS, the Grantor has agreed to provide an easement over the Property to City on the terms and conditions set forth in the proposed Easement Agreement for the purpose of facilitating completion of the Vine Trail; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. The City Council of the City of St. Helena hereby approves the Trail Easement Agreement (the **"Easement"**) in substantially the form provided in the agenda materials for this Resolution, and authorizes the City Manager to execute the Easement and any additional documentation as necessary to facilitate the acceptance and recordation of the Easement.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Council Member Chouteau:

Council Member Knudsen:

Council Member Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafoopoulos, City Clerk



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed approval of a resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract amount.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On September 27, 2020, the City of St. Helena ("City") proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which affected both Napa and Sonoma Counties.

As a result of the Glass Fire, several components of the City's water infrastructure have been damaged and in some cases rendered non-operational. In particular, the Meadowood Water Tanks that serve as the only source of water to the Meadowood Resort and residents in the Madrone Knoll area have burned and are no longer functional for the City's water operations.

On October 13, 2020, City Council ratified several emergency contracts/agreements to specifically assist with temporary and permanent design solutions for the Meadowood Water Tanks as follows: (1) Taylor Bailey, Inc. STH Contract: FY2021-028, (2) Rain for Rent STH Contract: FY2021-027, (3) HydroScience Engineers STH Contract: FY2021-24, (4) EKI Environmental & Water STH Contract: FY2021-025, (5) and Britton Tree Services, Inc. STH Contract: FY2021-29.

DISCUSSION

Public Contract Code Section 1102 defines an emergency as “a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services”.

Public Contract Code Section 22035 authorizes the City Council, in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050. Public Contract Code Section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency.

Pursuant to Section 3.04.290 and Section 3.04.170 of the City's Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager.

The City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there was an imminent need to take immediate action to replace the temporary water tanks to serve Meadowood Resort and the Madrone Knoll area in order to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

The State of California has given the City until March 31, 2021 to complete the installation of the replacement water tanks at the Meadowood Resort and the Madrone Knoll area.

Now, pursuant to Public Contract Code Section 22050(b)(3), the City Manager must report to the City Council the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency. In turn, pursuant to Public Contract Code Section

22050(c)(2), the City Council must review the emergency action by the City Manager and determine, by a four-fifths vote, there is a need to continue the action.

FISCAL IMPACT

The fiscal impact of the awarded contracts/agreements is for a not-to-exceed amount of \$389,882.47 and authorizing the Director of Public Works to approve contract change orders up to 20% of the contract will equate up to an additional cost of \$77,976.50. The City is working with CalOES and REMIF for reimbursement of these expenses. The deductible for REMIF is \$100,000.

RECOMMENDED ACTION

Approval of a resolution resolution (1) ratifying an emergency public project without public bidding relating to the Glass Fire; (2) approving the Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; (3) approving the Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04; and (4) authorizing the Director of Public Works to approve contract change orders up to 20% of the contract amount.

ATTACHMENTS

[Attachment 1: Resolution for Meadowood Tank Replacement](#)

[Attachment 2: 10/15/2020 Email from State Department of Drinking Water](#)

[Attachment 3: STH Contract FY2021-036 National Storage Tank, Inc. Equipment Purchase](#)

[Attachment 4: NST Design and Fabrication Quote](#)

[Attachment 5: STH Contract FY2021-037 National Storage Tank Construction Contract](#)

[Attachment 6: NST Construction Quote](#)

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA: (1) RATIFYING AN EMERGENCY PUBLIC PROJECT WITHOUT PUBLIC BIDDING RELATING TO THE GLASS FIRE; (2) APPROVING THE EQUIPMENT PURCHASE AGREEMENT WITH NATIONAL STORAGE TANK, INC. IN AN AMOUNT NOT-TO-EXCEED \$236,712.47 FOR DESIGN AND FABRICATION OF THE MEADOWOOD WATER TANKS EMERGENCY REPLACEMENT PROJECT, CIP PROJECT NO. E21-04; (3) APPROVING THE CONSTRUCTION AGREEMENT WITH NATIONAL STORAGE TANK, INC. IN AN AMOUNT NOT-TO-EXCEED \$153,170.00 TO CONSTRUCT THE MEADOWOOD WATER TANKS EMERGENCY REPLACEMENT PROJECT, CIP PROJECT NO. E21-04; AND (4) AUTHORIZING THE DIRECTOR OF PUBLIC WORKS TO APPROVE CONTRACT CHANGE ORDERS UP TO 20% OF THE CONTRACT AMOUNT.

WHEREAS, Public Contract Code section 1102 defines an emergency as “a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services”; and

WHEREAS, Public Contract Code section 22035 authorizes the City Council of the City of St. Helena (“City”), in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050; and

WHEREAS, Public Contract Code section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency; and

WHEREAS, pursuant to Section 3.04.290 and 3.04.170 of the City’s Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager; and

WHEREAS, on September 27, 2020, the City proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which is affecting both Napa and Sonoma Counties; and

WHEREAS, as a result of the Glass Fire, several components of the City's water infrastructure have been damaged and, in some cases, rendered non-operational. In particular, the Meadowood Water Tanks that serve as the only source of water to the Meadowood Resort and residents in the Madrone Knoll area have burned and are no longer functional for the City's water operations.; and

WHEREAS, the City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there is an imminent need to take immediate action to permanently replace the water tanks to serve Meadowood Resort and Madrone Knoll area in order to prevent or mitigate the loss or impairment of life, health, property, or essential public services; and

WHEREAS, the State of California has given the City until March 31, 2021 to complete the installation of the replacement water tanks at the Meadowood Resort and the Madrone Knoll area; and

WHEREAS, pursuant to Public Contract Code section 22050(b)(3), the City Manager must report to the City Council the reasons justifying why the emergency will not permit a delay resulting from a competitive solicitation for bids and why the action is necessary to respond to the emergency; and

WHEREAS, an Equipment Purchase Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$236,712.47 for design and fabrication of the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04 and a Construction Agreement with National Storage Tank, Inc. in an amount not-to-exceed \$153,170.00 to construct the Meadowood Water Tanks Emergency Replacement Project, CIP Project No. E21-04 is necessary; and

WHEREAS, pursuant to Public Contract Code section 22050(c)(2), the City Council must review the emergency action by the City Manager and determine, by a four-fifths vote, there is a need to continue the action; and

WHEREAS, it is also recommended that in the event there are changes needed during fabrication or construction that the Director of Public Works is authorized to approve contract change orders up to 20% of the total contract amount.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. That the public interest and necessity demand the immediate expenditure of public funds for emergency work related to the Glass Fire in order to

prevent or mitigate the loss or impairment of life, health, property, or essential public services.

SECTION 3. That the emergency would not permit a delay that would have resulted from a competitive solicitation for bids and that action was necessary to respond to the emergency related to the Glass Fire.

SECTION 4. That the City Manager's emergency determination and award of emergency contracts/agreements to National Storage Tank, Inc. are hereby ratified.

SECTION 5. That the City Manager, or his or her designee, is hereby authorized to continue taking any directly related and immediate action required by the emergency condition related to the Glass Fire and directed to report back to the City Council regarding the status of the emergency condition and need to continue the emergency action at every regularly scheduled meeting until the emergency action is terminated.

SECTION 6. That the Director of Public Works is authorized to approve contract change orders up to 20% of the contract amount.

SECTION 7. That the approvals herein authorized are necessary to protect the public health, safety, and welfare.

SECTION 8. This Resolution shall become effective immediately.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Council Member Chouteau:

Council Member Knudsen:

Council Member Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk

From: [Little, Amy@Waterboards](mailto:Little.Amy@Waterboards)
To: [David Cuffman](#); [Eric Sanders](#); [Clayton Church](#)
Cc: [Rounds, Zachary@Waterboards](#); [Curtis Lam](#); [Erica Ahmann Smithies](#); [Carlos Uribe](#)
Subject: RE: [External] Waiver Request
Date: Thursday, October 15, 2020 2:58:17 PM

Hello,

On October 1, 2020, the City of St. Helena made a request to temporarily install three 6,900 gallon polyethylene storage tanks to supply Zone 4 as a result of the destruction from the Glass Fire. The City of St. Helena conducted a 48 hour soak test of the storage tanks and the results are below primary maximum contaminant levels and single product allowable concentrations. Therefore, the Division is waiving the NSF/ANSI 61 requirement for the storage tanks. The storage tanks installed cannot remain in place on a permanent basis. The Division expects a permanent tank situation to be in place no later than March 31, 2021.

Sincerely,
 Amy

707-576-2147

From: Little, Amy@Waterboards
Sent: Thursday, October 1, 2020 12:05 PM
To: Eric Sanders <ESanders@cityofsthelena.org>
Cc: Rounds, Zachary@Waterboards <Zachary.Rounds@waterboards.ca.gov>; Curtis Lam <clam@hydroscience.com>; Erica Ahmann Smithies <ESmithies@cityofsthelena.org>; Clayton Church <CChurch@cityofsthelena.org>
Subject: RE: Waiver Request

Hi Eric,

Pursuant to California Code of Regulations section 64551.100, the Division anticipates approving the City of St. Helena's request to install the proposed three 6,900 gallon polyethylene storage tanks. Upon tank placement or earlier, the Division requires the City fill the tank to the operating level and conduct a soak test for 24 hours and test for CA Title 22 VOCs and SOCs. Provided the results are below NSF Single Product Allowable Levels (SPAC), the Division approves of the tank installation. The storage tanks installed cannot remain in place on a permanent basis. The Division expects a permanent tank situation to be in place no later than March 31, 2021.

Thank you,
 Amy

707-576-2147

From: Eric Sanders <ESanders@cityofsthelena.org>
Sent: Thursday, October 1, 2020 9:59 AM
To: Little, Amy@Waterboards <Amy.Little@waterboards.ca.gov>
Cc: Curtis Lam <clam@hydroscience.com>; Erica Ahmann Smithies <ESmithies@cityofsthelena.org>;

Clayton Church <CChurch@cityofsthelena.org>

Subject: Waiver Request

EXTERNAL:

Amy,

The City of St. Helena had three redwood storage tanks on Meadowood Lane in Pressure Zone 4 that were destroyed due to the Glass Fire. Pressure Zone 4 is currently without water, and the City needs to install emergency storage tanks to repressurize the pressure zone, restore water service, and determine the condition and water quality throughout the distribution system.

Due to the limited site access to the redwood storage tank sites, options for emergency storage are limited. City staff visited the site with a tank vendor, and determined that the only feasible option was to install three temporary poly tanks, each with a volume of 6,900 gallons, at the Meadowood site. The poly tanks are not NSF/ANSI 61 certified, but have only been used for potable water storage in the past.

During the state of emergency created by the impacts from the Glass Fire, the City is requesting a waiver from DDW from the need for the temporary water storage tanks to be NSF/ANSI 61 certified. The City will disinfect the tanks prior to putting them into operation, provide the same level of operations and maintenance to these tanks as it does for other water system infrastructure, and make sure that all other conditions are consistent with our permit and all state requirements.

Should you have any questions about this emergency waiver, please contact me at [\(707\) 312-1207](tel:(707)312-1207) or esanders@cityofsthelena.org. If this waiver is acceptable to DDW, please provide a response to my attention via email.

Thank you,

Eric Sanders
COSH CPO

Sent from my iPhone

STH Contract: FY2021-036

**CITY OF ST. HELENA
EQUIPMENT PURCHASE AGREEMENT**

**MEADOWOOD WATER TANKS EMERGENCY REPLACEMENT PROJECT,
CIP PROJECT NO. E21-04**

This Equipment Purchase Agreement (“Agreement”) is entered into this ____ day of _____, 2020, by and between the City of St. Helena, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at a municipal corporation organized under the laws of the State of California with its principal place of business at 1572 Railroad Avenue, St. Helena, CA 94574 (“City”), and National Storage Tank, Inc., a California corporation with its principal place of business at 4137 Santa Rosa Ave. Santa Rosa, CA 95407 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

Section 1. DEFINITIONS.

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering, manufacturing, and delivery services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit “B.”

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at City’s request.

If the Contractor is responsible for providing installation services, the site of any installation work shall be kept clean and free of hazards at all times during performance of such installation services. After installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming,

unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit "A," then without prejudice to any other rights or remedies, City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of five (5) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City's plant, office or other location of City where the Equipment was originally performed or delivered; or
3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.

B. If Progress Milestones have been specified Exhibit "B," then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by City upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B." Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other

format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;
2. Written acceptance of the Equipment by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of \$500 per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;
2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);
3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and
4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.
5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

D. Evidence of Insurance. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to

bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such

termination will be effective in the manner specified in such notice, will be without prejudice to any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. SERVICES

If Contractor is required to perform any services under this Agreement, Contractor shall be duly licensed and possess the necessary qualifications to provide such services. The services, if any, shall be described in Exhibit "A", which is attached hereto and incorporated herein by this reference. Contractor's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. In the event the services to be performed by Contractor under this Agreement are a prerequisite to commencing manufacturing and delivery of the Equipment, City shall have no obligation to proceed beyond performance of the services until it issues a "Notice to Proceed with Fabrication" to Contractor.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:

CONTRACTOR:

City of St. Helena

National Storage Tank, Inc.

1572 Railroad Ave.

4137 Santa Rosa Ave.

St. Helena, CA 94574

Santa Rosa, CA 95407

Attn: Erica Ahmann Smithies, Director of Public Works Attn: Nicole Oblad, General Manager

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City. If the Equipment will be incorporated into a larger project as owner provided equipment, City may in its sole discretion assign and Contractor agrees to the assignment of any and all rights, duties and obligations of City under this Agreement, including any warranty rights, to the City's independent contractor.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Napa County.

G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

J. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

K. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

L. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

M. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work being performed under this Agreement is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work under this Agreement, including any delay, shall be Contractor's sole responsibility and Contractor shall indemnify City from liability arising out of the same. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

O. Federal Provisions. When funding for the Agreement is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the federal requirements including, but not limited to, 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and the Federal Contract Provisions included in Exhibit “D” attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT

BETWEEN THE CITY OF ST. HELENA

AND NATIONAL STORAGE TANK, INC.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ST. HELENA

Approved By:

Mark T. Prestwich
City Manager

Attested By:

Cindy Tzafopoulos
City Clerk

Approved As To Form:

Ethan Walsh
City Attorney

NATIONAL STORAGE TANK, INC.

Signature

Name

Title

Date

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

Exhibit "A"
SECTION 13212
FUSION EPOXY BOLTED STEEL TANKS

PART 1 - GENERAL

1.01 SUMMARY

- A. Section Includes: All labor, material, equipment, tools and services required for the design, fabrication, erection, and testing of three bolted steel water storage tanks, tank appurtenances and accessories to replace in kind three 65,000-gallon potable water storage tanks that were damaged in the Glass Fire and have since been demolished. This specification supplements the requirements of AWWA D103. Where modifications, deletions, or amplifications of AWWA D103 have been made they are provided to exceed the minimum requirements of AWWA D103. Tanks covered by this specification shall be supplied with factory-applied interior and exterior coating systems and will be installed on existing concrete foundations as shown on the project plans. These specifications apply to all three tanks unless otherwise indicated.
- B. Related Sections
 - 1. City of St. Helena Water and Sewer Standards (2015)
 - 2. City of St. Helena contract documents
- C. Attached Exhibits for Reference
 - 1. Exhibit 1. Existing Site Plan with Preliminary Piping Information
 - 2. Exhibit 2. Meadowood Tanks Vicinity Map
 - 3. Preliminary Tank Design by NST

1.02 REFERENCES

- A. American Water Works Association Standards (AWWA):
 - 1. AWWA D103 Factory Coated Bolted Steel Tanks for Water Storage (latest edition)
 - 2. AWWA C652 Disinfection of Water Storage Facilities
- B. NSF International (NSF):
 - 1. ANSI/NSF61 Drinking Water System Components – Health Effects
- C. American Iron and Steel Institute (AISI)
- D. American Society for Testing and Materials International (ASTM)
- E. American Welding Society (AWS)
- F. Steel Structures Painting Council (SSPC)

G. Occupation Safety and Health Standards OSHA 29 CFR Part 1910

H. California Building Code (CBC) (latest edition)

I. California Code of Regulations, Title 8: Industrial Safety (CCR)

1.03 DEFINITIONS

- A. Fill Level: The water level in the tank that triggers the pump to shut off.
- B. Working Capacity: The net volume in gallons based on the bottom capacity level and the fill level.
- C. Bottom Capacity Level (BCL): The lowest operating level of water in a tank based on the elevation at which water discharges from the tank through the inlet/outlet pipe entrance.
- D. Contractor: One company will be responsible to the Owner for the work in this section including design, manufacturing and installation, and that company is National Storage Tank Inc. (NST, Contractor or tank manufacturer) of Santa Rosa, CA.

1.04 SYSTEM DESCRIPTION

- A. The tank exterior color shall be NST standard color Tan. The interior shall be standard white.
- B. The tank sizes shall match the same working water storage (fill level – BCL) as the original 26-foot diameter tanks and to the extent possible reuse the three existing concrete pads shown on the Drawings (two are octagons 26 feet in diameter and 8-inch thick and the third is a concrete rectangle, 28 feet by 29 feet) and 12-inches thick, with the following additional design criteria:
 - 1. Water fill level of 15.0 feet above the top of the existing pads.
 - 2. Freeboard of approximately 4 feet (or as necessary for seismic sloshing).
 - 3. Overflow invert 6 inches over the fill level.
- C. Design Requirements: Materials, design, fabrication and erection AWWA D103, latest edition, and also (*note these design data are preliminary and are pending the release of the geotechnical report*):
 - 1. Roof snow load: 0 lb/ft².
 - 2. Roof live load: 15 lb/ft². 50 lb/ft² on platform and ladder areas of the tank roof around access hatches enclosed in guardrails. Note that the Owner is considering adding solar panels to the tank roofs. Let the City Representative know how this may change the design.
 - 3. Ladder loads: 500 lb on each vertical section of the ladder.
 - 4. Wind load:
 - a. Basic Wind Speed (3-second gust): $V = 103$ mph.
 - b. NST to calculate the site-specific wind loads.

5. Seismic design: CBC Section 1613; ASCE 7, Section 15.7.7.2; AWWA D103 except that the design input forces shall be determined in accordance with the requirements of AWWA 100-11, Section 13. Refer to the coefficients and factors below:

Seismic Use Group.....IV
 Seismic Importance Factor (Table 24)..... $I_E = 1.5$
 Site Class (Table 25).....B
 Mapped MCE Spectral Response Acceleration, 0.2 sec..... $S_s = 1.737g$
 Mapped MCE Spectral Response Acceleration, 1.0 sec..... $S_1 = 0.633g$

 Design Earthquake Spectral Response Acceleration, 0.2 sec..... $S_{DS} = 1.042g$
 Design Earthquake Spectral Response Acceleration, 1.0 sec..... $S_{D1} = 0.338g$
 Transition Period for Longer Period Ground Motion..... $T_L = 8.0$ sec

- a. The design earthquake ground motion in this specification is based on a maximum considered earthquake ground motion, defined as a motion caused by an event with a 2 percent probability of exceedance within a 50- year period (recurrence interval of approximately 2,475 years).
 - b. The design seismic forces which are reduced by a factor of 1.4 in AWWA D100 equations shall be used with the allowable stress design method.
 - c. Apply horizontal and vertical design accelerations simultaneously.
 - d. Hoop stress combination: Root mean square method.
 - e. Pressure stability: check with tank full and empty.
 - f. Sliding check: check tank utilizing a coefficient of friction of 0.40.
6. Tank anchor system: Resist tension from seismic overturning moment (AWWA D100 Equation 13.23), without any reduction for vertical loads.
- a. Design anchorage including anchor bolts and anchor chairs for wind and seismic loads in accordance with AWWA D100, Section 3.8.
 - b. Anchor attachments shall be designed such that the anchor yields before the anchor chair, if used, and anchor attachment fail. Submit calculations for both the as-built condition and the corroded condition of the anchor, anchor chair, attachment, and tank shell.
 - c. Anchorage design check shall include concrete limit states, including but not limited to, pullout, concrete side-face blowout, bond strength, concrete breakout and concrete pryout.
7. Soil bearing pressures:
- Dead and live or operating loads.....4,500 psf
 Dead, live, operating loads plus seismic or wind loads.....4,500 psf

1.05 SUBMITTALS

- A. Submit via email to Owner's Representative Jenn Hyman, EKI (jhyman@ekiconsult.com).

B. Product Data

1. Hangers, pipe and equipment supports.
2. Bolts and anchor bolts.
3. Stainless steel items.
4. Manufactured items, including manholes, hatches, doors, ladders, vents, and safety devices.
5. Erection Plan.
6. Mill test reports for plates and sheets, structural shapes and other steel materials.

C. Shop Drawings

1. Fabrication and erection drawings for bolted steel tank and accessories indicating size and thickness of members including anchor bolt layout and details, assembly drawings, and bolted joint details. Show detail dimensions and quantities and details of construction and erection as prepared by the tank manufacturer. Detailed drawings for the tank and accessories signed and stamped by a Civil or Structural Engineer licensed to practice in the state where the tank will be constructed.
2. Tank manufacturer and tank constructor's standard published warranty.
3. Tank manufacturer's standard operation and maintenance manual.

D. Structural Calculations

1. A single complete set of structural calculations for the bolted steel tank, seismic anchoring, and roof signed and stamped by a registered professional Civil or Structural Engineer licensed to practice in the state where the tank will be constructed. Submit calculations for tank shell, shell thickness, compressive stress in each ring under wind or earthquake loading combined with dead and water load. Submit calculations for bolted joints including minimum spacing, multiple bolt lines, tension on the net section, hole bearing stress, bolt shear and tension. Submit calculations for the amount of reinforcement for openings in the tank shell or floor including pipe connections and manholes.

E. Samples – NOT USED

- 1.

F. Quality Assurance/Control Submittals

1. Test Reports: Supply certified test data on the interior and exterior coating thickness.
2. Certificates
 - a. Not used.
 - b. Certificate from tank manufacturer that tank constructor is as an authorized builder and that crew personnel have satisfactorily completed a training program provided by tank manufacturer.
 - c. Certificate from the tank manufacturer, including mill tests and shop inspection report.
 - d. Certificate from the tank manufacturer that tank erection by tank constructor is satisfactory, including field inspection and testing report.

3. Manufacturer's Instructions: Submit a procedure and provide supplies for field repair and touch-up of damaged coatings.
4. Manufacturer's Field Reports
5. Welder performance qualification test records "welder's certification" in accordance with AWWA D103 Section 6.
6. Written Welding Procedure Specifications (WPSs) in accordance with AWS B2.1 and D1.1 and AWWA D103 Section 6 requirements for each different welded joint proposed for use whether prequalified or qualified by testing.
7. Procedure Qualification Record (PQR) in accordance with AWS D1.1 for all procedures qualified by testing.

1.06 QUALITY ASSURANCE

A. Qualifications

1. The tank constructor crew personnel shall be trained in a factory sponsored program and shall be certified by the tank manufacturer as having satisfactorily completed that program.

B. Certifications

1. The tank constructor shall be experienced in the construction of the specified tank and shall be certified by the tank manufacturer as an authorized builder. The builder shall have built at least five (5) tanks of similar type that are equal or greater in size than the specified tank.

1.07 DELIVERY, STORAGE AND HANDLING

A. Packing, Shipping, Handling, and Unloading

1. Protect all sheets that pass factory inspection and quality control checks from damage prior to packing for shipment. All material shall be loaded, transported to the site, unloaded, and stored in such a manner as to prevent damage.
2. Place heavy paper or plastic foam sheets between each panel to eliminate sheet-to-sheet abrasion during shipment.
3. Wrap individual stacks of panels in heavy mil plastic and steel banded to special wood pallets built to maintain the roll-radius of the tank panels and minimize contact or movement of finished panels during shipment.
4. Shipment from the factory will be by truck, hauling the tank components exclusively.
5. Mark or tag all of the tank components and materials with a piece mark or part number for ease of field assembly prior to shipment.

B. Delivery

1. The tank site is accessed by a narrow, single-lane road with one severe switchback within the Meadowood Resort as shown in the Drawings. Trucks with trailers will not be able to go any higher than this switchback and therefore it is anticipated that the delivery of the tank panels will need to be made at a parking area at the Resort located about 2500-3000 feet from the tank site. The tank supplier shall provide additional trucks, forklifts and other equipment and personnel as needed to ferry the tank materials to the tank site.

- C. Due to the very small amount of surplus space at the tank site including the presence of the temporary water tanks, the tank supplier and contractor may need to park their vehicles down the hill from the tank site and walk up to it.

1.08 PROJECT/SITE CONDITIONS

- A. Existing Conditions
 - 1. Water: The Owner will provide clean water for testing.
 - 2. Disposal: The Owner will provide for disposal of water after testing.
 - 3. Electrical power is not available at the tank site.

1.09 WARRANTY

- A. The tank manufacturer shall include a warranty for the tank materials and coating. As a minimum, this warranty shall provide assurance against defects in material or workmanship for the period of 5 years and corrosion of the coated surface for the period of 5 years.

1.10 MAINTENANCE

- A. Submit tank manufacturer's standard operation and maintenance manual.
- B. Provide tank manufacturers' standard spare parts and any extra materials.

PART 2 - PRODUCTS

2.01 MANUFACTURERS

- A. National Storage Tank Company, Inc., Santa Rosa, CA.

2.02 MATERIALS

- A. Plates, Sheets, and Structural Shapes: Comply with the minimum standards of AWWA D103, latest edition, for all plates and sheets used in the construction of the tank shell, tank floor (when supplied) and tank roof.
 - 1. ASTM A36; A283 Grades C or D; A570 Grade 30, 33, 36, 40, 45, or 50; A572 Grade 42, 50; A607 Grade 50; or A715, Grade 50; steel grades designating a minimum $F_y = 50,000$ psi or more shall not be used.
 - 2. Thickness:
 - a. Roof, shell and floor plates: 0.118-inches, minimum.
 - b. Shell plates: 3/8-inch, maximum.
 - 3. Maximum yield strength, $F_y = 50,000$ psi. The annealing effect created from the coating firing process may be considered in determining ultimate steel strength.
 - 4. Effective net section area shall not be taken as greater than 85% of the gross area when multiple vertical bolt line sheets and plates of ASTM A1011 Grade 50 are used.
 - 5. All sheets in the shell of the tank that require multiple vertical row punching (double or triple) must be in a single stroke to insure proper alignment.
 - 6. Rolled Structural Shapes: ASTM A36 or ASTM A992.

- B. Top and Intermediate Shell Girders (Horizontal Wind Stiffeners):
 - 1. Design requirements for intermediate horizontal wind stiffeners shall be of the "web truss" type with an extended tail creating multiple layers of stiffener, permitting wind loads to be distributed around the tank.
 - 2. Web truss stiffeners shall be of steel with hot dipped galvanized coating.
 - 3. Rolled steel angle stiffeners are not permitted for use as intermediate horizontal wind stiffeners.

- C. Bolts and Bolted Joints: AWWA D103 and API 12B, Appendix A, latest edition, and:
 - 1. Bolts used in tank lap joints shall be ½" - 13 UNC- 2A rolled thread.
 - 2. SAE J429 Grade 2 (1" bolt length): Tensile Strength - 74,000 psi Min.; Proof Load - 55,000 psi Min.; Allowable shear stress with threads excluded from the shear plane - 18,163 psi Min.
 - 3. SAE J429 Grade 5 (1 1/4" bolt length): Tensile Strength - 120,000 psi Min.; Proof Load - 85,000 psi Min.; Allowable shear stress with threads excluded from the shear plane - 29,454 psi Min.
 - 4. SAE J429 Grade 8 (Greater than 1 1/4" bolt length): Tensile Strength - 150,000 psi Min.; Proof Load - 120,000 psi Min.; Allowable shear stress with threads excluded from the shear plane - 36,818 psi Min.
 - 5. Bolt Finish: Zinc, mechanically deposited; 2.0 mils (0.002 inches) Min. - under bolt head, on shank and threads.
 - 6. Bolt Head Encapsulation: High impact polypropylene copolymer encapsulation of entire bolt head up to the splines on the shank; resin shall be stabilized with an ultraviolet light resistant material such that the color shall appear black; the bolt head encapsulation shall be certified to meet the ANSI/NSF Standard 61 for indirect additives.
 - 7. All bolts on the vertical tank wall shall be installed such that the head portion is located inside the tank, and the washer and nut are on the exterior.
 - 8. All lap joint bolts shall be properly selected such that threaded portions of the bolts will not be exposed to the "shear plane" between tank sheets.
 - 9. Bolt lengths shall be sized to achieve a neat and uniform appearance. Excessive threads extending beyond the nut after torquing will not be permitted.
 - 10. All lap joint bolts shall include a minimum of 4 splines on the underside of the bolt head at the shank in order to resist rotation during torquing.

- D. Sealants:
 - 1. The lap joint sealant shall be a one component, moisture cured, polyurethane compound. The sealant shall be suitable for contact with potable water and shall be certified to meet ANSI/NSF Additives Standard 61 for indirect additives. Sealant shall be chlorine resistant.
 - 2. The sealant shall be used to seal lap joints and bolt connections and edge fillets for sheet notches and starter sheets. The sealant shall cure to a rubber-like consistency, have excellent adhesion to the coating, low shrinkage, and be suitable for interior and exterior use.
 - 3. Sealant curing rate at 73°F and 50% RH:
 - a. Tack-free time: 6 to 8 hours.
 - b. Final cure time: 10 to 12 days.
 - 4. Neoprene gaskets and tape type sealer shall not be used.

- E. Gaskets:
 1. EPDM prefabricated gasket with a minimum width of 1 ¾-inch for all bolted connections.
 2. Provide a single piece (double or triple punched) gasket at vertical seams, which require two or three vertical rows of punching.
 3. Field caulk discontinuous gasket sections and joint connections.
 4. Provide neoprene backed steel washers at bolts in contact with stored liquid.
- F. All materials furnished by the Contractor, which are in contact with the stored water shall be certified and listed by the National Sanitation Foundation (NSF) to meet ANSI/NSF Additives Standard No. 61. Certification of a coating type alone will not be sufficient to meet this requirement.
- G. Concrete: NOT USED.
- H. Reinforcing steel: NOT USED.

2.03 ROOF

- A. Bolted Steel Roof:
 1. Provide a radially sectioned roof fabricated from coated bolted steel panels and assembled in a similar manner as the sidewall panels utilizing the same sealant and bolting techniques, so as to assure a weather/air tight assembly.
 2. Provide a clear-spanning and self-support roof. Both live and dead loads shall be supported by the tank walls.
 3. Provide a rolled knuckle design for the roof with no rolled angle connection between sidewall and roof panels.
 4. Provide a roof opening which shall be placed near the outside tank ladder and which shall be provided with a hinged cover and a hasp for locking. The opening shall have a clear dimension of at least 30-inches in both directions. The opening shall have a curb at least 4-inches in height, and the cover shall have a downward overlap of at least 2-inches, or a gasketed weather-tight cover in lieu of the 4-inch curb and 2-inch overlap.
 5. Provide 20-inch mushroom vent, epoxy coated and lined.

2.04 ACCESSORIES

- A. Shell Manholes:
 1. One manhole in the lowest side ring shall be provided as shown on the Drawings in accordance with AWWA D103 latest edition. Circular shape 30 inches diameter with hinge and hand hold. Manway cover, hinges, and handle shall be manufactured with galvanized steel materials or factory epoxy-coated carbon steel.
 2. The shell manhole and the tank shell, including the bolting, the cover, and the reinforcement of the neck shall comply with AWWA D103.

B. Piping and Pipe Connections:

1. Pipe connections to the tank are shown on the Drawings. Where pipe connections are shown to pass through tank panels, they shall be field located, saw cut, (acetylene torch cutting or welding is not permitted), and utilize an interior and exterior flange assembly and the tank shell reinforcing shall comply with AWWA D103 latest edition. Reinforce openings in tank shell and floor larger than 4-inches in diameter. Sealants shall be applied on any cut panel edges or bolt connections.
2. Pipe: ASTM A53; ASTM A240 300 series stainless steel; AWWA C200, Schedule 20.
3. Pipe lining: AWWA C205. Pipe coating, same as tank.
4. Pipe flanges: AWWA C207, Class B.
5. Provide epoxy coated and lined, welded steel inlet/outlet, overflow and drain piping.
6. Flexibility: Owner to provide flexible connections or fittings as shown on the Drawings for pipe connections to the tank bottom or shell to accommodate seismic movements and settlement in the piping system.

C. Overflow:

1. Overflow pipe: Provide external overflow pipe with support system. Tank manufacturer to design and provide support system, brackets, including spacing for overflow pipe. The overflow pipe shall contain an air break before discharge to the tank pad. The overflow shall be the same diameter as the inlet/outlet connection.

D. Ladders:

1. Provide exterior and interior tank ladders as shown on the Drawings.
2. Ladders shall have rungs at 12-inch spacing with 12-inches from the last rung to the ground or floor plate of the tank. Support spacing shall not exceed 10- feet.
3. Fabricate exterior ladder of aluminum and utilize grooved, skid-resistant rungs.
4. Provide exterior ladder with a hinged and lockable ladder door at the bottom.
5. Fabricate exterior ladder Personal Fall Protection System per paragraph 2.04 E below.
6. Provide an exterior ladder with fall restraint system, and guardrail to provide safe access to the roof hatch
7. Hot-dip galvanize all parts of the exterior steel safety cage, intermediate landing, guardrails and ladder supports after fabrication except the stainless steel items.
8. Provide a stainless steel interior ladder with personal fall protection system from the roof hatch to the interior floor of the tank, all in accordance with the OSHA.
9. Provide interior ladder with dielectric connection with isolation kits, including isolation sleeves and plates, at all interior ladder supports to separate the stainless steel ladder from the support tank shell.
10. Guardrail: Schedule 40 pipe. Hot-dip galvanize. Provide guardrail and toeboard around the ladder area in accordance with OSHA.
11. Landings: Provide landings and supporting steel or aluminum structure designed to support either a 150 psf uniform live load or 1,000 lb. concentrated load.
12. Provide a retractable ladder extension where interior ladder does not extend above the highest surface served: Bilco "Ladder Up," equivalent by Saf-T-

Climb; or equal.

13. Design and provide ladders complying with OSHA 29 CFR Part 1910, IBC (latest edition), and any State of California Structural Specialty Code Amendments.
14. When locating ladders on the tanks, Manufacturer shall confirm that a clear 36-inch by 36-inch landing footprint is available.

E. Safety Devices: For ladder provide accessory fall prevention devices as manufactured by SAF-T Climb, Norton Safety Products, O'Keeffe's Inc., or equal. Include the following items:

1. Safety rail fall arrest system (304 stainless steel).
2. Brackets for attaching the rail to ladder (304 stainless steel).
3. Removable 48-inch long rail extension (304 stainless steel).
4. One safety lock sleeve assembly.
5. One safety harness belt. Safety harness-belt shall fit a waist range from 23-inches to 54-inches.

F. Roof Openings: Provide a roof opening which shall be placed near the outside tank ladder and which shall be provided with a hinged cover and a hasp for locking. The opening shall have a clear dimension of at least 30-inches square. The opening shall have a curb at least 4-inches in height, and the cover shall have a downward overlap of at least 2-inches, or a gasketed weather-tight cover in lieu of the 4-inch curb and 2-inch overlap. Provide a cover that opens a full 180°, and can be pushed open from inside the tank. Support 300 lbs. on cover when closed. All cover hinges, handles, and hardware shall be stainless steel.

G. Roof fittings:

1. Provide two 2-inch threaded female nipple galvanized steel connectors on the roof within 1 foot of the roof hatch for the transmittal of wiring for future devices.
2. On one of the three tanks provide a standard liquid level indicator.

H. Identification Plate:

1. A tank manufacturer's nameplate shall list the tank serial number, tank diameter and height, and maximum design capacity. The nameplate shall be affixed to the tank exterior sidewall at a location approximately five (5) feet from grade elevation in a position of unobstructed view.

I. Guardrail:

1. Schedule 40 pipe. Hot-dip galvanize or epoxy coat. Provide roof edge guardrail and toeboard (or kickplate) in accordance with CA/OSHA and contract drawings. Deflection at top of rail shall not exceed 1/4" under loading.

2.05 CATHODIC PROTECTION SYSTEMS

- A. At the recommendation of National Storage Tank, no cathodic protection system will be installed.
- B. Provide electrical continuity between all tank sidewall panels for future installation of cathodic protection system.

2.06 FINISHES

- A. Coatings: Conform to AWWA D103, latest edition. All metal plates, supports, members, and miscellaneous parts, except bolts, certain accessories, and appurtenances, shall be factory coated. Limit field coating to touch-up of damaged or scratched coatings during delivery, storage, handling, and erection.
1. Cleaning
 - a. After fabrication and prior to application of the coating system, clean all sheets by a caustic wash and hot rinse process followed immediately by hot air drying.
 - b. Inspect sheets for traces of foreign matter, soil particles, grease, oil or rust.
 2. Surface Preparation
 - a. Sheets shall be steel grit-blasted on both sides to the equivalent of SSPC SP-10 (Near-White Metal Blast Cleaning). Sand blasting and chemical pickling of steel sheets is not acceptable.
 - b. Surface anchor profile: Not less than 2.0 to 3.0 mils.
 - c. Coat sheets and other parts within 15 minutes of grit-blasting utilizing automated powder applicators.
 3. Sheet Edges
 - a. After initial sheet preparation, mechanically bevel all full height vertical wall sheets and all rectangular shaped floor sheets.
 4. Interior Coating
 - a. Thermally cured modified epoxy powder (includes underside of the steel floor).
 - b. First coat: Powder application of NSF approved modified epoxy.
 - c. Dry film interior coating thickness: 5.0 mils (0.050) min.
 5. Exterior Coating
 - a. Thermally cured modified epoxy powder and acrylic polyurethane in manufacturer's standard color as selected by the Owner.
 - b. First coat: Powder application of modified epoxy, 3.0 mils (0.030) min.
 - c. Second coat: Acrylic polyurethane, 1.5 mils (0.015) min.
 - d. Third coat: Clear coat of polyurethane for gloss retention and additional UV resistance, 1.0 mils (0.010) min.
 - e. Dry film exterior coating thickness (total): 5.5 mils (0.055) min.
 6. Curing
 - a. Baking ovens to be used after each coat.
 - b. After powder is applied initial cure by heating parts to 300° F to gel the powder.
 - c. After top coat is applied final cure by heating parts to 350° F to finish curing powder and topcoat.

2.07 SOURCE QUALITY CONTROL

- A. Provide an ISO 9001/2000 certified quality system for tank manufacture and coating operations.

- B. Low Voltage Wet Sponge Holiday Test
 - 1. Inspect the inside sheet surface using a low voltage wet sponge holiday tester in accordance with ASTM D5162-91 Method A (Low Voltage Wet Sponge Testing).
 - 2. Use the tester at a voltage of 67.5 volts ($\pm 10\%$) and set so the alarm is sounded if the electrical resistance of the coating falls below 125,000? ($\pm 10\%$). The tester shall have a valid calibration record. The testing solution used to wet the sponge shall contain a low sudsing wetting agent added at a ratio of not more than $\frac{1}{2}$ fluid oz. per gallon of water.
 - 3. Test every sheet. Reject any sheet registering a discontinuity.
 - 4. All inside sheet surfaces shall be holiday free.
 - 5. A 1000 volt dry test shall not be acceptable as this is not recommended by ASTM for coating thicknesses less than 20.0 mils (0.020 inches).
- C. Measurement of Color – NOT USED
- D. Impact Adherence Test
 - 1. Test the adherence of the coating to the steel in accordance with ASTM B916-01. Reject any sheet that has poor adherence.
 - 2. Test one sheet per gage lot run minimum.

PART 3 - EXECUTION

3.01 ACCEPTABLE TANK CONSTRUCTORS

- A. The tank constructor crew personnel shall be trained in a factory sponsored program and shall be certified by the tank manufacturer as having satisfactorily completed that program.

3.02 PREPARATION

- A. Foundation: The top of the existing concrete foundations shall be cleaned and otherwise prepared as needed by the tank installer.
- B. Welding: Limit welding to the shop fabrication and installation of nozzle, vent, manway, connections, and subassemblies. Field welding is to be used only after submission in writing of the welding to be performed and techniques to be utilized and favorable review by the Engineer. The Contractor is responsible for preparing and submitting written Welding Procedure Specifications (WPSs) and Welder performance qualification test records "welders certification". WPSs for each joint type shall indicate proper AWS qualification and be available where welding is performed. WPSs shall be included with any shop drawings referencing welds. WPSs shall include the manufacturer and specific electrode.
- C. Shop Fabrication: Shop fabrication including straightening, finish of plate edges, rolling, manufacturing tolerances, and shipping shall be in accordance with AWWA D103. All sheets in the shell of the tank that require multiple vertical row punching (double or triple) must be in a single stroke to insure proper alignment.

3.03 ERECTION

- A. Erection including bolting, sealants, coating repair and cleanup shall be in accordance with AWWA D103.
- B. Follow the tank manufacturer's procedures and erection manual and drawings for field erection of the tank.
- C. Use specialized erection jacks and building equipment developed and manufactured by the tank manufacturer to erect the tanks.
- D. Particular care shall be taken in handling and bolting of the tank panels and members to avoid abrasion of the coating system. Inspect surface areas prior to a liquid test.
- E. Perform an electrical leak test during erection using a wet sponge, nine (9) volt leak detection device. Repair electrical leak points found on the inside surface in accordance with manufacturers procedures.
- F. Inspect the placement of sealant on each panel prior to placement of adjacent panels.
- G. Do not place any backfill against the tank sidewall.

3.04 CONSTRUCTION

- A. Foundation – NOT USED
- B. Bolted Tank Floor (AWWA D103 Type 1)
 - 1. Place non-shrink grout or 1:1.5 cement-sand grout, 1-inch minimum thickness by 6-inch minimum width, between the tank bottom and the top of the existing foundation.
 - 2. Use a plastic encapsulated nut to cover the bolt threads exposed on the inside of the floor. The plastic encapsulation shall be NSF compliant
 - 3. Level the ringwall foundation and base setting ring so the maximum differential elevation within the ring shall not exceed 1/16-inch and concentric within ¼-inch.
 - 4. Locate anchor bolts within ¼-inch of anchor bolt layout design.

3.05 FIELD QUALITY CONTROL

- A. Leakage Testing: Following completion of erection and cleaning of the tank, the tank shall be tested for liquid-tightness by filling the tank to its overflow elevation and allowing a seven (7) day soaking period. Any leaks disclosed by this tank test shall be repaired by the Contractor in accordance with the tank manufacturer's recommendation.

- B. Volatile Organic Compound (VOC) Analysis: A minimum of five (5) days after filling the tank, the Contractor will obtain water samples from the tank for VOC analysis. If any VOC exceeds State action levels and the Department of Health Services (DOHS) requirements, the Contractor shall take corrective actions in accordance with the manufacturers recommendations and the tank shall be retested, including the five (5) day soaking period, until the VOC's meet the state and DOHS requirements.
- C. Clean water and covers on the pipe openings required for the initial testing shall be furnished by the Owner. Any water required for retesting shall be paid for by the Contractor.
- D. Disposal of Test Water: Refer to paragraph 1.08.A.2.
- E. Paint touch up: The Installer shall repair any dings in the paint identified by the Owner's Representative using the touch-up paint kit provided.
- F. Tank disinfection will be performed by others.

END OF SECTION

EXHIBIT “B”
DELIVERY SCHEDULE

The following estimated schedule shall be followed for design, delivery and payment for the three bolted steel tanks, assuming Notice to Proceed by 24 November 2020:

Milestone	Due Date	Progress Payment
Notice to Proceed/Fully executed Purchase Agreement	24 November 2020	30%
Tank design completed and submitted for all tanks (4 weeks from NTP)	22 December 2020	None
City review and sign off of design submittal (1 week plus holidays)	8 January 2021	None
Tank manufacture completed and delivery initiated (6 weeks from sign off on design submittal)	19 February 2021	50%
Tank delivery for all tanks at the project site (2 weeks from leaving factory)	5 March 2021	None
Date after which \$500/day penalties are accrued due to missing delivery date	5 March 2021	None
Tank substantially constructed (3 weeks)	26 March 2020	20%

EXHIBIT "C"
FEE SCHEDULE

FEE SCHEDULE
CITY OF ST. HELENA – MEADOWOOD TANKS EMERGENCY REPLACEMENT
PROJECT

Item No.	Item Description	Estimated Quantity	Unit	Unit Price	Total Cost*
1	Design and Manufacture of 3 Bolted Steel Tanks	1	LS	\$189,110.83	\$189,110.83
	Sales Tax (estimated)	8.25	%	On Item 1	\$15,601.64
2	Delivery (estimated)	1	LS	\$9,000	\$9,000.00
3	Optional Foundation Design	1	LS	\$4,000.00	\$4,000.00
4	Optional 5-Year Warranty	1	LS	\$10,500.00	\$10,500.00
5	Optional Different Design of Tank 3	1	LS	\$8,500.00	\$8,500.00
TOTAL FEE					\$236,712.47

*In accordance with NST Proposal # NSTQ10077-04 dated 16 November 2020

EXHIBIT "D"
FEDERAL CONTRACT REQUIREMENTS

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.327)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal

opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement.
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions

Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R.

part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
 - (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
 - (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."
- (K) Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:
- (i) Contractor shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of

Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(v) See Public Law 115-232, section 889 for additional information.

(L) Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

- (i) Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts
- (ii) For purposes of this section: “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2. **ACCESS TO RECORDS & RECORD RETENTION**

(A) Access to Records. The following access to records requirements apply to this contract:

- (i) The Contractor agrees to provide the State, Agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (ii) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (iii) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (iv) In compliance with the Disaster Recovery Act of 2018, the Agency and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

3. **MISCELLANEOUS PROVISIONS**

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.

**EKI Environment & Water, Inc.**

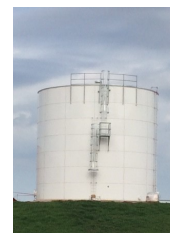
Attention: Jenn Hyman, PE

505 14th St, Suite 250
Oakland, CA 94612

Phone:

Cell:

Fax:

Email: jhyman@ekiconsult.comProject: (3) 23.77' Diameter x 19.77' Height Erection in St
Helena Meadowood**We hold the Solution to
your water storage needs.****PROPOSAL****Proposal #** NSTQ10077-04**Date** Nov 16, 2020**Certified Women Owned**

Thank you for giving National Storage Tank, Inc. the opportunity to provide you with excellent products and services. National Storage Tank's #1 priority is customer satisfaction. It is our goal to arrive on time and within budget. NSTI is the leading choice for water storage tanks and rain harvesting systems. Our products are specifically designed for Wineries, Construction Contractors, Homeowners, Fire Suppression Contractors and more.

Quantity	Description	Unit Price	Total
	MATERIALS, ENGINEERING & FREIGHT ONLY		
	THREE(3) NEW 23.77 x 19.77' FLAT PANEL CARBON BOLTED STEEL STORAGE TANK FOR POTABLE WATER		
	SCOPE OF WORK Furnish all materials for the following thermosetting fusion bonded powder coated epoxy bolted tank approximately 23.77' Diameter X 19.77' Height, giving a nominal capacity of approximately 65,000 U.S. Gallons. and giving a usable capacity of approximately 52,300 U.S. Gallons, with 48" Freeboard Furnish all materials for an epoxy coated steel floor. Furnish all materials for an Epoxy Coated steel deck with 2:12 slope without center columns Furnish all materials for erection (Non Union/Non Prevailing Wage) The exterior tank color can be chosen from five standard colors with an interior color of standard white. Other customer requested exterior color can be matched if customer can provide paint spec. and / or color chip National Storage Tank will use a combination of Manus Bond 75-AM sealant and EPDM gasket for panel connections, depending on product stored and environmental conditions		
	TANK DESIGN Storage of: Potable Water Seismic Use Group: III Importance Factor: 1.5 / Soil Profile D Designed to AWWA D103-09 Wind Conditions: 103 MPH Roof Snow Load: 25 PSF Specific Gravity 1.0		
	Customer to verify that codes & loads quoted are suitable for location		

Quantity	Description	Unit Price	Total
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COATING

We have quoted our standard interior coating system NST Standard DuraCoat powder coating. There are five exterior topcoat colors available. All interior / exterior powder coatings are thermally bonded at factory, using SSPC-PA-2 Specification with Blasted Profile of SSPC-SP10. Thicknesses of coatings are as follows: interior surfaces: 5 mils avg; exterior primer: 3-5 mils avg; exterior topcoat 2-3 mils avg. We have quoted our standard 1-year warranty.

FITTINGS AND ACCESSORIES

(1) Galvanized standard exterior ladder with OSHA approved fall arrest protection, composed of carbon steel

(1) Epoxy coated interior ladder

(1) Epoxy coated standard climb prevention door, composed of carbon steel

(1) Epoxy coated weir cone, composed of carbon steel

(2) Epoxy coated 6" inlet, outlet, overflow, drain composed of carbon steel

(1) Epoxy coated 2" drain composed of carbon steel

(1) Epoxy coated 30" manway in first ring, composed of carbon steel

(1) Epoxy coated 30" sq. deck manway, composed of carbon steel

(1) Standard liquid level indicator

(1) Standard 20" Mushroom vent

(2) Standard grounding lugs (wiring and cable not included)

Partial Perimeter Epoxy coated guardrail, composed of carbon steel

Touch-up epoxy

Anchor bolts as required (Material and Engineering only)

Asphalt fiber board as required

SubTotal \$189,110.83

3 Optional extended 5 year warranty. Requires annual draining and inspection

SubTotal \$10,500.00

1 Optional engineering calcs for different size tank for third tank with wider diameter

SubTotal \$8,500.00

SALES TAX: Sales tax will be added upon order, unless a sales tax exemption or resale certificate are provided

OPTIONAL: Foundation Design – ADD \$4,000.00

SPECIAL LEAD TIMES: 1-2 weeks engineering submittals, 2 weeks fabrication time with signed submittal approval, 1 week to ship, 7-10 days to build each tank.

Tank Weight – 24,000# each

TOTAL Shipping weight – 72,000#

Quantity	Description	Unit Price	Total
QUOTE VALIDITY: Quote is good for 30 days Delivery must occur within 14 weeks of order date. Noncompliance to the delivery time will result in a price review. Prices are for quantities shown.		SubTotal	\$208,110.83
PAYMENT TERMS: 30% Due upon order, 50% Due prior to materials shipping, 20% Due upon substantial completion of tank; not total project.		Tax	\$15,601.64
LEAD TIMES:		Est.Shipping	\$9,000.00
Approval Submittals: 1 - 3 Weeks		Total	\$232,712.47
Material Fabrication: 4- 7 Weeks			
Freight and Mobilization of Crew: 1 - 2 Weeks			
Tank Field Assembly/ Installation: 10-14 days			

Please inform NSTI if faster lead times are required.
NSTI will make every effort to accommodate your project schedule.

Customer is responsible for adequate lay down area, field testing, field holiday testing (if required) by others. Unless noted, the customer is responsible for filling the tank, covering openings, supply of water to fill the tank, furnish pumps, hoses, and the accessories required to fill and dispose of the test water. An optional price can be provided if the customer requires the erector to supply water and equipment for leak testing.

Tank quoted utilizes those standards, specifications and or interpretations and recommendations of professionally recognized agencies basis in establishing its own design, fabrication and quality criteria, standards, practices, methods and tolerances. National Storage Tank, Inc. (NSTI) has included the above items per customer request. NSTI has not researched details of tank use to insure that tanks included in the above proposal are correct for the intended use. Installation quoted using non-union erection labor (with no restrictive wage or work hour rules) on customer's prepared grade level and accessible foundation. Quote for materials and labor may be separated when ready to order, this is for orders placed outside of the state of CA. Any items not specifically mentioned within this quote shall be the responsibility of others. Should the order be cancelled after acceptance, the deposit shall be forfeited. AR license #0391880620, AZ license #315296, CA license # 987765, ID license #RCE-48520

NOTE: Union erection labor or erection labor using prevailing rates are optional at an additional charge. For union work, cost of supplying union operator for crane, compressor, or air tugger (if required) shall be provided by customer. Site must accommodate easy access for a 40' Truck and Trailer. Offloading by others unless specified above. If NSTI is providing off loading and staging, delivery truck must have easy level access to the tank pad and be able to access the site and tank pad within 10 feet and be free of obstructions. If your project does not meet our delivery requirements, a hard access and additional charges will apply. This quote is subject to attached National Storage Tank, Inc. standard terms and conditions. No exceptions made unless approved in writing by NSTI.

EXCEPTIONS & CLARIFICATIONS: permits, testing, hydro testing, providing, filling or draining of water for any reason, water for leak testing nor water level, inspections, special inspections, exterior plumbing, county required reports, letter of compliance, & disinfection are the responsibility of others.

We look forward to providing you with excellent products and service.

Thank you,

Nicole Oblad

Nicole Oblad

Customer Acceptance Date:

Acceptance Signature

Acceptance Printed Name

☐ Resale Certificate Provided to NSTI

☐ Exempt Certificate Provided to NSTI

The above person has the legal authority to purchase on behalf of:

EKI Environment & Water, Inc.

STH Contract: FY2021-037

CITY OF ST. HELENA
CONSTRUCTION CONTRACT
MEADOWOOD WATER TANKS EMERGENCY REPLACEMENT PROJECT,
CIP PROJECT NO. E21-04

1. PARTIES AND DATE.

This Contract is made and entered into this _____ day of _____, 2020 by and between the City of St. Helena, a public agency of the State of California ("City") and National Storage Tank, Inc., a California corporation with its principal place of business at 4137 Santa Rosa Ave. Santa Rosa, CA 95407 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing water tank manufacturing and related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: B – General Building Contractor.

2.3 Project. City desires to engage Contractor to render such services for the Water Meadowood Tanks Emergency Replacement Project ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule/Fee (Exhibit "A")
- Draft Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Federal Requirements (Exhibit "G")
- Addenda
- Change Orders executed by the City

- Current Edition of the Standard Specifications for Public Works Construction (The Greenbook), Excluding Sections 1-9
- Final Plans and Specifications

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on

the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract within 30 (or 38 with the two optional gravel bases) CALENDAR DAYS days, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of five hundred dollars (\$500) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations

respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of One hundred fifty-three thousand one hundred and seventy Dollars (\$153,170.00) ("Total Contract Price") assuming the two optional gravel bases are required provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6)

unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability

arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works

project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 **Cost of Compliance.** Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 **Liability for Non-Compliance.** Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 **Reservation of Right to Defend.** City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 **Training.** In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Contract. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 **Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 **Laws and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations

in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, any required business license. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's business license fee, if any. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval 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. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Contract.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, 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. Effective January 1, 2017, 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.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, 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, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise

provided by 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.

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

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 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 public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body 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, City shall have up to three days following the next duly publicly noticed meeting of the

governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

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

3.10.4.3 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.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of 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, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 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, 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 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 City and the Contractor sharing the associated costs equally. 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.

3.10.6.1 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.

3.10.6.2 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.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, 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 pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 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 terms of these procedures.. 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.

3.10.8.2 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 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, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. 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. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Contract, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.13.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.13.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); (3) *Professional Liability (Errors & Omissions)*; and (4) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; (3) *Professional Liability (Errors and Omissions)*: \$1,000,000 per claim; and (4) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased,

hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 Professional Liability (Errors & Omissions): Professional Liability insurance or Errors & Omissions insurance appropriate to Consultant's profession with limits of not less than \$1,000,000. Covered professional services shall specifically include all work to be performed under the Contract and delete any exclusions that may potentially affect the work to be performed (for example, any exclusions relating to lead, asbestos, pollution, testing, underground storage tanks, laboratory analysis, soil work, etc.). If coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the initial Contract and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least five (5) years from termination or expiration of this Contract.

3.13.3.5 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13.8 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.13.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer

will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 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 sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair 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 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.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby 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. Section 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 Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

National Storage Tank, Inc.
4137 Santa Rosa Ave.
Santa Rosa, CA 95407
Attn: Nicole Oblad, General Manager

CITY:

City of St. Helena
1572 Railroad Ave.
St. Helena, CA 94574
Attn: Erica Ahmann Smithies, Director of Public Works/City Engineer

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. This Contract shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Contract, the action shall be brought in a state or federal court situated in the County of Napa, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to rescind this Contract without liability. For the term of this Contract, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Contract shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Federal Provisions. When funding for the Work is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the federal requirements including, but not limited to, 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and the Federal Contract Provisions included in Exhibit “G” attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Contract and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF ST. HELENA
AND NATIONAL STORAGE TANK, INC.**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.

CITY OF ST. HELENA

NATIONAL STORAGE TANK, INC.

Approved By:

Signature

Mark T. Prestwich
City Manager

Name

Title

Attested By:

Date

Cindy Tzaopoulos
City Clerk

Approved As To Form:

Ethan Walsh
City Attorney

EXHIBIT “A”**SERVICES / SCHEDULE / FEE**

Item	Service	Estimated Duration	Fee, Lump Sum*
1	Erection of 3 bolted steel tanks	14 calendar days per tank or 42 calendar days	\$109,170.00
2	Bonds (3%)**	None	\$5,000.00
3	Subtotal		
4	Optional – Demo existing two octagonal concrete tank bases, offhaul debris and install new gravel tank bases	4 calendar days per pad or 8 calendar days	\$39,000.00
	Total including optional task	50 calendar days	\$153,170.00

*Per the NST Proposal # NSTQ10207-05 dated 16 November 2020

**Bonds (3%) are decreased if Optional item 4 is not selected.

EXHIBIT "B"
DRAFT PLANS AND SPECIFICATIONS
(FINAL PLANS AND SPECIFICATIONS TO BE DEVELOPED BY NST)

EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

NATIONAL STORAGE TANK, INC.

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT “E”

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark “Yes” in response to “Small Project Exemption.”

EXHIBIT "F"
PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT WHEREAS, the City of St. Helena (hereinafter referred to as "City") has awarded to National Storage Tank, Inc., (hereinafter referred to as the "Contractor") an agreement for the Water Tank Replacement project (hereinafter referred to as the "Project").

WHEREAS, the work to be performed by the Contractor is more particularly set forth in the Contract Documents for the Project dated _____, (hereinafter referred to as "Contract Documents"), the terms and conditions of which are expressly incorporated herein by reference; and

WHEREAS, the Contractor is required by said Contract Documents to perform the terms thereof and to furnish a bond for the faithful performance of said Contract Documents.

NOW, THEREFORE, we the undersigned Contractor and _____ as Surety, a corporation organized and duly authorized to transact business under the laws of the State of California, are held and firmly bound unto the City in the sum of _____ DOLLARS, (\$_____), said sum being not less than one hundred percent (100%) of the total amount of the Contract, for which amount well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the Contractor, his or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the Contract Documents and any alteration thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning; and shall faithfully fulfill all obligations including the one-year guarantee of all materials and workmanship; and shall indemnify and save harmless the City, its officers and agents, as stipulated in said Contract Documents, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As a condition precedent to the satisfactory completion of the Contract Documents, unless otherwise provided for in the Contract Documents, the above obligation shall hold good for a period of one (1) year after the acceptance of the work by City, during which time if Contractor shall fail to make full, complete, and satisfactory repair and replacements and totally protect the City from loss or damage resulting from or caused by defective materials or faulty workmanship, Surety shall undertake and faithfully fulfill all such obligations. The obligations of Surety hereunder shall continue so long as any obligation of Contractor remains. Nothing herein shall limit the City's rights or the Contractor or Surety's obligations under the Contract, law or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

Whenever Contractor shall be, and is declared by the City to be, in default under the Contract Documents, the Surety shall remedy the default pursuant to the Contract Documents, or shall promptly, at the City's option:

- (1) Take over and complete the Project in accordance with all terms and conditions in the Contract Documents; or

- (2) Obtain a bid or bids for completing the Project in accordance with all terms and conditions in the Contract Documents and upon determination by Surety of the lowest responsive and responsible bidder, arrange for a Contract between such bidder, the Surety and the City, and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.
- (3) Permit the City to complete the Project in any manner consistent with local, California and federal law and make available as work progresses sufficient funds to pay the cost of completion of the Project, less the balance of the contract price, including other costs and damages for which Surety may be liable. The term "balance of the contract price" as used in this paragraph shall mean the total amount payable to Contractor by the City under the Contract and any modification thereto, less any amount previously paid by the City to the Contractor and any other set offs pursuant to the Contract Documents.

Surety expressly agrees that the City may reject any contractor or subcontractor which may be proposed by Surety in fulfillment of its obligations in the event of default by the Contractor.

Surety shall not utilize Contractor in completing the Project nor shall Surety accept a bid from Contractor for completion of the Project if the City, when declaring the Contractor in default, notifies Surety of the City's objection to Contractor's further participation in the completion of the Project.

The Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract Documents or to the Project, including but not limited to the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2020).

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached.

(Attach Attorney-in-Fact Certificate) Title _____

The rate of premium on this bond is _____ per thousand. The total amount of premium charges, \$_____.
(The above must be filled in by corporate attorney.)

THIS IS A REQUIRED FORM

Any claims under this bond may be addressed to:

(Name and Address of Surety) _____

(Name and Address of Agent or Representative for service of process in California, if different from above) _____

(Telephone number of Surety and Agent or Representative for service of process in California) _____

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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 _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, 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.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

_____ Title(s)

- ☐ Partner(s) ☐ Limited
 ☐ General

- ☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:

Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

_____ Title or Type of Document

_____ Number of Pages

_____ Date of Document

_____ Signer(s) Other Than Named Above

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS That

WHEREAS, the City of St. Helena (hereinafter designated as the "City") has awarded to National Storage Tank, Inc. hereinafter designated as the "Principal," a contract for the work described as follows:

Water Tank Replacement project (the "Project"); and

WHEREAS, the work to be performed by the Principal is more particularly set forth in the Contract Documents for the Project dated _____ ("Contract Documents"), the terms and conditions of which are expressly incorporated by reference; and

WHEREAS, said Principal is required to furnish a bond in connection with said contract; providing that if said Principal or any of its Subcontractors shall fail to pay for any materials, provisions, provender, equipment, or other supplies used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of said Principal and its Subcontractors with respect to such work or labor the Surety on this bond will pay for the same to the extent hereinafter set forth.

NOW THEREFORE, we, the Principal and _____ as Surety, are held and firmly bound unto the City in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if said Principal, his or its subcontractors, heirs, executors, administrators, successors or assigns, shall fail to pay any of the persons named in Section 9100 of the Civil Code, fail to pay for any materials, provisions or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department or Franchise Tax Board from the wages of employees of the contractor and his subcontractors pursuant to Section 18663 of the Revenue and Taxation Code, with respect to such work and labor the Surety or Sureties will pay for the same, in an amount not exceeding the sum herein above specified.

This bond shall inure to the benefit of any of the persons named in Section 9100 of the Civil Code so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

It is further stipulated and agreed that the Surety on this bond shall not be exonerated or released from the obligation of this bond by any change, extension of time for performance, addition, alteration or modification in, to, or of any contract, plans, specifications, or agreement pertaining or relating to any scheme or work of improvement herein above described, or pertaining or relating to the furnishing of labor, materials, or equipment therefore, nor by any change or modification of any terms of payment or extension of the time for any payment pertaining or relating to any scheme or work of improvement herein above described, nor by any rescission or attempted rescission of the contract, agreement or bond, nor by any conditions precedent or

subsequent in the bond attempting to limit the right of recovery of claimants otherwise entitled to recover under any such contract or agreement or under the bond, nor by any fraud practiced by any person other than the claimant seeking to recover on the bond and that this bond be construed most strongly against the Surety and in favor of all persons for whose benefit such bond is given, and under no circumstances shall Surety be released from liability to those for whose benefit such bond has been given, by reason of any breach of contract between the owner or City and original contractor or on the part of any obligee named in such bond, but the sole conditions of recovery shall be that claimant is a person described in Section 9100 of the Civil Code, and has not been paid the full amount of his claim and that Surety does hereby waive notice of any such change, extension of time, addition, alteration or modification herein mentioned and the provisions of sections 2819 and 2845 of the California Civil Code.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this _____ day of _____, 2020.

(Corporate Seal)

Contractor/ Principal

By _____

Title _____

(Corporate Seal)

Surety

By _____

Attorney-in-Fact

Title _____

Signatures of those signing for the Contractor and Surety must be notarized and evidence of corporate authority attached. A Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

NOTE: A copy of the Power-of-Attorney authorizing the person signing on behalf of the Surety to do so must be attached hereto.

Notary Acknowledgment

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 _____

On _____, 20____, before me, _____, Notary Public, personally appeared _____, 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.

Signature of Notary Public _____

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

CAPACITY CLAIMED BY SIGNER

- ☐ Individual
☐ Corporate Officer

Title(s)

☐ Partner(s) ☐ Limited
 ☐ General

☐ Attorney-In-Fact
☐ Trustee(s)
☐ Guardian/Conservator
☐ Other:
Signer is representing:
Name Of Person(s) Or Entity(ies)

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document

Number of Pages

Date of Document

Signer(s) Other Than Named Above

EXHIBIT "G"**FEDERAL CONTRACT REQUIREMENTS**

During the performance of this Contract, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.327)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Contract.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to

such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it

participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor

shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or

articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or

research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the

OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
 - (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
 - (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
 - (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."
- (K) Appendix II to Part 200 (K) – §200.216 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment:
- (i) Contractor shall not contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system funded under this Contract. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (ii) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (iii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iv) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of

Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(v) See Public Law 115-232, section 889 for additional information.

(L) Appendix II to Part 200 (L) – §200.322 Domestic Preferences for Procurement:

- (i) Contractor shall, to the greatest extent practicable, purchase, acquire, or use goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts
- (ii) For purposes of this section: "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

2. ACCESS TO RECORDS & RECORD RETENTION

(A) Access to Records. The following access to records requirements apply to this contract:

- (i) The Contractor agrees to provide the State, Agency, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (ii) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (iii) The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (iv) In compliance with the Disaster Recovery Act of 2018, the Agency and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

3. MISCELLANEOUS PROVISIONS

(A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.

**EKI Environment & Water, Inc.**

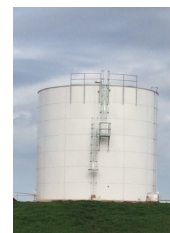
Attention: Jenn PE

505 14th St, Suite 250
Oakland, CA 94612

Phone:

Cell:

Fax:

Email: jhyman@ekiconsult.comProject: (3) 23.77' Diameter x 19.77' Height Erection in St
Helena LABOR**We hold the Solution to
your water storage needs.****PROPOSAL****Proposal #** NSTQ10207-05**Date** Nov 16, 2020**Certified Women Owned**

Thank you for giving National Storage Tank, Inc. the opportunity to provide you with excellent products and services. National Storage Tank's #1 priority is customer satisfaction. It is our goal to arrive on time and within budget. NSTI is the leading choice for water storage tanks and rain harvesting systems. Our products are specifically designed for Wineries, Construction Contractors, Homeowners, Fire Suppression Contractors and more.

Quantity	Description	Unit Price	Total
	On-Site erection of tank of (3) 24.63' Diameter x 19.77' Height Tanks- Prevailing Wage		
	SubTotal		\$109,170.00
2	Pad Demolition: Estimated Two 26'D x 8" thick and One 28'D x 8" thick concrete pads. Demolish, remove and dispose of		
	SubTotal		\$12,400.00
2	Installation of 12" x 26' Grade Band and Gravel Compacted to Engineered requirements. Subsoil and grading not included		
	SubTotal		\$26,600.00
1	3% Bond		
	SubTotal		\$5,000.00

SPECIAL LEAD TIMES: 1-2 weeks engineering submittals, 2 weeks fabrication time with signed submittal approval, 1 week to ship, 7-10 days to build each tank.

Tank Weight – 24,000# each

TOTAL Shipping weight – 72,000#

NOTE: This quote is budgetary and subject to change per site specific reports and access conditions.

1. SITE CONDITIONS: Free access to work site must be provided by Buyer during daylight hours on all working days including Saturday, Sunday, U.S. holidays and country or region-specific holidays if outside U.S. If a 8 hour, 5 day week is required, Buyer must specify. The price for work described is based on erection being performed during the months of April through October unless otherwise noted. Increased cost for work accomplished November through March may be at Buyer's expense.

2. FOUNDATIONS: Top of any new foundation must be within 12" of grade. Existing Pad height does not apply. It is the Buyer's responsibility to provide a level and true foundation. Buyer is responsible for establishing center lines on foundations or structures. Zero degree must be marked on pad prior to crew arrival. If National Storage Tank, Inc. (NSTI) or erection contractor finds inaccuracies or

Quantity	Description	Unit Price	Total
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deficiencies in foundation work done by others or is required to alter the tanks to make them fit, the Buyer shall be notified and if Buyer instructs Erector to make necessary changes, erection contractor shall be reimbursed for the cost of material and labor used. In any event, the Buyer will reimburse erection contractor for the cost of lost time by the erection crew and equipment. Buyer agrees to hold and save NSTI and erection contractor harmless from and against any claim, demand, action or cause of action that may be asserted by any person arising out of or regarding Buyer's failure to provide a level and true foundation including, but not limited to, injury or death suffered by any person whether by third party action or actions otherwise covered under applicable Workers' Compensation laws.

3. EXCLUSIONS: This Contract includes unloading, hauling, It does not include grouting, or washing, painting (other than touch-up on erection scratches), welding, load lines or other systems installation unless stated as being included. The responsibilities of NSTI or erection contractor will not include liability for demurrage. Also excluded are costs from delays caused by others, local construction licenses or fees, permits, taxes or any items or services not specifically mentioned. NSTI will not be responsible for damage to personnel, automobiles, or machines within 100 feet of erection site. If union labor is specified, the erection crew will be members of the N.T.D. Boilermakers. Specifically excluded are cost for an operating engineer, crane, field office, sanitary facilities, trash dumpster, or the employment of members of any union other than N.T. D. Boilermakers. Any item not mentioned in this quote is by others.

4. CONTINUOUS OPERATION: Buyer will ensure all operations are continuous, scheduled and completed in accordance of suggested sequence throughout erection and finishing with a completed water test and inspection. If lost time occurs due to delays caused by others for any reason, Buyer will reimburse for additional travel and cost of lost time by the erection crew and equipment. NSTI or erection contractor will not be liable for any reason whatsoever for any indirect, incidental, special or consequential damages.

5. INSPECTION: Buyer inspection and acceptance of interior and exterior must be performed during and prior to erection crew leaving jobsite. Delay caused by Buyer will be charged to Buyer by others.

6. CHANGES: If the Buyer orders extra work or makes changes by altering, adding to, or deducting from the work set forth in this quote, the price and any completion date quoted will be adjusted accordingly. The price adjustment will include costs of engineering, shipping, manufacturing performed, materials purchased, extra erection expense, extra supervisor and administration expense.

7. OBSTRUCTION AND UNFORESEEN CONDITIONS: Should concealed, unusual, unexpected, and/or unrecorded conditions be encountered which interfere with normal erection procedures, NSTI or erection contractor will advise Buyer of conditions encountered. If Buyer instructs NSTI to perform the necessary work to overcome such conditions, Buyer will reimburse NSTI for the extra cost and time incurred. In any event, the Buyer will reimburse NSTI for the cost of lost time.

8. BUYER'S RESPONSIBILITY: Buyer will supply, if required, (NOT REQUIRED) 120 volt/60 Amp AC current at no cost, within 10 feet of tank foundation and necessary utilities including, but not limited to, the necessary sanitary facilities and palatable drinking water as required for the performance of the contract. Buyer will ensure all tank parts are within 50 feet of tank foundation with no interfering objects. NSTI will be allowed access for a truck to be placed and operated at the erection site. If winter erection requires heating the tank interior to cure painting and caulking, it will be furnished by buyer. Foundation will be clean and clear of any obstruction, material, or equipment. Adequate clearance will be provided around the tank foundation area as well as overhead. Minimum clearance of six(6) feet is required between tanks, eight feet overhead. NSTI will supply and install blind flanges for all nozzles for performing Hydro-Test. Buyer responsible for Hydro-Test, if a leak is disclosed during the hydro-test, a NSTI service personnel will be dispatched immediately. If NSTI or erection contractor is to provide Hydro-Test, buyer shall have water available within 24 hours' notice and begin filling water tank. Buyer shall provide water for Hydro-test and any subsequent fillings after that. Buyer is responsible for emptying and disposing of water after testing. Disinfections if required shall

Quantity	Description	Unit Price	Total
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be the responsibility of others. Buyer shall furnish water quality test. Buyer is to blind flange all nozzles for water testing. Buyer responsible for supplying trash dumpster at job site and for disposing of contents of dumpster.

9. BUYER'S INSURANCE: The Buyer will obtain insurance and indemnify NSTI or erection contractor against loss by fire, lightning, removal, and all extended coverage perils, theft, vandalism, and malicious mischief, earthquake, negligence, breach of contract and any other insurance which the Buyer deems necessary upon the work covered by the Contract, for the full insurable value thereof. Additional expense by theft will be reimbursed to NSTI by Buyer. Cost of security guards, if required, to be paid by Buyer.

10. CANCELLATION OF ORDER: All orders cancelled within 30 days of order placement will be subject to a 10% cancellation charge. Orders cancelled after 30 days will be subject to a cancellation charge of 10% of materials or, 10% of materials charge plus the cost of work performed from date of order placement to cancellation date, whichever is greater. Cancellation must be received in writing, either physically or electronically.

11. NOTE: Any items or specifications not specifically mentioned above are not a part of this quotation. This quotation represents our complete offering. If there are any conflicts between your requirements or the plans and specifications and what we have quoted, our quotation shall govern.

EXCEPTIONS and CLARIFICATIONS:

* Unless otherwise noted, Foundation Design by others. If Foundation Design is requested, customer is to supply Geotechnical Soils Report. Unless otherwise noted, All foundation work shall be done by others.

* This quote does not include disinfection at jobsite.

* Unless otherwise noted, NSTI Storage Systems has quoted our standard design, fabrication, accessories (perimeter handrails, ladders, etc.) and coatings. These tanks are coated with a standard coating for water PH levels of 6- 8. For water or other liquid with PH levels above a 8 PH or anything of a more corrosive nature, a change order will apply.

* No bonds (i.e. bid/payment), permits, are included.

* Pricing does not include piping, valves, brackets, or elbows unless specifically mentioned in accessories area.

* Customer is responsible for unloading of tank materials at site and locating them within 50 feet of the tank foundation. NSTI recommends the use of a 10,000 lb forklift for off-loading, by others.

*All electrical, wiring and calibration by others

*The number of flanges and their sizes are assumed. The actual sizes will need to be verified before order.

Thank you for the opportunity to provide this quote.

ACCEPTED PAYMENT TYPES: Wire Transfer, Check, Cashier's Check, Money Order, Cash. Credit Cards can be approved in some cases, with the additional cost of processing fee added to payment total (percentages vary per card type).

Quantity	Description	Unit Price	Total
		SubTotal	\$153,170.00
QUOTE VALIDITY: Quote is good for 30 days Delivery must occur within 14 weeks of order date. Noncompliance to the delivery time will result in a price review. Prices are for quantities shown.		Tax	\$0.00
PAYMENT TERMS: 30% Due upon order, 50% Due prior to materials shipping, 20% Due upon substantial completion of tank; not total project.		Est.Shipping	\$0.00
Total			\$153,170.00

LEAD TIMES:

Approval Submittals: 1 - 3 Weeks
Material Fabrication: 4- 7 Weeks
Freight and Mobilization of Crew: 1 - 2 Weeks
Tank Field Assembly/ Installation: 10-14 days

Customer is responsible for adequate lay down area, field testing, field holiday testing (if required) by others. Unless noted, the customer is responsible for filling the tank, covering openings, supply of water to fill the tank, furnish pumps, hoses, and the accessories required to fill and dispose of the test water. An optional price can be provided if the customer requires the erector to supply water and equipment for leak testing.

Please inform NSTI if faster lead times are required.
NSTI will make every effort to accommodate your project schedule.

Tank quoted utilizes those standards, specifications and or interpretations and recommendations of professionally recognized agencies basis in establishing its own design, fabrication and quality criteria, standards, practices, methods and tolerances. National Storage Tank, Inc. (NSTI) has included the above items per customer request. NSTI has not researched details of tank use to insure that tanks included in the above proposal are correct for the intended use. Installation quoted using non-union erection labor (with no restrictive wage or work hour rules) on customer's prepared grade level and accessible foundation. Quote for materials and labor may be separated when ready to order, this is for orders placed outside of the state of CA. Any items not specifically mentioned within this quote shall be the responsibility of others. Should the order be cancelled after acceptance, the deposit shall be forfeited. AR license #0391880620, AZ license #315296, CA license # 987765, ID license #RCE-48520

NOTE: Union erection labor or erection labor using prevailing rates are optional at an additional charge. For union work, cost of supplying union operator for crane, compressor, or air tugger (if required) shall be provided by customer. Site must accommodate easy access for a 40' Truck and Trailer. Offloading by others unless specified above. If NSTI is providing off loading and staging, delivery truck must have easy level access to the tank pad and be able to access the site and tank pad within 10 feet and be free of obstructions. If your project does not meet our delivery requirements, a hard access and additional charges will apply. This quote is subject to attached National Storage Tank, Inc. standard terms and conditions. No exceptions made unless approved in writing by NSTI.

EXCEPTIONS & CLARIFICATIONS: permits, testing, hydro testing, providing, filling or draining of water for any reason, water for leak testing nor water level, inspections, special inspections, exterior plumbing, county required reports, letter of compliance, & disinfection are the responsibility of others.

We look forward to providing you with excellent products and service.

Thank you,

Nicole Oblad

Nicole Oblad

Customer Acceptance Date:

Acceptance Signature

Acceptance Printed Name

☐ Resale Certificate Provided to NSTI

☐ Exempt Certificate Provided to NSTI

The above person has the legal authority to purchase on behalf of:

EKI Environment & Water, Inc.



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following Construction Contracts: (a) up to \$144,000.00 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency Fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$244,000.00, (b) up to \$52,000.00 with Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$152,000.00.

CEQA Determination: Exempt from CEQA pursuant to Sections 21080(b)(3) and (4)

Prepared By: Martin Beltran, Management Analyst

Reviewed By: Erica Ahmann Smithies, Public Works Director and City Engineer

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On September 27, 2020, the City of St. Helena ("City") proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which affected both Napa and Sonoma Counties.

As a result of the Glass Fire, several components of the City's water infrastructure were damaged and, in some cases, rendered non-operational. In particular, the Meadowood Water Tanks that serve as the only source of water to the Meadowood Resort and residents in the Madrone Knoll were burned and no longer functional for the City's water operations. The Louis Stralla Water Treatment Plant (LSWTP) treats water stored in the Bell Canyon Reservoir and is the primary source of potable water for the City and

surrounding areas. The fire additionally burned to the LSWTP and burned the building at the Plant that housed sodium permanganate, which the City uses as the primary oxidizer to reduce organic growth in the water and to improve the taste and odor of the water. The site of the LSWTP was difficult to access due to the fire debris surrounding the area.

Additionally, the Glass Fire burned up to Tank 2 at Lower Reservoir, which holds 2.7 million gallons of potable water and helps pressurize the west side of the City of St. Helena. Without pressure the City would not have sufficient available water flow for the west side of the City. While there is currently no known damage to Tank 2, the fire has burned up to Tank 2 and caused damage to trees in the area that pose life and safety concerns if not removed.

As such, the City had to take immediate action and the City Manager took such action by procuring Construction Contracts with McCullough Construction Inc. STH Contract: FY2021-026 and Taylor Bailey, Inc. STH Contract FY2021-028 and STH Contract FY2021-028-01A.

Public Contract Code Section 1102 defines an emergency as “a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services”.

Public Contract Code Section 22035 authorizes the City Council, in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050. Public Contract Code Section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency.

Pursuant to Section 3.04.290 and Section 3.04.170 of the City's Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager.

DISCUSSION

The City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there is an imminent need to take immediate action remove fire debris from the locations described above and to place and install temporary water tanks to serve Meadowood Resort and the Madrone Knoll area. Further, the City Manager needed contractor services to assist with emergency fire debris cleanup and removal, including downed trees, materials from

the tank site including water appurtenances and the burnt tanks themselves, and prevent or mitigate the loss or impairment of life, health, property, or essential public services. With that in mind, the City Manager hired and executed the following agreements/contracts:

1. McCullough Construction, Inc. in a contract dated October 2, 2020 for a not-to-exceed amount of \$100,000, STH Contract: FY2021-026.
2. Taylor Bailey, Inc. in a contract dated October 2, 2020, as amended on October 5, 2020 for a not-to-exceed amount of \$100,000, STH Contract: FY2021-028 and STH Contract: FY2021-028-01A.

The City and McCullough's executed an Emergency Construction Contract for fire clearing and debris cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to close proximity of the Glass Fire. McCullough performed fire clearing and debris cleanup, and removal of cut down trees previously taken down by tree removal contractor, and removal of any other compromised trees identified during the process. Fire clearing and debris cleanup is critical for providing safe access to these critical facilities as needed for repair, replacement, and operations. When first accessing the area post Glass Fire, it was anticipated the scope of work would be completed for a total amount not-to-exceed \$100,000; however, the City nor McCullough knew the extent of the damage or the cost to haul away the debris. As McCullough began working in the affected areas, the amount of burned debris removal taken to Clover Flats and the extent of the tree damage/work completed was higher than anticipated. Approximately, two to three miles of access routes between the Bell Canyon Dam, Spillway access, Bell Creek access, Tank 1 access, and the Police Department Gun Range required clearing as well as the area at the base of the dam and the treatment plant itself. McCullough's draft final invoice is \$238,155.82. Staff is recommending the proposed change order of \$144,000.00, which includes everything billed to date and allows for additional incidentals of \$5,844.18 if necessary.

The City and Taylor Bailey's executed an Emergency Construction Contract for assistance with emergency fire debris cleanup and removal at Meadowood. Debris consisted of burned or downed trees, materials from the the tank site including redwood planks and water appurtenances as well as the removal of the burnt Meadowood water tanks. Taylor Bailey also assisted with the placement and installation of the temporary tanks. Taylor Bailey's draft final invoice is \$146,253.32. Staff is recommending the proposed change order of \$52,000.00, which includes everything billed to date and allows for additional incidentals of \$5,746.68 if necessary.

FISCAL IMPACT

The fiscal impact of the current Construction Contracts is as follows:

Contract	Current Not-to-Exceed	Change Order	Revised Not-to-Exceed
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McCullough	\$100,000	\$144,000.00	\$244,000.00
Taylor Bailey	\$100,000	\$52,000.00	\$152,000.00
TOTAL	\$200,000	\$196,000.00	\$396,000.00

The City is working with CalOES and REMIF for reimbursement of these expenses. The deductible for REMIF is \$100,000.

RECOMMENDED ACTION

Consideration and Proposed Approval of a Resolution authorizing (1) the Director of Public Works to approve Change Orders to the following Construction Contracts: (a) up to \$144,000.00 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$244,000.00, (b) up to \$52,000.00 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency Fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$152,000.00.

ATTACHMENTS

[Attachment 1: Resolution](#)

[Attachment 2: McCullough Construction Draft Final Invoice](#)

[Attachment 3: Taylor Bailey Draft Final Invoices](#)

[STH Contract FY 2021-026 McCullough Construction Fire Clearing Work - Emergency Construction Contract](#)

[STH Contract FY2021-28-01A Amendment #1 Taylor Bailey Inc.](#)

[STH Contract FY 2021-028 Taylor Bailey Inc. Fire Debris Cleanup - Emergency Construction Contract](#)

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ST. HELENA: (1) Authorizing the Director of Public Works to approve Change Orders to the following Construction Contracts (a) up to \$144,000.00 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency Fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$244,000.00, (b) up to \$52,000.00 with Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not to exceed contract amount of \$152,000.00.

WHEREAS, Public Contract Code section 1102 defines an emergency as “a sudden unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services”; and

WHEREAS, Public Contract Code section 22035 authorizes the City Council of the City of St. Helena (“City”), in cases of emergency when repair or replacements are necessary, to proceed at once to replace or repair any public facility without adopting plans, specifications, strain sheets, or working details, or giving notice for bids to let contracts, and if notice for bids to let contracts will not be given, the City shall comply with Public Contract Code section 22050; and

WHEREAS, Public Contract Code section 22050(a) authorizes the City to proceed with awarding a public works contract to perform emergency work without giving notice for bids to let contracts upon adoption by the City Council by a four-fifths vote of a resolution finding that the emergency will not permit a delay resulting from a competitive solicitation for bids and that the action is necessary to respond to the emergency; and

WHEREAS, pursuant to Section 3.04.290 and 3.04.170 of the City’s Municipal Code and Public Contract Code section 22050(b), the City Council delegated authority to make an emergency determination and award a contract to perform emergency work to the City Manager; and

WHEREAS, on September 27, 2020, the City proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire which is affecting both Napa and Sonoma Counties; and

WHEREAS, as a result of the Glass Fire, several components of the City's water infrastructure have been damaged and, in some cases, rendered non-operational. In particular, the Meadowood Water Tanks that serve as the only source of water to the Meadowood Resort and residents in the Madrone Knoll area have burned and are no longer functional for the City's water operations. The Louis Stralla Water Treatment Plant (LSWTP) treats water stored in the Bell Canyon Reservoir and is the primary source of potable water for the City and surrounding areas. The fire additionally burned to the LSWTP and burned the building at the Plant that housed sodium permanganate, which the City uses as the primary oxidizer to reduce organic growth in the water and to improve the taste and odor of the water. The site of the LSWTP is also currently difficult to access due to the fire debris surrounding the area. Additionally, the Glass Fire burned up to Tank 2 at Lower Reservoir, which holds 2.7 million gallons of potable water and helps pressurize the west side of the City of St. Helena. Without pressure the City would not have sufficient available water flow for the west side of the City. While there is currently no known damage to Tank 2, the fire has burned up to Tank 2 and caused damage to trees in the area that pose life and safety concerns if not removed; and

WHEREAS, the City Manager determined the Glass Fire constituted an emergency that did not permit undergoing the formal competitive bidding process because there is an imminent need to take immediate action remove test all critical City facilities for smoke damage and for Phase 2 engineering, management, sampling, oversight, and required reporting for the fire debris removal; and

WHEREAS, the City Manager procured two construction contractors to provide remove fire debris from the areas described above, and to place and install temporary water tanks to serve Meadowood Resort and the Madrone Knoll area to prevent or mitigate the loss or impairment of life, health, property, or essential public services. This included hiring McCullough Construction in a contract dated October 2, 2020 for a not-to-exceed amount of \$100,000 and Taylor Bailey in a contract dated October 2, 2020, as amended on October 5, 2020, for a not-to-exceed amount of \$100,000; and

WHEREAS, staff is recommending a Change Order of up to \$144,000.00 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not-to-exceed contract amount of \$244,000.00, and

WHEREAS, staff is recommending a Change Order of up to \$52,000.00 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency Fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not-to-exceed contract amount of \$152,000.00.

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ST. HELENA AS FOLLOWS:

SECTION 1. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. That the public interest and necessity demand the immediate expenditure of public funds for emergency work related to the Glass Fire in order to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

SECTION 3. That the emergency would not permit a delay that would have resulted from a competitive solicitation for bids and that action was necessary to respond to the emergency related to the Glass Fire.

SECTION 4. That the City Council authorizes the Director of Public Works to approve Change Orders to the following Construction Contracts (a) up to \$144,000.00 with McCullough Construction, Inc. STH Contract: FY2021-026 for Emergency fire Clearing and Debris Cleanup at Tank 1A, Tank 2, Bell Canyon Access Roads, and LSWTP due to Glass Fire, Project E21-03, for a total not-to-exceed contract amount of \$244,000.00, (b) up to \$52,000.00 Taylor Bailey, Inc. STH Contract: FY2021-028 for Emergency fire Clearing and Debris Removal at Meadowood tanks due to Glass Fire, Project E21-03, for a total not-to-exceed contract amount of \$152,000.00.

SECTION 5. That the approvals herein authorized are necessary to protect the public health, safety, and welfare.

SECTION 6. This Resolution shall become effective immediately.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Council Member Chouteau:

Council Member Knudsen:

Council Member Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk

McCullough Construction
57 Aldergrove Road
Arcata, CA 95521

INVOICE



Phone: 707-825-1014

Fax: 707-825-1769

Invoice: 22242

Invoice Date: 10/22/2020

Bill To:	Project Details:
City of St. Helena 1572 Railroad Avenue St Helena, CA 94574 Phone: Fax:	Glass Fire-City of St Helena

Payment Terms	Contract Number	Invoice Due Date
Due On Receipt		10/22/2020

Description

City of St Helena - Emergency Fire Contract- Glass Fire
Lodging- 10/04/20-10/28/20

Description	Invoice Amount	Retainage	Current Due
10/04/2020	3,352.47	0.00	3,352.47
10/05/2020	9,755.99	0.00	9,755.99
10/06/2020	11,005.37	0.00	11,005.37
10/07/2020	11,024.84	0.00	11,024.84
10/08/2020	11,011.81	0.00	11,011.81
10/09/2020	11,783.25	0.00	11,783.25
10/10/2020	6,807.64	0.00	6,807.64
10/11/2020	5,682.18	0.00	5,682.18
10/12/2020	5,295.58	0.00	5,295.58
10/13/2020	9,475.88	0.00	9,475.88
10/14/2020	9,316.36	0.00	9,316.36
10/15/2020	4,603.20	0.00	4,603.20
10/16/2020	8,247.41	0.00	8,247.41
10/17/2020	10,056.88	0.00	10,056.88
10/18/2020	8,203.26	0.00	8,203.26
10/19/2020	10,638.02	0.00	10,638.02
10/20/2020	4,495.08	0.00	4,495.08
Lodging- 3 Rms @ \$200 p/night	13,800.00	0.00	13,800.00
Dump Fees	46,021.88	0.00	46,021.88
10/21/2020	2,642.71	0.00	2,642.71
10/22/2020	10,147.35	0.00	10,147.35
10/23/2020	7,574.76	0.00	7,574.76
10/7-11/4-United Exc. Rental	8,847.71	0.00	8,847.71
10/26/2020	8,366.19	0.00	8,366.19
Subtotal Amount	238,155.82	0.00	238,155.82
Tax Amount ('T' Indicates a taxable line)			0.00
Total Invoice Amount Due			238,155.82

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/4/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

Mobilization

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 1,753.02

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 990.00

SUB TOTAL EQUIPMENT (A+B)

\$ 1,753.02

STANDARD M/U

15%

\$ 262.95

STANDARD M/U

35%

\$ 346.50

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 2,015.97

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 1,336.50

TOTAL REGULAR LABOR (.C)

\$ 900.00

TOTAL EQUIPMENT & MATERIALS

\$ 2,015.97

% REGULAR LABOR SURCHARGE

10%

\$ 90.00

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 3,352.47

TOTAL PREMIUM LABOR (D)

\$ -

% PREMIUM LABOR SURCHARGE

10%

\$ -

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 990.00

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 3,352.47

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)	\$	900.00
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TOTAL (D)	\$	-	(.E)	\$	900.00
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McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	6		\$ 42.49		\$ 254.94
Pick Up #2	6		\$ 40.16		\$ 240.96
Lowbed	6		\$ 90.06		\$ 540.36
Dump Truck	6		\$ 71.55		\$ 429.30
Water Truck	6		\$ 47.91		\$ 287.46
rooms & lodging 3 rooms @ 200.00 night					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 1,753.02



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Project: St. Helena Fire - Glass Fire Job No. _____
 Date: 10/4/20 Location: St. Helena

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Mack, McCullough - Lowbed	6								
Jeff McBratney Dump Truck	6								
Dana McCullough - Pilot Car	6								
Derek McIntosh - water truck / shop truck	6								
Clay Hides - P/U w/ skid steer	6								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE			
Description	Unit	Quantity	Total
Wanted in Link Belt 350 exc. & L.B. 80 Exc. & Bobcat skid steer & water truck & shop truck			

MCI

Contractor

by Clay Hides - Foreman

Signature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/5/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

Mobilization

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,713.24

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,211.68

SUB TOTAL EQUIPMENT (A+B)

\$ 4,713.24

STANDARD M/U

15%

\$ 706.99

STANDARD M/U

35%

\$ 1,124.09

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 5,420.22

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,335.77

TOTAL REGULAR LABOR (.C)

\$ 2,351.36

TOTAL EQUIPMENT & MATERIALS

\$ 5,420.22

% REGULAR LABOR SURCHARGE

10%

\$ 235.14

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 9,755.99

TOTAL PREMIUM LABOR (D)

\$ 568.35

% PREMIUM LABOR SURCHARGE

10%

\$ 56.84

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,211.68

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

10%

CCO NO

PAGE

2

REPORT NO

OF

3

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	1.5	\$ 107.25	\$ 160.88		\$ 817.20
OpEng	M	McCullough	8	\$ 82.04	\$ 656.32	1.5	\$ 107.25	\$ 160.88		\$ 817.20
Teamster	D	McIntosh	8	\$ 64.92	\$ 519.36	1.5	\$ 82.20	\$ 123.30		\$ 642.66
Teamster	J	McGuaghey	8	\$ 64.92	\$ 519.36	1.5	\$ 82.20	\$ 123.30		\$ 642.66
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 2,351.36	TOTAL (D)			\$ 568.35	(.E) \$ 2,919.71

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	9.5		\$ 42.49		\$ 403.66
Pick Up #2	9.5		\$ 40.16		\$ 381.52
Excavator	9.5		\$ 221.83		\$ 2,107.39
Dump Truck	9.5		\$ 71.55		\$ 679.73
Water Truck	9.5		\$ 47.91		\$ 455.15
Mini Exc	9.5		\$ 42.85		\$ 407.08
Skid Steer	9.5		\$ 29.34		\$ 278.73
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,713.24

Project: Glass Fire Job No. _____
Date: 10/5/20 Location: St. Helena - Water treatment Plant

[illegible]

BY

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/6/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,976.72

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,912.70

SUB TOTAL EQUIPMENT (A+B)

\$ 4,976.72

STANDARD M/U

15%

\$ 746.51

STANDARD M/U

35%

\$ 1,369.45

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 5,723.23

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 5,282.15

TOTAL REGULAR LABOR (.C)

\$ 2,351.36

TOTAL EQUIPMENT & MATERIALS

\$ 5,723.23

% REGULAR LABOR SURCHARGE

10%

\$ 235.14

TOTAL PREMIUM LABOR (D)

\$ 1,205.64

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 11,005.37

% PREMIUM LABOR SURCHARGE

10%

\$ 120.56

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,912.70

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 11,005.37

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)	\$ 2,351.36
-------------------	--------------------

TOTAL (D)	\$	1,205.64
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(.E)	\$ 3,557.00
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McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	11		\$ 42.49		\$ 467.39
Pick Up #2	11		\$ 40.16		\$ 441.76
Excavator	11		\$ 221.83		\$ 2,440.13
Dump Truck	7		\$ 71.55		\$ 500.85
Water Truck	1		\$ 47.91		\$ 47.91
End Dump	11		\$ 90.06		\$ 990.66
Skid Steer	3		\$ 29.34		\$ 88.02
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,976.72

Project: Glass Fire

Project: Class Pile Job No. _____
Date: 10/6/20 Location: St. Helena - water treatment plant

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hicks - Exc.	11								
Jeff McLaughlin - Exc.	11								
Sascha Ripka - End Dump	11								
Derek McIntosh - Dump Truck	87								
Water Truck	1								
Skidsteer	3								
Pickup x 2	2 day								
Chainsaw x 2	2 day								
Total									

Check the Equip

STATEMENT OF MATERIALS		Quantity	Total
Description			
Clearing on Rd. to Gun Range			
off hauled 3 loads to Dump.			

5
Clearing / Dump
Hauled
3 loads to
Dump

MCI

by Chy Th - Foreman
Signature and Title

Inspector
Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/7/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 5,134.62

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,792.61

SUB TOTAL EQUIPMENT (A+B)

\$ 5,134.62

STANDARD M/U

15%

\$ 770.19

STANDARD M/U

35%

\$ 1,327.41

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 5,904.81

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 5,120.03

TOTAL REGULAR LABOR (.C)

\$ 2,340.32

TOTAL EQUIPMENT & MATERIALS

\$ 5,904.81

% REGULAR LABOR SURCHARGE

10%

\$ 234.03

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 11,024.84

TOTAL PREMIUM LABOR (D)

\$ 1,107.51

% PREMIUM LABOR SURCHARGE

10%

\$ 110.75

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,792.61

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 11,024.84

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)

2,340.32

TOTAL (D)

1,107.51

(.E)

\$	3,447.83
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McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	11		\$ 42.49		\$ 467.39
Excavator	11		\$ 221.83		\$ 2,440.13
Dump Truck	11		\$ 71.55		\$ 787.05
End Dump	11		\$ 90.06		\$ 990.66
Water Truck	1		\$ 47.91		\$ 47.91
Mini Exc	8		\$ 42.85		\$ 342.80
Skid Steer	2		\$ 29.34		\$ 58.68
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 5,134.62

Project: Glass Fire

Date: 10/7/20

Location: St. Helena - water treatment plant

[illegible][illegible]

MCI

Contractor

by

Signature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/8/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 5,277.57

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,661.19

SUB TOTAL EQUIPMENT (A+B)

\$ 5,277.57

STANDARD M/U

15%

\$ 791.64

STANDARD M/U

35%

\$ 1,281.42

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 6,069.21

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,942.61

TOTAL REGULAR LABOR (.C)

\$ 2,340.32

TOTAL EQUIPMENT & MATERIALS

\$ 6,069.21

% REGULAR LABOR SURCHARGE

10%

\$ 234.03

TOTAL PREMIUM LABOR (D)

\$ 988.04

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 11,011.81

% PREMIUM LABOR SURCHARGE

10%

\$ 98.80

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,661.19

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 11,011.81

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

	10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)	\$ 2,340.32	TOTAL (D)	\$ 988.04	(.E)	\$ 3,328.36
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McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

[illegible]



Class Fire

Job No.

Location: St. Helena water treatment plant/Gunn Range

EQUIPMENT

LABOR

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

Cor	or
-----	----

nature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/9/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 5,690.38

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,880.98

SUB TOTAL EQUIPMENT (A+B)

\$ 5,690.38

STANDARD M/U

15%

\$ 853.56

STANDARD M/U

35%

\$ 1,358.34

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 6,543.94

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 5,239.32

TOTAL REGULAR LABOR (.C)

\$ 2,368.48

TOTAL EQUIPMENT & MATERIALS

\$ 6,543.94

% REGULAR LABOR SURCHARGE

10%

\$ 236.85

TOTAL PREMIUM LABOR (D)

\$ 1,159.68

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 11,783.25

% PREMIUM LABOR SURCHARGE

10%

\$ 115.97

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,880.98

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 11,783.25

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

CCO NO

PAGE

REPORT NO

OF

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	3	\$ 107.25	\$ 321.75		\$ 978.07
OpEng	J	McGuaghey	1	\$ 82.04	\$ 82.04		\$ 107.25	\$ -		\$ 82.04
Op8A	J	Mcguaghey		\$ 80.66	\$ -	1	\$ 105.18	\$ 105.18		\$ 105.18
Teamster	J	McGuaghey	7	\$ 64.92	\$ 454.44	2	\$ 82.20	\$ 164.40		\$ 618.84
OpEng	D	McIntosh	8	\$ 82.04	\$ 656.32	3	\$ 107.25	\$ 321.75		\$ 978.07
Teamster	S	Repkow	8	\$ 64.92	\$ 519.36	3	\$ 82.20	\$ 246.60		\$ 765.96
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 2,368.48	TOTAL (D)		\$ 1,159.68	(.E)	\$ 3,528.16

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	11		\$ 42.49		\$ 467.39
Pick Up #2	11		\$ 40.16		\$ 441.76
Excavator #1	11		\$ 221.83		\$ 2,440.13
Excavator#2	1		\$ 221.83		\$ 221.83
Dump Truck	11		\$ 71.55		\$ 787.05
End Dump	8		\$ 90.06		\$ 720.48
Water Truck	1		\$ 47.91		\$ 47.91
Skid Steer	1		\$ 29.34		\$ 29.34
Mini Exc	11		\$ 42.85		\$ 471.35
Chainsaw #1	11		\$ 2.87		\$ 31.57
Chainsaw #2	11		\$ 2.87		\$ 31.57
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 5,690.38

10/9/20



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Class Fire

Job No.

Location: Sf. Helena - water Treatment Plant

STATEMENT OF EQUIPMENT AND LABOR

[illegible]

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

[illegible]

MCI

Signature: [Signature] - foreman

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/10/2020

10/20/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 3,653.25

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 1,930.67

SUB TOTAL EQUIPMENT (A+B)

\$ 3,653.25

STANDARD M/U

15%

\$ 547.99

STANDARD M/U

35%

\$ 675.73

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,201.24

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 2,606.40

TOTAL REGULAR LABOR (.C)

\$ -

TOTAL EQUIPMENT & MATERIALS

\$ 4,201.24

% REGULAR LABOR SURCHARGE

10%

\$ -

TOTAL PREMIUM LABOR (D)

\$ 1,755.15

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 6,807.64

% PREMIUM LABOR SURCHARGE

10%

\$ 175.52

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 1,930.67

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 6,807.64

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR
CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.
LABOR SURCHARGE 10%

CCO NO
PAGE
REPORT NO
OF

NAME			REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks		\$ 82.04	\$ -	9	\$ 107.25	\$ 965.25		\$ 965.25
OpEng	S	Repkow		\$ 82.04	\$ -	2	\$ 107.25	\$ 214.50		\$ 214.50
Teamster	S	Repkow		\$ 64.92	\$ -	7	\$ 82.20	\$ 575.40		\$ 575.40
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ -	TOTAL (D)		\$ 1,755.15	(.E)	\$ 1,755.15

EQUIPMENT ID NUMBER

CLASS

MAKE

CODE

ATTACH

REG HRS

O/T HRS

REG RATE

O/T RATE

EXT AMT

TOTAL (A)

\$ 3,653.25

10/10/20



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Class Fric

Job No. _____

Location: St. Helena Water Treatment Plant

STATEMENT OF EQUIPMENT AND LABOR

EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hooks - Exc.	9								
- Dump Truck	9								
Susche Ripper - Exc.	2								
- End Dump	7								
Pickup	1 day								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

Description	Unit	Quantity	Total

MCI

Signature and Title: for

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/11/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 3,178.23

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 1,501.64

SUB TOTAL EQUIPMENT (A+B)

\$ 3,178.23

STANDARD M/U

15%

\$ 476.73

STANDARD M/U

35%

\$ 525.58

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 3,654.96

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 2,027.22

TOTAL REGULAR LABOR (.C)

\$ 1,175.68

TOTAL EQUIPMENT & MATERIALS

\$ 3,654.96

% REGULAR LABOR SURCHARGE

10%

\$ 117.57

TOTAL PREMIUM LABOR (D)

\$ 189.45

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 5,682.18

% PREMIUM LABOR SURCHARGE

10%

\$ 18.95

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 1,501.64

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 5,682.18

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

CCO NO

% PAGE

REPORT NO

OF

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	1	\$ 107.25	\$ 107.25		\$ 763.57
Teamster	S	Repkow	8	\$ 64.92	\$ 519.36	1	\$ 82.20	\$ 82.20		\$ 601.56
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 1,175.68	TOTAL (D)			\$ 189.45	(.E) \$ 1,365.13

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	9		\$ 42.49		\$ 382.41
Excavator	9		\$ 221.83		\$ 1,996.47
Dump Truck	2		\$ 71.55		\$ 143.10
End Dump	7		\$ 90.06		\$ 630.42
Chainsaw	9		\$ 2.87		\$ 25.83
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 3,178.23

10/11/20



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Class Fire

Job No. _____

Location: St. Helena Water Treatment Plant

STATEMENT OF EQUIPMENT AND LABOR

EQUIPMENT				LABOR				
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate	
						O.T.		O.T.
Ely Hicks - Exc.	9							
Sascha Ripke - End	7							
- Dump Truck	2							
Pickup	2 day							
Chain Saw	1 day							
Total				Total				

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

Description	Unit	Quantity	Total

MCI
 by [Signature] for 11/5 - Foreman
 Name and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/12/2020

10/20/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 1,649.78

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 2,517.28

SUB TOTAL EQUIPMENT (A+B)

\$ 1,649.78

STANDARD M/U

15%

\$ 247.47

STANDARD M/U

35%

\$ 881.05

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 1,897.25

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 3,398.33

TOTAL REGULAR LABOR (.C)

\$ 1,695.04

TOTAL EQUIPMENT & MATERIALS

\$ 1,897.25

% REGULAR LABOR SURCHARGE

10%

\$ 169.50

TOTAL PREMIUM LABOR (D)

\$ 593.40

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 5,295.58

% PREMIUM LABOR SURCHARGE

10%

\$ 59.34

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,517.28

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

	10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

% | PAGE

OF

Page 256 of 469

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CONTRACT NO.

CEM - 4902C (NEW 7/1994)

CCO NO

PAGE

REPORT NO

OF

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	10		\$ 42.49		\$ 424.90
Dump Truck	8		\$ 71.55		\$ 572.40
Water Truck	2		\$ 90.06		\$ 180.12
Excavator- 245	2		\$ 221.83		\$ 443.66
Chainsaw	10		\$ 2.87		\$ 28.70
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 1,649.78



iss Fire

Job No. _____

Location: St. Helene Water Treatment Plant

EQUIPMENT

LABOR

[illegible]

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

[illegible]

Control

Inspector

nature and Title

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/13/2020

10/20/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,265.69

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 3,385.44

SUB TOTAL EQUIPMENT (A+B)

\$ 4,265.69

STANDARD M/U

15%

\$ 639.85

STANDARD M/U

35%

\$ 1,184.90

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,905.54

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 4,570.34

TOTAL REGULAR LABOR (.C)

\$ 2,367.62

TOTAL EQUIPMENT & MATERIALS

\$ 4,905.54

% REGULAR LABOR SURCHARGE

10%

\$ 236.76

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 9,475.88

TOTAL PREMIUM LABOR (D)

\$ 710.05

% PREMIUM LABOR SURCHARGE

10%

\$ 71.01

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,385.44

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

CCO NO

% PAGE

REPORT NO

OF

[illegible]

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	10		\$ 42.49		\$ 424.90
Pick Up #2	10		\$ 40.16		\$ 401.60
Dump Truck	10.5		\$ 71.55		\$ 751.28
Excavator- 245	8.5		\$ 221.83		\$ 1,885.56
End Dump	3		\$ 90.06		\$ 270.18
Water Truck	3		\$ 90.06		\$ 270.18
Chainsaw #1	10		\$ 2.87		\$ 28.70
Chainsaw #2	10		\$ 2.87		\$ 28.70
Backhoe	5.5		\$ 37.20		\$ 204.60
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,265.69

10/13/20



DAILY REPORT ON EXTRA WORK ORDER NO. _____

✓ - class Fire

Job No.

Location: Sto Helena - water treatment plant

STATEMENT OF EQUIPMENT AND LABOR

EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hides - Exc.	8.5								
Sascha Ripken - Dump Truck	10.5								
Jeff McBratney - Exc. #2	7.5								
- End Dump	3								
Derek McIntosh - Backhoe	5.5								
- Labor	5								
Pickup x 2	1 day								
Water Truck	3								
Chainsaw x 2	1 day								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

[illegible]

Co	lor
----	-----

Inspector

nature and Title

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/14/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,246.29

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,283.80

SUB TOTAL EQUIPMENT (A+B)

\$ 4,246.29

STANDARD M/U

15%

\$ 636.94

STANDARD M/U

35%

\$ 1,149.33

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,883.23

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,433.13

TOTAL REGULAR LABOR (.C)

\$ 2,046.86

TOTAL EQUIPMENT & MATERIALS

\$ 4,883.23

% REGULAR LABOR SURCHARGE

10%

\$ 204.69

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 9,316.36

TOTAL PREMIUM LABOR (D)

\$ 938.41

% PREMIUM LABOR SURCHARGE

10%

\$ 93.84

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,283.80

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

\$ 9,316.36

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR
CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.
LABOR SURCHARGE

10%

CCO NO
PAGE

2

REPORT NO
OF

3

NAME			REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	2.5	\$ 107.25	\$ 268.13		\$ 924.45
Labor	D	McIntosh	0.5	\$ 57.34	\$ 28.67	2.5	\$ 73.12	\$ 182.80		\$ 211.47
Op8A	D	Mcintosh	7.5	\$ 80.66	\$ 604.95		\$ 105.18	\$ -		\$ 604.95
Labor	J	Haycock			\$ -	3	\$ 73.12	\$ 219.36		\$ 219.36
Teamster	S	Repkow	3	\$ 64.92	\$ 194.76		\$ 82.20	\$ -		\$ 194.76
Teamster	J	McGuaghey	5.5	\$ 64.92	\$ 357.06		\$ 82.20	\$ -		\$ 357.06
OpEng	J	McGuaghey	2.5	\$ 82.04	\$ 205.10	2.5	\$ 107.25	\$ 268.13		\$ 473.23
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 2,046.86	TOTAL (D)		\$ 938.41	(.E)	\$ 2,985.27

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	10.5		\$ 42.49		\$ 446.15
Pick Up #2	10.5		\$ 40.16		\$ 421.68
Excavator	10.5		\$ 221.83		\$ 2,329.22
Dump Truck	3		\$ 71.55		\$ 214.65
End Dump	5.5		\$ 90.06		\$ 495.33
Backhoe	7.5		\$ 37.20		\$ 279.00
Chainsaw #1	10.5		\$ 2.87		\$ 30.14
Chainsaw #2	10.5		\$ 2.87		\$ 30.14
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,246.29



G. is FRC

Job No.

Location: St. Helena Water treatment Plant

EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Lay Hacks - Exc.	10.5								
Creek McCintosh Load	3								
Buckhoe	7.5								
Mosby Haycock - Labor	3								
Sche Ripper - Dump Truck	3								
Off McCranghey - End Dump	5.5								
- Exc. #12	5								
Dump x 2	1 day								
Chain saw x 2	1 day								
Water Truck	3 hrs.								
Total				Total					

[illegible]

MCI

Signature and Title
Eugene H. Hines

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/15/2020

10/20/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 1,226.70

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 2,364.81

SUB TOTAL EQUIPMENT (A+B)

\$ 1,226.70

STANDARD M/U

15%

\$ 184.01

STANDARD M/U

35%

\$ 827.68

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 1,410.71

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 3,192.50

TOTAL REGULAR LABOR (.C)

\$ 1,855.20

TOTAL EQUIPMENT & MATERIALS

\$ 1,410.71

% REGULAR LABOR SURCHARGE

10%

\$ 185.52

TOTAL PREMIUM LABOR (D)

\$ 294.63

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 4,603.20

% PREMIUM LABOR SURCHARGE

10%

\$ 29.46

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,364.81

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 4,603.20

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

CCO NO

% PAGE

REPORT NO

OF

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	1	\$ 107.25	\$ 107.25		\$ 763.57
Op8A	D	McIntosh	8	\$ 80.66	\$ 645.28	1	\$ 105.18	\$ 105.18		\$ 750.46
OpEng	J	McGuaghey	2	\$ 82.04	\$ 164.08			\$ -		\$ 164.08
Teamster	J	McGuaghey	6	\$ 64.92	\$ 389.52	1	\$ 82.20	\$ 82.20		\$ 471.72
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 1,855.20	TOTAL (D) \$ 294.63			(.E)	\$ 2,149.83

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	9		\$ 42.49		\$ 382.41
Pick Up #2	9		\$ 40.16		\$ 361.44
Chainsaw #1	9		\$ 2.87		\$ 25.83
Chainsaw #2	9		\$ 2.87		\$ 25.83
Water Truck	9		\$ 47.91		\$ 431.19
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 1,226.70



Gross Profit

Job No. _____

Location: St. Helena Water Treatment Plant

EQUIPMENT

LABOR

[illegible]

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

[illegible]

Or _____ tor

Inspector

nature and Title

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/16/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,031.60

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 2,674.87

SUB TOTAL EQUIPMENT (A+B)

\$ 4,031.60

STANDARD M/U

15%

\$ 604.74

STANDARD M/U

35%

\$ 936.20

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,636.34

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 3,611.07

TOTAL REGULAR LABOR (.C)

\$ 1,906.56

TOTAL EQUIPMENT & MATERIALS

\$ 4,636.34

% REGULAR LABOR SURCHARGE

10%

\$ 190.66

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 8,247.41

TOTAL PREMIUM LABOR (D)

\$ 525.14

% PREMIUM LABOR SURCHARGE

10%

\$ 52.51

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,674.87

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)	\$ 1,906.56
-------------------	--------------------

TOTAL (D)	\$	525.14
------------------	-----------	---------------

(.E)	\$ 2,431.70
------	-------------

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	10		\$ 42.49		\$ 424.90
Pick Up #2	10		\$ 40.16		\$ 401.60
Chainsaw #1	10		\$ 2.87		\$ 28.70
Chainsaw #2	10		\$ 2.87		\$ 28.70
Water Truck	10		\$ 47.91		\$ 479.10
Excavator	10		\$ 221.83		\$ 2,218.30
End Dump	5		\$ 90.06		\$ 450.30
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,031.60

10/16/20



DAILY REPORT ON EXTRA WORK ORDER NO. _____

6. Less Fire - fire cleanup

Job No.

Location: St. Helena water treatment plant

STATEMENT OF EQUIPMENT AND LABOR

EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hooks - Exc. #1	10								
Jeff McBratney - Exc. #2	5								
- End Dump	5								
Derek McIntosh - labor	2								
- Backhoe	8								
Pickup x 2	1 day								
Water truck	1 day								
Chainsaw x 2	2 day								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

[illegible]

or

Inspector

Nature and Title

Engineer

MS Network - Norms

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/17/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 4,556.24

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,568.31

SUB TOTAL EQUIPMENT (A+B)

\$ 4,556.24

STANDARD M/U

15%

\$ 683.44

STANDARD M/U

35%

\$ 1,248.91

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 5,239.67

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,817.21

TOTAL REGULAR LABOR (.C)

\$ -

TOTAL EQUIPMENT & MATERIALS

\$ 5,239.67

% REGULAR LABOR SURCHARGE

10%

\$ -

TOTAL PREMIUM LABOR (D)

\$ 3,243.92

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 10,056.88

% PREMIUM LABOR SURCHARGE

10%

\$ 324.39

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,568.31

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.**LABOR SURCHARGE**

CCO NO

PAGE

REPORT NO

OF

3

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks		\$ 82.04	\$ -	10.5	\$ 107.25	\$ 1,126.13		\$ 1,126.13
OpEng	J	McGuaghey		\$ 82.04	\$ -	6	\$ 107.25	\$ 643.50		\$ 643.50
Teamster	J	McGuaghey		\$ 64.92	\$ -	4.5	\$ 82.20	\$ 369.90		\$ 369.90
Op8A	D	McIntosh		\$ 80.66	\$ -	10.5	\$ 105.18	\$ 1,104.39		\$ 1,104.39
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ -	TOTAL (D)		\$ 3,243.92	(.E)	\$ 3,243.92

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	10.5		\$ 42.49		\$ 446.15
Pick Up #2	10.5		\$ 40.16		\$ 421.68
Chainsaw #1	10.5		\$ 2.87		\$ 30.14
Chainsaw #2	10.5		\$ 2.87		\$ 30.14
Water Truck	10.5		\$ 47.91		\$ 503.06
Excavator	10.5		\$ 221.83		\$ 2,329.22
End Dump	4.5		\$ 90.06		\$ 405.27
Backhoe	10.5		\$ 37.20		\$ 390.60
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 4,556.24



Job No. _____

STATEMENT OF EQUIPMENT AND LABOR

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE

MCI

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/18/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 3,374.08

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,202.28

SUB TOTAL EQUIPMENT (A+B)

\$ 3,374.08

STANDARD M/U

15%

\$ 506.11

STANDARD M/U

35%

\$ 1,120.80

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 3,880.19

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,323.07

TOTAL REGULAR LABOR (.C)

\$ -

TOTAL EQUIPMENT & MATERIALS

\$ 3,880.19

% REGULAR LABOR SURCHARGE

10%

\$ -

TOTAL PREMIUM LABOR (D)

\$ 2,911.16

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 8,203.26

% PREMIUM LABOR SURCHARGE

10%

\$ 291.12

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,202.28

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

\$ 8,203.26

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

	10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

6 PAGE

OF

OF

3

TOTAL (.C)**TOTAL (D)**

2,911.16

(.E

)	\$ 2,911.16
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McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	8		\$ 42.49		\$ 339.92
Pick Up #2	8		\$ 40.16		\$ 321.28
Excavator	8		\$ 221.83		\$ 1,774.64
End Dump	4		\$ 90.06		\$ 360.24
Backhoe	4		\$ 37.20		\$ 148.80
Chainsaw #1	8		\$ 2.87		\$ 22.96
Chainsaw #2	8		\$ 2.87		\$ 22.96
Water Truck	8		\$ 47.91		\$ 383.28
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 3,374.08

Project: Glass Fire Cleanup

Location: St. Helene, Water Treatment plant Job No.

Job No. _____
Plant _____

EQUIPMENT

[illegible]

by Chy Hicks MCI
Contractor
Foreman
Signature and Title

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/19/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 5,563.09

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 3,141.08

SUB TOTAL EQUIPMENT (A+B)

\$ 5,563.09

STANDARD M/U

15%

\$ 834.46

STANDARD M/U

35%

\$ 1,099.38

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 6,397.55

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 4,240.46

TOTAL REGULAR LABOR (.C)

\$ 1,889.44

TOTAL EQUIPMENT & MATERIALS

\$ 6,397.55

% REGULAR LABOR SURCHARGE

10%

\$ 188.94

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 10,638.02

TOTAL PREMIUM LABOR (D)

\$ 966.09

% PREMIUM LABOR SURCHARGE

10%

\$ 96.61

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 3,141.08

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 10,638.02

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

CCO NO

PAGE

REPORT NO

OF

	NAME		REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	3	\$ 107.25	\$ 321.75		\$ 978.07
OpEng	J	McGuaghey	4	\$ 82.04	\$ 328.16		\$ 107.25	\$ -		\$ 328.16
Teamster	J	McGuaghey	4	\$ 64.92	\$ 259.68	4	\$ 82.20	\$ 328.80		\$ 588.48
Op4	D	McIntosh	8	\$ 80.66	\$ 645.28	1	\$ 105.18	\$ 105.18		\$ 750.46
Op8A	D	McIntosh		\$ 80.66	\$ -	2	\$ 105.18	\$ 210.36		\$ 210.36
										\$ -
										\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 1,889.44	TOTAL (D) \$ 966.09			(.E)	\$ 2,855.53

CONTRACT NO.

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Pick Up #1	11	✓	\$ 42.49		\$ 467.39
Pick Up #2	11	✓	\$ 40.16		\$ 441.76
Excavator	11	✓	\$ 221.83		\$ 2,440.13
End Dump	7	✓	\$ 90.06		\$ 630.42
Lowbed	1	✓	\$ 90.66		\$ 90.66
Backhoe	2	✓	\$ 37.20		\$ 74.40
Chainsaw #1	11	✓	\$ 2.87		\$ 31.57
Chainsaw #2	11	✓	\$ 2.87		\$ 31.57
Water Truck	11	✓	\$ 47.91		\$ 527.01
Morooka	9	✓	\$ 92.02		\$ 828.18
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 5,563.09

Project: Glass Fire Job No. _____
Date: 10/19/20 Location: St. Helena Water Treatment Plant

STATEMENT OF EQUIPMENT AND LABOR							
EQUIPMENT				LABOR			
Description	Hrs.	Rate	Amt.	Classification and Name	Hours	Rate	Amt.
					O.T.	O.T.	
Clay Hicks - Exc. #1	11						
Jeff McBranghey - Exc #2	4						
- End Dump	8						
- low bed	1						
Derrick McIntosh - Morooka	9						
- Backhoe	2						
Water truck - 1 day	1 day						
Pickup x 2	1 day						
Chainsaw x 2	1 day						
Total							

[illegible]

by MCI Contractor - Foreman
[Signature] Signature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/20/2020

10/21/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 1,842.63

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 1,760.04

SUB TOTAL EQUIPMENT (A+B)

\$ 1,842.63

STANDARD M/U

15%

\$ 276.39

STANDARD M/U

35%

\$ 616.02

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 2,119.02

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 2,376.06

TOTAL REGULAR LABOR (.C)

\$ 1,207.16

TOTAL EQUIPMENT & MATERIALS

\$ 2,119.02

% REGULAR LABOR SURCHARGE

10%

\$ 120.72

TOTAL PREMIUM LABOR (D)

\$ 392.88

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 4,495.08

% PREMIUM LABOR SURCHARGE

10%

\$ 39.29

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 1,760.04

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 4,495.08

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

	10%

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

LABOR SURCHARGE

PAGE

OF

3

TOTAL (.C)

\$	1,207.16
----	----------

TOTAL (D)

	\$	392.88
--	----	--------

(.E)

\$ 1,600.04

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Excavator	4		\$ 221.83		\$ 887.32
Water Truck	2		\$ 47.91		\$ 95.82
Marooka	2		\$ 92.02		\$ 184.04
End Dump	7.5		\$ 90.06		\$ 675.45
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 1,842.63



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Project: Glass Fire

Job No. _____

Date: 10/20/20Location: St. Helene Water treatment Plant

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hides - Exc. #1	4								
Derde McIntosh - Water Truck	2								
- Morooka	2								
Jeff McBratney - Exc. #2	4								
End Dump	7.5								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE			
Description	Unit	Quantity	Total

MCI

by by Hubs - foreman
 Contractor
 Signature and Title

Inspector

Engineer

MCI Extra Work Form - MCI Network - Forms

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/21/2020

10/26/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 1,020.38

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(E)+(F)

\$ 1,088.35

SUB TOTAL EQUIPMENT (A+B)

\$ 1,020.38

STANDARD M/U

15%

\$ 153.06

STANDARD M/U

35%

\$ 380.92

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 1,173.43

TOTAL (.C)+(D)+SURCHARGE+(E)+(F)+M/U

\$ 1,469.27

TOTAL REGULAR LABOR (.C)

\$ 825.01

TOTAL EQUIPMENT & MATERIALS

\$ 1,173.43

% REGULAR LABOR SURCHARGE

10%

\$ 82.50

TOTAL PREMIUM LABOR (D)

\$ 164.40

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 2,642.71

% PREMIUM LABOR SURCHARGE

10%

\$ 16.44

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 1,088.35

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

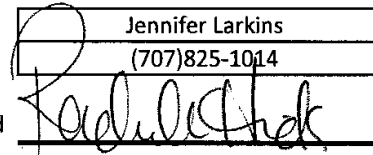
Prepared By

Business Phone

Jennifer Larkins

(707)825-1014

Contractor Approved



McCullough Construction, Inc

EXTRA WORK BILL - LABOR
CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.
LABOR SURCHARGE 10%

CCO NO
PAGE 2

REPORT NO
OF 3

NAME			REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
Teamster	C	Hicks	2.5	\$ 64.92	\$ 162.30	0	\$ 107.25	\$ -		\$ 162.30
Labor	D	McIntosh	2.5	\$ 57.34	\$ 143.35	0	\$ 107.25	\$ -		\$ 143.35
Teamster	J	Mcguaghey	8	\$ 64.92	\$ 519.36	2	\$ 82.20	\$ 164.40		\$ 683.76
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 825.01	TOTAL (D)		\$ 164.40	(.E)	\$ 989.41

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Water Truck	2.5		\$ 47.91		\$ 119.78
End Dump	10		\$ 90.06		\$ 900.60
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 1,020.38



DAILY REPORT ON EXTRA WORK ORDER NO. _____

Project: Glass Fire

Job No. _____

Date: 10/21/20

Location: St. Helena Water treatment Plant

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hicks - Water Truck	2.5								
Derick McIntosh - labor	2.5								
Jeff McBranghey - End Dump	10								
Total				Total					

STATEMENT OF MATERIALS ACTUALLY PLACED THIS DATE			
Description	Unit	Quantity	Total

MCI -
 by Clay Hicks - Foreman
 Contractor
 Signature and Title

Inspector _____
 Engineer _____

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/22/2020

10/26/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 5,331.00

TOTAL MATERIAL (B)

\$ -

SUB TOTAL EQUIPMENT (A+B)

\$ 5,331.00

STANDARD M/U

15%

\$ 799.65

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 6,130.65

TOTAL OTHER EXPENSE (F)

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 2,975.34

STANDARD M/U

35%

\$ 1,041.37

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 4,016.70

TOTAL REGULAR LABOR (.C)

\$ 1,820.96

% REGULAR LABOR SURCHARGE

10%

\$ 182.10

TOTAL PREMIUM LABOR (D)

\$ 883.89

% PREMIUM LABOR SURCHARGE

10%

\$ 88.39

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,975.34

TOTAL SUBSISTENCE (.E)

TOTAL EQUIPMENT & MATERIALS

\$ 6,130.65

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 10,147.35

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

\$ 10,147.35

Prepared By

Business Phone

Jennifer Larkins

(707)825-1014

Contractor Approved

[Signature]

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

10%

CCO NO

PAGE

2

REPORT NO

OF

3

CRAFT ID	NAME		REGULAR HOURS			PREMIUM HOURS			TOTAL
	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL	
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	3	\$ 107.25	\$ 321.75	\$ 978.07
Op8A	D	Mcintosh	8	\$ 80.66	\$ 645.28	3	\$ 105.18	\$ 315.54	\$ 960.82
Teamster	J	Mcguaghey	8	\$ 64.92	\$ 519.36	3	\$ 82.20	\$ 246.60	\$ 765.96
					\$ -			\$ -	\$ -
								\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
					\$ -			\$ -	\$ -
TOTAL (.C)					\$ 1,820.96	TOTAL (D)		\$ 883.89	(.E) \$ 2,704.85

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

[illegible]

Project: Glass Fire

Project: 10-22-20 Job No.
Date: 10/22/20 Location: St. Helena Water Treatment Plant

7-6:30

STATEMENT OF EQUIPMENT AND LABOR

EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hicks - Exc.	11								
Derek McIntosh - Moraca	11								
Jeff McLaughlin - End Dump	9								
Water Truck	2								
Pickup x 2	1 day								
Chain Saw x 2	1 day								
Excl. #2	3								
					</				

[illegible]

by MCI
Clay Huts Contractor - Foreman
Signature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/23/2020

10/26/2020

WORK PERFORMED BY

McCullough Construction Inc

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

LABOR

X

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 3,486.02

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 2,641.36

SUB TOTAL EQUIPMENT (A+B)

\$ 3,486.02

STANDARD M/U

15%

\$ 522.90

STANDARD M/U

35%

\$ 924.48

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,008.92

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 3,565.84

TOTAL REGULAR LABOR (.C)

\$ 2,154.64

TOTAL EQUIPMENT & MATERIALS

\$ 4,008.92

% REGULAR LABOR SURCHARGE

10%

\$ 215.46

TOTAL PREMIUM LABOR (D)

\$ 246.60

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 7,574.76

% PREMIUM LABOR SURCHARGE

10%

\$ 24.66

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,641.36

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Business Phone

Jennifer Larkins

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.

LABOR SURCHARGE

10%

CCO NO

PAGE

2

REPORT NO

OF

3

NAME			REGULAR HOURS			PREMIUM HOURS				
CRAFT ID	INT	LAST	HRS	RATE	TOTAL	HRS	RATE	TOTAL		TOTAL
OpEng	C	Hicks	8	\$ 82.04	\$ 656.32	0	\$ 107.25	\$ -		\$ 656.32
OpEng	C	Stolpe	8	\$ 82.04	\$ 656.32	0	\$ 107.25	\$ -		\$ 656.32
Teamster	J	Mcguaghey	8	\$ 64.92	\$ 519.36	3	\$ 82.20	\$ 246.60		\$ 765.96
OP8A	D	McIntosh	4	\$ 80.66	\$ 322.64			\$ -		\$ 322.64
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
					\$ -			\$ -		\$ -
TOTAL (.C)					\$ 2,154.64	TOTAL (D)		\$ 246.60	(.E)	\$ 2,401.24

McCullough Construction, Inc

EXTRA WORK BILL - EQUIPMENT CHARGES

CONTRACT NO.

CEM - 4902C (NEW 7/1994)

EQUIPMENT ID NUMBER	REG HRS	O/T HRS	REG RATE	O/T RATE	EXT AMT
Excavator	8		\$ 221.83		\$ 1,774.64
Water Truck	2		\$ 47.91		\$ 95.82
Marooka	4		\$ 92.02		\$ 368.08
End Dump	6		\$ 90.06		\$ 540.36
Pick up #1	8		\$ 42.49		\$ 339.92
Pick Up #2	8		\$ 40.16		\$ 321.28
Chainsaw #1	8		\$ 2.87		\$ 22.96
Chainsaw #2	8		\$ 2.87		\$ 22.96
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
					\$ -
			TOTAL (A)		\$ 3,486.02

Project: 5-ASS FIRE Job No. _____
Date: 10/23/20 Location: St. Helene Water Treatment Plant

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hires - Exc. #1	8								
Chris Stolpe - Exc. #2	8								
Jeff McBratney - End Dump	6								
- Water Truck	2								
Derek McIntosh Mowaka	4								
Pickup x 2	1 day								
Chainsaw x 2	1 day								

[illegible]

by McI Contractor Chy. R. R. R. - foreman
Signature and Title

Inspector

Engineer

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER

CCO NO.

REPORT NO.

PAGE

OF

DATE WORK PERFORMED

DATE OF REPORT

CONTRACTOR JOB NO.

CONTRACTOR REPORT NO.

10/26/2020

11/4/2020

WORK PERFORMED BY

DESCRIPTION OF WORK

ATTACHED TO THIS BILL IS

McCullough Construction Inc

LABOR

x

EQUIPMENT

TOTAL EQUIPMENT (A)

\$ 3,972.39

TOTAL OTHER EXPENSE (F)

TOTAL MATERIAL (B)

\$ -

SUB TOTAL (.C) + (D)+(.E)+(F)

\$ 2,813.29

SUB TOTAL EQUIPMENT (A+B)

\$ 3,972.39

STANDARD M/U

15%

\$ 595.86

STANDARD M/U

35%

\$ 984.65

TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP

\$ 4,568.25

TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U

\$ 3,797.94

TOTAL REGULAR LABOR (.C)

\$ 1,820.96

TOTAL EQUIPMENT & MATERIALS

\$ 4,568.25

% REGULAR LABOR SURCHARGE

10%

\$ 182.10

TOTAL PREMIUM LABOR (D)

\$ 736.58

TOTAL EQUIPMENT & MATS + TOTAL LABOR

\$ 8,366.19

% PREMIUM LABOR SURCHARGE

10%

\$ 73.66

SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR

\$ 2,813.29

TOTAL SUBSISTENCE (.E)

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL

\$ 8,366.19

REQUESTED CHANGE IN CONTRACT TIME

Prepared By

Jennifer Larkins

Business Phone

(707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILLING - TITLE PAGE

CEM 4902A (NEW 7/1994)

CONTRACT NUMBER CCO NO. REPORT NO.
PAGE OF

DATE WORK PERFORMED DATE OF REPORT CONTRACTOR JOB NO. CONTRACTOR REPORT NO.
 10/26/2020 11/4/2020

WORK PERFORMED BY DESCRIPTION OF WORK ATTACHED TO THIS BILL IS
McCullough Construction Inc LABOR ☒ EQUIPMENT ☐

TOTAL EQUIPMENT (A)		\$ 3,972.39	TOTAL OTHER EXPENSE (F)	
TOTAL MATERIAL (B)		\$ -	SUB TOTAL (.C) + (D)+(.E)+(F)	\$ 2,813.29
SUB TOTAL EQUIPMENT (A+B)		\$ 3,972.39		
STANDARD M/U	15%	\$ 595.86	STANDARD M/U	35%
TOTAL EQUIP & MATERIALS (A)+(B)+ STANDARD MARK UP		\$ 4,568.25	TOTAL (.C)+(D)+SURCHARGE+(.E)+(F)+M/U	\$ 3,797.94
TOTAL REGULAR LABOR (.C)		\$ 1,820.96	TOTAL EQUIPMENT & MATERIALS	\$ 4,568.25
% REGULAR LABOR SURCHARGE	10%	\$ 182.10		
TOTAL PREMIUM LABOR (D)		\$ 736.58	TOTAL EQUIPMENT & MATS + TOTAL LABOR	\$ 8,366.19
% PREMIUM LABOR SURCHARGE	10%	\$ 73.66		
SUB TOTAL (.C)+(D) REGULAR SURCHARGE + PREMIUM SUR		\$ 2,813.29		
TOTAL SUBSISTENCE (.E)				

10% OF MARK UP ON SUBCONTRACTED WORK ONLY

GRAND TOTAL
REQUESTED CHANGE IN CONTRACT TIME

Prepared By Jennifer Larkins
Business Phone (707)825-1014

Contractor Approved

McCullough Construction, Inc

EXTRA WORK BILL - LABOR

CEM - 4902B (NEW 7/1994) CT# 7541-3497-9

CONTRACT NO.**LABOR SURCHARGE**

CCO NO

PAGE

REPORT NO

OF

[illegible]

CONTRACT NO.[illegible]

MCCULLOUGH CONSTRUCTION, INC.

EXTRA WORK BILL - MATERIAL CHARGES

CEM - 4902D (NEW 7/1994)

CONTRACT NO.

CCO NO

PAGE

REPORT NO

--

OF

10

VENDOR NAME	INV #	MM/DD/YR	INVOICE DESCRIPTION	UNIT	UNIT CST	EXT AMT
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
						\$ -
				TOTAL (A)		\$ -

Project Glass Fire & 2010 Extra
Contractor/Subcontractor _____
Date 10/26/20
Shift 6:30 To 5:30
Weather/Temp. _____

A Fire Debris Clearing @ Tank 2

B Fence Prep. & mob.

C

D

III

14.

C

H

1

2

Final EWB
for glass fire
10/26/20

I didn't Bill for
day's 10.5 hrs,
It says 2010 project

Form FHWA-4413 (Rev. 3-90)

50742.1-M 344

Project: Glass Fire & 2010 Extra (split Rail Fence) Job No. _____
Date: 10/26/20 Location: Tank 2 & upper York spillway

STATEMENT OF EQUIPMENT AND LABOR									
EQUIPMENT				LABOR					
Description	Hrs.	Rate	Amt.	Classification and Name	Hours		Rate		Amt.
						O.T.		O.T.	
Clay Hicks - Foreman/pickup & trailer	10.5								
Chris Stolpe - Exc.	10.5								
Cameron Opp - Backhoe	6								
- Water Truck	4.5								
Jeff McBratney - End Dump	8.5								
- lowbed	2								
Pickup x 2	1 day								
Chainsaw x 2	1 day								

[illegible]

by MCI Contractor Chy Hays - foreman
Signature and Title

Inspector

Engineer



Taylor Bailey, Inc.
355 LaFata Street
Suite E
St. Helena, CA 94574

Lic. # 778716

Invoice

Date	Invoice #
10/27/2020	2240

Bill To
City of Saint Helena 1480 Main Street St. Helena, CA 94574 1572 Railroad Ave

Project
COSH - Meadowood Water Emergency Demo of Tank

P.O. Number	Terms	Due Date
	Net 15	11/11/2020

Description	Hours/Qty.	Rate	Amount
Demo of Tank / October 2020			
John Deere 310	4	160.00	640.00
Komatsu PC138	8	195.00	1,560.00
CAT 304E	32	165.00	5,280.00
CAT 416 Skip Loader	4	158.00	632.00
Bobtail Dump	32	148.00	4,736.00
Utility Truck and Trailer	9	45.00	405.00
Water Truck		2,157.00	2,157.00
Cut Off Saw	24	20.00	480.00
Air Comp - Hammer	24	25.00	600.00
Laborer	56	82.00	4,592.00
Foreman & Pickup	27	130.00	3,510.00
Operator	32	115.00	3,680.00
Laborer OT	4	118.50	474.00
Foreman & Pickup OT	1	195.00	195.00
Operator OT	5	168.00	840.00
Equip. Move In		562.50	562.50
Bond Insurance		1,692.50	1,692.50
			32,036.00
Green Waste Removal / Phase 2			
Komatsu PC138	29	195.00	5,655.00
CAT 304E	16	165.00	2,640.00
Bobtail Dump Truck	20	148.00	2,960.00
Water Truck		2,157.00	2,157.00
Skid Steer w/ grapple bucket		3,238.68	3,238.68

A service charge of 18% per annum will be charged
on all amounts overdue on regular statement dates

We appreciate your prompt payment!

Total
Payments/Credits
Balance Due



Taylor Bailey, Inc.
355 LaFata Street
Suite E
St. Helena, CA 94574

Lic. # 778716

Invoice

Date	Invoice #
10/27/2020	2240

Bill To
City of Saint Helena 1480 Main Street St. Helena, CA 94574 1572 Railroad Ave

Project
COSH - Meadowood Water Emergency Demo of Tank

P.O. Number	Terms	Due Date
	Net 15	11/11/2020

Description	Hours/Qty.	Rate	Amount
Case Excavator		2,532.43	2,532.43
Chainsaws	93	20.00	1,860.00
Laborer	343	82.00	28,126.00
Foreman & Pickup	15	130.00	1,950.00
Operator	72	115.00	8,280.00
Trucking		10,830.00	10,830.00
Central Valley		44.51	44.51
Clover Flat Green Waste 10/12/20		4,749.91	4,749.91
Clover Flat Green Waste 10/13/20		2,366.51	2,366.51
Clover Flat Green Waste 10/14/20		903.74	903.74
Clover Flat Green Waste 10/15/20		1,353.05	1,353.05
Belkore Chain Saw oil		118.55	118.55
			79,765.38
Gravel Tank Area / Phase 3			
John Deere 310	8	160.00	1,280.00
Komatsu PC138	1	195.00	195.00
Bobtail Dump	15	148.00	2,220.00
Laborer	18	82.00	1,476.00
Foreman & Pickup	5	130.00	650.00
Operator	5	115.00	575.00
Material Purchased BoDean		757.20	757.20
Syar		184.79	184.79
Clearing Clover Flat		155.69	155.69
			7,493.68
Final Green Waste Removal Phase 4			

A service charge of 18% per annum will be charged on all amounts overdue on regular statement dates

We appreciate your prompt payment!

Total
Payments/Credits
Balance Due



Taylor Bailey, Inc.
355 LaFata Street
Suite E
St. Helena, CA 94574

Lic. # 778716

Invoice

Date	Invoice #
10/27/2020	2240

Bill To
City of Saint Helena 1480 Main Street St. Helena, CA 94574 1572 Railroad Ave

Project
COSH - Meadowood Water Emergency Demo of Tank

P.O. Number	Terms	Due Date
	Net 15	11/11/2020

Description	Hours/Qty.	Rate	Amount
Komatsu PC35	8	155.00	1,240.00
Komatsu PC138	8	195.00	1,560.00
CAT 304E	16	165.00	2,640.00
Bobtail Dump	16	148.00	2,368.00
Truck and Trailer	4	45.00	180.00
Skid Steer w/ grapple bucket		3,238.68	3,238.68
Laborer	45	82.00	3,690.00
Foreman & Pickup	4	130.00	520.00
Operator	16	115.00	1,840.00
Clover Flat		2,435.33	2,435.33
Trucking		2,613.75	2,613.75
Equip. Move In or Out		562.50	562.50
			22,888.26
			142,183.32

A service charge of 18% per annum will be charged
on all amounts overdue on regular statement dates

We appreciate your prompt payment!

Total	\$142,183.32
Payments/Credits	\$0.00
Balance Due	\$142,183.32

355 LaFata Street
Suite E
St. Helena, CA 94574

Date	Invoice #
10/27/2020	2241

Project
COSH - Tree Mishap Water Main Repair October 8-9, 2020

[illegible]

Total	\$4,070.00
Payments/Credits	\$0.00
Balance Due	\$4,070.00

STH Contract: FY2021-026

CITY OF ST. HELENA
CONSTRUCTION CONTRACT

**EMERGENCY FIRE CLEARING AND DEBRIS CLEANUP CONTRACT DUE TO GLASS FIRE INCIDENT,
PROJECT NO. E21-03**

1. PARTIES AND DATE.

This Contract is made and entered into this 2nd day of October, 2020 by and between the City of St. Helena, a public agency of the State of California ("City") and McCullough Construction Inc., a corporation with its principal place of business at 57 Alder Grove Road, Arcata, CA. 95521 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing emergency fire clearing work and debris cleanup on the 2020 Glass Fire incident and related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: Class A General Contractors License.

2.3 Project. City desires to engage Contractor to render such services for the Emergency Fire Clearing and Debris Cleanup Contract due to Glass Fire Incident, Project No. E21-03 ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Addenda

- Change Orders executed by the City
- 2018 Caltrans Standard Specifications excluding Division I

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other

relevant data including catalog information which describes the requested substituted "or equal" material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract as defined by written direction by the City, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of Five Hundred Dollars (\$500.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of One Hundred Thousand Dollars (\$100,000.00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums

representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's

sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from

such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 **Liability for Non-Compliance.** Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 **Reservation of Right to Defend.** City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 **Training.** In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 **Safety.** Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 **Laws and Regulations.** Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary

to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, any required business license. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's business license fee, if any. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval 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. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically

be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, 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. Effective January 1, 2017, 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.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, 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, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by 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.

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

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

- (A) Specifications
- (B) Drawings
- (C) Clarifications (Requests for Information)
- (D) Schedules
- (E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 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 public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body 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, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

3.10.4.2 Within 30 days of receipt of a claim, City may request in writing additional documentation supporting the claim or relating to defenses or claims City may

have against the Contractor. If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of City and the Contractor.

3.10.4.3 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.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of 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, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 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, 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 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 City and the Contractor sharing the associated costs equally. 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.

3.10.6.1 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.

3.10.6.2 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.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, 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 pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 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 terms of these procedures.. 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.

3.10.8.2 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 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, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. 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. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by

City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.13.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work

hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.13.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the

City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage.

The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 All Coverages.

Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds; No Special Limitations.

All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage.

Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13.8 Subcontractors.

All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.13.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 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 sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair 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 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.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following

approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby 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. Section 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 Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

McCullough Construction, Inc.
7 Alder Grove Road
Arcata, CA 95521
Attn: Macky McCullough, President

CITY:

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
Attn: Mark T. Prestwich, City Manager

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Napa, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration

contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

3.17.21 Federal Funding Requirements. FEMA financial assistance will be used to fund all or a portion of this Agreement. The Contractor shall comply with all federal requirements including, but not limited to, the following:

a. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference.

b. Federal Contract Provisions attached hereto as Exhibit "G" and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the Agreement, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions.

With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF ST. HELENA
AND MCCULLOUGH CONSTRUCTION, INC**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 1st day of October, 2020.

CITY OF ST. HELENA

McCullough Construction, Inc.

By: _____
Mark T. Prestwich
City Manager

By: _____

Its: _____

Printed Name: _____

ATTEST:

By: _____
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Ethan Walsh
City Attorney

Project Code: CIP No. E21-03

EXHIBIT “A”**SERVICES / SCHEDULE**Scope

On September 27, 2020, the City of St. Helena proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire incident which is affecting Napa and Sonoma counties.

The City of St. Helena has an urgent need for emergency work due to the progression of these fires and the threat they pose to critical City structures. The City of St. Helena is a full-service City which includes providing water and wastewater treatment to the City of St. Helena as well as the surrounding communities.

The rapid moving fire has had, and continues to have, a direct impact on multiple critical sites of the water system throughout the City and its surrounding communities. The immediate need is to clear roads which provide access to critical City facilities and sites, and removal of cut down trees previously taken down by tree removal contractor, and any other compromised trees identified during the process. Fire clearing and debris cleanup is critical for providing safe access to these critical facilities as needed for repair, replacement, and operations. The potential areas are identified and described below:

The Meadowood Tank Site – 900 Meadowood Lane. The Meadowood Water Tanks serve Meadowood Resort and residents in the Madrone Knoll area. These tanks are the only source of water for this area. On September 28, 2020, at 11:30 a.m., City staff received visual confirmation that the three Meadowood Water Tanks had been burned in the Glass Fire Incident and were no longer functional for City water operations. City staff and consultant are actively working on both a temporary and permanent solution for replacement of these tanks to ensure customers can receive critical water services in this area.

Louis Stralla Water Treatment Plant (LSWTP) – 410 Crystal Springs Road. The LSWTP treats surface water stored in Bell Canyon Reservoir and is the primary source of potable water for the City and surrounding areas. On September 27, 2020, fires burned to the LSWTP and, despite firefighting efforts, the building which housed sodium permanganate (permag building) had been burned in the Glass Fire Incident. This building stored and injected sodium permanganate, the City's primary oxidizer, into the water to reduce organic growth and improve taste and odor of the water. City staff are actively working on both a temporary and permanent solution for replacement of this building and need to access this site. Additional access at this location include: Tank 1 which holds 1.4 million gallons of potable water, a valve building, access road to the Bell Canyon Reservoir Dam, Bell Canyon Reservoir spillway access road, and a module building which has been used to house essential water treatment staff.

The LSWTP is a critical asset as it supplies the greatest percentage of water to the City and the surrounding areas (40% in non-drought years and 46% in drought years).

Tank 2 at Lower Reservoir – 2234 Spring Mountain Road. Tank 2 holds 2.7 million gallons of potable water. This tank provides potable water and helps pressurize the west side of the City of St. Helena. Without pressure the City would not have sufficient available water flow for the west side of St. Helena. The fire has burned up to Tank 2 and the surrounding area. At this time, there

is no known damage to Tank 2; however, the fires have caused damage to trees in the area which pose life and safety concerns if not removed.

In all listed locations, the Glass Fire burned up to these critical sites and has left trees and debris blocking access roads to these sites. Additional locations may be identified during further assessments of the City's facilities and infrastructure.

Description of Work

McCullough Construction, Inc. (contractor) will assist with emergency fire clearing and debris cleanup needs due to close proximity of the Glass Fire. The contractor will perform fire clearing and debris cleanup, and removal of cut down trees previously taken down by tree removal contractor, and any other compromised trees identified during the process. Fire clearing and debris cleanup is critical for providing safe access to these critical facilities as needed for repair, replacement, and operations.

Location and Limits of Work

900 Meadowood Lane

- Meadowood Tank site and trunk line locations.

410 Crystal Springs Road

- Water Treatment Plant access, Tank 1 access and surrounding areas, Dam access road, permag & valve building access, spillway access road, and modular building.

2234 Spring Mountain Road

- Lower reservoir and Tank 2.

* Additional locations may be identified during further assessments of the City's facilities and infrastructure.

Estimated Time of Completion

Work is to commence as early as Monday, October 5, 2020, and will remain in effect until clearance is complete.

Emergency work associated with fire clearing is subject to highly changeable field conditions therefore this project will be based on time and materials associated with written task orders directed by the City and based on Caltrans Labor Surcharge and Equipment Rates effective April 1, 2020 through March 31, 2021 and available here:

[https://dot.ca.gov/-/media/dot-media/programs/construction/documents/equipment-rental-rates-and-labor-surcharge/book 2020. pdf](https://dot.ca.gov/-/media/dot-media/programs/construction/documents/equipment-rental-rates-and-labor-surcharge/book%2020.pdf)

EXHIBIT "B"

PLANS AND SPECIFICATIONS

Emergency work associated with fire clearing and debris cleanup is subject to highly changeable field conditions therefore plans and specifications other than already specified or via change order are not applicable.

EXHIBIT "C"

SPECIAL CONDITIONS

ARTICLE 1. BONDS

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT "D"

**CERTIFICATION
LABOR CODE - SECTION 1861**

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

McCullough Construction, Inc.

By: _____
Signature

Name (Print)

Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: _____

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor _____

Signature _____

Name and Title _____

Dated _____

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT "F"
PAYMENT AND PERFORMANCE BONDS

EXHIBIT "G"**FEDERAL CONTRACT PROVISIONS**

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or

subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback” Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government

Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
 - (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties

declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled “Disclosure Form to Report Lobbying.” Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:
- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the

item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.

- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. MISCELLANEOUS PROVISIONS

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.

STH Contract: FY2021-028-01A

AMENDMENT #1

TO CITY OF ST. HELENA CONSTRUCTION CONTRACT WITH TAYLOR BAILEY, INC.; STH CONTRACT NO: FY2021-028 FOR EMERGENCY FIRE DEBRIS CLEANUP AND ASSISTANCE WITH RESTORATION OF PRESSURE ZONE 4 WATER SYSTEM DUE TO GLASS FIRE INCIDENT FOR AN ADDITIONAL \$25,000 FOR A TOTAL CONTRACT AMOUNT NOT-TO-EXCEED \$100,000; ADDING FEDERAL FUNDING REQUIREMENT LANGUAGE; AND ADDING MEADOWOOD ASSOCIATES LP AND MEADOWOOD RESORT LLC AS ADDITIONAL INSURED

This First Amendment to Construction Contract; City of St. Helena STH Contract: FY 2021-028 dated October 2, 2020 ("Agreement") is made as of this 12 day of Oct, 2020 by and between the City of St. Helena and Taylor Bailey, Inc. (Consultant).

RECITALS

- A. On October 2, 2020, The City of St. Helena and Taylor Bailey, Inc. entered into Construction Contract to provide Emergency Fire Debris Cleanup and Assistance with Restoration of Pressure Zone 4 Water System due to Glass Fire Incident for an in amount not-to-exceed \$75,000; and
- B. It is expected that the total costs for Emergency Fire Debris Cleanup and Assistance with Restoration of Pressure Zone 4 Water System due to Glass Fire Incident will be \$100,000; and
- C. The City desires to add federal funding requirement language to the Agreement; and
- D. In order to secure necessary access to the Meadowood area, it has been requested that Meadowood Associates LP and Meadowood Resort LLP be added additional insured to all agreements; and
- E. The City of St. Helena desires to continue utilizing Taylor Bailey, Inc. to provide these services; and
- F. The City of St. Helena and Taylor Bailey, Inc. now desire to amend the Agreement for an additional \$25,000 for a total not-to-exceed amount of \$100,000.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein contained, for good and valuable consideration, the adequacy of which is hereby acknowledged, the parties agree to amend the Agreement as follows:

1. The beginning of Section 3.7.1 Amount of Compensation, is amended to read as follows:

"As consideration for performance of the Work required herein, the City agrees to pay Contractor the Total Contract Price of One Hundred Thousand Dollars

Page 1 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

(\$100,000)..."

2. The beginning of Section 3.13 Insurance Subsection 3.13.3.1 General Liability is amended as follows:

"(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers and Meadowood Associates LP and Meadowood Resort LLC additional insured status...."

3. The beginning of Section 3.13 Insurance Subsection 3.13.3.2 Automobile Liability is amended as follows:

"(1) Such policy shall give the City, its officials, employees, agents and authorized volunteers and Meadowood Associates LP and Meadowood Resort LLC additional insured status...."

4. Section 3.17.21 is to be added as follows:

"3.17.21 Federal Funding Requirements. FEMA financial assistance will be used to fund all or a portion of this Agreement. The Contractor shall comply with all federal requirements including, but not limited to, the following:

a. 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference.

b. Federal Contract Provisions attached hereto as Exhibit "G" and incorporated herein by reference.

Subcontracts, if any, shall contain a provision making them subject to all of the provisions stipulated in the Agreement, including but not limited to, 2 C.F.R. Part 200 and the Federal Contract Provisions.

With respect to any conflict between such federal requirements and the terms of this Agreement and/or the provisions of state law and except as otherwise required under federal law or regulation, the more stringent requirement shall control."

5. Exhibit "G" is hereby added in its entirety to the Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference.

All other terms of the Agreement shall remain in full force and effect.

Entered as of the day and year first above stated.

STH Contract: FY2021-028-01A

CITY OF ST. HELENA
a Municipal Corporation

APPROVED AS TO FORM:

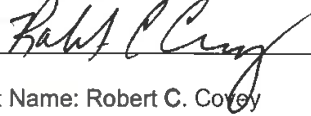
By: _____

Ethan Walsh, City Attorney St. Helena

Print Name: Mark T. Prestwich

Title: City Manager

TAYLOR BAILEY, INC.

By:  _____

Print Name: Robert C. Corey

Title: Owner

STH Contract: FY2021-028-01A

EXHIBIT "A"

EXHIBIT "G"

FEDERAL CONTRACT PROVISIONS

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. **REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)**

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the

Page 4 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

Page 5 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port

Page 6 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.

- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland “Anti-Kickback” Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).

Page 7 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
- (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
- (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier

Page 8 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.

(F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:

- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.
- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

(G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

- (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

STH Contract: FY2021-028-01A

- (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.

- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
 - (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.

- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with

Page 10 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

(J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. **MISCELLANEOUS PROVISIONS**

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

Page 11 of 12

First Amendment to Construction Contract City of St. Helena STH Contract: FY 2021-024 with Taylor Bailey, Inc.

STH Contract: FY2021-028-01A

- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
 - (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.

STH Contract: FY 2021-028

CITY OF ST. HELENA**CONSTRUCTION CONTRACT****EMERGENCY FIRE DEBRIS CLEANUP AND ASSISTANCE WITH RESTORATION OF PRESSURE ZONE 4
WATER SYSTEM DUE TO GLASS FIRE INCIDENT****1. PARTIES AND DATE.**

This Contract is made and entered into this 2nd day of October, 2020 by and between the City of St. Helena, a public agency of the State of California ("City") and Taylor Bailey, Inc., a corporation with its principal place of business at 355 La Fata St., Ste. E, St. Helena, CA. 94574 ("Contractor"). City and Contractor are sometimes individually referred to as "Party" and collectively as "Parties" in this Contract.

2. RECITALS.

2.1 City. City is a public agency organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Contractor. Contractor desires to perform and assume responsibility for the provision of certain construction services required by the City on the terms and conditions set forth in this Contract. Contractor represents that it is duly licensed and experienced in providing emergency fire debris cleanup and removal, burnt Meadowood water tank removal, and assistance with placement and installation of temporary water tanks and related construction services to public clients, that it and its employees or subcontractors have all necessary licenses and permits to perform the services in the State of California, and that it is familiar with the plans of City. The following license classifications are required for this Project: Class A General Contractors License.

2.3 Project. City desires to engage Contractor to render such services for the Emergency Fire Clearing and Debris Cleanup due to Glass Fire, Project No. E21-03 ("Project") as set forth in this Contract.

2.4 Project Documents & Certifications. Contractor has obtained, and delivers concurrently herewith, a performance bond, a payment bond, and all insurance documentation, as required by the Contract.

3. TERMS

3.1 Incorporation of Documents. This Contract includes and hereby incorporates in full by reference the following documents, including all exhibits, drawings, specifications and documents therein, and attachments and addenda thereto:

- Services/Schedule (Exhibit "A")
- Plans and Specifications (Exhibit "B")
- Special Conditions (Exhibit "C")
- Contractor's Certificate Regarding Workers' Compensation (Exhibit "D")
- Public Works Contractor Registration Certification (Exhibit "E")
- Payment and Performance Bonds (Exhibit "F")
- Addenda

- Change Orders executed by the City
- 2018 Caltrans Standard Specifications excluding Division I

3.2 Contractor's Basic Obligation; Scope of Work. Contractor promises and agrees, at its own cost and expense, to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately complete the Project, including all structures and facilities necessary for the Project or described in the Contract (hereinafter sometimes referred to as the "Work"), for a Total Contract Price as specified pursuant to this Contract. All Work shall be subject to, and performed in accordance with the above referenced documents, as well as the exhibits attached hereto and incorporated herein by reference. The plans and specifications for the Work are further described in Exhibit "B" attached hereto and incorporated herein by this reference. Special Conditions, if any, relating to the Work are described in Exhibit "C" attached hereto and incorporated herein by this reference.

3.2.1 Change in Scope of Work. Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition or deletion is approved in writing by a valid change order executed by the City. Should Contractor request a change order due to unforeseen circumstances affecting the performance of the Work, such request shall be made within five (5) business days of the date such circumstances are discovered or shall waive its right to request a change order due to such circumstances. If the Parties cannot agree on any change in price required by such change in the Work, the City may direct the Contractor to proceed with the performance of the change on a time and materials basis.

3.2.2 Substitutions/"Or Equal". Pursuant to Public Contract Code Section 3400(b), the City may make a finding that designates certain products, things, or services by specific brand or trade name. Unless specifically designated in this Contract, whenever any material, process, or article is indicated or specified by grade, patent, or proprietary name or by name of manufacturer, such Specifications shall be deemed to be used for the purpose of facilitating the description of the material, process or article desired and shall be deemed to be followed by the words "or equal."

Contractor may, unless otherwise stated, offer for substitution any material, process or article which shall be substantially equal or better in every respect to that so indicated or specified in this Contract. However, the City may have adopted certain uniform standards for certain materials, processes and articles. Contractor shall submit requests, together with substantiating data, for substitution of any "or equal" material, process or article no later than thirty-five (35) days after award of the Contract. To facilitate the construction schedule and sequencing, some requests may need to be submitted before thirty-five (35) days after award of Contract. Provisions regarding submission of "or equal" requests shall not in any way authorize an extension of time for performance of this Contract. If a proposed "or equal" substitution request is rejected, Contractor shall be responsible for providing the specified material, process or article. The burden of proof as to the equality of any material, process or article shall rest with Contractor.

The City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted. Data required to substantiate requests for substitutions of an "or equal" material, process or article shall include a signed affidavit from Contractor stating that, and describing how, the substituted "or equal" material, process or article is equivalent to that specified in every way except as listed on the affidavit. Substantiating data shall include any and all illustrations, specifications, and other relevant data including catalog information which describes the requested substituted "or equal"

material, process or article, and substantiates that it is an "or equal" to the material, process or article. The substantiating data must also include information regarding the durability and lifecycle cost of the requested substituted "or equal" material, process or article. Failure to submit all the required substantiating data, including the signed affidavit, to the City in a timely fashion will result in the rejection of the proposed substitution.

Contractor shall bear all of the City's costs associated with the review of substitution requests. Contractor shall be responsible for all costs related to a substituted "or equal" material, process or article. Contractor is directed to the Special Conditions (if any) to review any findings made pursuant to Public Contract Code section 3400.

3.3 Period of Performance and Liquidated Damages. Contractor shall perform and complete all Work under this Contract as defined by written direction by the City, beginning the effective date of the Notice to Proceed ("Contract Time"). Contractor shall perform its Work in strict accordance with any completion schedule, construction schedule or project milestones developed by the City. Such schedules or milestones may be included as part of Exhibits "A" or "B" attached hereto, or may be provided separately in writing to Contractor. Contractor agrees that if such Work is not completed within the aforementioned Contract Time and/or pursuant to any such completion schedule, construction schedule or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged and agreed that the City will suffer damage. Pursuant to Government Code Section 53069.85, Contractor shall pay to the City as fixed and liquidated damages the sum of Five Hundred Dollars (\$500.00) per day for each and every calendar day of delay beyond the Contract Time or beyond any completion schedule, construction schedule or Project milestones established pursuant to the Contract.

3.4 Standard of Performance; Performance of Employees. Contractor shall perform all Work under this Contract in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Contractor represents and maintains that it is skilled in the professional calling necessary to perform the Work. Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them. Finally, Contractor represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Work, including any required business license, and that such licenses and approvals shall be maintained throughout the term of this Contract. As provided for in the indemnification provisions of this Contract, Contractor shall perform, at its own cost and expense and without reimbursement from the City, any work necessary to correct errors or omissions which are caused by Contractor's failure to comply with the standard of care provided for herein. Any employee who is determined by the City to be uncooperative, incompetent, a threat to the safety of persons or the Work, or any employee who fails or refuses to perform the Work in a manner acceptable to the City, shall be promptly removed from the Project by Contractor and shall not be re-employed on the Work.

3.5 Control and Payment of Subordinates; Contractual Relationship. City retains Contractor on an independent contractor basis and Contractor is not an employee of City. Any additional personnel performing the work governed by this Contract on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Contractor shall pay all wages, salaries, and other amounts due such personnel in connection with their performance under this Contract and as required by law. Contractor shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.6 City's Basic Obligation. City agrees to engage and does hereby engage Contractor as an independent contractor to furnish all materials and to perform all Work according to the terms and conditions herein contained for the sum set forth above. Except as otherwise provided in the Contract, the City shall pay to Contractor, as full consideration for the satisfactory performance by Contractor of the services and obligations required by this Contract, the below-referenced compensation in accordance with compensation provisions set forth in the Contract.

3.7 Compensation and Payment.

3.7.1 Amount of Compensation. As consideration for performance of the Work required herein, City agrees to pay Contractor the Total Contract Price of Seventy-Five Thousand Dollars (\$75,000.00) ("Total Contract Price") provided that such amount shall be subject to adjustment pursuant to the applicable terms of this Contract or written change orders approved and signed in advance by the City.

3.7.2 Payment of Compensation. If the Work is scheduled for completion in thirty (30) or less calendar days, City will arrange for payment of the Total Contract Price upon completion and approval by City of the Work. If the Work is scheduled for completion in more than thirty (30) calendar days, City will pay Contractor on a monthly basis as provided for herein. On or before the fifth (5th) day of each month, Contractor shall submit to the City an itemized application for payment in the format supplied by the City indicating the amount of Work completed since commencement of the Work or since the last progress payment. These applications shall be supported by evidence which is required by this Contract and such other documentation as the City may require. The Contractor shall certify that the Work for which payment is requested has been done and that the materials listed are stored where indicated. Contractor may be required to furnish a detailed schedule of values upon request of the City and in such detail and form as the City shall request, showing the quantities, unit prices, overhead, profit, and all other expenses involved in order to provide a basis for determining the amount of progress payments.

3.7.3 Prompt Payment. City shall review and pay all progress payment requests in accordance with the provisions set forth in Section 20104.50 of the California Public Contract Code. However, no progress payments will be made for Work not completed in accordance with this Contract. Contractor shall comply with all applicable laws, rules and regulations relating to the proper payment of its employees, subcontractors, suppliers or others.

3.7.4 Contract Retentions. From each approved progress estimate, five percent (5%) will be deducted and retained by the City, and the remainder will be paid to Contractor. All Contract retention shall be released and paid to Contractor and subcontractors pursuant to California Public Contract Code Section 7107.

3.7.5 Other Retentions. In addition to Contract retentions, the City may deduct from each progress payment an amount necessary to protect City from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the City in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract Price or within the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by City during the prosecution of the Work; (9) erroneous or false estimates by Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages as determined by the City, incurred by the City for which Contractor is liable under the Contract; and (11) any other sums which the City is entitled

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to recover from Contractor under the terms of the Contract or pursuant to state law, including Section 1727 of the California Labor Code. The failure by the City to deduct any of these sums from a progress payment shall not constitute a waiver of the City's right to such sums.

3.7.6 Substitutions for Contract Retentions. In accordance with California Public Contract Code Section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City, or with a state or federally chartered bank in California as the escrow agent, and thereafter the City shall then pay such monies to Contractor as they come due. Upon satisfactory completion of the Contract, the securities shall be returned to Contractor. For purposes of this Section and Section 22300 of the Public Contract Code, the term "satisfactory completion of the contract" shall mean the time the City has issued written final acceptance of the Work and filed a Notice of Completion as required by law and provisions of this Contract. Contractor shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon. The escrow agreement used for the purposes of this Section shall be in the form provided by the City.

3.7.7 Title to Work. As security for partial, progress, or other payments, title to Work for which such payments are made shall pass to the City at the time of payment. To the extent that title has not previously been vested in the City by reason of payments, full title shall pass to the City at delivery of the Work at the destination and time specified in this Contract. Such transferred title shall in each case be good, free and clear from any and all security interests, liens, or other encumbrances. Contractor promises and agrees that it will not pledge, hypothecate, or otherwise encumber the items in any manner that would result in any lien, security interest, charge, or claim upon or against said items. Such transfer of title shall not imply acceptance by the City, nor relieve Contractor from the responsibility to strictly comply with the Contract, and shall not relieve Contractor of responsibility for any loss of or damage to items.

3.7.8 Labor and Material Releases. Contractor shall furnish City with labor and material releases from all subcontractors performing work on, or furnishing materials for, the Work governed by this Contract prior to final payment by City.

3.7.9 Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720 et seq., and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Since the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and since the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Contract upon request. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Contractor and any subcontractor shall forfeit a penalty of up to \$200 per calendar day or portion thereof for each worker paid less than the prevailing wage rates.

3.7.10 Apprenticeable Crafts. When Contractor employs workmen in an apprenticeable craft or trade, Contractor shall comply with the provisions of Section 1777.5 of the California Labor Code with respect to the employment of properly registered apprentices upon

public works. The primary responsibility for compliance with said section for all apprenticeable occupations shall be with Contractor. The Contractor or any subcontractor that is determined by the Labor Commissioner to have knowingly violated Section 1777.5 shall forfeit as a civil penalty an amount not exceeding \$100 for each full calendar day of noncompliance, or such greater amount as provided by law.

3.7.11 Hours of Work. Contractor is advised that eight (8) hours labor constitutes a legal day's work. Pursuant to Section 1813 of the California Labor Code, Contractor shall forfeit a penalty of \$25.00 per worker for each day that each worker is permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week, except when payment for overtime is made at not less than one and one-half (1-1/2) times the basic rate for that worker.

3.7.12 Payroll Records. Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor in the manner provided in Labor Code section 1776. In the event of noncompliance with the requirements of this section, Contractor shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects such Contractor must comply with this section. Should noncompliance still be evident after such 10-day period, Contractor shall, as a penalty to City, forfeit not more than \$100.00 for each calendar day or portion thereof, for each worker, until strict compliance is effectuated. The amount of the forfeiture is to be determined by the Labor Commissioner. A contractor who is found to have violated the provisions of law regarding wages on Public Works with the intent to defraud shall be ineligible to bid on Public Works contracts for a period of one to three years as determined by the Labor Commissioner. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from progress payments then due. The responsibility for compliance with this section is on Contractor. The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

3.7.13 Contractor and Subcontractor Registration. Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work. Contractor is directed to review, fill out and execute the Public Works Contractor Registration Certification attached hereto as Exhibit "E" prior to contract execution. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

3.7.14 Labor Compliance; Stop Orders. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be the Contractor's sole responsibility to evaluate and pay the cost of complying with all labor compliance requirements under this Contract and applicable law. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of Work, including any delay, shall be Contractor's sole responsibility. Any delay

arising out of or resulting from such stop orders shall be considered Contractor caused delay subject to any applicable liquidated damages and shall not be compensable by the City. Contractor shall defend, indemnify and hold the City, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor.

3.8 Performance of Work; Jobsite Obligations.

3.8.1 Water Quality Management and Compliance.

3.8.1.1 Water Quality Management and Compliance. Contractor shall keep itself and all subcontractors, staff, and employees fully informed of and in compliance with all local, state and federal laws, rules and regulations that may impact, or be implicated by the performance of the Work including, without limitation, all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. §§ 1300); the California Porter-Cologne Water Quality Control Act (Cal Water Code §§ 13000-14950); local ordinances regulating discharges of storm water; and any and all regulations, policies, or permits issued pursuant to any such authority regulating the discharge of pollutants, as that term is used in the Porter-Cologne Water Quality Control Act, to any ground or surface water in the State.

3.8.1.2 Compliance with the Statewide Construction General Permit. Contractor shall comply with all conditions of the most recent iteration of the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, issued by the California State Water Resources Control Board ("Permit"). It shall be Contractor's sole responsibility to file a Notice of Intent and procure coverage under the Permit for all construction activity which results in the disturbance of more than one acre of total land area or which is part of a larger common area of development or sale. Prior to initiating work, Contractor shall be solely responsible for preparing and implementing a Storm Water Pollution Prevention Plan (SWPPP) as required by the Permit. Contractor shall be responsible for procuring, implementing and complying with the provisions of the Permit and the SWPPP, including the standard provisions, and monitoring and reporting requirements as required by the Permit. The Permit requires the SWPPP to be a "living document" that changes as necessary to meet the conditions and requirements of the job site as it progresses through different phases of construction and is subject to different weather conditions. It shall be Contractor's sole responsibility to update the SWPPP as necessary to address conditions at the project site.

3.8.1.3 Other Water Quality Rules Regulations and Policies. Contractor shall comply with the lawful requirements of any applicable municipality, drainage City, or local agency regarding discharges of storm water to separate storm drain systems or other watercourses under their jurisdiction, including applicable requirements in municipal storm water management programs.

3.8.1.4 Cost of Compliance. Storm, surface, nuisance, or other waters may be encountered at various times during construction of The Work. Therefore, the Contractor, by submitting a Bid, hereby acknowledges that it has investigated the risk arising from such waters, has prepared its Bid accordingly, and assumes any and all risks and liabilities arising therefrom.

3.8.1.5 Liability for Non-Compliance. Failure to comply with the Permit is a violation of federal and state law. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to defend, indemnify and hold harmless the City and its officials, officers, employees, volunteers and agents for any alleged violations. In addition, City

may seek damages from Contractor for any delay in completing the Work in accordance with the Contract, if such delay is caused by or related to Contractor's failure to comply with the Permit.

3.8.1.6 Reservation of Right to Defend. City reserves the right to defend any enforcement action brought against the City for Contractor's failure to comply with the Permit or any other relevant water quality law, regulation, or policy. Pursuant to the indemnification provisions of this Contract, Contractor hereby agrees to be bound by, and to reimburse the City for the costs (including the City's attorney's fees) associated with, any settlement reached between the City and the relevant enforcement entity.

3.8.1.7 Training. In addition to the standard of performance requirements set forth in paragraph 3.4, Contractor warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Work assigned to them without impacting water quality in violation of the laws, regulations and policies described in paragraph 3.8.1. Contractor further warrants that it, its employees and subcontractors will receive adequate training, as determined by City, regarding the requirements of the laws, regulations and policies described in paragraph 3.8.1 as they may relate to the Work provided under this Agreement. Upon request, City will provide the Contractor with a list of training programs that meet the requirements of this paragraph.

3.8.2 Safety. Contractor shall execute and maintain its work so as to avoid injury or damage to any person or property. Contractor shall comply with the requirements of the specifications relating to safety measures applicable in particular operations or kinds of work. In carrying out its Work, Contractor shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the Work and the conditions under which the Work is to be performed. Safety precautions as applicable shall include, but shall not be limited to, adequate life protection and lifesaving equipment; adequate illumination for underground and night operations; instructions in accident prevention for all employees, such as machinery guards, safe walkways, scaffolds, ladders, bridges, gang planks, confined space procedures, trenching and shoring, fall protection and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and adequate facilities for the proper inspection and maintenance of all safety measures. Furthermore, Contractor shall prominently display the names and telephone numbers of at least two medical doctors practicing in the vicinity of the Project, as well as the telephone number of the local ambulance service, adjacent to all telephones at the Project site.

3.8.3 Laws and Regulations. Contractor shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Contract or the Work, including all Cal/OSHA requirements, and shall give all notices required by law. Contractor shall be liable for all violations of such laws and regulations in connection with Work. If Contractor observes that the drawings or specifications are at variance with any law, rule or regulation, it shall promptly notify the City in writing. Any necessary changes shall be made by written change order. If Contractor performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Contractor shall be solely responsible for all costs arising therefrom. City is a public entity of the State of California subject to certain provisions of the Health & Safety Code, Government Code, Public Contract Code, and Labor Code of the State. It is stipulated and agreed that all provisions of the law applicable to the public contracts of a municipality are a part of this Contract to the same extent as though set forth herein and will be complied with. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless, pursuant to the

indemnification provisions of this Contract, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.8.4 Permits and Licenses. Contractor shall be responsible for securing City permits and licenses necessary to perform the Work described herein, including, but not limited to, any required business license. While Contractor will not be charged a fee for any City permits, Contractor shall pay the City's business license fee, if any. Any ineligible contractor or subcontractor pursuant to Labor Code Sections 1777.1 and 1777.7 may not perform work on this Project.

3.8.5 Trenching Work. If the Total Contract Price exceeds \$25,000 and if the Work governed by this Contract entails excavation of any trench or trenches five (5) feet or more in depth, Contractor shall comply with all applicable provisions of the California Labor Code, including Section 6705. To this end, Contractor shall submit for City's review and approval 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. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

3.8.6 Hazardous Materials and Differing Conditions. As required by California Public Contract Code Section 7104, if this Contract involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor shall promptly, and prior to disturbance of any conditions, notify City of: (1) any material discovered in excavation that Contractor believes to be a hazardous waste that is required to be removed to a Class I, Class II or Class III disposal site; (2) subsurface or latent physical conditions at the site differing from those indicated by City; and (3) unknown physical conditions of an unusual nature at the site, significantly different from those ordinarily encountered in such contract work. Upon notification, City shall promptly investigate the conditions to determine whether a change order is appropriate. In the event of a dispute, Contractor shall not be excused from any scheduled completion date and shall proceed with all Work to be performed under the Contract, but shall retain all rights provided by the Contract or by law for making protests and resolving the dispute.

3.8.7 Underground Utility Facilities. To the extent required by Section 4215 of the California Government Code, City shall compensate Contractor for the costs of: (1) locating and repairing damage to underground utility facilities not caused by the failure of Contractor to exercise reasonable care; (2) removing or relocating underground utility facilities not indicated in the construction drawings; and (3) equipment necessarily idled during such work. Contractor shall not be assessed liquidated damages for delay caused by failure of City to provide for removal or relocation of such utility facilities.

3.8.8 Air Quality. Contractor must fully comply with all applicable laws, rules and regulations in furnishing or using equipment and/or providing services, including, but not limited to, emissions limits and permitting requirements imposed by the California Air Resources Board (CARB). Although CARB limits and requirements are more broad, Contractor shall specifically be aware of their application to "portable equipment", which definition is considered by CARB to include any item of equipment with a fuel-powered engine. Contractor shall indemnify City against any fines or penalties imposed by CARB, or any other governmental or regulatory agency for violations of applicable laws, rules and/or regulations by Contractor, its subcontractors, or others for whom Contractor is responsible under its indemnity obligations provided for in this Agreement.

3.8.9 State Recycling Mandates. Contractor shall comply with State Recycling Mandates. Any recyclable materials/debris collected by the contractor that can be feasibly diverted via reuse or recycling must be hauled by the appropriate handler for reuse or recycling.

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3.9 Completion of Work. When Contractor determines that it has completed the Work required herein, Contractor shall so notify City in writing and shall furnish all labor and material releases required by this Contract. City shall thereupon inspect the Work. If the Work is not acceptable to the City, the City shall indicate to Contractor in writing the specific portions or items of Work which are unsatisfactory or incomplete. Once Contractor determines that it has completed the incomplete or unsatisfactory Work, Contractor may request a reinspection by the City. Once the Work is acceptable to City, City shall pay to Contractor the Total Contract Price remaining to be paid, less any amount which City may be authorized or directed by law to retain. Payment of retention proceeds due to Contractor shall be made in accordance with Section 7107 of the California Public Contract Code.

3.10 Claims; Government Code Claim Compliance.

3.10.1 Intent. Effective January 1, 1991, 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. Effective January 1, 2017, 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.

3.10.2 Claims. For purposes of this Section, "Claim" means a separate demand by the Contractor, after a change order duly requested in accordance with the terms of this Contract has been denied by the City, 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, or (C) an amount the payment of which is disputed by the City. A "Claim" does not include any demand for payment for which the Contractor has failed to provide notice, request a change order, or otherwise failed to follow any procedures contained in the Contract Documents. Claims governed by this Section may not be filed unless and until the Contractor completes all procedures for giving notice of delay or change and for the requesting of a time extension or change order, including but not necessarily limited to the change order procedures contained herein, and Contractor's request for a change has been denied in whole or in part. Claims governed by this Section must be filed no later than fourteen (14) days after a request for change has been denied in whole or in part or after any other event giving rise to the Claim. The Claim shall be submitted in writing to the City and shall include on its first page the following in 16 point capital font: "THIS IS A CLAIM." Furthermore, the claim shall include the documents necessary to substantiate the claim. Nothing in this Section is intended to extend the time limit or supersede notice requirements otherwise provided by 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.

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

3.10.3.1 Summary of claim merit and price, reference Contract Document provisions pursuant to which the claim is made

3.10.3.2 List of documents relating to claim:

(A) Specifications

(B) Drawings

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(C) Clarifications (Requests for Information)

(D) Schedules

(E) Other

3.10.3.3 Chronology of events and correspondence

3.10.3.4 Analysis of claim merit

3.10.3.5 Analysis of claim cost

3.10.3.6 Time impact analysis in CPM format

3.10.3.7 If Contractor's claim is based in whole or in part on an allegation of errors or omissions in the Drawings or Specifications for the Project, Contractor shall provide a summary of the percentage of the claim subject to design errors or omissions and shall obtain a certificate of merit in support of the claim of design errors and omissions.

3.10.3.8 Cover letter and certification of validity of the claim, including any claims from subcontractors of any tier, in accordance with Government Code section 12650 *et seq.*

3.10.4 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 public entity issues its written statement.

3.10.4.1 If City needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body 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, City shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.

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

3.10.4.3 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.

3.10.5 Meet and Confer. If the Contractor disputes City's written response, or City fails to respond within the time prescribed, the Contractor may so notify City, in writing, either within 15 days of receipt of City's response or within 15 days of 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, City shall schedule a meet and confer conference within 30 days for settlement of the dispute.

3.10.6 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, 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 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 City and the Contractor sharing the associated costs equally. 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.

3.10.6.1 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.

3.10.6.2 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.

3.10.6.3 Unless otherwise agreed to by City and the Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

3.10.6.4 The mediation shall be held no earlier than the date the Contractor completes the Work or the date that the Contractor last performs Work, whichever is earlier. All unresolved claims shall be considered jointly in a single mediation, unless a new unrelated claim arises after mediation is completed.

3.10.7 Procedures After Mediation. If following the mediation, the claim or any portion remains in dispute, the Contractor must file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, 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 pursuant to subdivision (a) until the time the claim is denied, including any period of time utilized by the meet and confer conference or mediation.

3.10.8 Civil Actions. The following procedures are established for all civil actions filed to resolve claims subject to this Section:

3.10.8.1 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 terms of these procedures.. 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.

3.10.8.2 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 1114.11 of that code. The Civil Discovery Act of 1986 (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 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.

3.10.8.3 In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

3.10.9 Government Code Claims. In addition to any and all contract requirements pertaining to notices of and requests for compensation or payment for extra work, disputed work, claims and/or changed conditions, Contractor must comply with the claim procedures set forth in Government Code sections 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, claims, and/or changed conditions have been followed by Contractor. If no such Government Code claim is submitted, or if any prerequisite contractual requirements are not otherwise satisfied as specified herein, Contractor shall be barred from bringing and maintaining a valid lawsuit against the City. A Government Code claim must be filed no earlier than the date the work is completed or the date the Contractor last performs work on the Project, whichever occurs first. A Government Code claim shall be inclusive of all unresolved claims unless a new unrelated claim arises after the Government Code claim is submitted.

3.10.10 Non-Waiver. 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. City's failure to respond shall not waive City's rights to any subsequent procedures for the resolution of disputed claims.

3.11 Loss and Damage. Except as may otherwise be limited by law, Contractor shall be responsible for all loss and damage which may arise out of the nature of the Work agreed to herein, or from the action of the elements, or from any unforeseen difficulties which may arise or be encountered in the prosecution of the Work until the same is fully completed and accepted by City. In the event of damage proximately caused by an Act of God, as defined by Section 7105 of the Public Contract Code, the City may terminate this Contract pursuant to Section 3.17.3; provided, however, that the City needs to provide Contractor with only one (1) day advanced written notice.

3.12 Indemnification.

3.12.1 Scope of Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the City, its officials, employees, agents and authorized volunteers free and harmless from any and all claims, demands, causes of action, suits, actions, proceedings, costs, expenses, liability, judgments, awards, decrees, settlements, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, (collectively, "Claims") in any manner arising out of, pertaining to, or incident to any alleged acts, errors or omissions, or willful misconduct of Contractor, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Contractor's services, the Project or this Agreement, including without limitation the payment of all consequential damages, expert witness fees and attorneys' fees and other related costs and

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expenses. Notwithstanding the foregoing, to the extent required by Civil Code section 2782, Contractor's indemnity obligation shall not apply to liability for damages for death or bodily injury to persons, injury to property, or any other loss, damage or expense arising from the sole or active negligence or willful misconduct of the City or the City's agents, servants, or independent contractors who are directly responsible to the City, or for defects in design furnished by those persons.

3.12.2 Additional Indemnity Obligations. Contractor shall defend, with counsel of City's choosing and at Contractor's own cost, expense and risk, any and all Claims covered by this section that may be brought or instituted against City or its officials, employees, agents and authorized volunteers. In addition, Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Contractor shall also reimburse City for the cost of any settlement paid by City or its officials, employees, agents and authorized volunteers as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Contractor shall reimburse City and its officials, employees, agents and authorized volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, employees, agents and authorized volunteers.

3.13 Insurance.

3.13.1 Time for Compliance. Contractor shall not commence Work under this Contract until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Contractor shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section. Failure to provide and maintain all required insurance shall be grounds for the City to terminate this Contract for cause.

3.13.2 Minimum Requirements. Contractor shall, at its expense, procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by Contractor, its agents, representatives, employees or subcontractors. Contractor shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Contract. Such insurance shall meet at least the following minimum levels of coverage:

3.13.2.1 Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01) OR Insurance Services Office Owners and Contractors Protective Liability Coverage Form (CG 00 09 11 88) (coverage for operations of designated contractor); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 00 01, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Policies shall not contain exclusions contrary to this Contract.

3.13.2.2 Minimum Limits of Insurance. Contractor shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence and \$4,000,000 aggregate for bodily injury, personal injury and property damage; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' compensation limits as required by the Labor Code of the State of California.

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Employer's Liability limits of \$1,000,000 each accident, policy limit bodily injury or disease, and each employee bodily injury or disease. Defense costs shall be available in addition to the limits. Notwithstanding the minimum limits specified herein, any available coverage shall be provided to the parties required to be named as additional insureds pursuant to this Contract.

3.13.3 Insurance Endorsements. The insurance policies shall contain the following provisions, or Contractor shall provide endorsements (amendments) on forms supplied or approved by the City to add the following provisions to the insurance policies:

3.13.3.1 General Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status using ISO endorsements CG20 10 10 01 plus CG20 37 10 01, or endorsements providing the exact same coverage, with respect to the Work or operations performed by or on behalf of Contractor, including materials, parts or equipment furnished in connection with such work; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it.

3.13.3.2 Automobile Liability. (1) Such policy shall give the City, its officials, employees, agents and authorized volunteers additional insured status with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by Contractor or for which Contractor is responsible; (2) all policies shall waive or shall permit Contractor to waive all rights of subrogation which may be obtained by the Contractor or any insurer by virtue of payment of any loss or any coverage provided to any person named as an additional insured pursuant to this Contract, and Contractor agrees to waive all such rights of subrogation; and (3) the insurance coverage shall be primary insurance as respects the City, its officials, employees, agents and authorized volunteers, or if excess, shall stand in an unbroken chain of coverage excess of Contractor's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its officials, employees, agents and authorized volunteers shall be excess of Contractor's insurance and shall not be called upon to contribute with it in any way.

3.13.3.3 Workers' Compensation and Employer's Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officials, employees, agents and authorized volunteers for losses paid under the terms of the insurance policy which arise from work performed by Contractor.

3.13.3.4 All Coverages. Each insurance policy required by this Contract shall be endorsed to state that: (1) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City; and (2) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its officials, employees, agents and authorized volunteers.

3.13.4 Separation of Insureds: No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition,

such insurance shall not contain any special limitations on the scope of protection afforded to the City, its officials, employees, agents and authorized volunteers.

3.13.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Contractor shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and authorized volunteers; or (2) the Contractor shall procure a bond or other financial guarantee acceptable to the City guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.13.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VII, licensed to do business in California, and satisfactory to the City. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

3.13.7 Verification of Coverage. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Contract on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13.8 Subcontractors. All subcontractors shall meet the requirements of this Section before commencing Work. Contractor shall furnish separate certificates and endorsements for each subcontractor. Subcontractor policies of General Liability insurance shall name the City, its officials, employees, agents and authorized volunteers as additional insureds using form ISO 20 38 04 13 or endorsements providing the exact same coverage. All coverages for subcontractors shall be subject to all of the requirements stated herein except as otherwise agreed to by the City in writing.

3.13.9 Reporting of Claims. Contractor shall report to the City, in addition to Contractor's insurer, any and all insurance claims submitted by Contractor in connection with the Work under this Contract.

3.14 Bond Requirements.

3.14.1 Payment Bond. If required by law or otherwise specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Payment Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.2 Performance Bond. If specifically requested by City in Exhibit "C" attached hereto and incorporated herein by reference, Contractor shall execute and provide to City concurrently with this Contract a Performance Bond in an amount required by the City and in a form provided or approved by the City. If such bond is required, no payment will be made to Contractor until the bond has been received and approved by the City.

3.14.3 Bond Provisions. Should, in City's sole opinion, any bond become insufficient or any surety be found to be unsatisfactory, Contractor shall renew or replace the effected bond within (ten) 10 days of receiving notice from City. In the event the surety or

Contractor intends to reduce or cancel any required bond, at least thirty (30) days prior written notice shall be given to the City, and Contractor shall post acceptable replacement bonds at least ten (10) days prior to expiration of the original bonds. No further payments shall be deemed due or will be made under this Contract until any replacement bonds required by this Section are accepted by the City. To the extent, if any, that the Total Contract Price is increased in accordance with the Contract, Contractor shall, upon request of the City, cause the amount of the bond to be increased accordingly and shall promptly deliver satisfactory evidence of such increase to the City. If Contractor fails to furnish any required bond, the City may terminate the Contract for cause.

3.14.4 Surety Qualifications. Only bonds executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, shall be accepted. If a California-admitted surety insurer issuing bonds does not meet these requirements, the insurer will be considered qualified if it is in conformance with Section 995.660 of the California Code of Civil Procedure, and proof of such is provided to the City.

3.15 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 sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair 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 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.

3.16 Employee/Labor Certifications.

3.16.1 Contractor's Labor Certification. By its signature hereunder, Contractor certifies that he is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Work. A certification form for this purpose, which is attached to this Contract as Exhibit "D" and incorporated herein by reference, shall be executed simultaneously with this Contract.

3.16.2 Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

3.16.3 Verification of Employment Eligibility. By executing this Contract, Contractor verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subcontractors and sub-subcontractors to comply with the same.

3.17 General Provisions.

3.17.1 City's Representative. The City hereby designates the General Manager, or his or her designee, to act as its representative for the performance of this Contract ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Contractor shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.17.2 Contractor's Representative. Before starting the Work, Contractor shall submit in writing the name, qualifications and experience of its proposed representative who shall be subject to the review and approval of the City ("Contractor's Representative"). Following approval by the City, Contractor's Representative shall have full authority to represent and act on behalf of Contractor for all purposes under this Contract. Contractor's Representative shall supervise and direct the Work, using his best skill and attention, and shall be responsible for all construction means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Work under this Contract. Contractor's Representative shall devote full time to the Project and either he or his designee, who shall be acceptable to the City, shall be present at the Work site at all times that any Work is in progress and at any time that any employee or subcontractor of Contractor is present at the Work site. Arrangements for responsible supervision, acceptable to the City, shall be made for emergency Work which may be required. Should Contractor desire to change its Contractor's Representative, Contractor shall provide the information specified above and obtain the City's written approval.

3.17.3 Termination. This Contract may be terminated by City at any time, either with or without cause, by giving Contractor three (3) days advance written notice. In the event of termination by City for any reason other than the fault of Contractor, City shall pay Contractor for all Work performed up to that time as provided herein. In the event of breach of the Contract by Contractor, City may terminate the Contract immediately without notice, may reduce payment to Contractor in the amount necessary to offset City's resulting damages, and may pursue any other available recourse against Contractor. Contractor may not terminate this Contract except for cause. In the event this Contract is terminated in whole or in part as provided, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated. Further, if this Contract is terminated as provided, City may require Contractor to provide all finished or unfinished documents, data, diagrams, drawings, materials or other matter prepared or built by Contractor in connection with its performance of this Contract.

3.17.4 Contract Interpretation. Should any question arise regarding the meaning or import of any of the provisions of this Contract or written or oral instructions from City, the matter shall be referred to City's Representative, whose decision shall be binding upon Contractor.

3.17.5 Anti-Trust Claims. This provision shall be operative if this Contract is applicable to California Public Contract Code Section 7103.5. In entering into this Contract to supply goods, services or materials, Contractor hereby 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. Section 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 Contract. This assignment shall be made and become effective at the time the City tender final payment to Contractor, without further acknowledgment by the Parties.

3.17.6 Notices. All notices hereunder and communications regarding interpretation of the terms of the Contract or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

CONTRACTOR:

Taylor Bailey, Inc.
355 La Fata St., Ste. E
St. Helena, CA 94574
Attn: Bob Covey, Owner

CITY:

City of St. Helena
1572 Railroad Avenue
St. Helena, CA 94574
Attn: Mark T. Prestwich, City Manager

Any notice so given shall be considered received by the other Party three (3) days after deposit in the U.S. Mail as stated above and addressed to the Party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.17.7 Time of Essence. Time is of the essence in the performance of this Contract.

3.17.8 Assignment Forbidden. Contractor shall not, either voluntarily or by action of law, assign or transfer this Contract or any obligation, right, title or interest assumed by Contractor herein without the prior written consent of City. If Contractor attempts an assignment or transfer of this Contract or any obligation, right, title or interest herein, City may, at its option, terminate and revoke the Contract and shall thereupon be relieved from any and all obligations to Contractor or its assignee or transferee.

3.17.9 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.17.10 Laws, Venue, and Attorneys' Fees. This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to

interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of Napa, State of California.

3.17.11 Counterparts. This Contract may be executed in counterparts, each of which shall constitute an original.

3.17.12 Successors. The Parties do for themselves, their heirs, executors, administrators, successors, and assigns agree to the full performance of all of the provisions contained in this Contract.

3.17.13 [Reserved]

3.17.14 Solicitation. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Contract. For breach or violation of this warranty, City shall have the right to terminate this Contract without liability.

3.17.15 Conflict of Interest. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Contract, no official, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Contract, or obtain any present or anticipated material benefit arising therefrom. In addition, Contractor agrees to file, or to cause its employees or subcontractors to file, a Statement of Economic Interest with the City's Filing Officer as required under state law in the performance of the Work.

3.17.16 Certification of License.

3.17.16.1 Contractor certifies that as of the date of execution of this Contract, Contractor has a current contractor's license of the classification indicated below under Contractor's signature.

3.17.16.2 Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

3.17.17 Authority to Enter Contract. Each Party warrants that the individuals who have signed this Contract have the legal power, right and authority to make this Contract and bind each respective Party.

3.17.18 Entire Contract; Modification. This Contract contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior

negotiations, understandings or agreements. This Contract may only be modified by a writing signed by both Parties.

3.17.19 Non-Waiver. None of the provisions of this Agreement shall be considered waived by either party, unless such waiver is specifically specified in writing.

3.17.20 City's Right to Employ Other Contractors. City reserves right to employ other contractors in connection with this Project or other projects.

[SIGNATURES ON NEXT PAGE]

**SIGNATURE PAGE FOR CONSTRUCTION CONTRACT
BETWEEN THE CITY OF ST. HELENA
AND TAYLOR BAILEY, INC.**

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the 1st day of October, 2020.

CITY OF ST. HELENA

Taylor Bailey, Inc.

By: _____
Mark T. Prestwich
City Manager

By: Robert C. Covey
Its: Taylor Bailey / owner
Printed Name: Robert C. Covey

ATTEST:

By: _____
Cindy Tzafopoulos
City Clerk

APPROVED AS TO FORM:

By: _____
Ethan Walsh
City Attorney

Project Code: CIP No. E21-03

EXHIBIT "A"**SERVICES / SCHEDULE**Scope

On September 27, 2020, the City of St. Helena proclaimed the existence of a local emergency due to the rapid and continuing progression of the Glass Fire incident which is affecting Napa and Sonoma counties.

The City of St. Helena has an urgent need to provide water services to its residents to the Meadowood Water Tanks burning in the Glass Fire Incident and are no longer functional. The City of St. Helena is a full-service City which includes providing water and wastewater treatment to the City of St. Helena as well as the Meadowood Resort and the Madrone Knoll neighborhood.

The rapid moving fire has had, and continues to have, a direct impact on multiple critical sites of the water system throughout the City and its surrounding communities. The Meadowood tanks are a critical asset to the City as it supplies water to the Meadowood Resort and 37 customers in the Madrone Knoll neighborhood. On September 28, 2020, at 11:30am, City staff received visual confirmation that the three Meadowood Water Tanks had been burned in the Glass Fire Incident and were no longer functional for City water operations. There will be no City potable water available in this area until a temporary solution has been implemented. The City of St Helena is actively working on both a temporary and permanent solution for providing safe potable water to those directly impacted by the loss of the old tanks.

The Meadowood Tank Site – 900 Meadowood Lane. The Meadowood Water Tanks serve Meadowood Resort and residents in the Madrone Knoll area. These tanks are the only source of water for this area. On September 28, 2020, at 11:30 a.m., City staff received visual confirmation that the three Meadowood Water Tanks had been burned in the Glass Fire Incident and were no longer functional for City water operations. City staff and consultant are actively working on both a temporary and permanent solution for replacement of these tanks to ensure customers can receive critical water services in this area.

Description of Work

Taylor Bailey, Inc. (contractor) will assist with emergency fire debris cleanup and removal. Debris can consist of down trees, materials from the tank site including redwood planks and water appurtenances and burnt Meadowood water tank removal. Contractor will also assist with the placement and installation of temporary water tanks.

Location and Limits of Work

900 Meadowood Lane

- Meadowood tank site and trunk line locations.

Estimated Time of Completion

Work is to commence as early as Monday, October 5, 2020 (tentative), and will remain in effect until debris removal, burnt Meadowood water tank removal, and placement of temporary water tanks work is complete.

Emergency work associated with fire debris removal is subject to highly changeable field conditions therefore this project will be based on time and materials associated with written task

orders directed by the City and based on Caltrans Labor Surcharge and Equipment Rates effective April 1, 2020 through March 31, 2021 and available here:

[https://dot.ca.gov/-/media/dot-media/programs/construction/documents/equipment-rental-rates-and-labor-surcharge/book 2020. pdf](https://dot.ca.gov/-/media/dot-media/programs/construction/documents/equipment-rental-rates-and-labor-surcharge/book%202020.pdf)

EXHIBIT "B"

PLANS AND SPECIFICATIONS

The area in which the emergency work will occur is in an evacuation and fire zone for the Glass Fire Incident therefore plans and specifications other than already specified or via change order are not applicable.



EXHIBIT "C"**SPECIAL CONDITIONS****ARTICLE 1. BONDS**

Within ten (10) calendar days from the date the Contractor is notified of award of the Contract, the Contractor shall deliver to the City four identical counterparts of the Performance Bond and Payment Bond on the forms supplied by the City and included as Exhibit "F" to the Contract. Failure to do so may, in the sole discretion of City, result in the forfeiture of Contractor's bid security. The surety supplying the bond must be an admitted surety insurer, as defined in Code of Civil Procedure Section 995.120, authorized to do business as such in the State of California and satisfactory to the City. The Performance Bond and the Payment Bond shall be for one hundred percent (100%) of the Total Contract Price.

EXHIBIT "D"

CERTIFICATION
LABOR CODE - SECTION 1861

I, the undersigned Contractor, am aware of the provisions of Section 3700, et seq., of the California Labor Code which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and I, the undersigned Contractor, agree to and will comply with such provisions before commencing the performance of the Work on this Contract.

Taylor Bailey, Inc.

By: Robert C. Covey
Signature

Robert C. Covey
Name (Print)

owner
Title (Print)

EXHIBIT "E"

PUBLIC WORKS CONTRACTOR REGISTRATION CERTIFICATION

Pursuant to Labor Code sections 1725.5 and 1771.1, all contractors and subcontractors that wish to bid on, be listed in a bid proposal, or enter into a contract to perform public work must be registered with the Department of Industrial Relations. See <http://www.dir.ca.gov/Public-Works/PublicWorks.html> for additional information.

No bid will be accepted nor any contract entered into without proof of the contractor's and subcontractors' current registration with the Department of Industrial Relations to perform public work.

Contractor hereby certifies that it is aware of the registration requirements set forth in Labor Code sections 1725.5 and 1771.1 and is currently registered as a contractor with the Department of Industrial Relations.¹

Name of Contractor: Taylor Bailey Inc

DIR Registration Number: _____

DIR Registration Expiration: _____

Small Project Exemption: _____ Yes or _____ No

Unless Contractor is exempt pursuant to the small project exemption, Contractor further acknowledges:

- Contractor shall maintain a current DIR registration for the duration of the project.
- Contractor shall include the requirements of Labor Code sections 1725.5 and 1771.1 in its contract with subcontractors and ensure that all subcontractors are registered at the time of bid opening and maintain registration status for the duration of the project.
- Failure to submit this form or comply with any of the above requirements may result in a finding that the bid is non-responsive.

Name of Contractor Taylor Bailey Inc

Signature Robert C. Covey

Name and Title Robert C. Covey / owner

Dated Oct 2 2020

¹ If the Project is exempt from the contractor registration requirements pursuant to the small project exemption under Labor Code Sections 1725.5 and 1771.1, please mark "Yes" in response to "Small Project Exemption."

EXHIBIT "F"
PAYMENT AND PERFORMANCE BONDS



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: CONSENT ITEMS

Subject: Consideration and proposed adoption of a Resolution approving an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C20-06 Emergency Back-up Power an amount not-to-exceed \$314,544.97.

CEQA Determination: Exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities

Prepared By: Erica Ahmann Smithies, Public Works Director and City Engineer

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

Following the 2017 October Wildfire Disaster, the City of St. Helena identified risks that were posed against the City during the disaster. One risk identified is that in the event of a disaster, or a PG&E Public Safety Power Shutoff (PSPS), the City does not have back-up power to several critical City facilities that provide essential services to first responders and the citizens of St. Helena. Based on this risk to the City, it was determined it was essential to provide a permanent source of back-up power generation to various facilities to minimize the impacts disasters may have on St. Helena.

The Federal 2017 October Wildfire Disaster declaration opened the opportunity to compete for Hazard Mitigation Grant Program (HMGP) funding. In July 2018, City staff submitted an application requesting a designated fixed generator for the Library and three generators to serve three utility locations: Flood Control Levee Site, Stonebridge Wells, and the Madrone Knoll Pump Station.

On November 12, 2019, the City was notified the City of St. Helena was approved for HMGP funds for these generators. The total eligible costs are \$647,189, with up to \$485,391.75, or 75%, of the funding coming from HMGP funds.

On December 10, 2019, City Council accepted award of the generator grant and approved a budget for CIP Project No. C20-06 Emergency Back-up Power.

DISCUSSION

This project will upgrade four existing City facilities with back-up power generation capabilities and will include the purchase of one portable generator and three fixed-position generators. The locations are as follows:

1. Portable Generator - will be located at the rural Madrone Knoll Pump Station and will only be moved during times of maintenance at the facility due to site constraints.
2. Fixed-position Generator - Stonebridge Wells
3. Fixed-position Generator - Flood Control Levee Site
4. Fixed-position Generator - Library

Securing generators for the Madrone Knoll Pump Station, Stonebridge Wells, and Flood Control Site will ensure fully operational utility and flood control during natural disasters and/or power outages that are otherwise out of the control of the City and its residents. Having a fixed generator at the City Library will provide a fully functional location for the community to gather for disaster related information, safety from potentially dangerous conditions, and support charging stations.

The bidding requirements of St. Helena Municipal Code (SHMC) Section 3.04.100 shall not apply to the purchasing of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared by and processed through another public, local, state, or federal governmental agency. If it is determined to be in the best interest of the City, the purchasing officer is authorized to “piggy-back” onto or join into an existing written purchase contract, which contract was obtained within the last 12 months through a competitive bidding process prepared by and awarded by another public, local, state or federal government agency. However, City Council approval is required prior to and for the joining of a “piggy-back” purchase or cooperative purchase for a purchase greater than \$25,000.00.

On September 30, 2020, Gonneville, Inc. of San Clemente and their authorized installer, CD and Power of Martinez, visited all City locations still needing back-up power during power outages. Gonneville, Inc. has had a multiple award schedule contract that includes the purchase and installation of generators with the federal General Services Administration (GSA) since June 25, 2001 with a current expiration date of June 24, 2021. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020. Gonneville has also provided a sole source letter stating that CD and Power is the only authorized installer for their equipment under their GSA contract and bidding the project separately would potentially compromise the equipment warranty.

Based on the contract award with GSA, and in accordance with SHMC 3.04.150 (Cooperative purchasing with other agencies), staff is recommending the City award an

agreement with Gonneville, Inc. to purchase the four generators. The lead time for generator manufacture can take 8-10 weeks while permitting and onsite construction can take place within that timeframe in order to be ready for the delivery and installation. In addition, staff is recommending that City Council support the sole source finding and award the construction contract to CD and Power in order to install the generators and ancillary equipment at the four locations. The construction contract will be brought to City Council at a later date for recommended approval.

The City currently has until April 12, 2021, to complete the project and expend the grant funding. However, the City has inquired on a grant extension due to Covid-19 and the two wildfires that have impacted progress on the project earlier this year.

FISCAL IMPACT

The approved budget for CIP Project No. C20-06 is \$647,189, resulting in up to \$485,391.75 in FEMA HMGP grant funds to provide back-up generators to four critical City facilities. The grant will fund 75% of the total project cost leaving an estimated local match of \$161,797. The FY 2018-19 budget included, and has encumbered, \$137,600 in funding to be used towards the required 25%. If additional funds are necessary, funds are available in the Equipment Replacement Fund which is estimated to have an FY 2020-21 ending fund balance of \$175,000.

The proposal from Gonneville, Inc. is for an amount of \$299,544.97 and includes the purchase of four generators, ancillary equipment detailed in the proposal, delivery, and sales tax on equipment. In the event that revisions to taxes, permitting, delivery, and/or additional ancillary equipment are needed, it is recommended that an additional \$15,000 for contingency is added to the contract amount for a total not to exceed agreement of \$314,544.97. The additional contingency funds would need to be substantiated and agreed upon in writing by the Director of Public Works prior to invoicing.

If the project is completed under budget, the remaining local funds will be dispersed back into their respective fund balance.

RECOMMENDED ACTION

Adopt the Resolution approving an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C20-06 Emergency Back-up Power in an amount not-to-exceed \$314,544.97.

ATTACHMENTS

[Attachment 1 C20-06 Resolution Gonneville](#)

[Attachment 2 2021 CIP Budget for C20-06](#)

[Attachment 3 GSA Schedule No. GS-07F-0251L GONNEVILLE](#)

[Attachment 4 GSA Advantage Excerpts for Generators](#)

[Attachment 5 CIP C20-06 Gonneville Quotes w out sales tax](#)

[Attachment 6 Gonneville Authorized Installer Letter](#)

[Equipment Purchase Agreement_Gonneville_DRAFT](#)

CITY OF ST. HELENA

RESOLUTION No. 2020-

Resolution approving award of an Equipment Purchase Agreement with Gonneville, Inc. for the CIP Project No. C20-06 Emergency Back-up Power for an amount not-to-exceed \$314,544.97.

RECITALS

- A. City staff successfully applied for a FEMA Hazard Mitigation Grant Program (HMGP) through Cal OES and was awarded \$485,391.75 toward the purchase and installation of four emergency back-up power generators for the Library, Madrone Knoll Pump Station, Stonebridge Wells, and Flood Control Levee Sites ("Sites"); and
- B. The HMGP grant will fund a project that includes design, inspection, generator procurement, and installation with automatic transfer switches for all four Sites; and
- C. City staff researched generator companies that provide generators and ancillary equipment and Gonneville, Inc. was the most reasonably priced, is located within California, will meet the needs of the City, and was very responsive to the City's request; and
- D. Gonneville, Inc., offers its generators through the California Multiple Award Schedule and federal General Services Administration ("GSA") multiple award schedule programs – Gonneville, Inc.'s federal GSA listing will not expire until June 24, 2021; and
- E. In accordance with St. Helena Municipal Code Section 3.04.150, the bidding requirements of Section 3.04.100 shall not apply to the purchase of any equipment or supplies which the purchasing officer decides to obtain through a cooperative competitive bidding procedure prepared and processed through another public, local, state, or federal agency; and
- F. The current GSA award pricing schedule, GS-07F-0251L, was updated on February 2020; and
- G. In accordance with St. Helena Municipal Code Section 3.04.150, staff is recommending the City award an equipment purchase agreement to Gonneville, Inc. in reliance on GSA schedule GS-07F-0251L to purchase four generators for CIP Project No. C20-06 Emergency Back-up Power in the amount not-to-exceed \$314,544.97.

RESOLUTION

The City Council of the City of St. Helena hereby resolves as follows:

1. The Recitals set forth above are true and correct and are incorporated herein; and
2. The adoption of this resolution is exempt from the requirements of CEQA pursuant to Section 15301, Class 1, which exempts the operation, leasing, or minor alteration of existing facilities; and
3. Based on the City's above described review and St. Helena Municipal Code Section 3.04.150, the City Council hereby approves award of an Equipment Purchase Agreement to Gonnevill, Inc. for the CIP Project No. C20-06 Emergency Back-up Power for an amount not-to-exceed \$314,544.97; and
4. This Resolution shall take effect immediately upon adoption.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020 by the following vote:

Mayor Ellsworth: _____
Vice Mayor Dohring: _____
Councilmember Koberstein: _____
Councilmember Chouteau: _____
Councilmember Knudsen: _____

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzafopoulos, City Clerk

Emergency Back-Up Power

Project No: 0110-C20-06

Category: Civic

Project Location: Library, Madrone Knoll Pump Station, Stonebridge Wells, and Flood Control Levee Site



PROJECT PURPOSE & DESCRIPTION: Provide emergency back-up power to four existing City facilities with the use of one portable generator at the Madrone Knoll Pump Station and three fixed-position generators at the following locations: Library, Stonebridge Wells, and the Flood Control Levee Site.

NOTES:

EXPENDITURE ACCOUNTS:

Fund: 733 **Dept:** 5010

EXPENDITURES								PROJECT TOTAL
	Total YTD	Rollover Funds	2020-21	2021-22	2022-23	2023-24	2024-25	
3110 - Design		64,719						64,719
3160 - Construction Contract		582,470						582,470
EXPENDITURE TOTALS		647,189						647,189
FUNDING SOURCES								
733-Civic CIP		161,797	0					161,797
733-Civic CIP HMGP Funds		485,392						485,392
FUNDING TOTALS		647,189	0					647,189



**General Services Administration
Federal Supply Service
Authorized Federal Supply Service Schedule Catalog/ Price List**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!
The Internet address for GSA Advantage! is:
GSAAdvantage.gov.

MULTIPLE AWARD SCHEDULE (MAS)

332999BMS Building Materials and Services
333415HVAC Heating, Ventilation, and Air Conditioning (HVAC)
333912 Air Compressors and Pressure Cleaners
33512 Energy-Efficient Lighting and Sustainable Energy Solutions
335911 Batteries
335999 Power Distribution and Solar Energy Solutions
ANCRA Ancillary Repair and Alterations
OLM Order-Level Materials

FSC CLASS: 6115, 6135, 6105, 6140, 6145, 4940, 6210, 6250, 5930, 6240

CONTRACT NUMBER: GS-07F-0251L

CONTRACT PERIOD: June 25, 2001 through June 24, 2021
Price List effective Feb 2020



CONTRACTOR:
Gonneville, Inc
211 Calle Pintoresco, Unit A
San Clemente , Ca 92673
Tel: (949) 248-7297 Fax: (949) 248-0666
Email: sales@gonneville.com
Website: www.gonneville.com

CONTRACTOR'S ADMINISTRATION SOURCE: Donald E. Gonneville

BUSINESS SIZE: Service disabled veteran owned small business

CUSTOMER INFORMATION	4
1a. Table of awarded special item numbers (SINs)	4
1b. Identification of the lowest-priced model-number price for each SIN.	4
1c. Hourly Rates	5
2. Maximum Order by SIN	5
3. Minimum Order	5
4. Geographic Coverage (delivery area)	5
5. Point(s) of Production	5
6. Basic Discount	6
7. Quantity Discount	6
8. Prompt Payment Terms	6
9a. Notification That Government Purchase Cards Are Accepted Below the Micro-purchase Threshold	6
9b. Notification That Government Purchase Cards Are Accepted Above the Micro-purchase Threshold	6
10. Foreign Items	6
11a. Time of Delivery	6
11b. Expedited Delivery	6
11c. Overnight and 2-day Delivery	6
11d. Urgent Delivery	6
12. FOB Point	6
13a. Ordering Address	6
13b. Ordering Procedures	6

14. Payment Address	6
15. Warranty Provision	6
16. Export Packaging Charges	6
17. Terms and Conditions of Government Purchase Card Acceptance	6
18. Terms and Conditions of Rental, Maintenance, and Repair	7
19a. Terms and Conditions of Products	7
19b. Terms and Conditions of Turnkey Installations	7
19c. Terms and Conditions of Services	7
20a. Terms and Conditions for Any Other Services	7
21. List of Service and Distribution Points	7
22. List of Participating Dealers	7
23. Preventive Maintenance	8
24a. Special Attributes Such as Environmental Attributes	8
24a. Section 508 Compliance for EIT	8
25. Data Universal Number System (Duns) Number	8
26. Notification Regarding Registration in (SAM) Central Contractor Registration (CCR)	8

CUSTOMER INFORMATION

1a. Table of awarded special item numbers (SINs)

SIN	Description
332999BMS	Building Materials and Services
333415HVAC	Heating, Ventilation, and Air Conditioning (HVAC)
333912	Air Compressors and Pressure Cleaners
33512	Energy-Efficient Lighting and Sustainable Energy Solutions
335911	Batteries
335999	Power Distribution and Solar Energy Solutions
ANCRA	Ancillary Repair and Alterations
OLM	Order-Level Materials

1b. Identification of the lowest-priced model-number price for each SIN.

SIN	Part Number
332999BMS	See Pricing
333415HVAC	See Pricing
333912	See Pricing
33512	See Pricing
335911	See Pricing
335999	See Pricing
ANCRA	See Pricing
OLM	See Pricing

1c. Hourly Rates**Electrical Consultant \$84.62/Hour**

Individual with vast knowledge and experience in the Electrical professional field hired to lend their expertise to clients in need of insight they do not possess. Degree requirements include: Bachelor of Science degree (or equivalent education) in an appropriate engineering discipline and Professional Engineering License.

Master Electrician \$84.62/Hour

Install and maintain all of the electrical and power systems for homes, factories and businesses, according to the U.S. Department of Labor Bureau of Labor Statistics. They handle wiring as well as electrical equipment and machines. Requirements include at least seven years of experience as an electrician or a bachelor's degree in electrical engineering or a related field.

Electrical Journeyman \$64.66/Hour

Install and repair electrical wires within homes and businesses and are often called upon to provide estimates or maintenance. Requirements include CA Journeyman's State Licensing.

Journeyman's Assistant \$44.79/Hour

Install, repair, alter and maintain electrical conductors, fittings, devices and fixtures for heating, lighting or power purposes. They must comply with the current edition of the National Electric Code. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program for 2+ years.

Electrical Technician \$39.79/Hour

Responsible for performing and providing maintenance, repair, installation and troubleshooting of electrical equipment. Can only perform above duties under direct supervision of a Master or Journeyman Electrician. Requirements include currently being enrolled in the Electrician Apprenticeship Program.

2. Maximum Order by SIN

332999BMS \$250,000; 333415HVAC \$250,000; 333912 \$250,000; 33512 \$250,000; 335911 \$250,000; 335999 \$250,000; ANCRA \$250,000; OLM \$250,000

3. Minimum Order

\$100 on Products.

4. Geographic Coverage (delivery area)

U.S. Domestic 50, Puerto Rico, Washington DC

5. Point(s) of Production

MQ Power Corp., Carson, CA (LA County)
Ecoquip, Virginia Beach, VA (Princess Anne County)
MMD, Swedesboro, New Jersey
Cireon, Moorpark, CA
Luxul, Santa Clara, CA

6. Basic Discount: All prices are net discount

7. Quantity Discount

SIN 33512 : 4-6% for 5,000+ units

SIN 333912 : 3% 2-9 pallets and 21% 10+ pallets

SIN 206 4 (Luxul Products): 1-14% depending on line item and quantity

8. Prompt Payment Terms Net 30 days

9a. Notification That Government Purchase Cards Are Accepted
Below the Micro-purchase Threshold

Yes

9b. Notification That Government Purchase Cards Are Accepted
Above the Micro-purchase Threshold

Yes

10. Foreign Items

None

11a. Time of Delivery Products: 60 Days ARO
Services: By arrangement

11b. Expedited Delivery Contact Contractor

11c. Overnight and 2-day Delivery Contact Contractor

11d. Urgent Delivery Contact Contractor

12. FOB Point

Origin for 332999BMS; 333415HVAC; 333912; 33512; 335999; ANCRA

Destination for SIN 335911

13a. Ordering Address Same as Contractor

13b. Ordering Procedures Ordering activities shall use the ordering procedures described in Federal Acquisitions 8.405 when placing an order or establishing a BPA for supplies or services. The ordering procedures, information on Blanket Purchase Agreement's (BPA's) and a sample BPA can also be found at the GSA/FSS Schedule Homepage (fss.gsa.gov/schedules).

14. Payment Address Same as Contractor

15. Warranty Provision

Products (installed or delivered): Manufacturer's Standard Warranty

Installation Labor/Workmanship: 90 days

16. Export Packaging Charges

Not Applicable

17. Terms and Conditions of Government Purchase Card Acceptance

Any thresholds above the micro-purchase level contact contractor.

18. Terms and Conditions of Rental, Maintenance, and Repair

Contact Contactor

19a. Terms and Conditions of Products: (SIN 33512)

1. A shipping charge will apply to all orders depending on the item and distance
2. Minimum Order increments apply as indicated on GSA-Advantage!
3. Return policy:
 - a) Returns are allowed unless explicitly stated on an item's description or advised in writing.
 - b) If the returned portion of an order reduces the total charge below the minimum order then either the entire order should be returned, or restocking fee raised to meet the minimum
 - c) The customer must obtain a "Return Authorization Number" before returning an item.
 - d) A restocking fee of 15% will apply to all returned items.
 - e) The original shipping charge is not refundable.
 - f) The customer will be responsible for the shipping charges of defective returns, but no restocking or shipping will apply to the re-shipment.
4. Automatically calculated shipping charges are NOT valid for shipments to outside of Continental US.

19b. Terms and Conditions of Installations:

Terms and conditions of installation: Service prices include the cost of materials and recycling (or legal disposal) of old hardware. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above 15ft, add \$4/measure Plus the cost of lift and it's delivery & pickup. Measures indicated are for "retrofits" of existing lighting fixtures (whole fixture installations or replacements is available on an "Open Market" basis). The Lighting retrofit measures indicated include the exchange of Lamps, Ballasts, Wirenuts, lamp sockets, Brackets, and all fasteners as needed. "Retrofit" or "Exchange" means removal and disposal of existing internals of fixtures (but not the fixture itself), and complete installation and testing of indicated new replacements. Except where the measure description includes "New Fixture" the existing fixtures are retained. If an existing fixture is found to be defective or in violation of applicable safety standards (National Electrical Code), it will be left as is, reported, and not billed. All retrofits include the wipe-cleaning of the insides of the fixtures. No light diffusers/lenses are included, existing diffusers/lenses may be cleaned and re-installed. All work areas will be cleaned of all debris and parts, and dust resulting from the work. Minimum Order is \$1000. When a distance radius of 50 miles is exceeded, shipping charges (at cost) will apply to the materials being shipped/installed. All measures are assumed at height of 15ft or lower, For each 10 foot or fraction above add \$4/measure Plus the cost of lift and it's delivery & pickup. Customer will be responsible for removal of all obstacles in the way of installation. Gonnevill reserves the right to declare any fixture as "unsafe to work on" or "reasonably inaccessible", and forgo its retrofit. Gonnevill will comply with the standard per diem rates as applicable.

20a. Terms and Conditions for Any Other Services

Not Applicable

21. List of Service and Distribution Points

Not Applicable

22. List of Participating Dealers

Not Applicable

23. Preventive Maintenance

See service manuals

24a. Special Attributes Such as Environmental Attributes

(e.g. recycled content, energy efficiency and/or reduced pollutants.): As indicated on GSA- Advantage!

24a. Section 508 Compliance for EIT

Not Applicable

25. Data Universal Number System (Duns) Number:

79-652-1755

26. Notification Regarding Registration in (SAM) Central Contractor Registration (CCR) Database: Registration valid.

No image available at this time

GEN 70KVA 3PHASE ISUZU TIER 4F

Mfr Part No.: DCA70SSIU4F
Contractor Part No.: DCA70SSIU4F
Manufacturer: MQ MULTIQUIP
Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
MAS Schedule/SIN: MAS/335999
Warranty: STANDARD WARRANTY
Country of Origin: UNITED STATES OF AMERICA
Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price: \$52,997.48 EA

Qty: 1

add to cart

sold and shipped by
GONNEVILLE, INC
Contract minimum order: \$100.00

Product Details

0.001L X 0.001W (IN),Generator 70KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$52,997.48	EA GONNEVILLE, INC		60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI

No image available at this time

GEN 125KVA 3PHASE ISUZU TIER 4F

Mfr Part No.: DCA125SSIU4F

Contractor Part No.: DCA125SSIU4F

Manufacturer: MQ - MULTIQUIP

Contract No.: GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN: MAS/335999

Warranty: STANDARD WARRANTY

Country of Origin: UNITED STATES OF AMERICA

Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price

\$57,128.46 ^{EA}

Qty: 1

Add to cart

sold and shipped by

GONNEVILLE, INC

Contract minimum order: \$100.00

Product Details

Gen 125KVA 3Phase Isuzu Tier 4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit⚡	Contractor ⚡	Socio	Deliv Days ⚡	Min Order ⚡	FOB/Shipping ⚡
\$57,128.46	^{EA} GONNEVILLE, INC	^{\$100}	60 days delivered ARO	\$100.00	O-CONUS,AX,ER,HI

No image available at this time

POWER GENERATOR

Mfr Part No.: DCA220SSJU4F

Contractor Part No.: DCA220SSJU4F

Manufacturer: MQ - MULTIQUIP

Contract No.: GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN: MAS/335999

Warranty: STANDARD WARRANTY

Country of Origin: UNITED STATES OF AMERICA

Weight: 1,000 LB

Disaster Purchasing items

VA Verified SDVOSB

Price: \$93,853.90 EA

Qty: 1

Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

Gen 220KVA 3Phase John Deere Tier4F

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⚡ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FDB/Shipping
\$93,853.90	EA GONNEVILLE, INC	1154	60 days delivered.ARD	\$100.00	Q-CONUS,AK,PR,HI

No image available at this time

300REOZJ, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940403

Contractor Part No.:25940403

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$58,117.49 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

300REOZJ, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 555 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
⌘ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$58,117.49 EA	GONNEVILLE, INC		60 days delivered ARO	\$100.00	O-CONUS,AK,PR,HJ

No image available at this time

150REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940237

Contractor Part No.:25940237

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$35,385.07 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

150REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 316 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
♦ Indicates when volume discounts are offered.

Price/Unit ♦	Contractor ♦	Socio	Deliv Days ♦	Min Order ♦	FOB/Shipping ♦
\$35,385.07	EA GONNEVILLE, INC	13.67	60 days delivered ARO	\$100.00	Q-CONUS, AK, PR, HI

No image available at this time

100REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.:25940133

Contractor Part No.:25940133

Manufacturer:KOHLER

Contract No.:GS-07F-0251L (ends: Jun 24, 2021)

MAS Schedule/SIN:MAS/335999

Warranty:STANDARD WARRANTY

Country of Origin:UNITED STATES OF AMERICA

Weight:0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price\$24,193.95 EA

Qty: 1Add to cart

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Product Details

100REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 215 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.

⚙ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$24,193.95	EA GONNEVILLE, INC	1182	60 days delivered ARO	\$100.00	Q:CONUS,AK,PR,HI

No image available at this time

200REOZJF, KOHLER DIESEL GENERATOR, WITH

Mfr Part No.: 2594025G
Contractor Part No.: 2594025G
Manufacturer: KOHLER
Contract No.: GS-07F-0251L (ends: Jun 24, 2021)
MAS Schedule/SIN: MAS/335999
Warranty: STANDARD WARRANTY
Country of Origin: UNITED STATES OF AMERICA
Weight: 0.001 LB

Disaster Purchasing Items

VA Verified SDVOSB

Price

\$44,003.21 EA

sold and shipped by

GONNEVILLE, INC.

Contract minimum order: \$100.00

Qty: 1

Add to cart

Product Details

200REOZJF, Kohler Diesel Generator, with weather enclosure, Dec 3000 Controller, 24 hour tank - 416 Gal, CA Spill Kit, 80% Circuit Breaker, Battery, 6A Battery Charger

Compare Available Sources

Instructions: Select price below, enter qty at left, then Add to Cart. To view another contractor description, simply select the Contractor in the list below.
◆ Indicates when volume discounts are offered.

Price/Unit	Contractor	Socio	Deliv Days	Min Order	FOB/Shipping
\$44,003.21	EA GONNEVILLE, INC	107	60 days delivered ARO	\$100.00	O-CONUS, AK, PR, HI



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Trailer-Mounted Generator at MKS

Item 1 – GSA Equipment – 1 Ea Multiquip DCA125SSIU4F Generator	\$57,128.46
Includes: ➤ Isuzu BR-4HK1X Diesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 125kW Standby Rating, 100 kW Prime Rating ➤ Multiple Voltage Selector, 139/240V, 3 ph, 277/480V 3ph, 120/240V 1ph, 60 Hz ➤ Sound-attenuated enclosure, 66 dba @23 ft ➤ Main line circuit breaker 300 Amp	
Item 1A - Ancillary Equipment	\$34,218.51
Generator Options Package Includes: ➤ Battery Charger ➤ ECU845 Controller ➤ Sub-base fuel tank, 169 gallon, 24 hr run@ full load ➤ Engine block heater, 1500W, 120V ➤ Camlock connector Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 10,000 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3" pintle eye or 2 5/16" ball ➤ Tongue-mounted swivel jack 1 Ea ASCO 200A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 60 Hz ➤ 600 Amp, 3 pole, solid neutral ➤ Open transition ➤ Nema 3R	

Tel: (949) 248-7297 929 Calle Negocio, Suite D, San Clemente, CA 92673 Fax: (949) 248-0666

www.gonneville.com



Item 1A – Ancillary Equipment (continued)	
1 Ea Trystar Docking Station ➤ Model GDS-023W-LM-AC ➤ 120/208V, 3 phase ➤ 200 Amp, 3 pole ➤ 65kAIC rated ➤ Phase rotation monitor ➤ Camlock male connector ➤ Two-wire genset start ➤ One battery charger receptacle ➤ Nema 3R enclosure	
Equipment Sub-total Price	\$91,346.97
Item 2 – Permit, Installation, Test	
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain city permit ➤ Remove manual transfer switch, Install new ATS inside ➤ Install new docking station outside wall	
Installation, Permit, Engineering, Delivery, Test – Sub-Total	\$21,200.98
Total Project Price (turnkey), job site	\$112,547.95
Optional Adders:	
➤ Cable set, 5 X 25 ft, 4/0 cable with camlock connector	\$1,250.00
➤ Cable set, 5 X 50 ft, 4/0 cable with camlock connector	\$1,860.00
➤ Power Balance for DCA125	\$5,500.00

Quotation Notes:

- Sales tax is not included in quote prices
- Estimate leadtime, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included
- City permit cost waived
- Further permitting cost excluded
- No special inspection cost, if required

929 Calle Negocio, Suite D, San Clemente, CA 92673
Tel: (949) 248-7297 Fax: (949) 248-0666

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Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate to call us with any questions or concerns. We look forward to being of service to you.

Sincerely,

Don Gonneville

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Stone Bridge Wells

Item 1 – GSA Equipment – 1 Ea Kohler 150REOZJF Generator	\$35,385.07
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 154 kW / 193 kVA Standby Rating ➤ 277/480V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 250 Amp, 100%	
Item 1A - Ancillary Equipment	\$25,127.44
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 595 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO 200A Automatic Transfer Switch ➤ Series 300 ➤ 277/480V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure	
Equipment Sub-total Price	\$60,512.51

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Fax: (949) 248-0666

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Item 2 – Installation, Test	
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad on north side of building ➤ Anchor seismic calculation ➤ Install new ATS next to main panel ➤ Remove existing manual transfer switch and sleeve receptacle ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Install existing manual transfer switch and receptacle next to genset ➤ Trench and backfill for electrical conduits ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%	
Installation, Permit, Engineering, Delivery, Test – Sub-Total	\$54,487.61
Total Project Price (turnkey), job site	\$115,000.12

Quotation Notes:

- Sales tax is not included in quote prices
- Estimate lead time, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included
- City permit cost waived
- Further permitting cost excluded
- No special inspection cost, if required

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



Clarifications:

1. Upon review, additional charges may be required and thus requested, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

Please do not hesitate to call us with any questions or concerns. We look forward to being of service to you.

Sincerely,

Don Gonneville

Tel: (949) 248-7297

929 Calle Negocio, Suite D, San Clemente, CA 92673
Fax: (949) 248-0666

www.gonneville.com



November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Flood Control Pump

Item 1 – GSA Equipment – 1 Ea Kohler 200REOZJF Generator	\$24,193.95
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 200 kW / 250 kVA Standby Rating ➤ 120/208V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 800 Amp, 100%	
Item 1A - Ancillary Equipment	\$18,496.11
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 7653 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO 400A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure	
Equipment Sub-total Price	\$42,690.06

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Item 2 – Installation, Test	
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad next to HVAC cooler enclosure ➤ Construct wall and door similar to adjacent enclosure ➤ Anchor seismic calculation ➤ Install new ATS right outside of main switchboard ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Conduits surface mounted along the wall ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%	
Installation, Permit, Engineering, Delivery, Test – Sub-Total	\$50,638.29
Total Project Price (turnkey), job site	\$93,328.35

Quotation Notes:

- Sales tax is not included in quote prices
- Estimate leadtime, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included
- City permit cost waived
- **Upon engineering and city review, due to limited space and noncompliance of electrical room, the project scope might be redesigned and requested**
- Further permitting cost excluded
- No special inspection cost, if required

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Clarifications:

1. Upon review, additional charges may be required and thus requested, if engineering or city inspectors require changes to the initial design we've proposed.
2. Air quality permit fees and compliance are excluded. Local air quality authorities may require a health risk study or environmental quality assessment. The cost for a health risk study is excluded.
3. **All permits must be obtained prior to installation of the equipment.**
4. For diesel engine generators, **do not fuel** until pressurized tank testing is complete and signed off by local Hazmat authority.
5. Engines located on or near school grounds: new stationary emergency standby diesel fueled engines (greater than 50 bhp) located on school grounds or 100 m or less from a school which exists at the date of the application from permit to construct or permit to operate is deemed complete, whichever is earlier shall emit diesel PM at a rate less than or equal to 0.01 g/bhp-hr, which means that a PM filter will be necessary. If the generator is within 100 m of a kindergarten – 12th grade school and there is not a price for a PM filter on this quote, please contact us immediately.
6. Pricing is valid for 30 days from date of quote. Pricing may be adjusted after submittals and air-quality acceptance.
7. Restocking: a restocking fee of 15% will apply for cancellation after receipt of purchase order and up to 60 days prior to scheduled order shipment date. Cancellation 60 days or less before scheduled shipment date will result in full PO charges
8. Storage: Gonneville Inc and CD & Power will not be held responsible for damage, burglary or vandalism that may occur while equipment is stored at CD & Power's facility. Storage for more than one month will result in a \$100 per week storage fee. A secondary shipping and/or crane charge to jobsite may also apply.

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November 10, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St.
St. Helena, CA 94574

RE: Quote #204963 – **Gonneville GSA Schedule GS-07F-0251L**

Location / Application: Library

Item 1 – GSA Equipment – 1 Ea Kohler 200REOZJF Generator	\$44,003.21
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 200 kW / 250 kVA Standby Rating ➤ 120/208V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 800 Amp, 100%	
Item 1A - Ancillary Equipment	\$38,163.16
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 765 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO 400A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure	
Equipment Sub-total Price	\$82,166.37

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Item 2 – Installation, Test	
Scope of Work ➤ Prepare engineering drawings and plan for city permit ➤ Obtain construction permit ➤ Apply for air quality permit (permit fees, not included) ➤ Construct new concrete pad next to HVAC cooler enclosure ➤ Construct wall and door similar to adjacent enclosure ➤ Anchor seismic calculation ➤ Install new ATS right outside of main switchboard ➤ Deliver, set and anchor new genset on concrete pad (special anchor inspection by others) ➤ Conduits surface mounted along the wall ➤ Connect all electrical cables and wires MSB to ATS to genset ➤ Fuel tank pressure test ➤ Start up and test ➤ Load bank, two hours ➤ Fill up fuel tank to 90%	
Installation, Permit, Engineering, Delivery, Test – Sub-Total	\$151,635.05
Total Project Price (turnkey), job site	\$233,801.42

Quotation Notes:

- Sales tax is not included in quote prices
- Estimate leadtime, equipment only: 2 to 4 weeks ARO and signed submittal is returned
- Delivery time is an estimate and subject to change
- Submittals can be provided in two weeks from receipt of order
- Any work not stated above is not included
- City permit cost waived
- **Upon engineering and city review, due to limited space and noncompliance of electrical room, the project scope might be redesigned and requested**
- Further permitting cost excluded
- No special inspection cost, if required

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Clarifications:

1. Upon review, additional charges may be required and thus requoted, if engineering or city inspectors require changes to the initial design we've proposed.
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Don Gonneville

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Fax: (949) 248-0666

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November 19, 2020

City of St. Helena
ATTN: Erica Ahmann Smithies, PE
1480 Main St
St. Helena, CA 94574

Dear Erica,

This is to certify that California Diesel and Power is the only company authorized by Gonneville Inc to install generators and ancillary equipment sold and serviced on our GSA Schedule # GS-07F-0251L.

This relationship ensures that our customers receive consistently reliable results throughout the duration of the project, including any applicable warranty service.

We are available to respond to any further requests for information, and to answer any questions you may have. Thank you for your consideration.

Best regards,

A handwritten signature in cursive script, appearing to read "Don Gonneville".

Don Gonneville
President

929 Calle Negocio, Suite D, San Clemente, CA 92673

Tel: (949) 248-7297

Fax: (949) 248-0666

www.gonneville.com

**CITY OF ST. HELENA
EQUIPMENT PURCHASE AGREEMENT**

**EMERGENCY BACK-UP POWER
CIP PROJECT NO. C20-06**

This Equipment Purchase Agreement (“Agreement”) is entered into this [REDACTED] day of [REDACTED], 2020, by and between the City of St. Helena, a municipal corporation organized and operating under the laws of the State of California with its principal place of business at a municipal corporation organized under the laws of the State of California with its principal place of business at 1572 Railroad Avenue, St. Helena, CA 94574 (“City”), and Gonneville, Inc., a California corporation with its principal place of business at 211 Calle Pintesresco, Unit A, San Clemente, CA. 92673 (“Contractor”). City and Contractor are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

Section 1. DEFINITIONS.

A. “Equipment” means all machinery, equipment, items, parts, materials, labor or other services, including design, engineering and installation services, provided by Contractor as specified in Exhibit “A,” attached hereto and incorporated herein by reference.

B. “Delivery Date(s)” means that date or dates upon which the Equipment is to be delivered to City, ready for approval, testing and/or use as specified in Exhibit “B.”

Section 2. MATERIALS AND WORKMANSHIP.

When Exhibit “A” specifies machinery, equipment or material by manufacturer, model or trade name, no substitution will be made without City’s written approval. Machinery, equipment or material installed in the Equipment without the approval required by this Section 2 will be deemed to be defective material for purposes of Section 4. Where machinery, equipment or materials are referred to in Exhibit “A” as equal to any particular standard, City will decide the question of equality. When requested by City, Contractor will furnish City with the name of the manufacturer, the performance capabilities and other pertinent information necessary to properly determine the quality and suitability of any machines, equipment and material to be incorporated in the Equipment. Material samples will be submitted at City’s request.

If the Contractor is responsible for providing installation services, the site of any installation work shall be kept clean and free of hazards at all times during performance of such installation services. After installation is completed at the site, as applicable, Contractor shall clean the surrounding area to the condition prior to delivery and installation.

Section 3. INSPECTIONS AND TESTS.

City shall have the right to inspect and/or test the Equipment prior to acceptance. If upon inspection or testing the Equipment or any portion thereof are found to be nonconforming, unsatisfactory, defective, of inferior quality or workmanship, or fail to meet any requirements or specifications contained in Exhibit “A,” then without prejudice to any other rights or remedies,

City may reject the Equipment or exercise any of its rights under Section 4.C. The inspection, failure to make inspection, acceptance of goods, or payment for goods shall not impair City's right to reject nonconforming goods, irrespective of City's failure to notify Contractor of a rejection of nonconforming goods or revocation of acceptance thereof or to specify with particularity any defect in nonconforming goods after rejection or acceptance thereof.

If the Contractor is responsible for providing installation services, finished installation work and/or equipment shall be subject to final inspection and acceptance or rejection by the City.

Section 4. WARRANTY.

A. Contractor warrants that the Equipment will be of merchantable quality and free from defects in design, engineering, material and workmanship for a period of two (2) years, or such longer period as provided by a manufacturer's warranty or as agreed to by Contractor and City, from the date of final written acceptance of the Equipment by City as required for final payment under Section 7. Contractor further warrants that any services provided in connection with the Equipment will be performed in a professional and workmanlike manner and in accordance with the highest industry standards.

B. Contractor further warrants that all machinery, equipment or process included in the Equipment will meet the performance requirements and specifications specified in Exhibit "A" and shall be fit for the purpose intended. City's inspection, testing, approval or acceptance of any such machinery, equipment or process will not relieve Contractor of its obligations under this Section 4.B.

C. For any breach of the warranties contained in Section 4.A and Section 4.B, Contractor will, immediately after receiving notice from City, at the option of City, and at Contractor's own expense and without cost to City:

1. Repair the defective Equipment;
2. Replace the defective Equipment with conforming Equipment, F.O.B. City's plant, office or other location of City where the Equipment was originally performed or delivered; or
3. Repay to City the purchase price of the defective Equipment.

If City selects repair or replacement, any defects will be remedied without cost to City, including but not limited to, the costs of removal, repair and replacement of the defective Equipment, and reinstallation of new Equipment. All such defective Equipment that is so remedied will be similarly warranted as stated above. In addition, Contractor will repair or replace other items of the Equipment which may have been damaged by such defects or the repairing of the same, all at its own expense and without cost to City.

D. Contractor also warrants that the Equipment is free and clear of all liens and encumbrances whatsoever, that Contractor has a good and marketable title to same, and that Contractor owns or has a valid license for all of the proprietary technology and intellectual property incorporated within the Equipment. Contractor agrees to indemnify, defend and hold City harmless against any and all third party claims resulting from the breach or inaccuracy of any of the foregoing warranties.

E. In the event of a breach by Contractor of its obligations under this Section 4, City will not be limited to the remedies set forth in this Section 4, but will have all the rights and remedies permitted by applicable law, including without limitation, all of the rights and remedies afforded to City under the California Commercial Code.

Section 5. PRICES.

Unless expressly provided otherwise, all prices and fees specified in Exhibit "C," attached hereto and incorporated herein by reference, are firm and shall not be subject to change without the written approval of City. No extra charges of any kind will be allowed unless specifically agreed to in writing by City's authorized representative. The total price shall include (i) all federal, state and local sales, use, excise, privilege, payroll, occupational and other taxes applicable to the Equipment furnished to City hereunder; and (ii) all charges for packing, freight and transportation to destination.

Section 6. CHANGES.

City, at any time, by a written order, and without notice to any surety, may make changes in the Equipment, including but not limited to, City's requirements and specifications. If such changes affect the cost of the Equipment or time required for its performance, an equitable adjustment will be made in the price or time for performance or both. Any change in the price necessitated by such change will be agreed upon between City and Contractor and such change will be authorized by a change order document signed by City and accepted by Contractor.

Section 7. PAYMENTS.

A. Terms of payment, are net thirty (30) days, less any applicable retention, after receipt of invoice, or completion of applicable Progress Milestones. Final payment shall be made by City after Contractor has satisfied all contractual requirements. Payment of invoices shall not constitute acceptance of Equipment.

B. If Progress Milestones have been specified Exhibit "B," then payments for the Equipment will be made as the requirements of such Progress Milestones are met. Progress payments for the Equipment will be made by City upon proper application by Contractor during the progress of the Equipment and according to the terms of payment as specified in Exhibit "B." Contractor's progress billing invoice will include progress payments due for the original scope of work and changes. Each "Item for Payment" shown in Exhibit "B" and each change order will be itemized on the invoice. Invoices for cost plus work, whether part of Exhibit "B" or a change order, must have subcontractor and/or supplier invoices attached to Contractor's invoice. Other

format and support documents for invoices will be determined by City in advance of the first invoice cycle.

C. Payments otherwise due may be withheld by City on account of defective Equipment not remedied, liens or other claims filed, reasonable evidence indicating probable filing of liens or other claims, failure of Contractor to make payments properly to its subcontractors or for material or labor, the failure of Contractor to perform any of its other obligations under the Agreement, or to protect City against any liability arising out of Contractor's failure to pay or discharge taxes or other obligations. If the causes for which payment is withheld are removed, the withheld payments will be made promptly. If the said causes are not removed within a reasonable period after written notice, City may remove them at Contractor's expense.

D. Payment of the final Progress Milestone payment or any retention will be made by City upon:

1. Submission of an invoice for satisfactory completion of the requirements of a Progress Milestone as defined in Exhibit "B" and in the amount associated with the Progress Milestone;
2. Written acceptance of the Equipment by City;
3. Delivery of all drawings and specifications, if required by City;
4. Delivery of executed full releases of any and all liens arising out of this Agreement; and
5. Delivery of an affidavit listing all persons who might otherwise be entitled to file, claim or maintain a lien of any kind or character, and containing an averment that all of the said persons have been paid in full.

If any person refuses to furnish an actual release or receipt in full, Contractor may furnish a bond satisfactory to City to indemnify City against any claim or lien at no cost to City.

E. Acceptance by Contractor of payment of the final Progress Milestone payment pursuant to Section 7.D will constitute a waiver, release and discharge of any and all claims and demands of any kind or character which Contractor then has, or can subsequently acquire against City, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement. However, payment for the final Progress Milestone by City will not constitute a waiver, release or discharge of any claims or demands which City then has, or can subsequently acquire, against Contractor, its successors and assigns, for or on account of any matter or thing arising out of, or in any manner connected with, the performance of this Agreement.

Section 8. SCHEDULE FOR DELIVERY.

A. The time of Contractor's performance is of the essence for this Agreement. The Equipment will be delivered in accordance with the schedule set forth in Exhibit "B." Contractor must immediately notify City in writing any time delivery is behind schedule or may not be completed on schedule. In addition to any other rights City may have under this Agreement or at law, Contractor shall pay City the sum of \$500 per item of Equipment for each calendar day for which the item of Equipment is unavailable beyond the scheduled delivery date(s) specified in Exhibit "B."

B. In the event that the Equipment is part of a larger project or projects that require the coordination of multiple contractors or suppliers, then Contractor will fully cooperate in scheduling the delivery so that City can maximize the efficient completion of such project(s).

Section 9. TAXES.

A. Contractor agrees to timely pay all sales and use tax (including any value added or gross receipts tax imposed similar to a sales and use tax) imposed by any federal, state or local taxing authority on the ultimate purchase price of the Equipment provided under this Agreement.

B. Contractor will withhold, and require its subcontractors, where applicable, to withhold all required taxes and contributions of any federal, state or local taxing authority which is measured by wages, salaries or other remuneration of its employees or the employees of its subcontractors. Contractor will deposit, or cause to be deposited, in a timely manner with the appropriate taxing authorities all amounts required to be withheld.

C. All other taxes, however denominated or measured, imposed upon the price of the Equipment provided hereunder, will be the responsibility of Contractor. In addition, all taxes assessed by any taxing jurisdiction based on Contractor property used or consumed in the provision of the Equipment such as and including ad valorem, use, personal property and inventory taxes will be the responsibility of Contractor.

D. Contractor will, upon written request, submit to City written evidence of any filings or payments of all taxes required to be paid by Contractor hereunder.

Section 10. INDEPENDENT CONTRACTOR.

Contractor enters into this Agreement as an independent contractor and not as an employee of City. Contractor shall have no power or authority by this Agreement to bind City in any respect. Nothing in this Agreement shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Contractor are employees, agents, contractors or subcontractors of the Contractor and not of City. City shall not be obligated in any way to pay any wage claims or other claims made against Contractor by any such employees, agents, contractors or subcontractors or any other person resulting from performance of this Agreement.

Section 11. SUBCONTRACTS.

Unless otherwise specified, Contractor must obtain City's written permission before subcontracting any portion of the Equipment. Except for the insurance requirements in Section 13.A, all subcontracts and orders for the purchase or rental of supplies, materials or equipment, or any other part of the Equipment, will require that the subcontractor be bound by and subject to all of the terms and conditions of the Agreement. No subcontract or order will relieve Contractor from its obligations to City, including, but not limited to Contractor's insurance and indemnification obligations. No subcontract or order will bind City.

Section 12. TITLE AND RISK OF LOSS.

Unless otherwise agreed, City will have title to, and risk of loss of, all completed and partially completed portions of the Equipment upon delivery, as well as materials delivered to and stored on City property which are intended to become a part of the Equipment. However, Contractor will be liable for any loss or damage to the Equipment and/or the materials caused by Contractor or its subcontractors, their agents or employees, and Contractor will replace or repair said Equipment or materials at its own cost to the complete satisfaction of City. Notwithstanding the foregoing, in the event that the City has paid Contractor for all or a portion of the Equipment which remains in the possession of Contractor, then City shall have title to, and the right to take possession of, such Equipment at any time following payment therefor. Risk of loss for any Equipment which remains in the possession of Contractor shall remain with Contractor until such Equipment has been delivered or City has taken possession thereof. Contractor will have risk of loss or damage to Contractor's property used in the construction of the Equipment but which does not become a part of the Equipment.

Section 13. INDEMNIFICATION.

A. Contractor shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence or willful misconduct of Contractor, its officials, officers, employees, agents, subcontractors and subconsultants arising out of or in connection with the Equipment or the performance of this Agreement, including without limitation the payment of all consequential damages and attorneys' fees and other related costs and expenses except such loss or damage which was caused by the sole negligence or willful misconduct of the City.

B. Contractor's defense obligation for any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the City, its officials, officers, employees, agents or volunteers shall be at Contractor's own cost, expense and risk. Contractor shall pay and satisfy any judgment, award or decree that may be rendered against City or its officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Contractor shall reimburse City and its officials, officers, employees, agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.

C. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its officials, officers, employees, agents or volunteers.

Section 14. INSURANCE.

A. General. Contractor shall take out and maintain:

1. Commercial General Liability Insurance, of at least \$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury and property damage, at least as broad as Insurance Services Office Commercial General Liability most recent Occurrence Form CG 00 01;
2. Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, of at least \$1,000,000 per accident for bodily injury and property damage, at least as broad as most recent Insurance Services Office Form Number CA 00 01 covering automobile liability, Code 1 (any auto);
3. Workers' Compensation in compliance with applicable statutory requirements and Employer's Liability Coverage of at least \$1,000,000 per occurrence; and
4. Pollution Liability Insurance of at least \$1,000,000 per occurrence and \$2,000,000 aggregate shall be provided by the Contractor if transporting hazardous materials.
5. If Contractor is also the manufacturer of any equipment included in the Equipment, Contractor shall carry Product Liability and/or Errors and Omissions Insurance which covers said equipment with limits of not less than \$1,000,000.

B. Additional Insured; Primary; Waiver of Subrogation; No Limitation on Coverage. The policies required under this Section shall give City, its officials, officers, employees, agents or volunteers additional insured status. Such policies shall contain a provision stating that Contractor's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the City or any additional insureds shall not be called upon to contribute to any loss, and shall contain or be endorsed with a waiver of subrogation in favor of the City, its officials, officers, employees, agents, and volunteers. The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as additional insured pursuant to this Agreement.

C. Insurance Carrier. All insurance required under this Section is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

D. Evidence of Insurance. Contractor shall furnish City with original certificates of insurance and endorsements effecting coverage required by the Agreement. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to

bind coverage on its behalf, and shall be on forms supplied or approved by the City. All certificates and endorsements must be received and approved by the City before delivery commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

E. Subcontractors. All subcontractors shall meet the requirements of this Section before commencing work. In addition, Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

F. Freight. Contractor shall ensure that third party shippers contracted by Contractor have adequate insurance coverage for the shipped Equipment.

Section 15. LIENS.

A. Contractor, subcontractors and suppliers will not make, file or maintain a mechanic's or other lien or claim of any kind or character against the Equipment, for or on account of any labor, materials, fixtures, tools, machinery, equipment, or any other things furnished, or any other work done or performance given under, arising out of, or in any manner connected with the Agreement (such liens or claims referred to as "Claims"); and Contractor, subcontractor and suppliers expressly waive and relinquish any and all rights which they now have, or may subsequently acquire, to file or maintain any Claim and Contractor, subcontractor and suppliers agree that this provision waiving the right of Claims will be an independent covenant.

B. Contractor will save and hold City harmless from and against any and all Claims that may be filed by a subcontractor, supplier or any other person or entity and Contractor will, at its own expense, defend any and all actions based upon such Claims and will pay all charges of attorneys and all costs and other expenses arising from such Claims.

Section 16. TERMINATION OF AGREEMENT BY CITY.

A. Should Contractor at any time refuse or fail to deliver the Equipment with promptness and diligence, or to perform any of its other obligations under the Agreement, City may terminate Contractor's right to proceed with the delivery of the Equipment by written notice to Contractor. In such event City may obtain the Equipment by whatever method it may deem expedient, including the hiring of another contractor or other contractors and, for that purpose, may take possession of all materials, machinery, equipment, tools and appliances and exercise all rights, options and privileges of Contractor. In such case Contractor will not be entitled to receive any further payments until the Equipment is delivered. If City's cost of obtaining the Equipment, including compensation for additional managerial and administrative services, will exceed the unpaid balance of the Agreement, Contractor will be liable for and will pay the difference to City.

B. City may, for its own convenience, terminate Contractor's right to proceed with the delivery of any portion or all of the Equipment by written notice to Contractor. Such termination will be effective in the manner specified in such notice, will be without prejudice to

any claims which City may have against Contractor, and will not affect the obligations and duties of Contractor under the Agreement with respect to portions of the Equipment not terminated.

C. On receipt of notice under Section 16.B, Contractor will, with respect to the portion of the Equipment terminated, unless the notice states otherwise,

1. Immediately discontinue such portion of the Equipment and the placing of orders for materials, facilities, and supplies in connection with the Equipment,
2. Unless otherwise directed by City, make every reasonable effort to procure cancellation of all existing orders or contracts upon terms satisfactory to City; and
3. Deliver only such portions of the Equipment which City deems necessary to preserve and protect those portions of the Equipment already in progress and to protect material, plant and equipment at the Equipment site or in transit to the Equipment site.

D. Upon termination pursuant to Section 16.B, Contractor will be paid a pro rata portion of the compensation in the Agreement for any portion of the terminated Equipment already delivered, including material and services for which it has made firm contracts which are not canceled, it being understood that City will be entitled to such material and services. Upon determination of the amount of said pro rata compensation, City will promptly pay such amount to Contractor upon delivery by Contractor of the releases of liens and affidavit, pursuant to Section 7.C.

Section 17. SERVICES

If Contractor is required to perform any services under this Agreement, Contractor shall be duly licensed and possess the necessary qualifications to provide such services. The services, if any, shall be described in Exhibit "A", which is attached hereto and incorporated herein by this reference. Contractor's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. In the event the services to be performed by Contractor under this Agreement are a prerequisite to commencing manufacturing and delivery of the Equipment, City shall have no obligation to proceed beyond performance of the services until it issues a "Notice to Proceed with Fabrication" to Contractor.

Section 18. MISCELLANEOUS PROVISIONS.

A. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address or at such other address as the respective parties may provide in writing for this purpose:

CITY:

City of St. Helena

CONTRACTOR:

Gonneville, Inc.

1572 Railroad Avenue

211 Calle Pinteroesco, Unit A

St. Helena, CA 94574

San Clemente, CA. 92673

Attn: Erica Ahmann Smithies, Public Works

Attn: Don Gonneville, President

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

B. Assignment or Transfer. Contractor shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of the City, which will not be unreasonably withheld. Provided, however, that claims for money due or to become due Contractor from the City under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer, whether voluntary or involuntary, shall be furnished promptly to the City. If the Equipment will be incorporated into a larger project as owner provided equipment, City may in its sole discretion assign and Contractor agrees to the assignment of any and all rights, duties and obligations of City under this Agreement, including any warranty rights, to the City's independent contractor.

C. Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

D. Amendment; Modification. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

E. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel or otherwise.

F. Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Napa County.

G. Interpretation. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party.

H. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

I. Authority to Enter Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right and authority to make this Agreement and bind each respective Party.

J. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

K. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

L. City's Right to Employ Other Contractors. City reserves its right to employ other contractors in connection with the Equipment.

M. Compliance with Law. Contractor shall comply with all applicable laws and regulations of the federal, state and local government and shall be responsible for obtaining any required licenses, permits or certifications necessary to perform this Agreement. Contractor is responsible for all costs of clean up and/or removal of hazardous and toxic substances spilled as a result of its performance of this Agreement. Contractor is aware of the requirements of California Labor Code Sections 1720 *et seq.* and 1770 *et seq.* ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the work being performed under this Agreement is being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. Contractor shall defend, indemnify and hold City, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Any stop orders issued by the Department of Industrial Relations against Contractor or any subcontractor that affect Contractor's performance of work under this Agreement, including any delay, shall be Contractor's sole responsibility and Contractor shall indemnify City from liability arising out of the same. It shall be mandatory upon the Contractor and all subcontractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815), contractor registration (Labor Code Sections 1725.5 and 1771.1) and debarment of contractors and subcontractors (Labor Code Sections 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 and to be registered with the Department of Industrial Relations shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1771.4, 1725.5 and 1771.1.

N. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relative to the Equipment specified herein. There are no understandings, agreements, conditions, representations, warranties or promises with respect to this Agreement, except those contained in or referred to in the writing.

O. Federal Provisions. When funding for the Agreement is provided, in whole or in part, by an agency of the federal government, Contractor shall also fully and adequately comply with the federal requirements including, but not limited to, 2 C.F.R. Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which is expressly incorporated herein by reference, and the Federal Contract Provisions included in Exhibit “D” attached hereto and incorporated herein by reference (“Federal Requirements”). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE FOR EQUIPMENT PURCHASE AGREEMENT

BETWEEN THE CITY OF ST. HELENA

AND GONNEVILLE , INC.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY OF ST. HELENA

Approved By:

Mark T. Prestwich
City Manager

Date

Attested By:

Cindy Tzafopoulos
City Clerk

Approved As To Form:

Ethan Walsh
City Attorney

GONNEVILLE , INC.

Signature

Name

Title

Date

EXHIBIT "A"
EQUIPMENT SPECIFICATIONS

Item 1: Location / Application: Library

GSA Equipment – 1 Ea Kohler 200REOZJF Generator
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 200 kW / 250 kVA Standby Rating ➤ 120/208V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 800 Amp, 100%
Ancillary Equipment
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 765 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W
1 Ea ASCO 400A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure

Item 2: Location / Application: Flood Control Pump

GSA Equipment – 1 Ea Kohler 200REOZJF Generator
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 200 kW / 250 kVA Standby Rating ➤ 120/208V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 800 Amp, 100%

Ancillary Equipment
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 7653 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO 400A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure

Item 3: Location / Application: Stone Bridge Wells

Item 1 – GSA Equipment – 1 Ea Kohler 150REOZJF Generator
Includes: ➤ John Deere 6068HFG85A diesel engine ➤ Water cooled, 1800 RPM ➤ 154 kW / 193 kVA Standby Rating ➤ 277/480V, 3 phase, 60 Hz ➤ Sound-attenuated enclosure, 75 dba @23 ft ➤ Main line circuit breaker 250 Amp, 100%
Item 1A - Ancillary Equipment
Generator Options Package Includes: ➤ APM402 Controller ➤ Sub-base fuel tank, 595 gallon, 48 hr run@ full load ➤ Block heater, 1800W, 120V ➤ Generator heater 120/240V, 200W 1 Ea ASCO 200A Automatic Transfer Switch ➤ Series 300 ➤ 277/480V, 3 phase, 60 Hz ➤ Service entrance rated ➤ 800 Amp, 3 pole, 4W solid neutral ➤ Open transition ➤ Programmable exercise ➤ Nema 3R enclosure

Item 4: Location / Application: Trailer-Mounted Generator at MKS

GSA Equipment – 1 Ea Multiquip DCA125SSIU4F Generator
Includes: ➤ Isuzu BR-4HK1X Diesel Engine ➤ EPA Tier 4 Final Certified ➤ Water Cooled, 1800 RPM ➤ 125kW Standby Rating, 100 kW Prime Rating ➤ Multiple Voltage Selector, 139/240V, 3 ph, 277/480V 3ph, 120/240V 1ph, 60 Hz ➤ Sound-attenuated enclosure, 66 dba @23 ft ➤ Main line circuit breaker 300 Amp
Ancillary Equipment
Generator Options Package Includes: ➤ Battery Charger ➤ ECU845 Controller ➤ Sub-base fuel tank, 169 gallon, 24 hr run@ full load ➤ Engine block heater, 1500W, 120V ➤ Camlock connector Trailer Package Includes: ➤ Tandem-Axle trailer, GVWR 10,000 lbs ➤ Hydraulic or Electric Brakes ➤ Coupler, 3" pintle eye or 2 5/16" ball ➤ Tongue-mounted swivel jack 1 Ea ASCO 200A Automatic Transfer Switch ➤ Series 300 ➤ 120/208V, 60 Hz ➤ 600 Amp, 3 pole, solid neutral ➤ Open transition ➤ Nema 3R 1 Ea Trystar Docking Station ➤ Model GDS-023W-LM-AC ➤ 120/208V, 3 phase ➤ 200 Amp, 3 pole ➤ 65kAIC rated ➤ Phase rotation monitor ➤ Camlock male connector ➤ Two-wire genset start ➤ One battery charger receptacle ➤ Nema 3R enclosure

EXHIBIT "B"
DELIVERY SCHEDULE

EXHIBIT "C"
FEE SCHEDULE

<u>Item</u>	<u>Description</u>	<u>Cost</u>
1	Library	\$82,166.37
2	Flood Control Site	\$42,690.06
3	Stonebridge Wells	\$60,512.51
4	Madrone Knoll/MKS	\$91,346.97
	SUBTOTAL	\$276,715.91
5	Anticipated Sales Tax on Items 1-4 (8.25%)	\$22,829.06
6	*Contingency	\$15,000.00
	TOTAL	\$314,544.97

*Any contingency items not outlined in Exhibit A are required to be approved in writing by the Public Works Director prior to proceeding.

EXHIBIT "D"
FEDERAL CONTRACT REQUIREMENTS

During the performance of this Agreement, the Contractor shall comply with all applicable federal laws and regulations including but not limited to the federal contract provisions in this Exhibit. In this Exhibit, the term "Agency" shall mean the City of St. Helena.

1. REQUIRED CONTRACT PROVISIONS IN ACCORDANCE WITH APPENDIX II TO PART 200 – CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS (2 C.F.R. § 200.326)

- (A) Appendix II to Part 200 (A); Appendix II to Part 200 (B): Remedies for Breach; Termination for Cause/Convenience. See Agreement.
- (B) Appendix II to Part 200 (C) – Equal Employment Opportunity: Except as otherwise provided under 41 C.F.R. Part 60, if this contract meets the definition of a "federally assisted construction contract" in 41 C.F.R. § 60-1.3, then Contractor shall comply with the following equal opportunity clause, in accordance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and implementation regulations at 41 C.F.R. Chapter 60:
 - (i) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
 - (ii) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - (iii) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action,

including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (iv) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (v) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (vi) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (vii) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (viii) The Contractor will include the portion of the sentence immediately preceding paragraph (i) and the provisions of paragraphs (i) through (vii) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal

opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(C) Appendix II to Part 200 (D) – Davis-Bacon Act:

- (i) If this contract is in excess of \$2,000 and if required by Federal program legislation, Contractor must comply with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
- (ii) The Davis-Bacon Act only applies to the emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. It does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program.
- (iii) If applicable, all transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

- (iv) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

(D) Appendix II to Part 200 (D) – Copeland “Anti-Kickback” Act:

- (i) Contractor shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 C.F.R. Part 3) as may be applicable, which are incorporated by reference into this contract. In situations where the Davis-Bacon Act does not apply, neither does the Copeland "Anti-Kickback Act. The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (ii) Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (iii) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (iv) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

(E) Appendix II to Part 200 (E) – Contract Work Hours and Safety Standards Act:

- (i) If this contract is in excess of \$100,000 and involves the employment of mechanics or laborers, Contractor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5). Under 40 U.S.C. 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- (ii) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - (iii) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (ii) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (ii) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (ii) of this section.
 - (iv) Withholding for unpaid wages and liquidated damages. The Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Agreement Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (iii) of this section.
 - (v) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (ii) through (v) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (ii) through (v) of this Section.
- (F) Appendix II to Part 200 (F) – Rights to Inventions Made Under a Contract or Agreement:
- (i) If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity must comply with the requirements of 37 C.F.R. Part 401 (Rights to Inventions

Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements), and any implementing regulations issued by the Federal awarding agency.

- (ii) The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.
- (iii) This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”
- (G) Appendix II to Part 200 (G) – Clean Air Act and Federal Water Pollution Control Act: If this contract is in excess of \$150,000, Contractor shall comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).
 - (i) Pursuant to the Clean Air Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
 - (ii) Pursuant to the Federal Water Pollution Control Act, (1) Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., (2) Contractor agrees to report each violation to the Agency and understands and agrees that the Agency will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate Environmental Protection Agency Regional Office, and (3) Contractor agrees to include these requirements in each subcontract exceeding \$150,000.
- (H) Appendix II to Part 200 (H) – Debarment and Suspension: A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 C.F.R.

part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- (i) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - (ii) Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - (iii) This certification is a material representation of fact relied upon by Agency. If it is later determined that Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Agency, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - (iv) Contractor warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in any federal programs. Contractor also agrees to verify that all subcontractors performing work under this contract are not debarred, disqualified, or otherwise prohibited from participation in accordance with the requirements above. Contractor further agrees to notify the Agency in writing immediately if Contractor or its subcontractors are not in compliance during the term of this contract.
- (I) Appendix II to Part 200 (I) – Byrd Anti-Lobbying Act: If this contract is in excess of \$100,000, Contractor shall have submitted and filed the required certification pursuant to the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1353). If at any time during the contract term funding exceeds \$100,000.00, Contractor shall file with the Agency the Federal Standard Form LLL titled "Disclosure Form to Report Lobbying." Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
- (J) Appendix II to Part 200 (J) – Procurement of Recovered Materials:

- (i) Contractor shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement.
- (ii) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired: Competitively within a timeframe providing for compliance with the contract performance schedule; Meeting contract performance requirements; or At a reasonable price.
- (iii) Information about this requirement, along with the list of EPA-designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- (iv) The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

2. MISCELLANEOUS PROVISIONS

- (A) The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.
- (B) This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of this contract. The Vendor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- (C) The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the Agency, Contractor, any subcontractors or any other party pertaining to any matter resulting from the contract.
- (D) Contractor acknowledges that 31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.
- (E) General and Administrative Expenses And Profit For Time And Materials Contracts/Amendments.
 - (i) General and administrative expenses shall be negotiated and must conform to the Cost Principles.
 - (ii) Profit shall be negotiated as a separate element of the cost. To establish a fair and reasonable profit, consideration must be given to the complexity of

the work to be performed, the risk borne by the Contractor, the Contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (iii) Any agreement, amendment or change order for work performed on a time and materials basis shall include a ceiling price that Contractor exceeds at its own risk.



Report to the City Council
Regular City Council - 24 Nov 2020

Agenda Section: NEW BUSINESS

Subject: Consideration and approval of a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

**CEQA Exempt
Determination:**

Prepared By: April Mitts, Finance Director

Reviewed By: April Mitts, Finance Director

Approved By: Mark T. Prestwich, City Manager

BACKGROUND

On August 11, 2020 the City Council adopted their three-year goals and 2020 workplan. Included in Goal 4 *Ensure Long-Term Economic Sustainability while Safeguarding St. Helena's Unique Culture & Quality of Life* was the need to develop a policy to receive charitable gifts and endowments on behalf of the City. The Finance Director, Council Member Knudsen, and City Attorney collaborated to develop the policy.

DISCUSSION

The purpose is to establish a policy that is consistent with the City's strategic goals for accepting donations in a transparent and accountable manner from individuals, community groups, and businesses whom wish to make donations to the City. The policy establishes uniform criteria and procedures to guide the review and acceptance of donations, confirm the City has adequate resources to administer the donations, and ensure that the City appropriately acknowledges the generosity of the donor.

The recommended policy (Attachment 1) identifies the following:

1. Types of donations
2. Consistency with City interests and considerations to take before accepting a donation

3. Acceptance of donations and threshold amounts of donation acceptance for both designated and undesignated donations
4. Acknowledgement and accounting of donations
5. Declined donations
6. Disposition of donations
7. Donations as charitable contributions

This policy does not replace reportable gift reporting as required under the Political Reform Act as outlined in California Government Code sections 91000-91014. The Fair Political Practices Commission (FPPC) requires all public officials and reporting employees to file a "Conflict of Interest Statement," known as Form 700. Nor does this Policy replace City Council Standards of Conduct as adopted in the *City Council Rules of Procedure for the Conduct of Council Meetings and Standard of Conduct*.

FISCAL IMPACT

There is no fiscal impact associated with this report.

RECOMMENDED ACTION

Staff recommends City Council adopt a Resolution approving City of St. Helena Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

ATTACHMENTS

[Attachment 1 - P-FI-00120 Acceptance of Donations to the City](#)

[Attachment 2 - Resolution P-FI-0020 Donations and Charitable Gifts Policy](#)

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 1 of 9

Title: Acceptance of Donations and Charitable Gifts to the City	Policy #	P-FI-0020
	Revision #	Release
	Implementation Date	
	Last Update Date	
Approval by City Council	Resolution 2020-	Date Approved

I. Purpose, Overview, and Scope of this Policy

The purpose of this Policy (the “Donation Policy”) is to establish a policy that is consistent with the City’s strategic goals for accepting donations in a transparent and accountable manner from individuals, community groups, and businesses wishing to make donations to the City. This policy establishes uniform criteria and procedures to guide the review and acceptance of such donations, confirm the City has adequate resources to administer such donations, and ensure that the City appropriately acknowledges the generosity of the donor. The City may accept or reject any gift or donation.

This policy does not replace reportable gift reporting as required under the Political Reform Act as outlined in California Government Code sections 91000-91014. The Fair Political Practices Commission (FPPC) requires all public officials and reporting employees to file a “Conflict of Interest Statement,” known as Form 700. Nor does this Policy replace City Council Standards of Conduct as adopted in the *City Council Rules of Procedure for the Conduct of Council Meetings and Standard of Conduct*.

II. Authority

Updates to this policy require City Council approval.

III. Policy

1. DEFINITIONS.

- A. City or City of St. Helena shall mean and include the City of St. Helena, and any other affiliated agency created or activated by the City of St. Helena City Council, and any departments, boards and commissions thereof.
- B. City Manager means the City Manager or their designee.
- C. City Official shall mean every elected official, officer, agent, and employee of the City who is obligated to file an Annual Statement of Economic Interests (FPPC Form 700) under state law or the City’s current conflict of interest code.
- D. City Venue shall mean and refer to any facility owned, controlled, or operated by the City.

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 2 of 9

- E. Designated Donation shall mean monetary donations whose expenditure is restricted to a Donor-specified purpose, which may identify a particular City department, program, project, or other purpose as the beneficiary of the donation. For example: such donations may include the funds directed to support a public art initiative or support construction of a skate park.
- F. Donation or Gift shall mean a monetary contribution, personal property, real property, equipment, or any other asset that the City has accepted and for which the donor has not received any legal consideration in return. For the purposes of this Policy, the terms “donation” and “gift” shall be synonymous.
- G. Donor shall mean a person or legal entity that proposes to provide a donation to the City.
- H. Endowment shall mean monetary donations that are restricted by the respective donor to the extent that only earnings, and not principal, may be expended by the City for the donor’s designated or intended purposes. Such donations are restricted donations in the sense that the donor-specified purpose is to preserve the corpus of the initial donation.
- I. FPPC shall mean and refer to the California Fair Political Practices Commission.
- J. Memorial is an item, object, or monument established to preserve the memory of a deceased person(s) or an event that occurred in the past.
- K. Tribute shall mean an item, object, or gift designated to acknowledge the contributions of living people to society.
- L. Undesignated Donation shall mean a donation made to the City by a donor without limitations or restrictions being placed upon its use.

2. TYPES OF DONATIONS.

- A. Donations may be offered in the form of cash, real or personal property, or in-lieu contributions.
- B. Designated donations are those donations that the donor specified for a particular City department, location, or purpose.
- C. Undesignated donations are those donations that are given to the City for an unspecified use.

3. CONSISTENCY WITH CITY INTERESTS AND CONSIDERATIONS

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 3 of 9

- A. Designated donations may only be accepted when they have a purpose consistent with the City's strategic goals and objectives and are in the best interests of St. Helena.
- B. The City must always consider the public trust and comply with all applicable laws when accepting donations.
- C. Before accepting a donation, consideration will be taken for the initial and future expenditures that may be required for use and maintenance of the donation. The City Manager will quantify the costs associated with both restricted and unrestricted donations before a donation is accepted. For example, possible clean-up costs of hazardous materials will be considered before real property is accepted.

4. ACCEPTANCE OF UNDESIGNATED DONATIONS OF CASH OR TANGIBLE ITEMS.

All donations to the City, including offers to employees related to the City, shall immediately be submitted for consideration for acceptance. Based on the value of the donation offered as outlined below, appropriate City staff shall review every donation and determine whether the donation is consistent with the requirements of this Policy and if the benefits to be derived warrant acceptance of the donation. The following are the threshold amounts for donation acceptance.

- A. Offers of donations of cash or items valued at \$1,000 or below may be accepted by a Department Director.
- B. Offers of donations of cash or items valued more than \$1,000 and up to \$10,000 may be accepted by the City Manager.
- C. Offers of donations of cash or items valued more than \$10,000 must be accepted by the City Council. Donations valued at more than \$10,000 shall be accepted through a written agreement consistent with these guidelines and approved by the City Council. The required written agreement may be incorporated into another agreement, such as a development agreement, if the donation is made as part of a proposed development or project. The Mayor and Vice Mayor shall review such offers of donation and provide a recommendation to the City Council.
- D. Offers of donations for gratuitous purposes (e.g. holiday gift baskets, etc.) to any employee, department, or the City shall be made available to benefit all employees.

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 4 of 9

- E. Offers of donations of wine and other alcoholic beverages shall be inventoried and placed in the City's wine cellar for use at City-sponsored events or used for charitable purposes as authorized by the City Manager.

5. ACCEPTANCE OF DESIGNATED DONATIONS OF CASH OR TANGIBLE ITEMS.

Based on the value of the donation offer as outlined in Section 4, appropriate City staff or the Mayor and Vice Mayor as provided in Section 4(C), will review the conditions of any designated donation and determine if the benefits to be derived warrant acceptance of the donation. Criteria for the evaluation include but are not limited to:

- A. Consideration of whether an immediate or initial expenditure is required in order to accept the donation.
- B. The potential and extent of the City's obligation to maintain, match, or supplement the donation.

6. ACKNOWLEDGEMENT AND ACCOUNTING OF DONATIONS.

- A. For all donations provided to the City under \$10,000, a Donations Acceptance Form is required to be completed by the receiving Department Director, the Finance Department, or the City Manager's Office in accordance with Section 4 (A) and Section 4 (B) of this Policy (form attached). The City Manager will acknowledge all donations by signing the designated space on the Donations Acceptance Form.
- B. The City of St. Helena Finance Department is responsible for providing for the deposit and financial administration of any donation to the City. If necessary, the Finance Department shall track the proposed use of any such donation and shall maintain separate records of accounts showing receipts and disbursements if the donation is restricted.
- C. A copy of the Donation Acceptance Form will be forwarded to donors by the receiving department and to the Finance Department.
- D. Donations over \$10,000 must be accepted by the City Council in accordance with Section 4 (C) of this Policy.
- E. The Donor Acceptance Form, including donor names and donation amounts, are public information subject to disclosure pursuant to the California Public Records Act.

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 5 of 9

7. DECLINED DONATIONS.

- A. The City of St. Helena reserves the right to decline any donation if, upon review, acceptance of the donation offer is determined at the sole discretion of the City to not be in the best interest of the City.

8. DISTRIBUTION OF DONATION.

- A. Tangible items will be distributed to appropriate City departments for use or, at the discretion of the Department Director or City Manager, disposed of in an appropriate manner according to this policy.
- B. Donations of cash for designated donations will be deposited into the appropriate revenue account for the designated City department.
- C. Donations of cash for undesignated donations under \$5,000 will be deposited into the City's General Fund Other Revenue account. Undesignated donations in an amount of \$5,000-\$25,000 will be designated to the Non-Profit Grant Program. Undesignated donations in an amount over \$25,000 will be distributed at the direction of City Council.

9. DISPOSITION

Unless restricted otherwise in writing, the City may keep, sell, or dispose of a donation.

10. DISSEMINATION OF INFORMATION.

- A. A copy of each Donation Acceptance Form for accepted donations shall be forwarded to the Finance Department and the designated department for which the donations was assigned.
- B. Accepted donations above \$5,000 shall be reported to the City Council in the Grant Report presented each quarter at a City Council meeting.
- C. Each original Donation Acceptance Form shall be maintained by the City Clerk's Office.

11. DONATIONS AS CHARITABLE CONTRIBUTIONS

- A. When Qualified

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 6 of 9

- i. A donation to the City may be tax deductible as a charitable contribution if the donation is made exclusively for a public purpose as described in the IRS Code at 26 U.S.C. § 170(c)(1).
- ii. The City does not provide legal, accounting, tax, or other such advice to donors. Each donor is ultimately responsible for ensuring the donor's proposed donation meets and furthers the donor's charitable, financial, and estate planning goals. As such, each donor is encouraged to meet with a professional advisor before making any donation to the City.
- iii. The City Manager will provide donors whose donations are accepted with a written statement that includes the following information required by the Internal Revenue Code 1.170A-13 and as described in IRS Charitable Contributions, Substantiation and Disclosure Requirements, Publication 1771. The City will not make a determination of whether the donation is tax deductible.
 1. Name of donor/Name of organization
 2. The amount of cash contribution
 3. A description (but not the value) of non-cash contribution
 4. Date of receipt
 5. A statement that no goods or services were provided by the City in return for the contribution/donation, if that was the case
 6. A description and good faith estimate of the value of goods or services, if any, that the City provided in return for the contribution/donation

12. ACCEPTANCE OF GIFTS TO EMPLOYEES AND/OR ELECTED OFFICIALS OF THE CITY.

- A. Employees and officials of the City are required to be objective and fair in dealing with the public and persons or firms doing business with the City. Employees shall not solicit or accept gifts or gratuities for the performance of their City job responsibilities.
- B. No City official or employee shall directly or indirectly solicit, accept, or attempt to accept any money, fee, credit, gift, gratuity, object of value, or compensation of any kind which the official or employee knows, or has reason to know is being offered:
 - i. For the purpose of improperly obtaining or rewarding favorable treatment;

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 7 of 9

- ii. With interest to influence the official or employee in the discharge of official duties;
 - iii. In consideration of having exercised official powers or performed official duties.
- C. Anonymous gifts shall be delivered to the City Manager or designee for appropriate disposition.
- D. This policy does not prohibit a City official from accepting anything of value by way of a gift when such a gift is made to and accepted on behalf of, the City of St. Helena. All such gifts to the City shall be forwarded to the City Manager for compliance with this Policy whenever possible; the City Manager or designee will ensure that all such gifts are disposed of accordingly. An example of such gifts would be those received during holiday periods.

IV. Forms

- A. City of St. Helena, California Donation Acceptance Form
- B. City of St. Helena, California Donation and Gift Policy Acknowledgement

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 8 of 9

CITY OF ST. HELENA - DONATION ACCEPTANCE FORM

Name of Donor: _____

Address: _____ City: _____ State: _____ Zip: _____

Description of Donation: _____

Donor estimate of current value: _____

Potential immediate/initial acquisition or installation cost, on-going maintenance or replacement cost:

Intended use: _____

Conditions of acceptance or donor designation: _____

Remarks: _____

City Department receiving donation: _____

APPROVED ☐ DISAPPROVED ☐

Date

Department Head Signature

Date

City Manager Signature

Date Submitted to Council

Date Approved by Council/Resolution No.

P-FI-0020

	City of St. Helena Policy Finance	Policy Donation Policy
		Page 9 of 9

CITY OF ST. HELENA - DONATION AND GIFT POLICY ACKNOWLEDGEMENT

I have received and read the City of St. Helena Donation and Gift Policy P-FI-0020 and understand its provisions. I further understand that when I sign this acknowledgement form it will be placed in my personnel file.

Employee (PRINT name)

Signature

Date

P-FI-0020

CITY OF ST. HELENA

RESOLUTION NO. 2020-__

Resolution approving City of St. Helena City Council Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City and Rescinding any Previous Policies or Administrative Memoranda which are Inconsistent with City Council Policy P-FI-0020.

RECITALS

- A. The City recognizes that fiscal policies and procedures are necessary for efficient, effective, and proper accounting of City spending; and
- B. On August 11, 2020, the City Council adopted their three-year goals and 2020 workplan; and
- C. Included in Goal 4 *Ensure Long-Term Economic Sustainability while Safeguarding St. Helena's Unique Culture Quality of Life* was the need to develop a policy to receive charitable gifts and endowments on behalf of the City; and
- D. An Acceptance of Donations and Charitable Gifts to the City Policy was presented to City Council; and
- E. To avoid any inconsistencies with policy application, it is necessary to repeal and rescind any previous policies and procedures which conflict with City Council Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

RESOLUTION

NOW, THEREFORE, the City Council of the City of St. Helena resolves as follows:

- 1. Approves St. Helena City Council Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City; and
- 2. Repeals and rescinds any previous policies or administrative memoranda which are inconsistent with City Council Policy P-FI-0020 Acceptance of Donations and Charitable Gifts to the City.

Approved at a Regular Meeting of the St. Helena City Council on November 24, 2020, by the following vote:

Mayor Ellsworth:

Vice Mayor Dohring:

Councilmember Chouteau:

Councilmember Knudsen:

Councilmember Koberstein:

APPROVED:

ATTEST:

Geoff Ellsworth, Mayor

Cindy Tzaopoulos, City Clerk