

## DESIGN-BUILD CONTRACT

This Design-Build Contract ("Contract") made effective this \_\_\_\_ day of \_\_\_\_\_, 2026 ("Contract Date") by and between the CITY OF SALINAS ("City"), a California charter city and municipal corporation and \_\_\_\_\_ a \_\_\_\_\_ ("Design-Builder") for the design, management, and construction of the Lake Street Lift Station Replacement located at 146 East Rossi Street, Salinas, California ("Project"), is made with reference to the following:

### RECITALS

- A. City is a municipal corporation duly organized and in good standing in the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Salinas Charter.
- B. Design-Builder is a \_\_\_\_\_ duly organized and in good standing in the State of \_\_\_\_\_ and represents that it has the background, knowledge, experience, and expertise to perform the obligations set forth in this Contract.
- C. On \_\_\_\_\_, 202\_\_, City issued a Request for Qualifications ("RFQ") and on \_\_\_\_\_, 202\_\_, City issued a Request for Proposals ("RFP") for the Project. Design-Builder submitted responses to both the RFQ and the RFP.
- D. Except as amended in this Contract, all other provisions of the RFP remain in full force and effect, including all attachments and exhibits thereto.
- E. City and Design-Builder desire to enter into this Contract to provide the Design-Build Services for the Project, and such other services as identified in the Contract Documents for the Project upon the following terms and conditions.

NOW THEREFORE, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the undersigned parties as follows:

### ARTICLE I CONTRACT DOCUMENTS AND INTERPRETATION

#### 1.1 DEFINITIONS

The meanings of all capitalized terms used in the Contract Documents and not otherwise defined herein are contained in the General Conditions. If not defined in the General

Conditions, they shall have the meanings assigned to them elsewhere in the Contract Documents. If not defined in the General Conditions or elsewhere, they shall have the meanings reasonably understood to apply to them by the context of the portion of the Contract Documents where such terms are used.

## **1.2 CONTRACT DOCUMENTS**

The "Contract Documents" except for modifications issued after execution of this Contract, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference:

**1.2.1** This Contract, including all Exhibits and attachments:

- a. **Exhibit A** – Request for Qualifications and Addenda
- b. **Exhibit B** – Request for Proposals and Addenda
- c. **Exhibit C** – Design-Builder's Proposal
- d. **Exhibit D** – General Conditions
- e. **Exhibit E** – Design Documents (to be developed by Design-Builder)
- f. **Exhibit F** – Performance Bond and Payment Bond
- g. **Exhibit G** – Design-Builder's Project Representation and Key Personnel
- h. **Exhibit H** – Project Schedule
- i. **Exhibit I** – Labor Law Requirements
- j. **Exhibit J** – Insurance Requirements

For purposes of the order of precedence of the Contract Documents and for the purposes of construing, interpreting, and resolving inconsistencies between and among the provisions of this Contract, City shall have the sole power to decide which document or provision shall govern as may be in the best interests of City. In any event, Design-Builder shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by the City in writing.

### **1.3 ENTIRE CONTRACT**

The Contract Documents represent the entire and integrated Contract between City and Design-Builder, all other representations or statements, whether verbal or written, are merged herein. The Design-Build Contract may be amended only by written modification.

## **ARTICLE II THE WORK**

### **2.1 SCOPE OF WORK**

Design-Builder shall provide, furnish, and perform all necessary planning, architectural, engineering, and all other design services of any type, procurement, permitting and support services, construction, landscaping, clean-up, and all other construction services of any type; provide and furnish all necessary supplies, materials and equipment (except those to be provided by City, if any) and all necessary supervision, labor, and services required for the complete engineering, design, procurement, quality assurance, construction and all necessary installation, start-up and testing required for a complete, operational, and fully functional Project, as further described in Design-Builder's Proposal (hereinafter, the all-inclusive obligations of the Design-Builder set forth in this sentence shall be referred to as the "Work"). Except with regard to any material to be provided and/or installed by City, Design-Builder shall fully commission and turn over a complete operational, and fully functional Project to City. Without limiting the generality of this Section, Design-Builder shall provide the following work and services:

2.1.1 Design-Builder shall prepare complete designs, engineering, working drawings, shop drawings and generate drawings and/or engineering analysis setting forth in detail the specifications and requirements for the purchasing and procurement of the services, materials and equipment and for the construction of the complete, operational, and fully functional Project, and shall furnish the services of all necessary supervisors, engineers, designers, and other personnel necessary for preparation of those drawings and specifications required for the Work, including the pertinent information for natural gas, water supply, and any other utilities, as required.

2.2.2 Design-Builder shall provide, install and complete as specified and pay for all labor, materials and equipment, tools, supplies, construction equipment and machinery, construction, start-up and testing, utilities, transportation, and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper execution and completion of the complete, operational, and fully functional Project, including the permanent interconnection for electricity, natural gas,

water supply, and any other utilities and demonstration of fully satisfactory operation of all systems and equipment.

2.2.3 Design-Builder shall supervise and direct the Work, and shall furnish the services of all supervisors, forepersons, skilled and unskilled labor, and all other personnel necessary to design and construct the complete, operational, and fully functional Project. Design-Builder shall provide, manage and organize such personnel as necessary to complete the Work in accordance with all requirements of the Contract Documents.

2.2.4 Design-Builder shall obtain, at Design-Builder's expense, all governmental and private approvals, licenses, and permits required to complete the Work; provided, however, City will be responsible for paying the cost of all City imposed fees. Design-Builder shall design and construct complete, operational, and fully functional Project in full compliance with all applicable laws, codes and standards (both public and private), including but not limited to, the standards included and warranties expressed in the Contract Documents and manufacturer's recommendations pertaining to individual items of equipment or systems.

## **2.2 STANDARD OF PERFORMANCE**

In addition to and without limiting Design-Builder's other obligations under the Contract Documents, Design-Builder shall at all times in its performance of its obligations under the Contract Documents conform to the following general standards of performance:

2.2.1 Comply with the requirements of the Contract Documents;

2.2.2 Comply with Applicable Laws;

2.2.3 Conform to the standard of care applicable to those who provide design-build project services and construction of the type called for by this Design-Build Contract for projects of a scope and complexity that is comparable to the Project;

2.2.4 Furnish efficient business administration of the Work, utilizing sufficient senior level management and other qualified personnel to manage the Work; and

2.2.5 Apply its best and highest skill and attention to completing the Work in an expeditious and economical manner, consistent with the expressed best interests of the City and within the limitations of the Contract Sum and Contract Time.

## ARTICLE III TIME FOR PERFORMANCE

### 3.1 CONTRACT TIME

Time is of the essence with respect to all time limits set forth in the Contract Documents. The Date of Commencement of the Work shall be fixed in a Notice to Proceed issued by the City. If City's issuance of a Notice to Proceed is delayed due to Design-Builder's failure to return a fully-executed Contract, insurance documents or bonds within fourteen (14) calendar days after the date of award of the Contract, one (1) calendar day will be deducted from the number of days to achieve Substantial Completion of the Work for every day of delay in City's receipt of such documents. This right is in addition to and does not affect City's right to demand forfeiture of Design-Builder's bid Security, or any other rights or remedies available to City if Design-Builder persistently delays in providing the required documentation. Design-Builder agrees to promptly commence the Work after the Notice to Proceed is issued by the City, to achieve Substantial Completion of the entire Work within **850 calendar days** after the Date of Commencement ("Contract Time") and to achieve Final Completion of the Work within the time fixed by the City in the Certificate of Substantial Completion. The Contract Time may be extended only with the written authorization of the City.

In addition to Contractor's right to a time extension for those events set forth in Section 8.4.1.3 of the General Conditions, Contractor shall also be entitled to an appropriate adjustment of the Contract Price for those events set forth in Section 8.4.1.3 of the General Conditions of contract, provided, however, for Force Majeure Events, Contractor shall only be entitled to an increase in Contract Price if said events exceed 45 cumulative days. Said additional compensation shall be limited to:

The direct costs and expenses Contractor can demonstrate it has reasonably and actually incurred as a result of such event.

3.1.1 Project Schedule. Within fourteen (14) days following full execution of the Contract, Design-Builder must prepare and submit for City's review and approval a preliminary Project Schedule showing the timing and sequencing of the Design-Build Services required to complete the Project. Unless otherwise specified by City, the preliminary Project Schedule should include the major phases for the Design Services and for the Construction Services, including, but not limited to, completion of Design Development Documents; Construction Documents; early procurement of equipment; procurement of Subcontractors; construction; final close out; as well as any other milestones applicable to this Project. The Project Schedule shall be updated for City's review and approval upon completion of each milestone included in the Project Schedule.

3.1.2 Design Development Documents. Includes 10% Conceptual Plan and Preliminary Engineering Report and 30% Preliminary Design, Validation of Project Site Constraints and Owner's Budget. Within 120 calendar days following execution of the Contract, Design-Builder shall prepare and submit for City's review and approval the 10% Conceptual Plan and Preliminary Engineering Report. Within 260 calendar days following execution of the Contract, Design-Builder shall prepare and submit for City's review and approval the 30% Preliminary Design, Validation of the Project Site Constraints and Owner's Budget. The Design Development Documents must be based on the RFQ/P Documents or as updated per City approved direction, but must further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, architectural, mechanical and electrical systems. The Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When submitting the Design Development Documents, the Design-Builder shall identify in writing, for City's approval, all material changes and deviations that have taken place since approval of the RFQ/P Documents and the Project Schedule.

3.1.3 Construction Documents. Includes 100% plans, specifications, and estimate. Within 140 calendar days following City's approval of the Design Development Documents, Design-Builder must prepare and submit for City's review and approval, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws, and regulations in effect at the time of their preparation at the location of the Project. The Construction Documents must also include all necessary bid and contract documents for procuring and providing the Construction Services, all of which are subject to approval by City and its legal counsel. When submitting the Construction Documents, the Design-Builder shall identify in writing all for City's approval, all material changes and deviations that have taken place since approval of the Design Development Documents and Project Schedule. .

3.1.4 Design-Builder understands and acknowledges that the City continues to work to identify property(ies) on which the Project will be developed. Design-Builder will assist the City on providing supporting documentation to property owner(s) in support of negotiations. Design-Builder understands that the exact location may change up to two times during the Design Development Phase and thus Design-Builder expressly waives any claim for time extensions or contract price unless authorized by the City.

3.1.5 Design-Builder expressly waives any claim for delayed early completion.

3.1.6 The Contract Time may only be adjusted for time extensions approved by City and memorialized in a change order approved in accordance with the Contract Documents.

3.1.7 Ownership of Documents.

a. Ownership of Tangible Documents. City shall receive ownership of the property rights of all documents, drawings, specifications, electronic data, and information prepared, provided or procured by Design-Builder, as part of the Design Services. Design-Builder hereby assigns to City, without reservation, all copyrights to all Project-related documents, models, photographs, and other written expressions created by Design-Builder.

b. Use of Documents in Event of Termination. In the event of a termination of this Contract, City shall have the right to use, to reproduce, and to make derivative works of the Design Documents to complete the Project, regardless of whether there has been a transfer of copyright to the City.

c. Use of Documents After Completion of Project. After completion of the Project, City may reuse, reproduce, or make derivative works from the Design Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project.

3.1.8 Design-Builder shall obtain from its Subcontractors and Design Professionals rights and rights of use that correspond to the rights given by Design-Builder in this Contract and Design-Builder shall provide evidence to the City that such rights have been secured.

## **3.2 LIQUIDATED DAMAGES**

3.2.1 City and Design-Builder recognize that time is of the essence if this Contract and that the City may suffer financial loss in the form of lost funds, additional contract administration expenses, loss of public use if the Work is not completed within the Contract Time, including any extensions thereof allowed in accordance with the Contract Document.

3.2.2 Design-Builder and City agree to liquidated damages with respect to Design-Builder's failure to achieve Substantial Completion of the Work within the Contract Time. The Parties intend for the liquidated damages set forth herein to apply to

this Contract as set forth in Government Code Section 53069.85. Design-Builder acknowledges and agrees that the liquidated damages are intended to compensate City solely for Design-Builder's failure to meet the deadline for Substantial Completion and shall not excuse Design-Builder from liability from any other breach, including any failure of the Work to conform to the requirements of the Contract Documents.

3.2.3 In the event that Design-Builder fails to achieve Substantial Completion of the Work within the Contract Time, Design-Builder agrees to pay City **\$9,500 per day** for each calendar day that Substantial Completion is delayed.

In the event that Design-Builder fails to achieve Final Completion of the Work within sixty (60) days of the Substantial Completion Date, Design-Builder agrees to pay City **\$14,000** for each calendar day that Final Completion is delayed.

3.2.4 Design-Builder acknowledges and agrees that the foregoing liquidated damages have been set based on an evaluation by City of damages that it will incur in the event of the late completion of the Work. Design-Builder and City agree that because of the nature of the Project it would be impractical or extremely difficult to fix the amount of actual damages incurred by the City due to a delay in completion of the Work. Accordingly, the City and Design-Builder have agreed to such liquidated damages to fix Design-Builder's costs and to avoid later disputes. It is understood and agreed by Design-Builder that any liquidated damages payable pursuant to this Contract are not a penalty and that such amounts are not manifestly unreasonable under the circumstances existing as of the effective date of this Contract.

3.2.5 It is further mutually agreed that City shall have the right to deduct liquidated damages against progress payments or retainage and that the City will issue a unilateral Construction Change Directive and reduce the Contract Sum accordingly. In the event the remaining unpaid Contract Sum is insufficient to cover the full amount of liquidated damages, Design-Builder shall pay the difference to City.

## ARTICLE IV CONTRACT SUM

### 4.1 CONTRACT SUM

4.1.1 Phase 1 Compensation. City shall pay the Design-Builder in current funds for the Design-Builder's complete performance of the Work in accordance with the Contract Documents the not-to-exceed Contract Sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) for Phase 1 Scope of Work. The Contract Sum shall be full compensation to Design-Builder for all

Design-Build Services provided by Design-Builder and, except as otherwise expressly permitted by the terms of the Contract Documents, shall cover all losses arising out of the nature of the Design-Build Services or from the acts of the elements or any unforeseen difficulties or obstructions which may arise or be encountered in the performance of the Design-Build Services until its acceptance by City, all risks connected with the Design-Build Services, and any and all expenses incurred due to suspension or discontinuance of the Design-Build Services, except as expressly provided herein. The Contract Sum may only be adjusted for change orders approved in accordance with the requirements of the Contract Documents.

4.1.2 Phase 2 Compensation. City shall pay Design-Builder for Phase 2 scope of work following completion of Phase 1 with approval of GMP and authorized contract amendment. City reserves the right to terminate the contract after Phase 1 if City and Design-Builder cannot agree to an amended contract or GMP.

4.1.4 Retention. The City will retain five percent (5%) from each progress payment per Section 9.5.4 of the General Conditions.

## 4.2 ALTERNATES

The Contract Sum is based upon the following Alternates described in the RFP Documents, which are hereby accepted by the City:

Number	Description	Dollar Amount
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## 4.3 UNIT PRICES

The following unit prices are agreed to by the Design-Builder and City:

Description	Measurement Unit	Dollar Amount
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## 4.4 PAYMENT BY ELECTRONIC FUND TRANSFER

Design-Builder shall accept all payments from City via electronic funds transfer (EFT) directly deposited into the Design-Builder's designated checking or other bank account.

Design-Builder shall promptly comply with directions and accurately complete forms provided by City required to process EFT payments.

## **ARTICLE V DESIGN-BUILDER'S DUTIES AND RESPONSIBILITIES**

### **5.1 BEFORE STARTING WORK**

Design-Builder shall submit the following to City for review and acceptance within fourteen (14) calendar days after the Date of Commencement fixed in City's Notice to Proceed, and as a condition to payment: (i) detailed Project Schedule including each deadline specified in the Contract Documents showing the timing and sequencing of the services required to timely complete the Project; (ii) Schedule of Submittals; (iii) material Procurement Schedule; and (iv) a Schedule of Values in accordance with the requirements of the General Conditions and other Contract Documents. The Project Schedule shall be updated for City's review and approval upon completion of each milestone included in the Project Schedule.

### **5.2 INITIAL CONFERENCE**

Within twenty (20) calendar days after the Date of Commencement fixed in City's Notice to Proceed, a conference attended by City and Design-Builder and others as appropriate will be held to establish a working understanding among the Parties as to the Work and to discuss the design concepts, updating schedules, progress meetings, procedures for handling submittals, processing Application for Payment, maintaining required records, coordination with Design-Builder Team Members, and other Project administration matters.

### **5.3 EVALUATION OF PRELIMINARY SUBMITTALS**

At least ten (10) calendar days before submission of the first Application for Payment, a conference attended by Design-Builder, City and others as appropriate, will be held to review for acceptability of the submittals required by the Contract Documents. No progress payment shall be made to Design-Builder until the required submittals are acceptable to City. The detailed Project Schedule will be acceptable to City as providing an orderly progression of the Work to completion within any specified Milestones and the Contract Time, but such acceptance will neither impose on City responsibility for the sequencing, scheduling or progress of the Work nor interfere with nor relieve Design-Builder from Design-Builder's full responsibility, therefore. The format and structure of the Project Schedule will be set forth in the Contract Documents and approved by City. City's acceptance shall not be deemed to confirm that the schedule is a reasonable plan

for performing the Work. Design-Builder's schedule of submittal will be acceptable to City as providing a workable arrangement for reviewing and processing the required submittals.

#### **5.4 DESIGN PROFESSIONAL LICENSING REQUIREMENTS**

City does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of this Contract, Design-Builder acknowledges that City has no such intent. It is the intent of the Parties that Design-Builder is fully responsible for furnishing the design of the Project, although the fully licensed design firms designated as members of the Design Team, will perform the design services required by the Contract Documents. Nothing in this Article shall create a contractual relationship between such Persons and the City.

#### **5.5 STANDARD OF CARE**

All design Services performed by Design-Builder, the Design Team Members, Subcontractors, and their employees identified by the Design-Builder or other persons approved by the City shall be performed in an expeditious and professional manner using architects, engineers and other professionals properly licensed and duly qualified in the jurisdiction in which the Project is located. The professional obligations of such persons shall be undertaken and performed in the interest of the Design-Builder. All design Services performed pursuant to this Contract shall be performed with the degree of skill and learning ordinarily possessed by architects and engineers in good standing in the community regularly engaged in the design and construction of an improvement such as this Project and must apply that knowledge with the diligence ordinarily exercised by reputable architects and engineers under similar circumstances ("Standard of Care").

#### **5.6 INDEMNIFICATION**

5.6.1 Hold Harmless. To the fullest extent permitted by law, and as more specifically described in the General Conditions, Design-Builder shall protect, indemnify, defend, and hold harmless City, its Council members, officers, employees, and agents (each an "Indemnified Party") against any and from all demands, claims, or liabilities of any nature, including death or injury to any person, property damage or any other loss, including all costs and expenses of whatever nature including attorneys' fees, expert fees, court costs and disbursements ("Claims") that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Design-Builder, its officers, employees, agents, or contractors under this Contract, regardless or whether or not it is caused in part by an Indemnified Party.

Notwithstanding the above, nothing in this section shall be construed to require Design-Builder to indemnify an Indemnified Party from Claims arising from the active negligence, sole negligence, or willful misconduct of an Indemnified Party.

Design-Builder shall pay City for any costs City incurs to enforce this provision. Nothing in the Contract Documents shall be construed to give rise to any implied right of indemnity in favor of Design-Builder against City or any other indemnitee.

Pursuant to Public Contract Code section 9201, City shall timely notify Design-Builder upon receipt of any third-party claim relating to the Contract.

5.6.2 Survival. The acceptance of Design-Builder's services and duties by City shall not operate as a waiver of the right of indemnification. The provisions of this section shall survive the expiration of termination of this Contract.

## **5.7 CONSTRUCTABILITY AND COORDINATION REVIEWS**

On at least a monthly basis or such other intervals identified in the Contract Documents, Design-Builder shall meet with the City, its Separate Contractors, and consultants to coordinate the Construction Documents, including the design of building systems delegated to the Design-Builder, for the purpose of continuing construction feasibility, identifying conflicts, missing information or gaps in the planned scope of Work and to take appropriate action to ensure the full scope of intended Work is performed efficiently and economically.

## **5.9 PHASE 1 - SCHEMATIC DESIGN, DESIGN DEVELOPMENT, & GMP DOCUMENTS (Pre-construction services)**

5.8.1 Provide program validation workshop services to confirm City goals and objectives.

5.8.2 Provide 10% Conceptual Plan and Preliminary Engineering Report.

5.8.3 Provide 30% Preliminary Design, Validation of Project Site Constraints, and Owner's Budget.

5.8.4 Perform constructability reviews and reports.

5.8.5 Provide continuous Value Engineering recommendations.

5.8.6 Provide budget updates at each design phase milestone.

5.8.7 Participate in monthly meetings with City and their project team.

5.8.8 Provide agency updates & presentations including city council, planning commission, design review board, and building department reviews.

5.8.9 Generate continuous schedule updates throughout pre-construction phase.

5.8.10 Develop Guaranteed Maximum Price and related Contract addendum documents.

## **5.9 PHASE 2 - CONSTRUCTION DOCUMENTS, PERMITS & CONSTRUCTION (Construction phase services)**

After City's issuance of a Contract Amendment and Notice to Proceed and within the times set forth in the Project Schedule accepted by City, Design-Builder shall

5.9.1 On the basis of the Design Development and GMP Documents, prepare final Construction Documents showing the scope, extent, and character of the construction to be performed and furnished by Design-Builder including technical drawings, schedules, diagrams, calculations, and specifications (which, unless otherwise approved by City, will be prepared, where appropriate, in general conformance with the Construction Specifications Institute) setting forth the requirements for construction of the Work which shall provide information customarily necessary for the use of those in building trades.

5.9.2 Provide technical criteria, written descriptions and design data required for obtaining approvals of such governmental authorities as have jurisdiction to review or approve the final design of the Project, and assist City in consultations with appropriate authorities.

5.9.3 Furnish the above documents, drawings, calculations and specifications to and review them with City for approval within the time indicated in the approved Project Schedule at increments of at least 50% and 100% completion of the Construction Documents. After City's approval of the final Construction Documents, said documents shall be deemed to be incorporated as Contract Documents. Design-Builder shall not proceed with the construction of elements that may be impacted by the final design, unless and until it receives City's written approval of the Construction Documents or portions thereof.

5.9.4 Design-Builder shall submit to City Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of Design Development and GMP design submissions, as such submissions may have been modified in a design review meeting. The parties shall have a design review meeting to

discuss, and City shall review and approve, the Construction Documents in accordance with the procedures set forth herein. Design-Builder shall proceed with construction in accordance with the approved Contract Documents and shall submit one set of approved Construction Documents by City prior to commencement of construction.

The Design-Builder shall prepare Construction Documents for the entire Project in full compliance with all applicable building codes, ordinances, and other regulatory authorities. The Construction Documents shall at a minimum comply with all applicable California State Building Codes to include, but not limited to, Title 8 (Industrial Relations) Title 17 (Public Health), and Title 24 (Building Standards). The completed Construction Documents are to be delivered to the City and shall consist of the following: (1) Drawings – Provide one reproducible original. s. Provide one copy of all approved Construction Document drawings on a flash drive using Computer-Aided Design (CAD) software, using the latest version of AutoCAD; and (2) Specifications – Provide two original copies of approved specifications, bound and organized. Provide approved specifications on flash drive for all sections for all work applicable to the Project in a format complying with the current edition of the Construction Specifications Institute's "MasterFormat", as directed by the City in accordance with the following:

- a. Electronic computer software in Microsoft Word, latest version for Windows.
- b. All flash drives produced shall be clearly labeled to indicate files contained and date produced.

5.9.5 City's review and approval of interim design submissions and the Contract Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither City's review nor approval of any interim design submissions and Construction Documents shall be deemed to transfer any design liability from Design-Builder to City.

5.9.6 Design-Builder shall perform Construction Phase Series in accordance with the requirements of the General Conditions.

5.9.7 Construction Services shall be performed by Design-Builder and/or by qualified and licensed Design-Builder, Subcontractors and suppliers who are selected, paid and acting in the interest of the Design-Builder in accordance with the procedures outlined in the Contract Documents.

5.9.8 The Design-Builder shall keep the City informed of the progress and quality of the Work in the form of periodic written reports, as determined by the City but no less than monthly.

5.9.9 As a condition to final payment to Design-Builder, each Design Team Member shall provide written certification that the Work has been constructed in accordance with the Contract Documents and the design provided by such person.

5.9.10 Design-Builder acknowledges that release of any portion of the retention withheld by City will not occur until, at a minimum, thirty-five (35) days following the City's filing of the Notice of Completion. Release of any retention is subject to the requirements in the General Conditions, including, but not limited to General Conditions Section 9.6, Substantial Completion, and Section 9.8, Final Completion.

#### **5.10 SENATE BILL 854 (CHAPTER 28, STATUTES OF 2014) AND SENATE BILL 96 (CHAPTER 28, STATUTES OF 2017) REQUIREMENTS**

5.10.1 Design-Builder shall comply with Senate Bill 854 (signed into law on June 20, 2014) and Senate Bill 96 (signed into law on June 27, 2017). The requirements include, but are not limited to, the following:

- a. No contractor or subcontractor may be listed on a bid proposal (submitted on or after March 1, 2015) for a public works project unless registered with the Department of Industrial Relations (DIR) pursuant to Labor Code Section 1725.5, with limited exceptions from this requirement for bid purposes only as allowed under Labor Code Section 1771.1(a).
- b. No contractor or subcontractor may be awarded a contract for public work or perform work on a public works project (awarded on or after April 1, 2015) unless registered with the DIR pursuant to Labor Code Section 1725.5.
- c. This Project is subject to compliance monitoring and enforcement by the DIR.
- c. As required by the DIR, Design-Builder is required to post job site notices, as prescribed by regulation, regarding compliance monitoring and enforcement by the DIR.
- d. Design-Builder and all of its subcontractors at every tier must submit certified payroll records online to the Labor Commissioner for all new public works projects issued on or after April 1, 2015, and for all public works projects, new or ongoing, on or after January 1, 2016.

(1) The certified payroll must be submitted at least monthly to the Labor Commissioner.

(2) The City reserves the right to require Design-Builder and all subcontractors at every tier to submit certified payroll records more frequently than monthly to the Labor Commissioner.

(3) The certified payroll records must be in a format prescribed by the Labor Commissioner.

e. Registration with the DIR and the submission of certified payroll records to the Labor Commissioner are not required if the public works project is \$25,000 or less when the project is for construction, alteration, demolition, installation or repair work, or if the public works project is \$15,000 or less when the project is for maintenance work.

f. Labor Code Section 1771.1(a) states the following: "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

**Exhibit I** further explains the requirements from Department of Industrial Relations.

## **5.11 INSURANCE**

Design-Builder agrees to provide the City with Certificates of Insurance evidencing the required insurance coverage at the time Design-Builder executes the contract with the City.

Insurance Requirements are further detailed in **Exhibit J**.

## **5.12 SKILLED AND TRAINED WORKFORCE**

The Design-Builder shall comply with all of the requirements of Public Contract Code Section 22164(c). As required by this section Design-Builder agrees that it "and its subcontractors at every tier will use a skilled and trained workforce to perform all work

on the project or contract that falls within an apprenticeable occupation in the building and construction trades.” Design-Builder agrees that it and all of its subcontractors at every tier will comply with the requirements of Public Contract Code Section 22164(c) and will provide the City with written evidence that Design-Builder and all of its subcontractors at every tier are complying with these requirements by the 10<sup>th</sup> day of each month that Work is performed.

## **ARTICLE VI DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES**

In order to induce City to enter into this Contract, Design-Builder makes the following representations and warranties:

6.1 Design-Builder has visited the Site and has reasonably examined the nature and extent of the Work, Site, locality, actual conditions, as-built conditions, and all local and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the design and the means, methods, techniques, sequences or procedures of construction to be employed by Design-Builder and safety precautions and programs incident thereto.

6.2 Design-Builder has reasonably examined all documents provided during the RFQ/P phase including reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for design and construction purposes, of physical conditions, or which may be apparent at the Site and accepts the criteria set forth in these documents and the General Conditions to the extent of the information contained in these documents upon which the Design-Builder is entitled to rely. Design-Builder agrees that except for the information so identified, Design-Builder does not and shall not rely on any other information contained in these documents.

6.3 After contract award, Design-Builder, will conduct or obtain any additional examinations, investigations, explorations, tests, reports and studies, including but not limited to geotechnical investigations upon which the design will be based, that pertain to the surface and subsurface conditions, as-built conditions, underground facilities and all other physical conditions at or contiguous to the Site as Design-Builder considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

6.4 Design-Builder has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

6.5 Design-Builder has given City prompt written notice of all conflicts, errors, ambiguities, or discrepancies that it has discovered before contract award in or among the Contract Documents and as-built drawings and actual conditions and the written resolution thereof through Addenda issued by City is acceptable to Design-Builder.

6.6 Design-Builder is duly organized, existing and in good standing under applicable state law, and is duly qualified to conduct business in the State of California.

6.7 Design-Builder has duly authorized the execution, delivery and performance of this Contract, the other Contract Documents and the Work to be performed herein. The Contract Documents do not violate or create a default under any instrument, Contract, order or decree binding on Design-Builder.

6.8 Design-Builder confirms its intent to include in the project the following pre-qualified subcontractors, who were listed in the Design-Builder's Statement of Qualifications earlier in this design-build procurement process. Design-Builder acknowledges its responsibility to provide City with a complete and updated list of subcontractors as they become known on the project, and that such listing shall be in accordance with the requirements of California Public Contract Code Section 22166. As required by Public Contract Code Section 22166(b), following the City's approval of the Contract, the Design-Builder shall award construction subcontracts with a value exceeding ½ of 1% of the Contract Sum allocable to construction Work as follows: (1) Provide public notice of the availability of work to be subcontracted in accordance with the publication requirements applicable to the competitive bidding process used by the City, including a fixed date and time when qualification statements, bids or proposals will be due; (2) Establish reasonable qualification criteria and standards; and (3) Award the subcontract either on a best value basis or to the lowest responsible bidder – this process may include prequalification or short-listing and does not apply to construction subcontractors listed in the Design-Builder's Proposal. All construction subcontractors that were identified in the Proposal and awarded as required under Public Contract Code Section 22166 shall be afforded all the protections of Public Contract Code Section 4100 *et seq.*

NAME OF SUBCONTRACTOR AND LOCATION OF MILL OR SHOP	DESCRIPTION OF WORK: REFERENCE TO BID ITEMS	SUBCONTRACTOR'S LICENSE NO.

NAME OF SUBCONTRACTOR AND LOCATION OF MILL OR SHOP	DESCRIPTION OF WORK: REFERENCE TO BID ITEMS	SUBCONTRACTOR'S LICENSE NO.

**ARTICLE VII  
MISCELLANEOUS PROVISIONS**

**7.1 INDEPENDENT DESIGN-BUILDER**

Design-Builder is, and shall be, acting at all times in the performance of this Contract as an independent Design-Builder. Design-Builder shall secure at its expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for Design-Builder and its officers, agents and employees and all business licenses, if any, in connection with the services to be performed hereunder.

**7.2 CITY EMPLOYEES AND OFFICIALS**

Design-Builder shall employ no City official nor any regular City employee in the Work performed pursuant to this Contract. No officer or employee of City shall have any financial interest in this Contract in violation of applicable provisions of law.

**7.3 ACCOUNTING RECORDS**

7.3.1 Financial Management and City Access. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract in accordance with generally accepted accounting principles and practices. City and employees and agents during normal business hours, may inspect, audit, and copy Design-Builder's records, books, estimates, take-offs, cost

reports, ledgers, schedules, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to this Project. Design-Builder shall retain these documents for a period of three (3) years after the later of (i) Final Payment, or (ii) final resolution of all disputes, or (iii) for such longer period as may be required by law.

7.3.2 Compliance with City Requests. Design-Builder's compliance with any request by City pursuant to this section shall be a condition precedent to filing or maintenance of any legal action or proceeding by Design-Builder against City and to Design-Builder's right to receive further payments under the Contract Documents. City may enforce Design-Builder's obligation to provide access to City of its business and other records referred to in this section for inspection or copying by issuance of a writ or a provisional or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court, without the necessity of oral testimony.

#### **7.4 NUISANCE**

Design-Builder shall not maintain, commit, nor permit the maintenance or commission of any nuisance in connection with the performance of services under this Contract.

#### **7.5 WAIVER**

A waiver by either party of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

#### **7.6 GOVERNING LAW AND VENUE**

7.6.1 Governing Law and Venue. This Contract shall be construed in accordance with and governed by the laws of the State of California, without regard to conflict of law provisions, and venue shall be in Monterey County, California, or in a federal court of competent jurisdiction.

7.6.2 Compliance with Laws. Design-Builder shall comply with all applicable federal, state, and local laws and regulations including, without limitation, ordinances and resolutions, in the performance of work under this Contract.

#### **7.7 SURVIVAL OF CONTRACT**

The provisions of this Contract which by their nature survive termination or expiration of this Contract or Final Completion, including, without limitation, all warranties, indemnities, payment obligations, and City's right to audit Design-Builder's books and records, shall remain in full force and effect after Final Completion or any termination or expiration of the Contract.

## **7.8 PREVAILING WAGES**

This Project is subject to prevailing wages and related requirements as a "public works" under California Labor Code sections 1720 et seq. and related regulations. Design-Builder is required to comply with all applicable laws and regulations related to the payment of prevailing wages, as the same may be amended from time to time.

## **7.9 NON-APPROPRIATION**

In the event the City Council, or other governing body, fails to appropriate or to budget sufficient funds for the continuation of this Contract, or should funds become unavailable for any other reason, the City reserves the right to terminate this Contract upon written notice. This termination shall be effective as of the last day of the fiscal year for which funds were appropriated. Upon such termination, Design-Builder will be limited to compensation for services satisfactorily rendered up to the date of termination.

## **7.10 NONDISCRIMINATION**

During the performance of this Contract, Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability. Consultant shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, ancestry, creed, sex, national origin, familial status, sexual orientation, age (over 40 years) or disability.

## **7.11 IRAN CONTRACTING ACT OF 2010**

(Public Contract Code sections 2200 et seq.)

(Applicable for all Contracts of one million dollars (\$1,000,000) or more)

In accordance with Public Contract Code section 2204(a), the Design-Builder certifies that at the time the Contract is signed, the Design-Builder signing the contract is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in

Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Contractors are cautioned that making a false certification may subject the contractor to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. Design-Builder agrees that signing the Contract shall constitute signature of this Certification.

#### **7.12 CONFLICT OF INTEREST**

Design-Builder warrants and declares that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, in any manner or degree which will render the services required under the provisions of this Contract a violation of any applicable local, state or federal law. Design-Builder further declares that, in the performance of this Contract, no subcontractor or person having such an interest shall be employed. In the event that any conflict of interest should nevertheless hereinafter arise, Design-Builder shall promptly notify City of the existence of such conflict of interest so that City may determine whether to terminate this Contract. Design-Builder further warrants its compliance with the Political Reform Act (Government Code section 81000 et seq.) and Salinas City Code Chapter 2A that apply to Design-Builder as the result of Design-Builder's performance of the work or services pursuant to the terms of this Contract.

#### **7.13 COUNTERPARTS**

This Contract may be signed in multiple counterparts, which, when executed by all the parties, shall together constitute a single binding Contract.

#### **7.14 LEVINE ACT DISCLOSURE COMPLIANCE (GOVERNMENT CODE SECTION 84308)**

Design-Builder hereby affirms and warrants that it has not contributed to the campaign of any elected or appointed City official an amount totaling more than \$500 within twelve (12) months of the effective date of this Contract, except as Design-Builder has disclosed within its Levine Act Disclosure Form submitted by Design-Builder to the City. Design-Builder agrees, that in the event it makes any contributions subject to the Levine Act's disclosure requirements within twelve (12) months of the effective date of this Contract, that it will file a Levine Act Disclosure Form (or Forms).

**7.15 ELECTRONIC EXECUTION OF CONTRACT.**

The words "execution," "signed," "signature," and words of like import in this Contract shall be deemed to include electronic signatures or electronic records (including, without limitation, DocuSign and AdobeSign), each of which shall be of the same legal effect, validity, enforceability, and admissibility as a handwritten signature.

**7.16 DEBARMENT AND SUSPENSION**

The Design-Builder certifies that neither it nor its principals, or other key decision makers, or subcontractors is presently disbarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency or on the Federal Government Excluded Parties List System ([www.epls.gov](http://www.epls.gov)). Design-Builder agrees that signing this Contract shall constitute signature of this Certification.

**7.17 INACCURACIES OR MISREPRESENTATIONS**

If during the course of the administration of this Contract, the City determines that the Design-Builder has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the City, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the City is entitled to pursue any available legal remedies.

**7.18 NOTICES**

Any notices or special instruction required to be given in writing under this Contract shall be given either by personal delivery or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

CITY	DESIGN-BUILDER
_____	_____
_____	_____
_____	_____

**With a copy to:**

City Attorney  
200 Lincoln Avenue  
Salinas, California 93901

7.18.1 City Representatives. City designates the City Engineer as the individual with authority and responsibility for administering this Contract (“Project Manager”). City further designates the following individual as the City’s Project Representative with the authority and responsibility for providing information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under this Contract. City’s Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions, or defects in the performance of the Work. City’s Representative shall communicate regularly with Design Builder and shall be vested with the authority to act on behalf of City:

Kari Wagner, PE  
COO/Principal  
Wallace Group  
612 Clarion Court  
San Luis Obispo, California 93401

7.18.2 Design-Builder's Representatives. Design-Builder designates the individual listed below as the Design-Builder's Representative, which individual has the authority and responsibility over Design-Builder's obligations as set forth in this Contract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**7.19 SEVERABILITY**

In case a provision of this Contract is held to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not be affected

**7.20 CONTRACTOR'S LICENSE NOTICE**

Contractors are required by law to be licensed and regulated by the Contractors State Licensee Board, which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 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.

IN WITNESS WHEREOF, the undersigned, at authorized representatives of the parties have entered into this Contract as of the date first set forth above.

CITY OF SALINAS

\_\_\_\_\_  
Dennis Donohue, Mayor

APPROVED AS TO FORM

\_\_\_\_\_  
Christopher A. Callihan, City Attorney

ATTEST:

\_\_\_\_\_  
Patricia M. Barajas, City Clerk

DESIGN- BUILDER

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

