

CONTRACT
CITY OF FRESNO, CALIFORNIA
PUBLIC WORK OF IMPROVEMENT

THIS CONTRACT is made and entered into by and between CITY OF FRESNO, a California municipal corporation (City), and CENTEC CONSTRUCTION, a California sole proprietorship (Contractor).

RECITALS

- A. The City periodically requires removal and disposal of hazardous materials (lead based paint and asbestos containing materials) pursuant to demolition on an emergency basis due to fire, inclement weather, or other circumstance that renders a building hazardous to the neighborhood and any persons entering the building.
- B. Contractor is qualified to provide these services on an emergency basis.

CONTRACT

- 1. Contract Documents. Specifications including General Conditions, Special Conditions, and Technical Specifications for demolitions necessary on an emergency basis during the period of the Contract, copies of which are annexed hereto, and are hereby incorporated into and made a part of this Contract, and shall be known as the Contract Documents.
- 2. Requirements Contract. During the period of the Contract, Contractor shall provide all the Services described in the Contract Documents. Contractor understands and agrees that this is a requirements Contract, and the City shall have no obligation to Contractor if no Services are required.
- 3. Price and Work. For the monetary consideration NOT TO EXCEED \$250,000.00, Contractor promises and agrees to perform or cause to be performed, in a good and workmanlike manner, under the direction and to the satisfaction of the City's Associate Environmental and Safety Consultant or City's Engineer and in strict accordance with the Specifications, all of the work as set forth in the Contract Documents.
- 4. Payment. City agrees to pay the consideration stated, at the times, in the amounts, and under the conditions specified in the Contract Documents. The Contractor agrees to accept electronic payment from the City.
- 5. Term of the Contract. The term of this Contract shall be up to six months. The Contract may be terminated by either party upon 30 days written notice.
- 6. Indemnification. To the furthest extent allowed by law including California Civil Code Section 2782, Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from

any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless, and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

7. Trench Shoring Detailed Plan. Contractor acknowledges the provisions of Section 6705 of the California Labor Code and, if said provisions are applicable to this Contract, agrees to comply therewith.
8. Worker's Compensation Certification. In compliance with the provisions of Section 1861 of the California Labor Code, Contractor hereby certifies as follows:

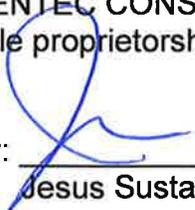
I am aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of work of this Contract and will make my subcontractors aware of this provision.
9. The City Attorney, or designee, is hereby authorized and directed to execute and implement this Agreement.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Contract on the day and year here below written, of which the date of execution by City shall be subsequent to that of Contractor's, and this Contract shall be binding and effective upon execution by both parties.

CENTEC CONSTRUCTION, a California
sole proprietorship

CITY OF FRESNO,
a California municipal corporation

By: 
Jesus Sustaita
Owner

By: _____
Douglas T. Sloan
City Attorney

Dated: 3-3-2022

Dated: _____

Applicable Contractor License:
Number: 1080683
Name: Centec Construction
Date of Issuance: September 2, 2021

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  3/3/22
Date

Senior Deputy City Attorney

Contractor Address:
Centec Construction
Attention: Jesus Sustaita, Owner
P.O. Box 28058
Fresno, CA 93729
Phone: 559-475-0590

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Date
Deputy

City address:
City of Fresno
ATTN: Erica Camarena, Chief Assistant City
Attorney
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-7500



**PAYMENT BOND
PUBLIC WORK**

WHEREAS, the Principal has been awarded a requirements contract for removal and disposal of hazardous materials in the City of Fresno on an emergency basis, in an amount not to exceed \$250,000; and

WHEREAS, the amount of the City payment is not yet known, as the projects under this agreement come up under an emergency basis; and

WHEREAS, the Principal agrees to pay the bond in installments, starting with \$50,000 to be posted prior to any work commencing under the Contract; and

WHEREAS, the Principal agrees to pay the next installment of \$50,000 when the work conducted has reached \$40,000 of the original \$50,000, and so on if and until the Contract amount reaches the limit;

NOW, THEREFORE, be it resolved, the Principal agrees as follows:

1. The Principal will timely seek to post a \$50,000 bond prior to the commencement of any work under the contract.
2. Once the bond is in place, if the Principal or subcontractors of the Principal shall fail to pay any of the persons named in Section 9100 of the Civil Code, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or prevailing wages due and penalties incurred pursuant to Sections 1774, 1775, 1813, or 1815 of the Labor Code, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Principal and subcontractors pursuant to Section 13020 of the Unemployment Insurance Code, with respect to the work and labor, the Surety will pay for the same, in an amount not exceeding the sum specified above, and also, in case suit is brought upon this bond, will pay, in addition to the face amount thereof, costs, and reasonable expenses and fees, including reasonable attorney's fees, incurred by the Obligee in successfully enforcing this obligation, to be awarded and fixed by the court, and to be taxed as costs and to be included in the judgment therein rendered. The benefit of this bond shall inure to any of the persons named in Section 9100 of the Civil Code so as to give the right of action to those persons or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

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No extension of time granted to the Principal and no change, alteration or addition in any of the terms of the contract or any of the contract documents or the work to be performed thereunder, whether made after notice or not, shall release or otherwise affect the obligations of the Surety hereunder, and the Surety waives notice of any such extension, change, alteration or addition.

CENTEC CONSTRUCTION



PRINCIPAL

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____ Date
Senior Deputy City Attorney

DIVISION II
GENERAL CONDITIONS

DIVISION II
GENERAL CONDITIONS

Wherever used in the Specifications or any of the Contract documents, the following words shall have the meaning herein given, unless the context requires a different meaning.

1. California Building Code (CBC), Latest Edition; California Plumbing Code (CPC), Latest Edition; California Mechanical Code (CMC), Latest Edition; National Electrical Code (NEC), Latest Edition; California Fire Code (CFC), Latest Edition; California Health and Safety Code (as applicable). For purposes of this definition, "Latest Edition" shall mean the edition, and to the extent, adopted by the City through the City of Fresno Municipal Code.
2. "City," "Buyer," "Owner," "Vendee," "City of Fresno" shall each mean and refer to the City of Fresno, California.
3. "City Standard Specifications" City of Fresno, Standard Specifications, Department of Public Works, dated September, 2010 and as amended from time-to-time.
4. "Construction Manager" shall mean and refer to the Owner's authorized representative at the Job Site, in responsible charge of administering the Contract. The Construction Manager shall be the single point of contact for all correspondence, submittals, progress payment requests, and contacts to and from the Contractor.
5. "Contract," "Contract Documents" shall mean and refer to these Specifications, the Agreement and all other standard Specifications, Buyer's Specifications and other papers and documents incorporated by reference into or otherwise referred to in any of the foregoing documents, whether or not attached thereto.
6. "Contractor," "Seller," "Vendor," "Supplier" shall each mean and refer to each person or other entity awarded a Contract hereunder and named or to be named in the Agreement with the Buyer to furnish the goods or services, or both, to be furnished under the Contract.
7. "Council," "City Council" shall each mean and refer to the Council of the Buyer.
8. "Engineer," "City Engineer," shall mean and refer to the City Engineer and any duly authorized representative.
9. "Goods," "Merchandise" shall each mean and refer to the equipment, material, article, supply or thing to be furnished by the Seller under the Contract.
10. "Purchasing Manager" shall mean and refer to the Purchasing Manager of the Buyer.
11. "Specifications" shall mean and refer to all of the Contract Documents.

12. "State Standard Specifications" State of California, Department of Transportation, Standard Specifications, Latest Edition.
13. "Working day" shall mean and refer to City regular business day.
14. "Associate Environmental and Safety Consultant" shall mean and refer to the City Associate Environmental and Safety Consultant and any duly authorized representative.

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, Contractor shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Contractor or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Contractor of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Contractor. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of

automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

Contractor shall procure and maintain for the duration of the contract, and for five years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY**

- (i) \$2,000,000 per occurrence for bodily injury and property damage;
- (ii) \$2,000,000 per occurrence for personal and advertising injury;
- (iii) \$4,000,000 aggregate for products and completed operations; and,
- (iv) \$4,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY**

\$1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

4. **CONTRACTORS' POLLUTION LEGAL LIABILITY** with coverage for bodily injury, property damage or pollution clean-up costs that could result from of pollution condition, both sudden and gradual. Including a discharge of pollutants brought to the work site, a release of pre-existing pollutants at the site, or other pollution conditions with limits of liability of not less than the following:

- (i) \$1,000,000 per occurrence or claim; and,
- (ii) \$2,000,000 general aggregate per annual policy period.
 - (a) In the event this Agreement involves the transportation of hazardous material, either the Commercial Automobile policy or other appropriate insurance policy shall be endorsed to include Transportation Pollution Liability insurance covering materials to be transported by Contractor pursuant to the Agreement.

UMBRELLA OR EXCESS INSURANCE

In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Contractor shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Contractor shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Contractor shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) *All policies of insurance* required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar days' written notice has been given to city, except 10 days for nonpayment of premium. Contractor is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.
- (ii) In the event this Contract involves any lead based environmental hazard (e.g., lead based paint), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for lead based environmental hazards. In the event this Contract involves any asbestos environmental hazard (e.g., asbestos remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for asbestos environmental hazards. In the event this Contract involves any mold environmental hazard (e.g., mold remediation), the Contractors Pollution Liability insurance policy shall be endorsed to include coverage for mold environmental hazards and "microbial matter including mold" within the definition of "Pollution" under the policy.

- (iii) The Commercial General, Pollution and Automobile Liability insurance policies shall be written on an occurrence form.
- (iv) The Commercial General, Pollution and Automobile Liability insurance policies shall be endorsed to name City, its officers, officials, agents, employees and volunteers as an additional insured. Contractor shall establish additional insured status for the City and for all ongoing and completed operations under both Commercial General and Pollution Liability policies by use of ISO Forms and an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.
- (v) The Commercial General, Pollution and Automobile Liability insurance shall contain, or be endorsed to contain, that the Contractors' insurance shall be primary to and require no contribution from the City. The Commercial General and Pollution Liability policies are required to include primary and non-contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. If Contractor maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by Contractor.
- (vi) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.
- (vii) For any claims related to this Agreement, Contractor's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, agents, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- (viii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.
- (ix) The Commercial General, Pollution and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to City, its officers, officials, agents, employees, and volunteers.

PROVIDING OF DOCUMENTS - Contractor shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Contractor shall immediately furnish City with a complete copy of any insurance policy required under this Agreement,

including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Contractor shall also be required to provide all documents noted herein.

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

- (i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Contractor.
- (ii) Insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- (iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, Contractor must purchase "extended reporting" period coverage for a minimum of 5 years after completion of the work or termination of the Agreement, whichever first occurs.
- (iv) A copy of the claims reporting requirements must be submitted to City for review.
- (v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTORS - If Contractor subcontracts any or all of the services to be performed under this Agreement, Contractor shall require, at the discretion of Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, Contractor will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

PERFORMANCE AND PAYMENT BONDS

The Contractor shall provide good and sufficient surety bonds from a corporate surety admitted by the California Insurance Commissioner to do business in the State of California, on forms as those provided by the City in these Specifications, and approved by the City. A Payment Bond is required for all contracts of \$25,000.00 or more. A Performance Bond is required if specified in the Special Conditions or the Technical Specifications.

- (a) The "Payment Bond" shall be for not less than 100% of the Contract price, to satisfy claims of material suppliers and of mechanics and laborers employed by Contractor on the work. For requirement contracts, the Contractor may pay the bond in installments, starting with \$50,000 to be posted prior to any work commencing under the Contract. The bond shall be maintained by the Contractor in full force and effect until the work is completed and accepted by the City, and

until all claims for materials and labor are paid, and shall otherwise comply with Chapter 5, Title III, Part 6, Division 4 of the California Civil Code.

- (b) The "Faithful Performance Bond" shall be for 100% of the Contract price to guarantee faithful performance of all work, within the time prescribed, in a manner satisfactory to the City, and that all materials and workmanship will be free from original or developed defects.

INDEMNIFICATION

To the furthest extent allowed by law including California Civil Code section 2782, Contractor shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Contract, tort or strict liability, including, but not limited to personal injury, death at any time and property damage) incurred by City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Contractor's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Contract, Contractor shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract.

GENERAL GUARANTY

Neither the final certificate of payment nor any provision in the Contract Documents nor partial or entire occupancy of the premises by the City shall constitute an acceptance of work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express warranties or responsibility for faulty materials or workmanship. The Contractor shall remedy any defects in the work and pay for any damage to other work resulting therefrom, which shall appear within a period of one year from the date of final acceptance of work unless a longer period is specified. The Engineer or the Associate Environmental and Safety Consultant will give notice of observed defects with reasonable promptness.

PRECEDENCE OF CONTRACT DOCUMENTS

The order of precedence of documents shall be: (1) Rules and Regulations of Federal Agencies relating to the source of funds for this project; (2) Permits from other agencies as may be required by law; (3) Supplemental Agreements, Change Orders, or Contract the one dated later having precedence over another dated earlier; (4) Special Conditions; (5) General Conditions; (6) Technical Specifications; (7) Plans; (8) Standard

Specifications; (9) Standard Plans.

Detailed Plans shall have precedence over general Plans.

Whenever any conflict appears in any portion of the Contract, it shall be resolved by application of the order of precedence.

PRE-CONSTRUCTION MEETING

Prior to the start of construction, the Engineer or the Associate Environmental and Safety Consultant may call a meeting with all affected City Departments, governmental agencies or utility companies to coordinate the construction with the Contractor so that no delays will be encountered due to conflicts of operations.

ASSIGNMENT OF PAYMENT

Contractor hereby agrees he or she will not assign the payment of any monies due it (him or her) from the City under the terms of this Contract to any other individual(s), corporation(s) or entity(s). The City retains the right to pay any and all monies due Contractor directly to Contractor.

PATENTS

For the purchase of equipment and material, the Vendor shall hold the City of Fresno, its officers and employees, harmless from any and all liability for damages arising out of the use of any patented material, equipment, device or process incorporated into or made a part of or required by the manufacturer's Specifications to be used on or in connection with the material, equipment or supplies purchased by the Buyer pursuant to these Specifications, and Vendor agrees, by submission of a proposal hereunder, to defend the Buyer, at Vendor's sole expense, in any action or suit for damages or injunctive relief on account of any allegedly unauthorized use of or infringement of patent rights on any patented material, equipment, device or process, if the Buyer is named as a defendant in any such action or suit.

CODES AND ORDINANCES

Nothing in these Specifications is to be construed to permit work not conforming to applicable codes.

MAINTENANCE OF RECORDS

Contractor and its subcontractors are required to maintain books, records, and other documents pertinent to the work of this Contract in accordance with Generally Accepted Accounting Principles. All such books, records, and other documents pertaining to the Contract shall be available to City or its authorized representatives upon request during regular business hours throughout the life of the Contract and for a period of five years after final payment or, if longer, for any period required by law or any State or Federal funding agreement applicable to this Contract. In addition, all books, documents, papers and records of Contractor and its subcontractors pertaining to the Contract shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time by City or its authorized representatives, (and, in the event State

or Federal funding is applicable to this Contract, then the respective State of California, State of California Department of Transportation (Caltrans), the State of California State Auditor, the United States, the Federal Highway Administration (FHWA), or any authorized representatives of the aforementioned), and shall allow interviews during normal business hours of any employees who might reasonably have information related to such records. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records must be retained until such action is resolved, or until the end of said time period whichever shall later occur. Failure or refusal by Contractor or its subcontractors to comply with this provision shall be considered a substantial failure to comply with this Contract, and City may declare Contractor in default as set forth in these Specifications, withhold payment to Contractor, or take any other action it deems necessary to protect its interests. This provision shall survive expiration or termination of this Contract.

Contractor and its subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred Project costs by line item for the Project. The accounting system shall enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by the City.

Contractor and its subcontractors shall make the Contract and any State or Federal funding agreement materials applicable to this Contract available at their respective offices at all reasonable times during the entire Project period and five years from the date of final payment to Contractor. This provision shall survive expiration or termination of this Contract.

NONFEDERAL LABOR STANDARD PROVISIONS

GENERAL PROVISIONS: The following Nonfederal Labor Standards Provisions, including the following provisions concerning: maximum hours of work, minimum rates of pay, and overtime compensation, with respect to the categories and classifications of employees hereinafter mentioned are included in the Contract pursuant to the requirements of applicable State or local laws, but the inclusion of such provisions shall not be construed to relieve the Contractor or any subcontractor from the pertinent requirements of any corresponding Federal Labor Standard Provisions of this Contract. In cases the minimum rates of pay set forth below shall be higher than the minimum rates of pay required by or set forth in the Federal Labor Standards Provisions of this Contract for corresponding classifications, the minimum rates of pay set forth below shall be deemed, for the purpose of this Contract, to be the applicable minimum rates of pay for such classifications. The limitations, if any, in these Nonfederal Labor Standards Provisions upon the hours per day, per week or month which employees engaged on the work covered by this Contract may be required or permitted to work thereon shall not be exceeded.

SCHEDULE OF WAGES AND SALARIES: In accordance with the provisions of sections 1770 to 1781, inclusive of the Labor Code of the State of California and/or section 29 C.F.R. section 1.1(b) of the United States Labor Code, the Director of Industrial Relations and/or the United States Secretary of Labor shall ascertain the general prevailing rate of

wages applicable to the work to be done under this Contract to be included in these Specifications by reference. (Copies of the wage rates or specific wage rate determinations may be obtained from the Contract Compliance Officer at City of Fresno Public Works Department, Construction Management Division, 1721 Van Ness, Fresno, California 93721, (559) 621-5600.)

LABOR CODE SECTION 1775: PENALTIES FOR UNDER-PAYMENT OF WAGES: The Contractor and each subcontractor shall comply with California Labor Code section 1775 and pay not less than the wages established by the Director of the Department of Industrial Relations and/or the Federal government. In accordance with such section 1775, Contractor or such subcontractor shall, as a penalty to the City, forfeit up to \$200.00, as determined by the Labor Commissioner, for each calendar day or portion thereof for each worker under this Contract paid less than the established wage rates. These penalties shall be withheld from progress payments then due. The Contractor shall contain in each subcontract the requirements hereunder.

PENALTIES FOR VIOLATION OF EIGHT HOUR DAY: Eight hours labor constitutes a regular day's work under this Contract. Contractor or any subcontractor under him or her shall forfeit as a penalty to the City \$25.00 for each worker employed in the execution of this Contract by contractor or such subcontractor for each calendar day during which any such worker is required or permitted to labor more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of sections 1810 to 1815, inclusive, of the California Labor Code. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the California Labor Code, and notwithstanding the foregoing, work performed by employees of contractors and subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours in excess of 8 hours per day at not less than one and one-half (1.5) times the basic rate of pay.

LABOR CODE SECTION 1777.5; EMPLOYMENT OF APPRENTICES: If this Contract involves \$30,000 or more, the Contractor and each subcontractor shall comply with California Labor Code section 1777.5, as it may be amended from time to time, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Article 10, Subchapter 1, Chapter 2, Title 8 of the California Code of Regulations for all apprenticeable occupations applicable to the work as defined in such laws and regulations. Contractor shall be responsible for the compliance with such Labor Code section for all apprenticeable occupations and shall contain in each subcontract the requirements hereunder. In accordance with section 1777.5 of the California Labor Code and the rules and regulations of the California Apprenticeship Council, properly indentured apprentices shall be employed in the execution of this Contract in at least the ratio of not less than 1 hour of apprentice work for every 5 hours of journeyman work (unless the respective contractor or subcontractor has been exempted from such ratio) and paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. The employment and training of each apprentice shall be in accordance with either the apprenticeship standards and apprentice agreements under which he or she is training, or the rules and regulations of the California Apprenticeship Council. Prior

to commencing work on the Contract, Contractor and each subcontractor shall submit contract award information to the City, if requested, and to an applicable apprenticeship program that can supply apprentices to the job site. The information shall include an estimate of journeyman hours to be performed under the Contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. Within sixty days after concluding work on the Contract, the Contractor and each subcontractor shall submit to the City, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the Contract. Contractor shall employ apprentices for the number of hours computed before the end of the Contract or, in the case of the subcontractor, before the end of the subcontract and endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the job site.

LABOR CODE SECTION 6705: If this Contract involves an estimated expenditure in excess of \$25,000.00 and excavation of any trench or trenches five feet or more in depth, then your attention is directed to California Labor Code section 6705 relating to a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, the entire provisions of which are incorporated by this reference as if fully set forth hereinafter.

Before execution of the Contract by the City, the Contractor shall submit to the City and the Engineer or the Associate Environmental and Safety Consultant shall accept, if satisfactory to him or her, said detailed plan.

If, in the Engineer's or the Associate Environmental and Safety Consultant's opinion, there is any noncompliance with said detailed plan, then the Contractor shall stop forthwith all trench work until, either in the Engineer's or the Associate Environmental and Safety Consultant's or the State Division of Industrial Safety's opinion, there is compliance. The City shall not be liable for costs incurred by the Contractor due to the work stoppage and the Contractor will not be given nor is entitled to an extension of time to complete the work within the time set forth in this Contract due to the work stoppage.

WAGE AND PRICE CONTROL: Notwithstanding any provisions of the Contract to the contrary, the Contractor shall be bound by the orders issued and rules and regulations adopted pursuant to the Economic Stabilization Act of 1970 (Public Law 91-379, 84 Statutes 799), as amended, or any subsequent Act of Congress.

COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970: This Contract is subject to all terms and conditions of the OCCUPATIONAL SAFETY AND HEALTH ACT of 1970, the California Occupational Safety and Health Act and their present and future amendments.

Contractor expressly assumes responsibility for compliance therewith and warrants that all materials, supplies and equipment provided or installed pursuant to this Contract, whether provided by the Contractor, subcontractor, or a supplier, fully satisfy the requirements of said Acts. Contractor shall, upon insertion in each Contract with a

subcontractor or supplier of a clause by which the subcontractor or supplier warrants such compliance, be relieved of responsibility by the subcontractor or supplier.

LABOR CODE SECTION 1776; PAYROLLS AND BASIC RECORDS: The Contractor and each subcontractor shall comply with California Labor Code section 1776, the entire provisions of which are incorporated by this reference as if fully set forth herein, and Contractor shall contain in each subcontract the requirements hereunder.

(a) Accurate payroll records and basic records relating thereto shall be maintained by the Contractor and each subcontractor during the course of the work and preserved for a period as required by law for all journeymen, apprentices, workers, and other employees employed in connection with the work. Such records shall contain information as on the payroll record forms provided by the Division of Labor Standards of the Department of Industrial Relations, the name, address, social security number, work classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents), daily and weekly number of hours worked, deductions made and actual per diem wages paid. The Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to all employees affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Contractor shall submit weekly (seven days after each week ending pay period) for each week in which any Contract work is performed a certified copy of all payrolls to the Engineer or the Associate Environmental and Safety Consultant. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. The Contractor is responsible for the submission of certified copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify under penalty of perjury under the laws of the State of California each of the following:

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause entitled "LABOR CODE SECTION 1776; PAYROLLS AND BASIC" and that such information is true, correct and complete;

(ii) That each employee employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions;

(iii) That each employee has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract;

(iv) Contractor has complied with the requirements of California Labor Code sections 1771, 1811, and 1815 for any work performed hereunder by his or her employees.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (b)(2) of this clause.

(4) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution.

(c) The Contractor or subcontractor shall make certified copies of all the records required under paragraph (a) of this clause available for inspection at all reasonable hours at the principal office of the Contractor by, and furnished upon request to, the Engineer or the Associate Environmental and Safety Consultant, the Division of Labor Standards Enforcement of the Department of Industrial Relations, the Division of Apprenticeship Standards of the Department of Industrial Relations, and each of their authorized representatives. A certified copy of the employee's record shall likewise be made available for inspection or furnished upon request by the employee or his or her authorized representative. The Contractor shall provide hereunder the street address, city and county of the location of the payroll records maintained by Contractor and shall provide a notice of any change of location and address within five working days of such change. The Contractor and subcontractors shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records within ten days after each week ending pay period, or to furnish or make them available for inspection within ten days of request, (Contractor has ten days to comply) after written notice, the Contractor shall forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated, pursuant to California Labor Code section 1776. These penalties shall be withheld from progress payments then due.

LABOR CODE SECTION 1771.1: CONSTRUCTION REGISTRATION WITH CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS: 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. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. The prime Contractor is required to post job site notices prescribed by California Code of Regulations. All Contractors and Subcontractors must furnish electronic certified payroll records directly to the Division of Labor Standards Enforcement.

FAIR EMPLOYMENT PRACTICES AND NONDISCRIMINATION

In connection with the performance of work under this Contract, the Contractor agrees as follows:

1. The Contractor shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), marital status, political affiliation, sex, age (over 40), sexual orientation, and denial of family care leave or on any other basis prohibited by law. The Contractor shall ensure that the treatment of employees and evaluation of applicants for employment are free of such discrimination and harassment. 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 by the State of California setting forth the provisions of this Fair Employment Practices section.
2. Contractor and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
3. Contractor assures City that it shall comply with the requirements of the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA; the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d (1988) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (1989) and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6102 (1994); together with all applicable regulations and guidelines adopted to implement same. Said group of laws and requirements are collectively referred to in this Contract as the "anti-discrimination laws".
4. The Contractor will send to each labor union or representative of workers with which he or she has a collective bargaining agreement or other contract or understanding, a written notice advising the said labor union or workers' representative 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.
5. The Contractor will permit access to his or her records of employment, employment advertisements, application forms, and other pertinent data and records by the

City, State of California, the State Fair Employment and Housing Commission, or any other appropriate agency designated by the City or the State of California, for the purposes of investigation to ascertain compliance with the Fair Employment Practices and Nondiscrimination section of this Contract.

6. Contractor agrees to collect and maintain information to show compliance with the "anti-discrimination laws" including a list of discrimination complaints, reports of any compliance reviews conducted by other agencies descriptions of any pending discrimination-based lawsuits and data on the racial, ethnic, national origin, sex and handicap characteristics of the population it serves.
7. Contractor agrees to cooperate with City, and any other appropriate agency designated by the City, in all manners necessary to permit City and any such agency to adequately report to the United States Environmental Protection Agency on Contractor's compliance with the "anti-discrimination laws".
8. A finding of willful violation of the Fair Employment Practices section of this Contract or of the California Fair Employment and Housing Act shall be regarded by the City as a basis for determining the Contractor to be not a "responsible Bidder" as to future contracts for which such Contractor may submit bids, for revoking the Contractor's prequalification rating, if any, and for refusing to establish, reestablish, or renew a prequalification rating for the Contractor.

The City will deem a finding of willful violation of the California Fair Employment and Housing Act to have occurred upon receipt of written notice from the Fair Employment and Housing Commission that it has investigated and determined that the Contractor has violated the California Fair Employment and Housing Act and has issued an order under California Government Code section 12973, section 12970, or obtained an injunction under California Government Code section 12973.

Upon receipt of such written notice from the Fair Employment and Housing Commission, the City shall notify the Contractor that unless he or she demonstrated to the satisfaction of the City within a stated period that the violation has been corrected, that he or she will be reported to the City Council as not a "responsible Bidder" on any future Contract.

9. The Contractor agrees, that should the City determine that the Contractor has not complied with the Fair Employment Practices section of this Contract, then pursuant to Labor Code sections 1735 and 1775, the Contractor shall forfeit, as a penalty to the City, for each calendar day, or portion thereof, for each person who was denied employment as a result of such noncompliance, the penalties provided in the Labor Code for violation of prevailing wage rates. Such monies may be recovered from the Contractor. The City may deduct any such damages from any monies due the Contractor from the City. Furthermore, Contractor agrees that the City shall have the right to terminate this Contract either in whole or in part, and any loss or damage sustained by City in securing the goods or services thereunder shall be borne and paid for by Contractor and by the surety under the performance

bond, if any, and City may deduct from any moneys due or thereafter may become due to Contractor, the difference between the price named in the Contract and the actual cost thereof to City to cure Contractor's breach of the Contract.

10. Nothing contained in this Fair Employment Practices section shall be construed in any manner or fashion so as to prevent the City from pursuing any other remedies that may be available at law.
11. After award of the Contract, the Contractor shall certify to the City that he or she has or will meet the following standards for affirmative compliance, which shall be evaluated in each case by the City:
 - (a) The Contractor shall provide evidence, as required by the City, that he or she has notified all supervisors, foremen, and other personnel officers in writing of the content of the antidiscrimination clause and their responsibilities under it.
 - (b) The Contractor shall provide evidence, as required by the City, that he or she has notified all sources of employee referrals (including unions, employment agencies, advertisement, Department of Employment) of the content of the antidiscrimination clause.
 - (c) The Contractor shall file a Fair Employment Practices compliance report, as required by the City. Willfully false statements made in such reports shall be punishable as provided by law. The compliance report shall also spell out the sources of the work force and who has the responsibility for determining whom to hire, or whether or not to hire. The compliance report shall be kept current throughout the Contract in that the Contractor shall report any changes in or additions to the answers therein, including changes in agreements with others. After the work or supplying materials is complete, and before final payment, the Contractor shall submit a final statement of compliance.
 - (d) Personally, or through his or her representatives, the Contractor shall, through negotiations with the unions with whom he or she has agreements, attempt to develop an agreement which will:
 - (1) Spell out responsibilities for nondiscrimination in hiring, referral, upgrading and training.
 - (2) Otherwise implement an affirmative antidiscrimination program in terms of the unions; specific areas of skill and geography, to the end that qualified disadvantaged workers will be available and given an equal opportunity for employment.
12. Contractor's signature on this Contract shall constitute a certification under the penalty of perjury under the laws of the State of California that Contractor has, unless exempted, complied with the nondiscrimination program requirements of Government Code, Section 12990, and Title 2, California Code of Regulations, Section 8103.

13. The Contractor will include the provisions of the foregoing paragraphs 1 through 12 in every first tier subcontract so that such provisions will be binding upon each such subcontractor.

GENERAL MISCELLANEOUS

Independent Contractor. In the furnishing of the work provided for herein, the Contractor is acting as an independent contractor. Neither the Contractor, nor any of its officers, associates, agents, or employees shall be deemed an employee, joint venturer, partner, or agent of the City for any purpose. However, the City shall retain the right to verify that the Contractor is performing its respective obligations in accordance with the terms of the Contract.

Because of its status as an independent contractor, Contractor and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Contract, Contractor shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Contractor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Contract, Contractor may be providing services to others unrelated to City or to this Contract.

Notices. Any notice required or intended to be given to either party under the terms of this Contract shall be in writing and shall be deemed to be duly given if delivered personally or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of the Bid Proposal in the case of the Contractor and at the address set forth on the signature page of the Contract in the case of the City, or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

Binding. Subject to the following section, once this Contract is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

Assignment. The Contract is personal to the Contractor and there shall be no assignment, transfer, sale, or subcontracting by the Contractor of its rights or obligations under the Contract without the prior written approval of the City. Any attempted assignment, transfer, sale, or subcontracting by the Contractor, its successors or assigns, shall be null

and void unless approved in writing by the City.

Compliance with Law. In providing the services required under this Contract, Contractor and its subcontractors shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Contract.

Waiver. The waiver by either party of a breach by the other of any provision of this Contract shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Contract. No provisions of this Contract may be waived unless in writing and signed by all parties to this Contract. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

Headings. The section headings in this Contract are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Contract.

Severability. The provisions of this Contract are severable. The invalidity, or unenforceability of any one provision in this Contract shall not affect the other provisions.

Interpretation. The parties acknowledge that this Contract in its final form is the result of the combined efforts of the parties and that, should any provision of this Contract be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Contract in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

Exhibits. Each exhibit and attachment referenced in this Contract is, by the reference, incorporated into and made a part of this Contract.

Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Contract are intended for the specific parties hereto as identified in the preamble of this Contract. Notwithstanding anything stated to the contrary in this Contract, it is not intended that any rights or interests in this Contract benefit or flow to the interest of any third parties other than expressly identified within this section. The parties do intend that in the event that the State of California is funding the Project being constructed hereunder, that the State of California be a third party beneficiary under this Contract and all rights, interest and benefits of this Contract accrue to the State.

Funding. This Contract is contingent on the appropriation of funds by City. Should funds not be appropriated, this Contract may be terminated by City upon prior written notice to Contractor.

Governing Law and Venue. This Contract shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Contract and

any rights and duties hereunder shall be Fresno County, California.

Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Contract. This Contract represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be modified only by written instrument duly authorized and executed by both City and Contractor in accordance with City's current contract change order resolution for public works of improvement as may be revised.

**DIVISION III
SPECIAL CONDITIONS**

DIVISION III
SPECIAL CONDITIONS

The work embraced herein shall be done in accordance with applicable provisions of the Standard Specifications of the City of Fresno, Department of Public Works and with the special conditions contained herein.

Inspection and other construction review shall be provided by the City of Fresno, except where specified otherwise in Specifications or required permits.

CONTRACTOR'S RESPONSIBILITIES

Products Liability Insurance: If these specifications are for equipment with moving parts, the Vendor shall provide the City of Fresno with verification of manufacturer's products liability insurance in excess of \$1,000,000 on said bid equipment, prior to issuance of a purchase order.

Warranty: For the purpose of equipment and material, the Vendor, unless otherwise provided in the Specifications, shall guarantee all items furnished in accordance with the standard guarantee offered by the manufacturer to buyers and consumers of the product. The Vendor shall be responsible for all warranty costs, including the transportation costs to and from the repair station.

Disposal of Concrete and A. C. Surfacing: All concrete, A.C. and pavement removed from the project site shall be disposed of at a site obtained by the Contractor and approved by the Engineer or the Associate Environmental and Safety Consultant. No recyclable material shall be disposed of at any landfill. All disposable recyclable materials shall be disposed in a manner that facilitates recycling. Payment for disposal, including all costs of hauling, shall be as specified in the Technical Specifications or Explanation of Bid Items. The Contractor shall report quantities of disposed material in a manner that enables the City to utilize diverted quantities as diversion credits pursuant to California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq.).

Disposal of Oil Cake, Vegetation, Wood Debris, Structure Demolition and Other Debris: All oil cake, wood debris, structure demolition, vegetation and any other debris removed from the project site shall be legally disposed of at a site(s) obtained by the Contractor ("Disposal Site(s)") with prior written permission of the Engineer or the Associate Environmental and Safety Consultant. Contractor shall identify the proposed Disposal Site(s) at the pre-construction conference. Such Disposal Site(s) shall be a properly licensed and permitted facility pursuant to state and local regulations for purposes of accepting delivery of the respective materials. No recyclable material shall be disposed of at any landfill. All disposable recyclable materials shall be disposed in a manner that facilitates recycling. In addition to the following, a certificate of compliance stating disposal location and manner of disposal of recyclable materials shall be submitted to the Engineer or the Associate Environmental and Safety Consultant. Contractor shall make arrangements for disposing of the materials at the Disposal Site(s) and pay all costs involved. Arrangements shall include, but not be limited to, obtaining written authorization

from the property owner of the Disposal Site(s) and before disposing of any material off the project site, Contractor shall furnish to the Engineer or the Associate Environmental and Safety Consultant the authorization or a certified copy thereof together with a written release from the property owner absolving the City of Fresno from any and all responsibility in connection with the disposal of material on the property of the Disposal Site(s). Before any material is disposed of on the Disposal Site(s), the Contractor shall obtain written permission from the Engineer or the Associate Environmental and Safety Consultant to dispose of the material at the location designated in the authorization. It is expressly understood and agreed that the City of Fresno assumes no responsibility to the Contractor whatsoever by the granting of such permission and Contractor shall assume all risks in connection with the use of the Disposal Site(s). The Contractor is cautioned to make such independent investigation and examination as the Contractor deems necessary to be satisfied as to the quantity and types of materials which may be disposed of on the Disposal Site(s) and the status of any permits or licenses in connection therewith. Within 24 hours of removing the respective material from the project site for disposal, Contractor shall provide the Engineer or the Associate Environmental and Safety Consultant with a certified copy of the weight slip from the Disposal Site obtained by Contractor upon delivery of such debris, and a certified statement from Contractor identifying the material constituting the debris and that it was disposed of at the Disposal Site (identifying the facility and name of the owner) in accordance with all laws and applicable regulations promulgated by Federal, State, regional, or local administrative and regulatory agencies.

Payment for disposal, including all costs of hauling, shall be as specified in the Technical Specifications. The Contractor shall report quantities of disposed material in a manner that enables the City to utilize diverted quantities as diversion credits pursuant to the California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 et seq.)

PAYMENT

The contractor shall be eligible for payment after completion and acceptance of job. The contractor must invoice the City, in order to initiate the payment process. Invoice shall be sent to:

ATTENTION: TIMOTHY SCHULZ
CITY OF FRESNO
CODE ENFORCEMENT DIVISION
2600 FRESNO ST., ROOM 3070
FRESNO, CA 93721

DIVISION IV
TECHNICAL SPECIFICATIONS

DIVISION IV
TECHNICAL CONDITIONS

It is the purpose and intent of these Specifications to describe the minimum requirements for the above project. All items not specifically mentioned which are required to complete the service shall be included in the contract price. Services performed, and materials used, shall conform in quality of material and workmanship to current industry standards.

The contract price shall include all costs of labor, equipment, disposal, and materials necessary for the furnishing and constructing complete in place and operating, in accordance with the specifications, for all work listed herein.

Before entering into this contract, Contractor should inspect the work site to verify the work, and the conditions under which the work will be performed.

Parking Permits All contractors using vehicles, necessary for the performance of work for the City of Fresno, that require parking off the jobsite in an area subject to a parking violation shall obtain a special parking permit issued by the City Traffic Engineer. Contractors not possessing such a valid parking permit shall be required to otherwise comply with the parking requirements of Chapter 10 of the Fresno Municipal Code, and will be subject to fines for violation of the Code.

Permits and Fees The Contractor shall secure all permits required to complete the items of this contract. No fees will be charged for any City permits, other than a fee for a water meter for water usage. The water meter permit and fee can be obtained and paid for at the Fresno City Water Division Office at 1910 East University Avenue, (559) 621-5300.

Clean-up Payment for clean-up shall be included in the contract price.

The Contractor shall perform all work necessary to complete the contract in a satisfactory manner. Unless otherwise provided in writing, he or she shall furnish all materials, equipment, tools, labor and incidentals necessary to complete the work.

This project shall be performed in accordance with the STANDARD SPECIFICATIONS of the City of Fresno, as may be excerpted or amended below. Standard Specifications may be purchased from the Department of Public Works Public Counter, 4th floor, City Hall, 2600 Fresno Street, Fresno. The Standard Specifications are available on the City of Fresno website (www.fresno.gov) by clicking on Public Works Department and checking Department Technical Library.

City Inspection The work will be subject to inspection by the Engineer or the Associate Environmental and Safety Consultant.

All work shall be done in conformance with the provisions in the Specifications and in conformance with the requirements in all permits related to or required for the work, and as directed by the Engineer or the Associate Environmental and Safety Consultant.

REMOVAL AND DISPOSAL OF HAZARDOUS MATERIALS SPECIFICATIONS

1. ADMINISTRATION OF CONTRACT

The administration of this contract shall be controlled by the Code Enforcement Division of the Office of the City Attorney. This supersedes any other references contrariwise. The designated contact person and Project Manager is Timothy Schulz at (559) 621-8425.

2. TIME FOR COMPLETION

The Contractor shall promptly commence work and shall diligently prosecute the work to completion.

3. LEAD BASED PAINT AND ASBESTOS INSPECTION REPORTS

Lead based paint and asbestos inspection report(s) and specifications for lead based paint and asbestos removal issued by the City's designated Consultant are hereby included by reference and made part of these specifications. All requirements for removal set forth therein must be followed by Contractor.

4. DOCUMENTATION REQUIRED PRIOR TO START OF WORK

a. Licenses and Registrations

- i. California Contractor's License for Asbestos Work
- ii. DOSH (Cal/OSHA) Registration for Asbestos
- iii. Project Manager/Competent Person Training (OSHA)

b. Notification Documents

- i. DOSH (Cal/OSHA)
- ii. Environmental Protection Agency
- iii. San Joaquin Valley Unified Air Pollution Control District

c. Employee (Submit for Each One)

- i. Name, Job Classification and Social Security
- ii. Number, Years with this Company
- iii. Medical approval for Asbestos Work and Respirators
- iv. Respirator Fit-Testing

d. Transportation and Disposal

- i. Name, address, phone and registration of hauler(s).
- ii. Name, address, phone and registration number of disposal site.
- iii. Completed asbestos-containing waste landfill indemnification agreement in the form as attached.

e. Equipment Certifications

- i. Negative Pressure Systems (ANSI Z-90.2-79)
- ii. Rental Agency Notification of Use for Asbestos
- iii. NIOSH approval for respirator(s).
- iv. Permits for negative air machines if required.

f. Project Requirements

- i. Decontamination Set-up, bag-out, isolation
- ii. Work Scheduled and Project Phase Chart
- iii. Air Monitoring Plan to meet OSHA requirements

g. Proof of Insurance

SUMMARY OF SCOPE OF WORK:

In accordance with the foregoing specifications, the scope of work includes mobilization, complete removal, and proper disposal of all lead based paint and asbestos containing material.

Work shall also include any and all Asbestos Notification and/or Removal fees charged by the San Joaquin Valley Unified Air Pollution Control District and the Contractor shall provide a fully executed "Demolition Permit Release" to the Project Manager.

If any location is inspected and fined for any violation of standards, that was controllable by the Contractor, the City will require reimbursement from the Contractor.