

SECTION 00500 – CONSTRUCTION CONTRACT

THIS CONTRACT is made and entered into on _____, by and between _____, with a business address of _____, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

W I T N E S S E T H:

WHEREAS, the plans and specifications for the _____ (Project No.) _____ were regularly adopted by Council Resolution No. _____ on _____; and WHEREAS, the contract for said work was regularly awarded to _____, by Council Resolution No. _____ on _____.

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

1. CONTRACTOR agrees:

(a) To do the work and furnish all the labor, materials, tools, equipment and insurance required for the _____ (Project No.) in accordance with the plans and specifications therefor regularly adopted on _____, by Council Resolution No. _____. Said plans and specifications are incorporated herein by this reference to the same extent as if fully set forth.

(b) To do and perform the work contemplated hereby in a good and professional manner under the direction of and to the complete satisfaction of the Municipal Utilities Director (Director) of the City of Stockton.

(c) CONTRACTOR shall, during the life of the contract, take out and maintain insurance coverage with an insurance carrier authorized to transact business in the State of California as will protect CONTRACTOR or any subcontractor or anyone directly or indirectly employed by any of them or by anyone for whose acts any of them may be liable from claims for damages because of bodily injury, sickness, disease, or death of its employees or any other persons, or for damages because of injury to or destruction of tangible property including loss of use resulting therefrom.

The minimum limits of liability for such insurance coverage, which shall include comprehensive general and automobile liability, including contractual liability assumed under the contract, shall be in the minimum amounts of \$1,000,000 for personal injury and \$1,000,000 for property damage.

Such liability insurance policies shall name CITY as an additional insured by separate endorsement and shall agree to defend and indemnify CITY against loss arising from operations performed under the contract and shall provide that written notice of any changes or cancellation in coverage shall be provided to CITY at least thirty (30) days prior to the effective date of such change or cancellation.

CONTRACTOR shall obtain, and keep in full force and effect, Workers' Compensation Insurance necessary in connection with the performance of this contract to protect itself and employees under the Workers' Compensation Insurance and Safety Act and CONTRACTOR shall supply CITY with a suitable statement certifying to the protection and defining the terms of the policy prior to undertaking the work contemplated herein.

Before permitting any subcontractors to perform work under the contract, CONTRACTOR shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by CONTRACTOR as may be applied to each subcontractor's work.

(d) CITY and all officers and employees thereof connected with the work, including but not limited to the Municipal Utilities Director and the Assistant Municipal Utilities Director, shall not be answerable or accountable in any manner, for any loss or damage that may happen to the work or any part thereof, for any loss or damage to any of the materials or other things used or employed in performing the work, for injury to or death of any person, either workers or the public, or for damage to property from any cause which might have been prevented by CONTRACTOR or CONTRACTOR's workers, or anyone employed by CONTRACTOR.

CONTRACTOR shall be responsible for any liability imposed by law and for injuries to or death of any person or damage to property resulting from defects or obstructions or from any cause whatsoever during the progress of the work or any time before its completion and final acceptance.

CONTRACTOR shall indemnify and save harmless CITY and all officials, officers, agents and employees thereof connected with the work, including but not limited to the Municipal Utilities Director and the Assistant Municipal Utilities Director, from all claims, suits or actions of every name, kind and description, brought for, or on account of, injuries to or death of any person or damage to property resulting from the construction of the work or by or in consequence of any negligence in guarding the work, use of improper materials in construction of the work, or by or on account of any act or omission by CONTRACTOR or CONTRACTOR's agents during the progress of the work or at any time before its completion and final acceptance.

The duty of CONTRACTOR to indemnify and save harmless, as set forth herein, shall include the duty to defend, as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require CONTRACTOR to indemnify CITY against any

responsibility or liability in contravention of Section 2782 of the California Civil Code, including any loss arising from design defect which is the result of the sole negligence of CITY.

To do and perform the work contemplated hereby and to furnish all labor, materials, tools and equipment necessary therefor at the prices herein specified, to wit:

((DESCRIPTION AND COST OF THE WORK USING BID ITEMS AND PRICES))

(f) To begin the work contemplated hereby after this contract has been approved as to form by the City Attorney of the City of Stockton and after receipt by CONTRACTOR of the Notice to Proceed. CONTRACTOR will diligently prosecute the work to substantial completion before the expiration of () consecutive calendar days from the effective date of the Notice to Proceed and final completion shall be achieved within () consecutive calendar days following substantial completion.

A calendar day is hereby defined as any day, except days on which CONTRACTOR is specifically required by the specifications to suspend construction operations.

It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of calendar days as set forth herein, damage will be sustained by the CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of per day for each and every day's delay in finishing the work in excess of the number of calendar days prescribed; should work remain unfinished after the time fixed for both substantial completion and final completion, the liquidated damages shall remain per day for each and every day's delay and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of calendar days specified, the City Council shall have the right to increase the number of calendar days or not, as may seem best to serve the interest of CITY, and if they decide to increase the said number of calendar days, they shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work in addition to the liquidated damages set forth above, all or any part, as may be deemed proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A calendar day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes, or delays of subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within ten (10) days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made to the specifications, or by any act of the Director or of the CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

(g) To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California.

To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 (\$25.00) DOLLARS for each laborer, worker, or mechanic employed by CONTRACTOR, or by any subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours in violation of the provisions of the Labor Code of the State of California.

(h) That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.

(i) CONTRACTOR and any subcontractor shall pay each employee engaged in the trade or occupation not less than the hourly prevailing wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.8, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. Said wages are available through the City of Stockton, Municipal Utilities Department, 2500 Navy Drive, Stockton, California, 95206. CONTRACTOR performing the work under this contract shall obtain a copy of the wage rate determination and shall distribute copies to each subcontractor. As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each subcontractor's responsibility to ensure that the prevailing wage rate of concern is current and paid to the employee.

2. CITY agrees:

(a) To pay CONTRACTOR for the work herein contemplated in the following manner:

Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Municipal Utilities Director as to the amount of work done and the proportional amount of the contract price represented therefor; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the filing of the Notice of Completion of said work of construction.

Pursuant to the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. The costs of such escrow shall be paid by the CONTRACTOR. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

CONTRACTOR shall have the obligation of ensuring that such securities deposited are sufficient so as to maintain, in total fair market value, an amount equal to the cash amount of the sums to be withheld under the Contract. If, upon written notice from CITY, or from the appropriate escrow agent, indicating that the fair market value of the securities has dropped below the dollar amount of monies to be withheld by CITY to ensure performance, CONTRACTOR shall, within five (5) days of the date of such notice, post additional securities as necessary to ensure that the total fair market value of all such securities held in escrow is equivalent to the amount of money to be withheld by CITY under the Contract.

3. CHANGE ORDERS:

CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the authorized CITY official executing this contract and/or the City Council.

For contracts approved by the City Council for initial prices of less than One Hundred Thousand Dollars (\$100,000), individual and/or cumulative change orders of Twenty Thousand Dollars (\$20,000) or greater require City Council approval. For contracts approved by the City Council with initial prices of One Hundred Thousand Dollars (\$100,000) or more, individual and/or cumulative change orders

which exceed Twenty Thousand Dollars (\$20,000) plus ten percent (10%) of the initial contract price over One Hundred Thousand Dollars (\$100,000) require City Council approval.

In emergency situations, the authorized CITY official may issue a change order beyond the authority limits described above in order to:

- (a) Prevent interruption of the work which would result in a substantial increase in the costs to, or liability of, CITY; or
- (b) Protect the work, equipment, materials to be used in the work, human safety, or the environment at or near the work from substantial and immediate danger or injury; or
- (c) Protect, where damage or injury has occurred, the work, equipment or materials to be used in the work, human safety, or the environment at or near the site of the work from further or additional damage or injury or deterioration.

The authorized CITY official shall have the authority to issue change orders in such sums as is reasonably necessary for such emergency purposes. After issuing a change order in an emergency situation described above, the authorized CITY official shall report such action and the reasons therefor to the City Council in writing not later than its next regularly scheduled meeting or as soon thereafter as is practicable.

Upon receipt of an approved contract change order, CONTRACTOR shall proceed with the ordered work. If ordered in writing by the Engineer, CONTRACTOR shall proceed with the work so ordered prior to actual receipt of an approved contract change order therefor. In such cases, the Engineer will, as soon as practicable, issue an approved contract change order for such work and the provisions in Contract Document section 00700-7.1.1, "Procedure and Protest," (Specifications) shall be fully applicable to such subsequently issued contract change order.

When the compensation for an item of work is subject to adjustment under the provisions of Contract Document section 00700-7.1, "Changes," (Specifications) CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

4. AUDITS:

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

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

CONTRACTOR further agrees to maintain such records for a period of three (3) years after final payment under the contract.

5. It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

6. It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:

CITY OF STOCKTON, a municipal corporation

CITY CLERK

By _____
CITY MANAGER
"CITY"

((Firm Name))
a

APPROVED AS TO FORM:

Dated:

By _____
"CONTRACTOR"

R. THOMAS HARRIS
CITY ATTORNEY

(Please indicate status: corporation, partnership,
or sole proprietorship)

By

CITY ATTORNEY

Tax Identification No.

BOND FOR FAITHFUL PERFORMANCE

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal
and _____, a corporation, organized and existing under the laws of the State
of _____ and duly authorized to transact business under the laws of the State of
California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly
created and existing under and by virtue of the laws of the State of California, as obligee, in the just and
full sum of _____, in lawful money of the
United States of America (being 100% of the contract price) for the payment whereof well and truly to be
made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns,
jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has
simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

_____ (Project No. _____) .

NOW THEREFORE, if the above bounded Principal, CONTRACTOR, Company or
Corporation or its subcontractor, shall well and truly perform the work contracted to be done under said
contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of
any provision of said contract, or in said plans or specifications agreed to between the said
CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to
relieve any Surety or Sureties from liability on this bond, and consent by said Surety is hereby given, and

the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on _____.

_____ a

APPROVED AS TO SURETY:

By _____ "PRINCIPAL"

DIRECTOR OF FINANCE

SURETY

APPROVED AS TO FORM:

R. THOMAS HARRIS
CITY ATTORNEY

By _____
ATTORNEY-IN-FACT

Dated: _____

By _____
CITY ATTORNEY

BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal,
and _____, a corporation, organized and existing under the laws of
the State of _____ and duly authorized to transact business under the
laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal
corporation, duly created and existing under and by virtue of the laws of the State of California, and unto
any and all material suppliers, persons, companies, or corporations furnishing materials, provisions,
provender or other supplies used in, upon, for or about the performance of the work contemplated to be
executed or performed under the contract hereinafter mentioned, and all persons, companies, or
corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all

persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of _____, in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit: _____ (Project No _____) .

NOW THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on _____.

_____ a

APPROVED AS TO SURETY:

By _____
"PRINCIPAL"

DIRECTOR OF FINANCE

SURETY

APPROVED AS TO FORM:

Dated _____

R. THOMAS HARRIS
CITY ATTORNEY

By _____
ATTORNEY-IN-FACT

By _____
CITY ATTORNEY