

DESIGN-BUILD CONTRACT
FOR THE DIGESTED SLUDGE DEWATERING FACILITY
(CPMS NO. 7758)
AT THE
SAN JOSE – SANTA CLARA
REGIONAL WASTEWATER FACILITY

between

THE CITY OF SAN JOSE, CALIFORNIA,
as administering agency of
The Regional Wastewater Facility

and

WALSH CONSTRUCTION COMPANY II, LLC

Dated

_____, 2019

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TABLE OF CONTENTS

Page

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1.	DEFINITIONS	3
SECTION 1.2.	INTERPRETATION	22
	(A) Gender and Plurality	22
	(B) Persons.....	22
	(C) Headings.....	23
	(D) References Hereto	23
	(E) References to Days and Time of Day	23
	(F) References to Including	23
	(G) References to Statutes.....	23
	(H) References to the City, Governmental Bodies and Private Persons	23
	(I) References to Business Days	23
	(J) References to Documents and Standards	23
	(K) References to All Reasonable Efforts	23
	(L) References to Knowledge	23
	(M) Entire Contract	23
	(N) Technical Specifications	24
	(O) Standards of Workmanship and Materials	24
	(P) Technical Standards and Codes.....	24
	(Q) Liquidated Damages.....	24
	(R) Causing Performance	25
	(S) Party Bearing Cost of Performance.....	25
	(T) Assistance.....	25
	(U) Good Engineering and Construction Practice	25
	(V) Applicability, Stringency and Consistency of Contract Standards	25
	(W) Delivery of Documents in Digital Format.....	25
	(X) Severability	26
	(Y) Drafting Responsibility	26
	(Z) No Third-Party Rights.....	26
	(AA) Acting Reasonably and in Good Faith; Discretion	26
	(BB) Convenience Termination	26
	(CC) Counterparts	26
	(DD) Governing Law	26
	(EE) Defined Terms.....	26
	(FF) Interpolation	27
	(GG) Accounting and Financial Terms	27
	(HH) Payments.....	27

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1.	REPRESENTATIONS AND WARRANTIES OF THE CITY.....	28
	(A) Existence and Powers.....	28
	(B) Due Authorization and Binding Obligation.....	28
SECTION 2.2.	REPRESENTATIONS AND WARRANTIES OF THE DESIGN-BUILDER.....	28
	(A) Existence and Powers.....	28

(i)

Table of Contents
(continued)

	(B) Due Authorization and Binding Obligation	28
	(C) No Conflict	28
	(D) No Approvals Required	28
	(E) City Licensing and Registration Requirements	29
	(F) No Litigation	29
	(G) Claims and Demands	29
	(H) Applicable Law Compliance	29
	(I) Intellectual Property	29
	(J) Practicability of Performance	29
	(K) Information Supplied by the Design-Builder.....	29
SECTION 2.3.	ERROR! BOOKMARK NOT DEFINED.

ARTICLE 3

TERM

SECTION 3.1.	EFFECTIVE DATE AND TERM.....	30
	(A) Term.....	30
	(B) Accrued Rights.....	30
SECTION 3.2.	SURVIVAL.....	30

ARTICLE 4

GENERAL PERFORMANCE AND PAYMENT REQUIREMENTS

SECTION 4.1.	PROJECT SCOPE	32
	(A) Project Scope Generally	32
	(B) Pricing Established on the Contract Date.....	32
	(C) Pricing Established Subsequent to the Contract Date.....	32
	(D) Estimated Acceptance Date	32
SECTION 4.2.	DESIGN-BUILDER RESPONSIBILITIES GENERALLY	32
	(A) Reliance	32
	(B) Scope of the Contract Services.....	33
	(C) City Input as to Operating and Maintenance Considerations	33
	(D) Cooperation	33
	(E) Responsibility for Personnel and Subcontractors.....	33
	(F) Stationing of Key Personnel	33
SECTION 4.3.	ENVIRONMENTAL REVIEW	33
	(A) EIR Addendum.....	33
	(B) Changes to Environmental Mitigation Measures.....	34
SECTION 4.4.	ACCESS TO AND SUITABILITY OF THE DEWATERING FACILITY SITE	34
	(A) Familiarity with the Dewatering Facility Site	34
	(B) Independent Verification of City-Provided Dewatering Facility Site Information	34
	(C) Access to the Dewatering Facility Site	34
SECTION 4.5.	COMPLIANCE WITH APPLICABLE LAW	35
	(A) Compliance with Applicable Law Generally	35
	(B) Compliance with Conditions in Governmental Approvals	35
	(C) Fines, Penalties and Remediation	36
SECTION 4.6.	OWNERSHIP AND USE OF DOCUMENTS AND INFORMATION	36
	(A) Ownership of and Use of Documents and Information	36

Table of Contents
(continued)

	(B) Liability Regarding Use of Deliverable Material Upon Early Termination	36
SECTION 4.7.	CITY PAYMENT OBLIGATIONS GENERALLY	37
	(A) Preliminary Services Fee, Design-Build Price, and Transition Services Fee	37
	(B) Interest On Overdue Obligations	37
SECTION 4.8.	COST SUBSTANTIATION.....	37
	(A) Required Substantiation.....	37
	(B) Cost Substantiation Certificate	37
SECTION 4.9.	CITY’S RIGHT OF SET OFF.....	37
SECTION 4.10.	BILLING STATEMENT DISPUTES	38
SECTION 4.11.	RETENTION AND AUDIT OF BOOKS AND RECORDS	38
	(A) Books and Records.....	38
	(B) City Rights to Audit and Examine	38
	(C) Notice and Process	38
	(D) Selection of Auditor or Examiner and Determination of Scope	39
	(E) Preservation of Books and Records	39
	(F) Overpayment	39

ARTICLE 5

PRELIMINARY SERVICES

SECTION 5.1.	SCOPE OF THE PRELIMINARY SERVICES	40
	(A) Generally	40
	(B) Preliminary Services Tasks; Notices to Proceed	40
SECTION 5.2.	CHANGES TO THE SCOPE OF THE PRELIMINARY SERVICES.....	40
	(A) Generally	40
	(B) Additional Preliminary Services	40
	(C) Additional Preliminary Services Resulting From Delay	40
	(D) Exclusions from Additional Preliminary Services	41
	(E) Changes that Reduce the Scope of the Preliminary Services	41
SECTION 5.3.	COMPENSATION FOR PRELIMINARY SERVICES	41
	(A) Compensation for Base Preliminary Services	41
	(B) Compensation for Additional Preliminary Services.....	41
	(C) Payment Requests and Payment	41
	(D) Non-Compliant Preliminary Services.....	42
SECTION 5.4.	PRELIMINARY SERVICES SCHEDULE	42
SECTION 5.5.	THE PRELIMINARY SERVICES SCHEDULE IS SET FORTH IN ATTACHMENT 2A (PRELIMINARY SERVICES SCHEDULE) AND SHALL BE UPDATED AS PROVIDED IN APPENDIX 2 (PRELIMINARY SERVICES)	42
SECTION 5.6.	COORDINATION WITH THE CITY	42
	(A) Meetings and Reports Generally	42
	(B) Monthly Preliminary Services Reports	42
	(C) Information Provided by the City	43
	(D) Required Design Information	43
	(E) Revisions to Drawings and Specifications.....	43
SECTION 5.7.	PROJECT DESIGN.....	43
	(A) Design Considerations.....	43
	(B) Design-Builder Assumption of Full Design Liability.....	44
SECTION 5.8.	CONSTRUCTION PLANNING AND EARLY WORK PACKAGES.....	44

Table of Contents
(continued)

	(A) Generally	44
	(B) Early Work Packages	44
	(C) Early Work Package Submittals	45
	(D) Early Work Package Submittal Revisions	46
	(E) Negotiation and Execution	46
	(F) Complete Early Design-Build Work Package Pricing	46
	(G) Compensation Payable in Connection With Early Work Packages	46
	(H) Design-Builder Representations in an Early Work Package Amendment	46
SECTION 5.9.	DEFINITIVE PROJECT SUBMITTAL	46
	(A) Preliminary Services and Definitive Project Submittal	46
	(B) Derivation of Proposed Base Guaranteed Maximum Price	49
	(C) Preliminary Services Fee, Design-Builder Fee and General Conditions Fee	49
	(D) Early Definitive Project Submittal	49
SECTION 5.10.	DEFINITIVE CONTRACT AMENDMENT	49
	(A) Non-Compliant Definitive Project Submittal	49
	(B) Negotiation and Execution of the Definitive Contract Amendment	49
	(C) Base Guaranteed Maximum Price Negotiating Principles	50
	(D) Obligations of the Design-Builder Relating to the Definitive Contract Amendment	51
	(E) No Obligation of the City to Enter Into a Definitive Contract Amendment	51
	(F) Elective Continuance of the Project by the Parties on Other Bases	51
	(G) Elective Continuance of the Project by the City with Other Contractors; Project Documents	51
	(H) Design-Builder Representations in a Definitive Contract Amendment	52
	(I) Performance Bond and Payment Bond	53

ARTICLE 6

DESIGN-BUILD WORK

SECTION 6.1.	DESIGN-BUILD WORK GENERALLY	54
	(A) Completion of Preliminary Services and Preliminary Design Documents	54
	(B) Commencement and Completion of the Design-Build Work	54
	(C) Elements of the Design-Build Work	54
	(D) Sequencing and Staging of Design-Build Work	55
	(E) Laydown and Staging Areas	55
	(F) Design-Build Schedule and Reports	55
	(G) Monthly On-Site Meetings and Design and Construction Review	56
	(H) Engagement of City Representatives	56
	(I) Utilities	57
	(J) Quality Assurance and Quality Control	57
	(K) Payment of Costs	57
	(L) Sales Tax	58
	(M) Title and Risk of Loss	58
	(N) Encumbrances	58

Table of Contents
(continued)

	(O) Notice of Default	58
	(P) Required Design-Build Manager Certification	58
	(Q) Partnering Requirements	59
	(R) Temporary Dewatering Facility Site Facilities	59
SECTION 6.2.	CONSTRUCTION COMMENCEMENT DATE	59
	(A) Construction Commencement Date Generally	59
	(B) Construction Commencement Date Conditions	59
	(C) Establishment of the Construction Commencement Date	60
	(D) Effect of the Establishment of the Construction Commencement Date.....	60
SECTION 6.3.	DIFFERING SITE CONDITIONS	60
	(A) Preliminary Services Relating to Differing Site Conditions.....	60
	(B) Commencing Subsurface Excavations.....	61
	(C) Discovery of Differing Site Conditions	61
	(D) Relief for Differing Site Conditions	61
SECTION 6.4.	REGULATED SITE CONDITIONS	61
	(A) Known Regulated Site Conditions	61
	(B) Unknown Regulated Site Conditions	62
	(C) Remediation of Regulated Substances.....	62
	(D) Uncontrollable Circumstance Relief	62
	(E) Design-Builder Responsibilities	62
	(F) Generator Liability	63
SECTION 6.5.	PERMITTING RESPONSIBILITIES AND SCHEDULE	63
	(A) Preliminary Services Relating to Permitting	63
	(B) Design-Builder Governmental Approval Responsibility	63
	(C) Application Process	64
	(D) City Governmental Approval Responsibility	64
	(E) Adjustment to Scheduled Acceptance Date Based on Delays Affecting Design-Builder Managed Governmental Approvals	65
	(F) Assumed Approval Issuance Dates for Design-Builder Managed Governmental Approvals	65
	(G) Adjustment to the Scheduled Acceptance Date Based on Delays Affecting the City Managed Governmental Approvals	65
	(H) Relief Based on Certain Permitting Terms and Conditions	66
SECTION 6.6.	FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION	66
	(A) Performance of the Design Work	66
	(B) Sole Responsibility and Liability	66
	(C) City Review and Comment on Final Design Documents	66
	(D) Documents at the Dewatering Facility Site.....	67
	(E) Licensing Requirements	67
SECTION 6.7.	CHANGES TO THE TECHNICAL SPECIFICATIONS AT DESIGN- BUILDER REQUEST	67
	(A) City Consent Required; Exceptions	67
	(B) Notice and Information as to Proposed Change	68
SECTION 6.8.	OTHER CHANGES TO THE TECHNICAL SPECIFICATIONS.....	68
	(A) Changes Made Due to Uncontrollable Circumstances.....	68
	(B) Changes Required by Governmental Bodies	68
	(C) Changes Required by the City.....	69
SECTION 6.9.	UNILATERAL CHANGE DIRECTIVES.....	69
	(A) City Right to Issue.....	69
	(B) Disagreement with Terms of a Unilateral Change Directive	70

Table of Contents
(continued)

SECTION 6.10.	DESIGN-BUILD WORK DELIVERABLE MATERIAL.....	70
SECTION 6.11.	INTERFACE AND COORDINATION	70
	(A) Maintenance of Operations During Construction.....	70
	(B) Related Projects	70
	(C) Coordination Meetings	71
	(D) Equipment and Materials Storage at Construction Enabling Site and Dewatering Facility Site	71
	(E) Interrelated Work	72
	(F) Disputes Associated with Separate Work	72
SECTION 6.12.	SUSPENSION OF WORK	72
	(A) Generally	72
	(B) Uncontrollable Circumstance Relief	72
SECTION 6.13.	CONSTRUCTION PRACTICE	73
	(A) Exclusive Responsibility of Design-BUILDER.....	73
	(B) Dewatering Facility Site Debris, Trash and Waste	73
SECTION 6.14.	RESPONSIBILITY FOR HEALTH AND SAFETY.....	73
	(A) Health and Safety Representative	73
	(B) Precautions and Protection	74
	(C) Health and Safety Inspections	74
	(D) Health and Safety Plan	74
	(E) Health and Safety Compliance Requirements	74
	(F) Emergencies	75
SECTION 6.15.	CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK	75
	(A) Observations and Design-Build Work Review Protocol.....	75
	(B) Factory Fabrication and Testing	75
	(C) Design-BUILDER Tests	75
	(D) Certificates and Reports	76
	(E) City Tests, Observations and Inspections	76
	(F) Notice of Covering Design-Build Work.....	76
SECTION 6.16.	CORRECTION OF WORK.....	77
	(A) Correction of Non-Conforming Design-Build Work.....	77
	(B) Election to Accept Non-Conforming Design-Build Work.....	77
	(C) Relation to Other Obligations	77
SECTION 6.17.	PROPERTY DAMAGE	78
	(A) Damage Prevention	78
	(B) Restoration	78
	(C) Notice and Reports	78
	(D) Insurance and Other Third-Party Payments	78
	(E) Payment for Restoration Work and Uninsured Costs	79
	(F) Repair of City and Private Property	79
SECTION 6.18.	OPERATIONS AND MAINTENANCE MANUAL.....	79
SECTION 6.19.	SUBSTANTIAL COMPLETION	79
	(A) Commissioning and Acceptance Test Plan.....	79
	(B) Conditions Precedent to Substantial Completion	80
	(C) Notice of Substantial Completion	81
SECTION 6.20.	PUNCH LIST ITEMS	81
	(A) Punch List Requirements	81
	(B) Completion of Punch List Items	81

Table of Contents
(continued)

ARTICLE 7

MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 7.1.	MANAGEMENT.....	82
	(A) Design-Build Manager.....	82
	(B) Replacement of Design-Build Manager.....	82
	(C) City Rights With Respect to Key Personnel.....	82
	(D) On Site Construction Manager.....	83
SECTION 7.2.	LABOR.....	83
	(A) Personnel Performance.....	83
	(B) Labor Relations.....	83
	(C) Notice of Labor Disputes.....	83
	(D) Prevailing Wage Rate.....	83
	(E) Non-Discrimination in Employment.....	84
	(F) Skilled Workforce Requirements.....	84
	(G) Drug-Free Workplace.....	84
SECTION 7.3.	SUBCONTRACTING GENERALLY.....	85
	(A) Right to Subcontract.....	85
	(B) Performance Failure.....	85
	(C) Restricted Persons.....	85
	(D) Subcontractor Licensing.....	85
	(E) Availability of Material Subcontractors and Key Personnel.....	85
	(F) Indemnity for Subcontractor Claims.....	85
	(G) Assignability.....	85
SECTION 7.4.	SELF-PERFORMANCE AND SUBCONTRACTOR SELECTION.....	86
	(A) Self-Performed Construction Work Generally.....	86
	(B) Subcontractor Selection Generally.....	86
	(C) Subcontracting Plan.....	86
	(D) Division of Work.....	86
	(E) Pre-Bid Conferences.....	86
	(F) Competitive Procedures for Construction Work.....	86
	(G) Alternative Procedures for Construction Work.....	87
	(H) Procurement of Subcontractors Prior to the Definitive Contract Amendment Date.....	87
	(I) Inapplicability of Construction Subcontractor Non-Substitution Requirements.....	88
	(J) Systems Integration Subcontractor.....	88
	(K) Required Subcontractor.....	88
	(L) City Rights Regarding Design-Builder Bidding.....	88
SECTION 7.5.	TERMINATION, AMENDMENT, ASSIGNMENT AND REPLACEMENT OF MATERIAL SUBCONTRACTS.....	88
	(A) Termination, Amendment and Assignment.....	88
	(B) Replacement.....	89

ARTICLE 8

COMMISSIONING, ACCEPTANCE AND FINAL COMPLETION

SECTION 8.1.	COMMISSIONING.....	90
	(A) Commencement of Commissioning.....	90

Table of Contents
(continued)

	(B) Performance of Commissioning.....	90
	(C) Maintenance of Operations During Construction.....	90
	(D) Training of City Employees	90
SECTION 8.2.	ACCEPTANCE TESTING.....	90
	(A) Submittal of Commissioning and Acceptance Test Plan.....	90
	(B) Notice of Commencement of the Acceptance Test	91
	(C) Conditions to Commencement of the Acceptance Test	91
	(D) Conduct of the Acceptance Test	91
	(E) Acceptance Test Report	91
SECTION 8.3.	ACCEPTANCE DATE CONDITIONS.....	92
SECTION 8.4.	CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS	93
	(A) Acceptance Date Concurrence	93
	(B) Acceptance Date Disagreement.....	93
SECTION 8.5.	EFFECT OF UNEXCUSED DELAY; EXTENSION PERIOD.....	93
	(A) Schedule for Completing the Design-Build Work	93
	(B) Unexcused Delay.....	93
	(C) Delay Liquidated Damages	94
	(D) Option to Establish Acceptance Date at a Reduced Acceptance Standard.....	94
	(E) Buydown Liquidated Damages.....	94
	(F) Failure to Achieve Acceptance by End of Extension Period.....	94
SECTION 8.6.	FINAL COMPLETION.....	94
	(A) Requirements.....	94
	(B) Failure to Achieve Final Completion.....	95

ARTICLE 9

COMPENSATION FOR DESIGN-BUILD WORK

SECTION 9.1.	DESIGN-BUILD PRICE.....	97
SECTION 9.2.	DESIGN-BUILD PRICE PAYMENT PROCEDURE	97
	(A) Progress Payments	97
	(B) Payment Request	97
	(C) Review and Payment	98
	(D) Payment Dispute Procedures	98
	(E) Retainage.....	99
	(F) Cost Control and Reporting	99
	(G) Certification of Amounts Due.....	99
SECTION 9.3.	PERMISSIBLE WITHHOLDINGS	100
SECTION 9.4.	PAYMENT UPON FINAL COMPLETION.....	101
	(A) Final Completion Payment Request.....	101
	(B) Final Completion Payment.....	101
	(C) Final Determination and Approval of Design-Build Price	102
	(D) Completion of Design-Build Work	102
SECTION 9.5.	NO ACCEPTANCE, WAIVER OR RELEASE	102

ARTICLE 10

PROJECT WARRANTIES

SECTION 10.1.	PROJECT WARRANTIES	104
---------------	--------------------------	-----

(viii)

Table of Contents
(continued)

	(A) Project Warranties Defined	104
	(B) Term of the Project Warranties	104
SECTION 10.2.	WARRANTY WORK	104
	(A) "Call-Back" Obligations	104
	(B) Right of the City to Proceed with Corrective Action; Design- Builder Liability	104
	(C) No Period of Limitation on Other Obligations	105
	(D) Extension of Warranties	105
	(E) Manufacturers' Warranties	105
	(F) Performance of Warranty Work	105
	(G) Responsibility for Costs	105
SECTION 10.3.	PROJECT WARRANTIES NOT EXCLUSIVE	106
SECTION 10.4.	MANUFACTURERS' WARRANTIES	106
	(A) Manufacturers' Warranties Generally.....	106
	(B) No Limitation on Third Party Warranties.....	106
	(C)	Error! Bookmark not defined.

ARTICLE 11

TRANSITION PERIOD

SECTION 11.1.	TRANSITION SERVICES.....	107
SECTION 11.2.	COMPENSATION FOR TRANSITION SERVICES	107
	(A) Transition Services Fee.....	107
	(B) Payment Procedures.....	107
SECTION 11.3.	LABOR AND WAGE REQUIREMENTS	107
SECTION 11.4.	POST-ACCEPTANCE PERFORMANCE TESTS	108
SECTION 11.5.	PAYMENT FOR POST-ACCEPTANCE PERFORMANCE TESTS.....	108
SECTION 11.6.	COMPLIANCE WITH PERFORMANCE GUARANTEES DURING THE TRANSITION PERIOD	108
	(A) General.....	108
	(B) Relief from Performance Guarantees	108
	(C) City Remedies for Noncompliance with Performance Guarantees	108

ARTICLE 12

DISPUTE RESOLUTION

SECTION 12.1.	FORUM FOR DISPUTE RESOLUTION	110
SECTION 12.2.	NON-BINDING MEDIATION.....	110
	(A) Rights to Request and Decline	110
	(B) Procedure	110
	(C) Non-Binding Effect	110
	(D) Relation to Judicial Legal Proceedings	110
SECTION 12.3.	CONTINUANCE OF PERFORMANCE DURING DISPUTE	110

Table of Contents
(continued)

ARTICLE 13

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 13.1.	REMEDIES FOR BREACH.....	111
	(A) Generally	111
	(B) No Effect On Contract Obligations	111
	(C) Waiver of Remedies	111
	(D) Exercise of Remedies.....	111
	(E) No Duplicative Recovery or Claims Outside Contract.....	111
SECTION 13.2.	EVENTS OF DEFAULT BY THE DESIGN-BUILDER.....	111
	(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination.....	111
	(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination.....	112
	(C) Notice and Cure Opportunity.....	113
	(D) Other Remedies Upon Design-Builder Event of Default	113
	(E) Relationship to Liquidated Damages	113
SECTION 13.3.	LIMITATION ON DESIGN-BUILDER LIABILITY	114
	(A) Design-Builder Liability Limit	114
	(B) Liquidated Damages Sub-Limit.....	114
SECTION 13.4.	APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY	114
SECTION 13.5.	EVENTS OF DEFAULT BY THE CITY.....	115
	(A) Events of Default Permitting Termination.....	115
	(B) Notice and Cure Opportunity.....	115
	(C) Termination Liquidated Damages	115
	(D) Payment of Amounts Owing Through the Termination Date.....	115
SECTION 13.6.	CITY CONVENIENCE TERMINATION RIGHTS	116
	(A) Convenience Termination Right and Payment	116
	(B) Convenience Termination Payment for Preliminary Services and Transition Services.....	116
	(C) Convenience Termination Payment for Design-Build Work	116
	(D) Settlement of Subcontracts.....	116
	(E) Payment of Amounts Due as a Result of Convenience Termination	116
	(F) Delivery of Design-Build Work to the City	117
	(G) Completion or Continuance by the City.....	117
SECTION 13.7.	OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION	117
SECTION 13.8.	NO WAIVERS.....	119
SECTION 13.9.	WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES	119

ARTICLE 14

INSURANCE

SECTION 14.1.	INSURANCE	120
	(A) Required Insurance	120
	(B) Subcontractors	120
	(C) Compliance with Insurer Requirements	120

Table of Contents
(continued)

(D) Proof of Insurance Coverage for Additional Insurance Required
From Enrolled Parties and Excluded Parties 120

(E) Failure to Provide Insurance Coverage 121

ARTICLE 15

UNCONTROLLABLE CIRCUMSTANCES

SECTION 15.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY..... 122

(A) Extent of Relief Available to the Design-Builder..... 122

(B) Mitigation Given Effect 122

(C) Applicable Law Compliance 122

SECTION 15.2. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES 122

(A) Notice and Written Report 122

(B) Updates 122

(C) Submittal of Relief Request..... 123

(D) Delay in Notification 123

(E) Multiple and Overlapping Claims 123

(F) Burden of Proof and Mitigation 123

(G) Resumption of Performance..... 123

(H) Design-Builder Information 123

(I) City Response 123

(J) Agreement or Dispute..... 123

(K) Certifications 123

SECTION 15.3. UNCONTROLLABLE CIRCUMSTANCES RELIEF 123

ARTICLE 16

INDEMNIFICATION

SECTION 16.1. DESIGN-BUILDER’S OBLIGATION TO INDEMNIFY 125

SECTION 16.2. INDEMNIFICATION PROCEDURES 126

(A) Notice 126

(B) Design-Builder Right to Dispute Claim 126

(C) Conflicts of Interest 126

(D) Rights and Duties of the Parties 126

(E) City Indemnitee Rights to Conduct Defense 127

(F) Transfer of Conduct of Claim to City Indemnitee 127

ARTICLE 17

SECURITY FOR PERFORMANCE

SECTION 17.1. GUARANTOR..... 128

(A) Guarantor Agreement..... 128

(B) Reports and Notifications Concerning the Financial Condition of
the Guarantor 128

SECTION 17.2. PERFORMANCE AND PAYMENT BONDS 128

(A) Requirements..... 128

(B) Monitoring of Sureties 128

Table of Contents
(continued)

SECTION 17.3. COSTS OF PROVIDING SECURITY INSTRUMENTS 129

ARTICLE 18

MISCELLANEOUS PROVISIONS

SECTION 18.1. OWNERSHIP OF THE REGIONAL WASTEWATER FACILITY AND THE DEWATERING FACILITY 131

SECTION 18.2. RELATIONSHIP OF THE PARTIES 131

SECTION 18.3. CONTRACT ADMINISTRATION 131

 (A) Administrative Communications 131

 (B) Contract Administration Memoranda 131

 (C) Procedure 131

 (D) Effect 132

SECTION 18.4. CONTRACT AMENDMENTS 132

 (A) Amendments Generally 132

 (B) Procedure 132

SECTION 18.5. CONTRACT REPRESENTATIVES 132

 (A) Design-Builder Contract Representative and Senior Supervisors 132

 (B) City Contract Representative 132

 (C) City Approvals and Consents 133

SECTION 18.6. PROPERTY RIGHTS 133

 (A) Protection from Infringement 133

 (B) Substitutes for Deliverable Material, Process or Equipment 133

 (C) Exceptions to Infringement Protection 133

 (D) Intellectual Property Developed by the Design-Builder 134

SECTION 18.7. GENERAL DUTY TO MITIGATE 134

 (A) Mitigation by the Design-Builder 134

 (B) Mitigation by the City 134

SECTION 18.8. ASSIGNMENT OF ANTI-TRUST CLAIMS 135

SECTION 18.9. ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY 135

SECTION 18.10. ASSIGNMENT 135

SECTION 18.11. COMPLIANCE WITH MATERIAL AGREEMENTS 135

SECTION 18.12. BINDING EFFECT 136

SECTION 18.13. AMENDMENT AND WAIVER 136

SECTION 18.14. NOTICES 136

 (A) Procedure 136

 (B) City Notice Address 136

 (C) Owner’s Advisor Notice Address 137

 (D) Design-Builder Notice Address 137

SECTION 18.15. NOTICE OF LITIGATION 137

SECTION 18.16. FURTHER ASSURANCES 137

Table of Contents
(continued)

APPENDICES

1. Dewatering Facility, Dewatering Facility Site and Related Projects Description
2. Preliminary Services
 - Attachment 2A - Preliminary Services Schedule
 - Attachment 2B - List of Meetings
3. Governmental Approvals
4. Technical Specifications
5. General Design-Build Work Requirements
 - Attachment 5A - Design-Build Schedule
 - Attachment 5B - Maintenance of Operations during Construction Plan
6. Design-Build Quality Assurance and Quality Control Requirements
7. Design-Build Work Review Procedures
8. Design-Build Price
 - Attachment 8A - Description of General Conditions Costs
 - Attachment 8B - Supervisory and Administrative Personnel Cost Schedule
 - Attachment 8C - Schedule of Values and Design-Builder Contingency
 - Attachment 8D - Initial Monthly Cash Flow Schedule
9. Commissioning and Acceptance
 - Attachment 9A - Preliminary Outline of Commissioning and Acceptance Test Plan
 - Attachment 9B - Performance Guarantees
10. Post-Acceptance Performance Tests
11. Transition Services
12. Insurance Requirements
13. Key Personnel and Approved Subcontractors
 - Attachment 13A - Key Personnel Chart
 - Attachment 13B - Subcontracting Plan

TRANSACTION FORMS

- A. Form of Guaranty Agreement
- B. Form of Performance Bond
- C. Form of Payment Bond

REFERENCE DOCUMENTS

[NOTE: Reports to be generated by Design-Builder as part of Preliminary Services to be added at Definitive Contract Amendment.]

1. Digested Sludge Dewatering Facility Project Definition Report by Brown and Caldwell, dated October 1, 2018
2. Flows and Loads/Preliminary Operating Strategy, (Technical Memorandum No. 1) by Brown and Caldwell, June 12, 2017
3. Dewatering Technology Analysis, (Technical Memorandum No. 2) by Brown and Caldwell, August 9, 2017
4. Conveyance, Storage and Pumping Alternatives Analysis, (Technical Memorandum No. 3) by Brown and Caldwell, March 20, 2018.

Table of Contents
(continued)

5. Facility and Site Civil Arrangement Alternatives Analysis (Technical Memorandum No. 4) by Brown and Caldwell, March 12, 2018.
6. San José-Santa Clara Water Pollution Control Plant Master Plan Project EIR (Planning File No. PP11-043) and the Addendum thereto and related Mitigation Monitoring and Reporting Program for the Project.

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DESIGN-BUILD CONTRACT
FOR THE DIGESTED SLUDGE DEWATERING FACILITY
(CPMS NO. 7758)
AT THE
SAN JOSE-SANTA CLARA
REGIONAL WASTEWATER FACILITY

THIS DESIGN-BUILD CONTRACT (“Design-Build Contract”) is made and entered into as of _____ 2019 between the City of San Jose, California (the “City”), as administering agency of the Regional Wastewater Facility, and Walsh Construction Company II, LLC, a limited liability company organized and existing under the laws of the State of Illinois and authorized to do business in the State of California (the “Design-Builder”).

RECITALS

WHEREAS, the City of San Jose and the City of Santa Clara jointly own a regional wastewater facility through a joint exercise of powers agreement.

WHEREAS, the City, as the administering agency under the joint exercise of powers agreement, manages and operates the regional wastewater facility.

WHEREAS, the regional wastewater facility currently separates influent wastewater into a liquid stream and a solids stream, processes the solids stream through anaerobic digestion, and pumps the digested sludge into an open lagoon and drying bed for further reduction and stabilization.

WHEREAS, the City is currently constructing facilities to convert the digestion process from anaerobic digestion to temperature-phased anaerobic digestion.

WHEREAS, recent legislation may limit the City’s ability to continue to dispose of sludge in landfills.

WHEREAS, the City wishes to open up the use of approximately 750 acres currently used for lagoons and drying beds for open space, land development, and other community purposes, eliminate the potential for odors from the open-air lagoons and drying beds, and produce a biosolids product suitable for beneficial uses.

WHEREAS, in order achieve such goals, the City wishes to transition from the current open lagoon and drying bed process to an enclosed, mechanical treatment system to dewater digested sludge.

WHEREAS, the City has determined to contract with a private entity to design, construct, commission, acceptance test and obtain certain governmental approvals for a new, dewatering facility.

WHEREAS, pursuant to Section 22164 of the California Public Contract Code, the City issued a request for qualifications on March 16, 2018, as amended on May 2, 2018, in order to prequalify or short-list the design-build entities whose proposals would be compared, selected or rejected on a best value basis.

WHEREAS, based on the evaluation of the statements of qualifications submitted in response to the request for qualifications and using the criteria set forth in the

request for qualifications, the City's selection committee short-listed four firms deemed to be the most qualified to submit proposals from among four teams submitting statements of qualifications.

WHEREAS, on October 11, 2018, the City undertook the second phase of the competitive process by issuing to the proposers a request for proposals for the dewatering facility.

WHEREAS, proposals submitted in response to the request for proposals were received on December 14, 2018, from each of the proposers.

WHEREAS, the proposals were reviewed by the selection committee and assigned a score based on the evaluation criteria and scoring method set forth in the request for proposals.

WHEREAS, based on the evaluations and scoring of the proposals, the selection committee determined that the proposal submitted by the Design-Builder was the highest scored proposal received in response to the City's request for proposals.

WHEREAS, in March 2019, negotiations were initiated with the Design-Builder, which negotiations have concluded with this Design-Build Contract.

WHEREAS, on September 17, 2019, the City Council authorized the execution and delivery of this Design-Build Contract.

WHEREAS, Walsh Construction Group, LLC, an affiliate of the Design-Builder, will guarantee the performance of the obligations of the Design-Builder under this Design-Build Contract pursuant to a guaranty agreement executed concurrently herewith.

WHEREAS, the dewatering facility will be designed, constructed, commissioned and acceptance tested, and certain governmental approvals obtained therefor, by the Design-Builder pursuant to the terms of this Design-Build Contract and the appendices attached hereto.

WHEREAS, payment of amounts payable hereunder by the City to the Design-Builder will be made solely from revenues of the City's wastewater system, and shall not be an obligation of the City's general fund, any other City enterprise fund or any other asset or revenue of the City.

WHEREAS, the City desires to receive, and the Design-Builder desires to provide design and construction services under the terms of this Design-Build Contract.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

“Acceptance” means demonstration by the Design-Builder in accordance with ARTICLE 8 (Commissioning, Acceptance and Final Completion) and Appendix 9 (Commissioning and Acceptance) that the Acceptance Test has been conducted, the Acceptance Standards have been demonstrated and all other Acceptance Date Conditions have been achieved.

“Acceptance Date” means the date on which Acceptance of the Project occurs or is deemed to have occurred under ARTICLE 8 (Commissioning, Acceptance and Final Completion).

“Acceptance Date Conditions” means the preconditions for the achievement of Acceptance by the Design-Builder, as set forth in SECTION 8.3 (Acceptance Date Conditions).

“Acceptance Standards” means the standards [(either the Full Acceptance Standards or the Minimum Acceptance Standards)] set forth in Appendix 9 (Commissioning and Acceptance) that the Dewatering Facility must meet during the performance of the Acceptance Test, including the Performance Guarantees.

“Acceptance Test” and “Acceptance Testing” means the test and testing required in order to achieve Acceptance, as more particularly described in ARTICLE 8 (Commissioning, Acceptance and Final Completion) and Appendix 9 (Commissioning and Acceptance).

“Additional Insurance Required From Enrolled Parties and Excluded Parties” means the insurance policies and coverages required pursuant to Section 9 of Appendix 12 (Insurance Requirements) hereto.

“Additional Preliminary Services” has the meaning specified in subsection 5.2(B) (Additional Preliminary Services).

“Affiliate” means any person directly or indirectly controlling or controlled by another person, corporation or other entity or under direct or indirect common control with such person, corporation or other entity.

“Air Quality Permit to Construct” means the Governmental Approval to be issued by the BAAQMD under the Clean Air Act authorizing the construction of the Dewatering Facility.

“Air Quality Permit to Operate” means the Governmental Approval to be issued by the BAAQMD under the Clean Air Act authorizing the operation of the Dewatering Facility.

“Appendix” means any of the Appendices and, as applicable, any attachments thereto, that are appended to this Design-Build Contract and identified as such in the table of contents to this Design-Build Contract.

“Applicable Law” means (1) any federal, state, City or local law, code or regulation, including all City rules and regulations; (2) any formally adopted and generally applicable rule, requirement, determination, standard, policy, implementation schedule, or other order of any Governmental Body having appropriate jurisdiction; (3) any established interpretation of law or regulation utilized by an appropriate Governmental Body if such interpretation is documented by such Governmental Body and generally applicable; (4) any Governmental Approval; and (5) any consent order or decree, settlement agreement or similar agreement between the City and any Governmental Body, in each case having the force of law and applicable from time to time, over the Project, the Contract Services or any other transaction contemplated hereby.

“Approved Subcontractors” means the subcontractors identified in Appendix 13 (Key Personnel and Approved Subcontractors).

“Assumed Approval Issuance Date” has the meaning specified in subsection 6.5(F) (Assumed Approval Issuance Dates for the Design-Builder Managed Governmental Approvals).

“BAAQMD” means the Bay Area Air Quality Management District.

“Bankruptcy Code” means the United States Bankruptcy Code, 11 U.S.C. 101 *et seq.*, as amended from time to time and any successor statute thereto. “Bankruptcy Code” shall also include any similar state law relating to bankruptcy, insolvency, the rights and remedies of creditors, the appointment of receivers or the liquidation of companies and estates that are unable to pay their debts when due.

“Base Early Work Package Price” means the base fixed-price or guaranteed maximum price established in any Early Work Package for the portion of the Design-Build Work to be performed thereunder.

“Base Guaranteed Maximum Price” means the initial amount approved by the City as the Guaranteed Maximum Price pursuant to Appendix 8 (Design-Build Price).

“Base Guaranteed Maximum Price Adjustment” means an adjustment to the Base Guaranteed Maximum Price made in accordance with and subject to the terms and conditions of Appendix 8 (Design-Build Price).

“Base Preliminary Services” means those services designated as Base Preliminary Services in Appendix 2 (Preliminary Services).

“Books and Records” has the meaning specified in subsection 4.11(A) (Books and Records).

“Business Day” means all calendar days except for weekends and holidays for which City offices are closed.

“Buydown Liquidated Damages” has the meaning specified in subsection 8.5(E) (Buydown Liquidated Damages).

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Change in Law” means any of the following acts, events or circumstances to the extent that compliance with the change materially expands the scope, interferes with, delays or increases the cost of performing the obligations of the Design-Builder:

(1) except as provided below with respect to the exclusions from the definition of “Change in Law”, the adoption, amendment, promulgation, issuance, modification, repeal or written change in administrative or judicial interpretation of any Applicable Law on or after the Change in Law Baseline Date, unless such Applicable Law was on or prior to the Change in Law Baseline Date duly adopted, promulgated, issued or otherwise officially modified or changed in interpretation, in each case in final form, to become effective without any further action by any Governmental Body;

(2) except as provided below with respect to the exclusions from the definition of “Change in Law”, the order or judgment of any Governmental Body issued on or after the Change in Law Baseline Date (unless such order or judgment is issued to enforce compliance with Applicable Law which was effective as of the Change in Law Baseline Date) to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence; or

(3) except as provided below with respect to the exclusions from the definition of “Change in Law”, the denial of an application for, a delay in the review, issuance or renewal of, or the suspension, termination or interruption of any Governmental Approvals, or the imposition of a term, condition or requirement on or after the Change in Law Baseline Date in connection with the issuance, renewal or failure of issuance or renewal of any Governmental Approval, to the extent that such occurrence is not the result of willful or negligent action, error or omission or a lack of reasonable diligence of the Design-Builder; provided, however, that the contesting in good faith or the failure in good faith to contest any such occurrence shall not be construed as such a willful or negligent action or lack of reasonable diligence.

It is specifically understood, however, that none of the following shall constitute a “Change in Law”:

(a) any Change in Law relating to Taxes, except (i) for sales or use Taxes imposed in the United States on materials and equipment incorporated in the Project (or equivalent Taxes imposed by an international taxing jurisdiction), (ii) the imposition of any gross receipts tax or (iii) tariffs imposed in the United States on materials and equipment to be incorporated into the Project;

(b) a change in the nature or severity of the actions typically taken by a Governmental Body to enforce compliance with Applicable Law that was in effect as of the Contract Date;

(c) any increase in any fines or penalties provided for under Applicable Law in effect as of the Change in Law Baseline Date; or

(d) any Change in Law (including the enactment of any statute, or the promulgation of any regulation) the terms and conditions of which do not impose more stringent or burdensome requirements on the Design-Builder than are imposed by the Contract Standards in effect as of the Change in Law Baseline Date.

“Change in Law Baseline Date” means the Contract Date; except that, upon the execution and delivery of an Early Work Package or the Definitive Contract Amendment, the Change in Law Baseline Date shall mean the date of the execution and delivery of such Early Work Package or Definitive Contract Amendment Date, respectively.

“Change Order” means a written order issued by the City and agreed to in writing by the Design-Builder prior to Acceptance making a Technical Specifications Change, whether made at Design-Builder request, due to Uncontrollable Circumstances, as a result of a term or condition imposed by a Governmental Body, or at the direction of the City, or otherwise making a Base Guaranteed Maximum Price Adjustment, adjustment to the Scheduled Acceptance Date or any other change to the terms and conditions of this Design-Build Contract. A Change Order shall be deemed to constitute a Contract Amendment.

“City” means the City of San Jose, a municipal corporation of the State of California, acting in its capacity as administering agency of the Regional Wastewater Facility.

“City Contract Representative” has the meaning specified in subsection 18.5(B) (City Contract Representative).

“City Fault” means any breach (including the untruth or breach at the time made of any City representation or warranty herein set forth), failure, non-performance or non-compliance by the City under this Design-Build Contract with respect to its obligations and responsibilities under this Design-Build Contract to the extent not directly attributable to any Uncontrollable Circumstance and which materially and adversely affects the Design-Builder’s rights, obligations or ability or costs to perform under this Design-Build Contract.

“City Indemnitee” has the meaning specified in SECTION 16.1 (Design-Builder’s Obligation to Indemnify).

“City Managed Governmental Approvals” means those Governmental Approvals for which the City is the application manager, as designated in Appendix 3 (Governmental Approvals).

“City Property” means any structures, improvements, equipment, or other real or personal property owned, leased, operated, maintained, or occupied by the City.

“City Technical Representative” means an engineer or construction management or technical professional employed by the City and designated by the City from time to time as a City Technical Representative.

“Commissioning” means starting up, operating and maintaining the Dewatering Facility prior to the performance of the Acceptance Test in order to tune and adjust the systems, subsystems and processes comprising the Dewatering Facility to achieve stable operating conditions.

“Commissioning and Acceptance Test Plan” means the plans, protocols, procedures and processes for the performance of Commissioning and Acceptance Testing to be prepared and documented by the Design-Builder and approved by the City in accordance with subsection 6.19(A) (Commissioning and Acceptance Test Plan) and Appendix 9 (Commissioning and Acceptance).

“Construction” means that part of the Design-Build Work consisting of the construction of the Project as required by this Design-Build Contract, including furnishing, installing or incorporating Supplies into the Project.

“Construction Commencement Date” means the date, following satisfaction of the Construction Commencement Date Conditions by the Design-Builder, upon which the Design-Builder shall have the right to proceed with the physical construction of the Dewatering Facility, as determined in accordance with subsection 6.2(A) (Construction Commencement Date Conditions).

“Construction Commencement Date Conditions” has the meaning specified in subsection 6.2(A) (Construction Commencement Date Generally).

“Construction Enabling Site” means that area within the Regional Wastewater Facility, as indicated and described in Appendix 1 (Dewatering Facility, Dewatering Facility Site and Related Projects Description).

“Construction Notice to Proceed” has the meaning specified in subsection 6.2(C) (Establishment of the Construction Commencement Date).

“Contract Administration Memorandum” has the meaning specified in SECTION 18.3(B) (Contract Administration Memoranda).

“Contract Amendment” has the meaning specified in subsection 18.4(A) (Amendments Generally).

“Contract Compensation” means the Preliminary Services Fee, the Design-Build Price and the Transition Services Fee.

“Contract Date” means _____, 2019, the date this Design-Build Contract was executed and delivered by the parties hereto.

“Contract Obligations” means everything required to be furnished and done for and relating to the permitting, design, construction, Commissioning and Acceptance Testing of the Project and the Warranty Work and Transition Services to be performed by the Company, pursuant to this Design-Build Contract.

“Contract Representative” means, in the case of the Design-Builder, the Design-Builder Contract Representative and, in the case of the City, the City Contract Representative.

“Contract Services” means the Preliminary Services, the Design-Build Work, the Warranty Work and the Transition Services.

“Contract Standards” means the standards, terms, conditions, methods, techniques and practices imposed or required by: (1) Applicable Law; (2) the Technical Specifications; (3) the Acceptance Standards; (4) Good Engineering and Construction Practice; (5) the Design-Build Quality Management Plan; (6) the Maintenance of Operations During Construction Plan, (7) the Health and Safety Plan; (8) the Commissioning and Acceptance Test Plan; (9) the Operation and Maintenance Manual; (10) the Insurance Requirements; and (11) any other standard, term, condition or requirement specifically provided in this Design-Build Contract to be observed by the Design-Builder. Subsection 1.2(V) (Applicability, Stringency and Consistency of the Contract Standards) shall govern issues of interpretation related to the applicability, stringency and consistency of the Contract Standards.

“Cost Substantiation” means the process of providing evidence of actual costs in accordance with Section 4.8 (Cost Substantiation).

“Definitive Contract Amendment” has the meaning specified in subsection 5.10(B) (Negotiation and Execution of the Definitive Contract Amendment).

“Definitive Contract Amendment Date” has the meaning specified in subsection 5.10(B) (Negotiation and Execution of the Definitive Contract Amendment).

“Definitive Project Submittal” has the meaning specified in SECTION 5.9 (Definitive Project Submittal).

“Deliverable Material” means the Preliminary Services Deliverable Material and the Design-Build Work Deliverable Material.

“Design-Build Contract” means this Design-Build Contract for the Dewatering Facility at the San Jose – Santa Clara Regional Wastewater Facility between the Design-Builder and the City, including the Appendices, as the same may be amended or modified from time to time in accordance herewith.

“Design-Build Costs” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Build Manager” has the meaning specified in subsection 7.1(A) (Design-Build Manager).

“Design-Build Period” means the period from and including the Definitive Contract Amendment Date through the date Final Completion is achieved.

“Design-Build Price” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Build Quality Management Plan” means the Design-Builder’s plan for quality assurance and quality control in implementing the Design-Build Work to be developed in accordance with the requirements set forth in Appendix 6 (Design-Build Quality Assurance and Quality Control Requirements).

“Design-Build Schedule” means the Design-Builder’s critical path method completion schedule for the performance of the Design-Build Work, as set forth as an attachment to Appendix 5 (General Design-Build Work Requirements) and as updated and maintained by the Design-Builder in accordance with subsection 6.1(F) (Design-Build Schedule and Reports).

“Design-Build Work” means everything required to be furnished and done for and relating to the design and construction of the Dewatering Facility pursuant to this Design-Build Contract, other than the Preliminary Services and the Transition Services. Design-Build Work includes the employment and furnishing of all labor, materials, equipment, supplies, tools, scaffolding, transportation, Utilities, insurance, temporary facilities and other things and services of every kind whatsoever necessary for the full performance and completion of the Design-Builder’s design, engineering, permitting, procurement, construction, testing, and related obligations with respect to the construction of the Dewatering Facility under this Design-Build Contract, including all completed structures, assemblies, fabrications, acquisitions and installations, all testing, and all of the Design-Builder’s administrative, accounting, recordkeeping, notification and similar responsibilities of every kind whatsoever under this Design-Build Contract pertaining to such obligations, as well as the Warranty Work. A reference to Design-Build Work shall mean any part and all of the Design-Build Work unless

the context otherwise requires, and shall include all Design-Build Work authorized by Change Order or Unilateral Change Directive.

“Design-Build Work Deliverable Material” means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to the City in the performance of the Design-Build Work pursuant to this Design-Build Contract, including the Final Design Documents.

“Design-Builder” means Walsh Construction Company II, LLC, a limited liability company organized and existing under the laws of the State of Illinois, and its permitted successors and assigns.

“Design-Builder Contingency” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Builder Contract Representative” has the meaning specified in subsection 18.5(A) (Design-Builder Contract Representative and Senior Supervisors).

“Design-Builder Fault” means any breach (including the untruth or breach at the time made of any Design-Builder representation or warranty herein set forth), failure, non-performance or non-compliance by the Design-Builder with respect to its obligations and responsibilities under this Design-Build Contract to the extent not directly attributable to any Uncontrollable Circumstance and which materially and adversely affects the City’s rights, obligations or ability or costs to perform under this Design-Build Contract.

“Design-Builder Fee” has the meaning specified in Appendix 8 (Design-Build Price).

“Design-Builder Managed Governmental Approvals” means those Governmental Approvals for which the Design-Builder is the application manager, as designated in Appendix 3 (Governmental Approvals).

“Design Services” means that part of the Design-Build Work consisting of the preparation of plans, drawings and specifications for the Project by licensed professional engineering, architectural and land surveying firms.

“Design Services Firm” means any person providing Design Services.

“Dewatering Facility” means the new dewatering facility to be designed and constructed by the Design-Builder pursuant to this Design-Build Contract, including a new dewatering building and all ancillary equipment including mechanical dewatering equipment, process control room, MCC room, electrical distribution and switchgear, instrumentation and control systems, fiber optic cable and network connections for phone, internet, CCTV, radio, fire, RWF Distributed Control System, etc.; chemical feed station; polymer storage, handling and containment areas to deliver polymer dosages to mechanical dewatering units, centrate pump station to return centrate to the RWF’s headworks; dewatered cake storage and conveyance facilities; truck load-out facility with weighing scales, and other ancillary facilities including overhead crane, elevator, HVAC and fire systems, showers, lockers, bathrooms, maintenance shop and parts storage area. The Dewatering Facility shall also include new sludge storage tanks, transfer pumps to convey sludge from the digesters to the new sludge storage tank(s), a new digested sludge export pump station, and dual pipelines to convey sludge from storage tanks to the new dewatering building, and other pipelines to convey centrate, plant drainage, storm drainage, and sewage from the Dewatering Facility back to

RWF, as more fully described in Appendix 1 (Dewatering Facility, Dewatering Facility Site, and Related Projects Description) and Appendix 4 (Technical Specifications).

“Dewatering Facility Site” means the parcels of real property on which the Dewatering Facility is to be constructed by the Design-Builder, as more particularly described in Appendix 1 (Dewatering Facility, Dewatering Facility Site, and Related Projects Description).

“Differing Site Conditions” means (a) actual subsurface or latent physical conditions at the Dewatering Facility Site that differ materially from those indicated in the Dewatering Facility Site Reference Documents, or (b) unknown physical conditions at the Dewatering Facility Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character required herein; provided, however, that the term “Differing Site Conditions” EXCLUDES: (1) conditions of which the Design-Builder had actual or constructive knowledge as of the Definitive Contract Amendment Date including through review of the Reference Documents, as well as conditions that are evident from the location, topography and nature of the Dewatering Facility Site; (2) conditions that should have been discovered by the Design-Builder through a reasonable Dewatering Facility Site investigation performed prior to the Definitive Contract Amendment Date and through the geotechnical, hydrogeology, and contaminated soil and water management work required to be performed by the Design-Builder as part of the Preliminary Services; and (3) conditions created by the Design-Builder or resulting from the Design-Builder’s failure to comply with the Contract Standards that come into existence after the Definitive Contract Amendment Date. For the purposes of any Early Work Packages, references above to the Definitive Contract Amendment Date shall instead refer to the execution date of each such Early Work Package.

“Early Work Package” has the meaning specified in subsection 5.8(B) (Early Work Packages).

“Early Work Package Amendment” has the meaning specified in subsection 5.8(B) (Early Work Packages).

“Encumbrances” means any Lien, lease, mortgage, security interest, charge, judgment, judicial award, attachment or encumbrance of any kind with respect to the Project.

“Engineer-of-Record” means the professional engineer licensed in the State in good standing who is designated by the Design-Builder and acceptable to the City, acting reasonably, as the engineer responsible for the preparation, signing, dating, sealing and issuing of the engineering documents relating to a portion of or all of the Design-Build Work.

“Environmental Mitigation Measures” has the meaning set forth in SECTION 4.3 (Environmental Review).

“ESD” means the Environmental Services Department of the City.

“Event of Default” means, with respect to the Design-Builder, those items specified in SECTION 13.2 (Events of Default by the Design-Builder) and, with respect to the City, those items specified in Section 13.5 (Events of Default by the City).

“Expiration Date” means the last day of the Transition Period.

“Extension Period” means the period commencing on the day after the Scheduled Acceptance Date and ending 120 days following the Scheduled Acceptance Date, as

such period may be adjusted due to one or more delays caused by Uncontrollable Circumstances occurring during such 120-day period.

“Fees and Costs” means reasonable fees and expenses of employees, attorneys, architects, engineers, expert witnesses, contractors, consultants and other persons, and costs of transcripts, printing of briefs and records on appeal, copying and other reimbursed expenses, and expenses reasonably incurred in connection with investigating, preparing for, defending or otherwise appropriately responding to any Legal Proceeding.

“Final Completion” means completion of the Design-Build Work, including physical construction and Acceptance of the Dewatering Facility, in compliance with the Technical Specifications and the requirements of SECTION 8.6 (Final Completion).

“Final Design Documents” means the Design-Builder’s plans, technical specifications, drawings, record drawings and other design documents prepared following the Definitive Contract Amendment Date in connection with the Design-Build Work.

“Final Design Submittal Protocol” means the protocol for the submittal of Final Design Documents by the Design-Builder to the City to be developed by the Design-Builder in accordance with the requirements set forth in Appendix 7 (Design-Build Work Review Procedures).

“Full Acceptance Standards” shall mean the standards that the Facility must demonstrate to achieve Acceptance (as defined in Appendix 9 (Commissioning and Acceptance)) and which will not require the payment of Buydown Liquidated Damages.

“Functional Testing” means testing of the systems and subsystems of the Dewatering Facility to confirm capability to operate as intended without quantitative measurement of capacity, efficiency or effectiveness, as more particularly described in Appendix 9 (Commissioning and Acceptance).

“General Conditions Costs” has the meaning specified in Appendix 8 (Design-Build Price).

“General Conditions Fee” has the meaning specified in Appendix 8 (Design-Build Price).

“Geotechnical Evaluation Report” means the report so designated to be prepared by the Design-Builder pursuant to Preliminary Services Task 2.

“Good Engineering and Construction Practice” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, Commissioning and Acceptance Test practices for the design, construction and improvement of capital assets in the wastewater treatment industry using the design-build delivery method as followed in the United States, including those standards set forth in Appendix 4 (Technical Specifications).

“Governmental Approval” means any permit, license, authorization, consent, certification, exemption, ruling, entitlement or approval issued by a Governmental Body of whatever kind and however described, which is required under Applicable Law to be obtained or maintained by any person with respect to the Design-Build Work, including City-Managed Governmental Approvals.

“Governmental Approval Application Date” means the applicable date set forth in the Governmental Approvals Schedule Table.

“Governmental Approvals Responsibility Table” means Table 3-1 (Governmental Approvals Responsibility) of Appendix 3 (Governmental Approvals).

“Governmental Approvals Schedule Table” means Table 3-2 (Governmental Approvals Schedule) of Appendix 3 (Governmental Approvals).

“Governmental Body” means any federal, state, City, regional or local legislative, executive, judicial or other governmental board, agency, authority, commission, administration, court or other body, or any official thereof having jurisdiction, including the various departments of the City.

“Guaranteed Maximum Price” has the meaning specified in Appendix 8 (Design-Build Price).

“Guarantor” means Walsh Construction Group, LLC, a limited liability company organized and existing under the laws of the State of Illinois, and its permitted successors and assigns.

“Guaranty Agreement” means the Guaranty Agreement entered into concurrently with this Design-Build Contract from the Guarantor to the City in the form set forth in the Transaction Forms, as the same may be amended from time to time in accordance therewith.

“Hazardous Material” means any waste, substance, object or material deemed hazardous under Applicable Law, including “hazardous substances” as defined under CERCLA, “hazardous waste” as defined under RCRA and in California Health and Safety Code Section 25117, and “hazardous material” as defined under US DOT regulations (49 CFR 100-180).

“Health and Safety Plan” has the meaning specified in subsection 6.14(D) (Health and Safety Plan) and Appendix 5 (General Design-Build Work Requirements).

“Health and Safety Representative” has the meaning specified in subsection 6.14(A)6.14(A) (Health and Safety Representative).

“Intellectual Property” means any trade secrets, proprietary rights, patents, copyrights or trademarks recognized under Applicable Law.

“Insurance Requirement” means any rule, regulation, code, or requirement issued by any insurance company that has issued a policy, certificate, or endorsement of Required Insurance, compliance with which is a condition to the effectiveness of such policy.

“Legal Proceeding” means every action, suit, litigation, arbitration, administrative proceeding, and other legal or equitable proceeding having a bearing upon this Design-Build Contract, and all appeals therefrom.

“Lien” means any and every lien against the Project or against any monies due or to become due from the City to the Design-Builder under this Design-Build Contract, for or on account of the Contract Services, including mechanics’, materialmen’s, laborers’ and lenders’ liens.

“Loss-and-Expense” means and is limited to any and all actual losses, liabilities, forfeitures, obligations, damages, fines, penalties, judgments, deposits, Taxes, charges, costs or expenses, including all Fees and Costs, except as explicitly excluded or limited under any provision of this Design-Build Contract, relating to third party claims for which the Design-Builder is obligated to indemnify the City Indemnitees pursuant to this Design-Build Contract.

“Maintenance of Operations During Construction Plan” has the meaning specified in subsection 6.11(A) (Maintenance of Operations During Construction).

“Material Subcontract” means any Subcontract for the construction of the mechanical, electrical and plumbing systems and equipment comprising the Project, and any other Subcontract with a contract value exceeding \$300,000.

“Material Subcontractor” means any Subcontractor that is party to a Material Subcontract.

“Mediator” means any person serving as a third-party mediator of disputes hereunder pursuant to SECTION 12.2 (Non-Binding Mediation).

“Minimum Acceptance Standard” means the minimum Acceptance standards that the Facility must demonstrate to achieve Acceptance but which will require the payment of Buydown Liquidated damages as described in Appendix 9.

“Monthly Design-Build Work Report” has the meaning specified in subsection 6.1(F) (Design-Build Schedule and Reports).

“Monthly Preliminary Services Report” has the meaning specified in subsection 5.6(B) (Monthly Preliminary Services Reports).

“Non-Binding Mediation” means the voluntary system of dispute resolution through third-party mediation established by SECTION 12.2 (Non-Binding Mediation) for the resolution of any dispute arising under this Design-Build Contract.

“OCIP Coverages” means the OCIP Coverages described in Section 6 of Appendix 12 (Insurance Requirements) hereto.

“Other Coverages Provided by the City” means the Other Coverages Provided by the City described in Section 6 of Appendix 12 (Insurance Requirements) hereto.

“Operations and Maintenance Manual” means the manual and related computer programs prepared by the Design-Builder containing detailed standard operating and maintenance procedures and other specific instructions, policies, directives, routines, schedules and other matters relating to the Dewatering Facility, developed and maintained as required by Section 6.18 (Operations and Maintenance Manual), Appendix 5 (General Design-Build Work Requirements) and Appendix 11 (Transition Services). The Operations and Maintenance Manual includes the service manuals describing the operation and maintenance requirements for each equipment system, package and unit incorporated into the Dewatering Facility.

“OSHA” means both the California Occupational Safety and Health Act, Chapter 3.2, Division 1, Title 8 of the California Code of Regulations, including all applicable regulations promulgated thereunder, and the Occupational Safety and Health Act of 1970, 29

U.S.C. Section 650 *et seq.*, including the applicable regulations promulgated thereunder, each as amended or superseded from time to time.

“Overdue Rate” means the maximum rate of interest permitted by the laws of the State, if applicable, or the Prime Rate, whichever is lower.

“Owner Controlled Insurance Program” or **“OCIP”** means the owner controlled insurance program sponsored by the City for the projects identified as capital improvement projects to be performed at the Regional Wastewater Facility, including, without limitation, the Project.

“Owner’s Advisor” means Brown & Caldwell or any other individual or firm, or team of individuals or firms under contract with the City, including subcontractors, designated by the City from time to time as part of the City’s management-consulting, engineering or construction management team for purposes of administering this Design-Build Contract on behalf of the City.

“Payment Bond” means the labor and materials payment bond provided by the Design-Builder concurrently with the execution of the Definitive Contract Amendment or with the execution of an Early Work Package, as applicable, as described in and maintained pursuant to Section 17.2 of this Design-Build Contract, in the form set forth in the Transaction Forms.

“Payment Request” means a written submission by the Design-Builder in the form approved by the City and accompanied by all required supporting documentation, requesting payment hereunder of any portion of the Contract Compensation.

“Performance Bond” means the performance bond provided by the Design-Builder concurrently with the execution of the Definitive Contract Amendment or with the execution of an Early Work Package, as applicable, as described in and maintained pursuant to Section 17.2 of this Design-Build Contract, in the form set forth in the Transaction Forms.

“Performance Guarantees” means the Design-Builder’s performance guarantees for the systems, subsystems and processes of the Dewatering Facility, which are described in Appendix 9 (Commissioning and Acceptance).

“Performance Period” means the period during which Post-Acceptance Performance Tests are performed as set forth in Appendix 10 (Post-Acceptance Performance Tests).] **[NOTE: To be negotiated as part of the Definitive Contract Amendment.]**

“Permitted Encumbrances” means, as of any particular time, any one or more of the following:

(1) encumbrances for utility charges, taxes, rates and assessments not yet delinquent or, if delinquent, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves in accordance with generally accepted accounting principles;

(2) any encumbrance arising out of any judgment rendered that is being contested diligently and in good faith by the Design-Builder, the execution of which has been stayed or against which a bond or bonds in the aggregate principal amount equal to such judgments shall have been posted with a financially-sound insurer and which does not have a material and adverse effect on the ability to construct, or the ongoing operations of, the Dewatering Facility;

(3) any encumbrance arising in the ordinary course of business imposed by law dealing with materialmen's, mechanics', workmen's, repairmen's, warehousemen's, landlords', vendors' or carriers' encumbrances created by law, or deposits or pledges which are not yet due or, if due, the validity of which is being contested diligently and in good faith by the Design-Builder and against which the Design-Builder has established appropriate reserves;

(4) servitudes, licenses, easements, encumbrances, restrictions, rights-of-way and rights in the nature of easements or similar charges which will not in the aggregate materially and adversely impair the construction or the ongoing operations of the Dewatering Facility;

(5) zoning and building bylaws and ordinances, municipal bylaws and regulations, and restrictive covenants, which do not materially interfere with the construction of the Dewatering Facility by the Design-Builder;

(6) encumbrances which are created on or before the Contract Date;

(7) encumbrances which are created by a Change in Law on or after the Contract Date; and

(8) any encumbrance created by an act or omission of the City.

["Post-Acceptance Performance Tests" has the meaning specified in SECTION 11.4 (Post-Acceptance Performance Tests).] **[NOTE: To be negotiated as part of the Definitive Contract Amendment.]**

"Preliminary Design Documents" means the Design-Builder's plans, technical specifications, drawings and other documents prepared in connection with the Preliminary Services.

"Preliminary Services" means the Base Preliminary Services and the Additional Preliminary Services.

"Preliminary Services Deliverable Material" means all documents, reports, studies, surveys, computer programs, warranties, manuals, submittals, licenses and other documents and materials required to be delivered by the Design-Builder to the City in the performance of the Preliminary Services pursuant to this Design-Build Contract, including the Final Design Documents.

"Preliminary Services Fee" has the meaning specified in SECTION 5.3 (Compensation for Preliminary Services) and Appendix 2 (Preliminary Services).

"Preliminary Services Period" means the period between the Contract Date and the Definitive Contract Amendment Date.

"Preliminary Services Schedule" has the meaning specified in SECTION 5.4 (Preliminary Services Schedule).

"Preliminary Services Tasks" means the tasks specified in Appendix 2 (Preliminary Services).

"Preliminary Services Task Notices to Proceed" has the meaning specified in subsection 5.1(B) (Preliminary Services Tasks; Notices to Proceed).

“Prime Rate” means the prime rate as published in The Wall Street Journal (Eastern Edition), or a mutually agreeable alternative source of the prime rate if it is no longer published in The Wall Street Journal (Eastern Edition) or the method of computation thereof is substantially modified.

“Project” means the Dewatering Facility, the Dewatering Facility Site and all Contract Services required to be performed under this Design-Build Contract.

“Project Definition Report” or **“PDR”** means the report developed by the Owner’s Advisor that provides technical and background information on existing conditions for the Dewatering Facility and Dewatering Facility Site and indicative design concepts that served as the baseline concepts and scope of the Project used to obtain environmental permits.

“Project Warranties” has the meaning specified in subsection 10.1(A) (Project Warranties Defined).

“Proposal” means the proposal submitted by the Design-Builder on December 14, 2018, in response to the RFP.

“Punch List” has the meaning specified in subsection 6.20(A)6.20(A) (Punch List Requirements).

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C.A. 6901 *et seq.*, and applicable regulations promulgated thereunder, each as amended from time to time.

“Reference Documents” means the documents listed as reference documents in the table of contents to this Design-Build Contract, as such Contract may be amended from time to time.

“Regional Communities” means the following cities and special districts: San Jose, Santa Clara, Milpitas, Cupertino Sanitary District, West Valley Sanitation District, County Sanitation Districts 2-3 and Burbank Sanitary District.

“Regional Wastewater Facility” means the San Jose-Santa Clara Regional Wastewater Facility, formally known as the San Jose/Santa Clara Water Pollution Control Plant, located at 700 Los Esteros Road, San Jose, California and serving the Regional Communities.

“Regional Wastewater Facility Site” means the real property constituting the site on which the Regional Wastewater Facility is located.

“Regulated Site Condition” means, and is limited to, (1) surface or subsurface structures, materials or conditions having historical, archaeological, religious or similar significance that are regulated by Applicable Law; (2) the presence or habitat of a species that is classified under Applicable Law as endangered, rare, threatened, of special concern, or similarly subject to the protections of Applicable Law; (3) the presence anywhere in, on or under the Dewatering Facility Site of wells or underground storage tanks for the storage of chemicals, petroleum products or Regulated Substances; and (4) the presence of Regulated Substances in environmental media anywhere in, on or under the Dewatering Facility Site (including presence in surface water, groundwater, soils or subsurface strata), whether or not disclosed to the Design-Builder, but not including Regulated Substances used, stored or otherwise brought to the Dewatering Facility Site by the Design-Builder or any Subcontractor as provided in subsection 6.4(E) (Design-Builder Responsibilities).

“Regulated Substance” means (1) any oil, petroleum or petroleum product and (2) any pollutant, contaminant, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste or hazardous waste that is defined as such by and is subject to regulation under any Applicable Law. Regulated Substances include Hazardous Materials.

“Related Projects” has the meaning specified in subsection 6.11(B) (Related Projects).

“Related Projects Coordination Protocol” means the protocol set forth in Section 2.3.2.4 (Proposed Construction Organization, Work Plan and Schedule) of Appendix 2 (Preliminary Services), which is binding on the Design-Builder and all Separate Contractors, shall be submitted with the BDR and shall provide the framework for the coordination of the Project with the Related Projects.

“Request for Proposals” or **“RFP”** means the City’s Request for Proposals for the Dewatering Facility at the San Jose – Santa Clara Regional Wastewater Facility, issued on October 11, 2018, as amended on October 26, 2018, November 20, 2018, November 26, 2018, and November 29, 2018.

“Request for Qualifications” or **“RFQ”** means the City’s Request for Qualifications of Design-Build Entities for the San Jose-Santa Clara Regional Wastewater Facility Digested Sludge Dewatering Facility Project, City of San Jose CPMS Project No. 7758, issued on March 16, 2018, as amended on May 2, 2018.

“Required Insurance” means the Additional Insurance Required From Enrolled Parties and Excluded Parties, and, upon the Design-Builder’s enrollment in the OCIP, the OCIP Coverages and Other Coverages Provided by the City, all such policies and coverages as set forth and described in SECTION 14.1 (Insurance) and Appendix 12 (Insurance Requirements). The Required Insurance is subject to waiver or amendment if so approved in writing by the City Risk Manager.

“Required Subcontract” means a Subcontract with a Required Subcontractor.

“Required Subcontractor” means [_____], the required Subcontractor for the performance of services and the furnishing of materials and equipment associated with the process control system, as more particularly described in Appendix 13 (Key Personnel and Approved Subcontractors).

“Response Action” means any action taken in the investigation, removal, confinement, remediation or cleanup of a release of any Regulated Substance. “Response Actions” include any action which constitutes a “removal”, “response”, or “remedial action” as defined by Section 101 of the CERCLA.

“Restricted Person” means any person who (or any member of a group of persons acting together, any one of which):

- (1) Is disbarred, suspended, or otherwise disqualified from federal, State, or City contracting for any services similar in nature to the Design-Build Work (including those debarred by the California Division of Labor Standards Enforcement; see www.dir.ca.gov/dlse/debar.html);
- (2) Was or is subject to any material claim of the United States, State or City in any proceedings (including regulatory proceedings) which have been concluded or are

pending at the time at which the determination of whether the person falls within this definition is being made, and which (in respect of any such pending claim, if it were to be successful) would, in the City's view, in either case, be reasonably likely to materially affect the ability of the Design-Builder to perform its obligations under this Design-Build Contract;

(3) In the case of an individual, he or she (or in the case of a legal entity, any of the members of the board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence for any criminal offense (other than minor traffic offenses or misdemeanor) less than 5 years prior to the date at which the determination of whether the person falls within this definition is being made;

(4) Has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by the United States for reasons other than its trade or economic policies; or

(5) Has as its primary business the illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism.

"SCADA System" means the supervisory control and data acquisition systems required for the Project, as generally described in Appendix 5 (General Design-Build Work Requirements).

"Schedule of Values" means the detailed, itemized list of prices and costs that establishes the value of each part or component of the Design-Build Work, to be developed by the Design-Builder in accordance with the Contract Standards as part of the Definitive Project Submittal and to serve as the basis for progress payments of the Design-Build Price during the Design-Build Period.

"Scheduled Acceptance Date" means the date which is [___] days **[To be finalized on the Definitive Contract Amendment Date, based on the Definitive Project Submittal]** following the Definitive Contract Amendment Date, as such Scheduled Acceptance Date may be adjusted in accordance with subsection 8.5(A) (Schedule for Completing the Design-Build Work).

"Security Instruments" means the Guaranty Agreement, the Performance Bond and the Payment Bond.

"Senior Supervisors" has the meaning specified in SECTION 18.5(A) (Design-Builder Contract Representative and Senior Supervisors).

"Separate Contractor" means any person or entity under contract with the City for the performance of work associated with the Related Projects.

"Shared Savings Amount" has the meaning specified in Appendix 8 (Design-Build Price).

"Shop Drawings" means the drawings, diagrams, illustrations, brochures, schedules or other data prepared by the Design-Builder or any Subcontractor to illustrate specific portions of the Design-Build Work.

"Subcontract" means any contract entered into by the Design-Builder, or a Subcontractor of the Design-Builder of any tier, with one or more persons in connection with

the carrying out of the Design-Builder's obligations under this Design-Build Contract, whether for the furnishing of labor, materials, equipment, supplies, services or otherwise, including Construction Subcontracts, Design Services Subcontracts, Supplier Subcontracts and the Required Subcontract.

"Subcontracting Plan" means the Design-Builder's plan for entering into Subcontracts, attached as Attachment 13B to Appendix 13 (Key Personnel and Approved Subcontractors) and as updated and finalized on the Definitive Contract Amendment Date in accordance with subsection 13.3 (Subcontracting Plan).

"Subcontractor" means any person, other than the Design-Builder or the Guarantor, that enters into a Subcontract, including Construction Subcontractors, Design Services Firms, Suppliers and the Required Subcontractor.

"Substantial Completion" has the meaning specified in SECTION 6.196.19 (Substantial Completion).

"Substantial Completion Date" means the date on which Substantial Completion of the Dewatering Facility occurs or is deemed to have occurred under Section 6.19 (Substantial Completion).

"Subsurface Utilities Investigation Report" means the report so designated to be prepared by the Design-Builder pursuant to Preliminary Services Task 2.

"Supplier" means a manufacturer, distributor, materialman, fabricator, distributor, vendor or other supplier having a Subcontract to furnish Supplies.

"Supplies" means materials, equipment or other supplies furnished in connection with the Design-Build Work.

"Surety" means the surety company issuing the Performance Bond or the Payment Bond, as applicable.

"Tax" means any tax, fee, levy, duty, impost, charge, surcharge, assessment or withholding, or any payment-in-lieu thereof, and any related interest, penalty or addition to tax.

"Technical Specifications" means the technical specifications set forth in Appendix 4 (Technical Specifications) constituting the design and construction requirements for the Design-Build Work. **[NOTE: The 60% design will be incorporated into this Appendix in the Definitive Contract Amendment.]**

"Technical Specifications Change" means a change in the Technical Specifications made by a Change Order pursuant to Section 6.7 (Changes to the Technical Specifications at Design-Builder Request), Section 6.8 (Other Changes to the Technical Specifications) or a Unilateral Change Directive pursuant to Section 6.9 (Unilateral Change Directives), (1) as a result of a Design-Builder request agreed to by the City, (2) due to Uncontrollable Circumstances, (3) as a result of a term or condition imposed by a Governmental Body, or (4) at the direction of the City.

"Term" has the meaning set forth in SECTION 3.1 (Effective Date and Term).

"Termination Date" means the last day of this Design-Build Contract resulting from a termination under any provision hereof.

“Training Plan” means the Design-Builder’s plan for the training of City employees in the long-term operations and maintenance of the Dewatering Facility, as developed by the Design-Builder in accordance with the requirements set forth in Appendix 2, and executed as part of the Design-Build Work.

“Transaction Form” means any of the transaction forms identified in the table of contents to this Design-Build Contract.

“Transition Period” means the period between the Acceptance Date and the date that is two years following the Acceptance Date.

“Transition Services” means everything required to be furnished and done by the Design-Builder relating to the Project during the Transition Period.

“Transition Services Fee” has the meaning specified in SECTION 11.1 (Compensation for Transition Services).

“Uncontrollable Circumstance” means any act, event or condition that (1) is beyond the reasonable control of the party relying on it as a justification for not performing an obligation or complying with any condition required of the party under this Design-Build Contract, and (2) materially expands the scope, interferes with, delays or increases the cost of performing the party’s obligations under this Design-Build Contract, to the extent that such act, event or condition is not the result of the willful or negligent act, error or omission, failure to exercise reasonable diligence, or breach of this Design-Build Contract on the part of the party claiming the occurrence of an Uncontrollable Circumstance.

(1) Inclusions. Subject to the foregoing, Uncontrollable Circumstances may include the following:

- (a) a Change in Law;
- (b) the existence of a Differing Site Condition, as and to the extent provided in SECTION 6.3 (Differing Site Conditions);
- (c) the existence of a Regulated Site Condition, as and to the extent provided in SECTION 6.4 (Regulated Site Conditions);
- (d) acts, events or circumstances associated with the Separate Contractors, as and to the extent provided in subsection 6.11(E) (Interrelated Work);
- (e) naturally occurring events, including unusually severe and abnormal climactic conditions (as compared with the five-year average weather statistics compiled by the United States National Oceanic and Atmospheric Administration for the time of year and locality of the Dewatering Facility Site), landslides, underground movement, earthquakes, fires, tornadoes, hurricanes, floods, lightning, epidemics and other acts of God;
- (f) explosion, terrorism, sabotage or similar occurrence, acts of a declared public enemy, extortion, war, blockade or insurrection, riot or civil disturbance;
- (g) labor disputes, strikes, slowdowns, stoppages, boycotts or disruption (1) affecting a specific trade on a national or regional level, or (2) involving City employees at the Regional Wastewater Facility, each to the extent not caused by the improper acts or omissions of the Design-Builder or any Subcontractor;

(h) the failure of any Subcontractor (other than the Design-Builder or any Affiliate of the Design-Builder) to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event which would constitute an Uncontrollable Circumstance if it affected the Design-Builder directly, and the Design-Builder is not able after exercising all reasonable efforts to timely obtain substitutes;

(i) the failure of the City to provide and maintain the Utilities required to be provided and maintained by the City in accordance with subsection 6.1(l) (Utilities);

(j) any failure of title to the Project or any placement or enforcement of any Encumbrance on the Project not consented to in writing by, or arising out of any action, omission or agreement entered into by, the party adversely affected thereby, other than Permitted Encumbrances;

(k) the preemption, confiscation, diversion, destruction or other interference in possession or performance of materials or services by a Governmental Body in connection with a public emergency or any condemnation or other taking by eminent domain of any material portion of the Project;

(l) an act, event or circumstance occurring outside of the United States only to the extent that such act, event or circumstance (1) directly impacts the Design-Builder's foreign suppliers or vendors with respect to the performance of the Design-Build Work, and (2) would otherwise constitute an Uncontrollable Circumstance affecting the Design-Builder directly, as determined in accordance with ARTICLE 15 (Uncontrollable Circumstances);

(m) with respect to the Design-Builder, any City Fault or Change Order not due to Design-Builder Fault;

(n) with respect to the City, any Design-Builder Fault; or

(o) any other act, event or circumstance specifically identified herein as providing a basis for Uncontrollable Circumstance relief.

(2) Exclusions. It is specifically understood that, without limitation, none of the following acts, events or circumstances shall constitute Uncontrollable Circumstances:

(a) any act, event or circumstance that would not have occurred but for the affected party's failure to comply with its obligations hereunder;

(b) changes in interest rates, inflation rates, wage rates, insurance premiums, commodity prices, labor availability, currency values, exchange rates or other economic conditions;

(c) changes in the financial condition of the City, the Design-Builder or their Affiliates or Subcontractors affecting the ability to perform their respective obligations;

(d) the consequences of error, neglect or omissions by the Design-Builder, any Subcontractor, any of their Affiliates or any other person in the performance of the Design-Build Work;

(e) union or labor work rules, requirements or demands which have the effect of increasing the number of employees employed at the Project or otherwise increasing the cost to the Design-Builder of performing the Design-Build Work;

(f) strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions, unless such strikes, disputes, slowdowns, stoppages, boycotts or disruptions (1) affect a specific trade on a national or regional level, or (2) involve City employees at the Regional Wastewater Facility, each to the extent not caused by the improper acts or omissions of the Design-Builder or any Subcontractor;

(g) weather conditions that do not constitute unusually severe and abnormal climactic conditions, as determined in accordance with “Inclusions” above;

(h) except as specifically provided in SECTION 6.3 (Differing Site Conditions) and SECTION 6.4 (Regulated Site Conditions), any surface or subsurface conditions affecting the Dewatering Facility Site;

(i) except as specifically provided in this Section, any act, event, circumstance or Change in Law occurring outside of the United States;

(j) mechanical failure of equipment to the extent not resulting from a condition that is listed in the “Inclusions” section of this definition; or

(k) the failure of the Design-Builder to secure any patent or other intellectual property right which is or may be necessary for the performance of the Design-Build Work.

“**Unilateral Change Directive**” has the meaning specified in Section 6.9 (Unilateral Change Directives).

“**Utilities**” means any and all utility services and installations whatsoever (including gas, water, sewer, electricity, telephone, and telecommunications), and all piping, wiring, conduit, and other fixtures of every kind whatsoever related thereto or used in connection therewith.

“**Warranty Period**” has the meaning specified in subsection 10.1(B) (Term of the Project Warranties).

“**Warranty Work**” means all work and services required to be performed or provided by the Design-Builder pursuant to the Project Warranties in accordance with ARTICLE 10 (Project Warranties).

SECTION 1.2. INTERPRETATION.

This Design-Build Contract shall be interpreted according to the following provisions, except to the extent the context or the express provisions of this Design-Build Contract otherwise require:

(A) Gender and Plurality. Words of the masculine gender mean and include correlative words of the feminine and neuter genders and words importing the singular number mean and include the plural number and vice versa.

(B) Persons. Words importing persons include firms, individuals, legal personal representatives, companies, associations, joint ventures, general partnerships, limited partnerships, limited liability corporations, trusts, business trusts, corporations, Governmental Bodies and other legal entities.

(C) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Design-Build Contract shall be solely for convenience of reference and shall not affect its meaning, construction or effect.

(D) References Hereto. The terms “hereto”, “hereby,” “hereof,” “herein,” “hereunder” and any similar terms refer to this Design-Build Contract.

(E) References to Days and Time of Day. All references to days herein are references to calendar days, unless otherwise indicated, such as by reference to Business Days. Each reference to time of day is a reference to Pacific Standard time or Pacific Daylight Saving time, as the case may be.

(F) References to Including. The words “include,” “includes” and “including” are to be construed as meaning “include without limitation,” “includes without limitation” and “including without limitation,” respectively.

(G) References to Statutes. Each reference to a statute or statutory provision includes any statute or statutory provision which amends, extends, consolidates or replaces the statute or statutory provision or which has been amended, extended, consolidated or replaced by the statute or statutory provision and includes any orders, regulations, by-laws, ordinances, codes of practice or instruments made under the relevant statute.

(H) References to the City, Governmental Bodies and Private Persons. Each reference to the City or a Governmental Body is deemed to include a reference to any successor to the City or such Governmental Body or any organization or entity or organizations or entities which has or have taken over the functions or responsibilities of the City or such Governmental Body. Each reference to a private person that is not an individual is deemed to include a reference to its successors and permitted assigns.

(I) References to Business Days. If the time for doing an act falls or expires on a day that is not a Business Day, the time for doing such act shall be extended to the next Business Day.

(J) References to Documents and Standards. Each reference to an agreement, document, standard, principle or other instrument includes a reference to that agreement, document, standard, principle or instrument as amended, supplemented, substituted, novated or assigned.

(K) References to All Reasonable Efforts. The expression “all reasonable efforts” and expressions of like import, when used in connection with an obligation of either party, means taking in good faith and with due diligence all commercially reasonable steps to achieve the objective and to perform the obligation, including doing all that can reasonably be done in the circumstances taking into account each party’s obligations hereunder to mitigate delays and additional costs to the other party, and in any event taking no less steps and efforts than those that would be taken by a commercially reasonable and prudent person in comparable circumstances but where the whole of the benefit of the obligation and where all the results of taking such steps and efforts accrued solely to that person’s own benefit.

(L) References to Knowledge. All references to “knowledge”, “knowing”, “know” or “knew” shall be interpreted as references to a party having actual knowledge.

(M) Entire Contract. This Design-Build Contract contains the entire agreement between the parties hereto with respect to the transactions contemplated by this Design-Build Contract. Without limiting the generality of the foregoing, this Design-Build

Contract shall completely and fully supersede all other understandings and agreements among the parties with respect to such transactions, including those contained in the RFQ, the submittal made by the Design-Builder in response thereto, the RFP, the Proposal, and any amendments or supplements to any such documents.

(N) Technical Specifications. The Technical Specifications are intended to include the basic design principles, concepts and requirements for the Design-Build Work but do not include the final, detailed designs, plans or specifications or indicate or describe each and every item required for full performance of the physical Design-Build Work and for achieving Acceptance. The Design-Builder agrees to prepare all necessary and required complete and detailed designs, plans, drawings and specifications and to furnish and perform, without additional compensation of any kind, all Design-Build Work in conformity with the Technical Specifications and the final designs, plans, drawings and specifications based thereon. The Design-Builder further agrees that it shall not have the right to bring any claim whatsoever against the City or any of its consultants or subcontractors, arising out of any design drawings, specifications or design and construction requirements included in the RFP or made available during the procurement process.

(O) Standards of Workmanship and Materials. Any reference in this Design-Build Contract to materials, equipment, systems or supplies (whether such references are in lists, notes, specifications, schedules, or otherwise) shall be construed to require the Design-Builder to furnish the same in accordance with the grades and standards therefor indicated in this Design-Build Contract. Where this Design-Build Contract does not specify any explicit quality or standard for construction materials or workmanship, the Design-Builder shall use only workmanship and new materials of a quality consistent with that of construction workmanship and materials specified elsewhere in the Technical Specifications, and the Technical Specifications are to be interpreted accordingly.

(P) Technical Standards and Codes. References in this Design-Build Contract to all professional and technical standards, codes and specifications are to the most recently published professional and technical standards, codes and specifications of the institute, organization, association, authority or society specified, all as in effect as of the Contract Date. Unless otherwise specified to the contrary, (1) all such professional and technical standards, codes and specifications shall apply as if incorporated in the Technical Specifications, and (2) if any material revision occurs, to the Design-Builder's knowledge, after the Contract Date, and prior to completion of the applicable Design-Build Work, the Design-Builder shall notify the City. If so directed by the City through a Unilateral Change Directive or Change Order, the Design-Builder shall perform the applicable Design-Build Work in accordance with the revised professional and technical standard, code, or specification, subject to the Design-Builder's rights under this Design-Build Contract with respect to Unilateral Change Directives and Change Orders at the direction of the City.

(Q) Liquidated Damages. This Design-Build Contract provides for the payment by the Design-Builder of liquidated damages in certain circumstances associated with (1) the replacement of the Design-Build Manager and other key personnel, as and to the extent provided in SECTION 7.1 (Management), (2) unexcused delays in achieving Acceptance, as and to the extent provided in SECTION 8.5 (Effect of Unexcused Delay; Extension Period), (3) the failure of the Design-Builder to achieve the Full Acceptance Standards (but successfully achieving at least the Minimum Acceptance Standard) as provided in subsection 8.5(E) (Buydown Liquidated Damages) and (4) the failure to achieve the Performance Guarantees during the Performance Period as provided in Section 11.6 (performance liquidated damages). Each party agrees that the City's actual damages in each such circumstance of replacement or unexcused delay would be difficult or impossible to ascertain, and that the liquidated damages provided for herein with respect to each such circumstance of replacement or unexcused delay are intended to place the City in the same economic position as it would have been in had the

replacement or unexcused delay not occurred. Such liquidated damages shall constitute the only damages payable by the Design-Builder to the City to compensate the City for such replacement or for unexcused delays in achieving Acceptance by the Scheduled Acceptance Date, as applicable, regardless of legal theory. This limitation, however, is not intended to limit any of the other remedies for breach specifically provided for in this Design-Build Contract, including the City's remedies associated with an Event of Default by the Design-Builder under SECTION 13.2 (Events of Default by the Design-Builder). The parties acknowledge and agree that the additional remedies specifically provided for in this Design-Build Contract are intended to address harms and damages which are separate and distinct from those which the liquidated damages are meant to remedy. In addition, the parties agree as follows:

(1) that the liquidated damages payable under this Design-Build Contract are not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that may reasonably be anticipated from the circumstances of unexcused delay; and

(2) that, in recognition of the acknowledgments above, the Design-Builder is expressly estopped from arguing, and waives any rights it may have to argue, that the liquidated damages provided for herein are a penalty and that they are not enforceable.

(R) Causing Performance. A party shall itself perform, or shall cause to be performed, subject to any limitations specifically imposed hereby with respect to Subcontractors or otherwise, the obligations affirmatively undertaken by such party under this Design-Build Contract.

(S) Party Bearing Cost of Performance. All obligations undertaken by each party hereto shall be performed at the cost of the party undertaking the obligation or responsibility, unless the other party has explicitly agreed herein to bear all or a portion of the cost either directly, by reimbursement to the other party or through an adjustment to the Guaranteed Maximum Price.

(T) Assistance. The obligations of a party to cooperate with, to assist or to provide assistance to the other party hereunder shall be construed as an obligation to use the party's personnel resources to the extent reasonably available in the context of performance of their normal duties, and not to incur material additional overtime or third party expense unless requested and reimbursed by the assisted party.

(U) Good Engineering and Construction Practice. Good Engineering and Construction Practice shall be utilized hereunder, among other things, to implement and in no event displace or lessen the stringency of, the Contract Standards.

(V) Applicability, Stringency and Consistency of Contract Standards. The Design-Builder shall be obligated to comply only with those Contract Standards which are applicable in any particular case. Where more than one Contract Standard applies to any particular performance obligation of the Design-Builder hereunder, each such applicable Contract Standard shall be complied with. In the event there are different levels of stringency among such applicable Contract Standards, the most stringent of the applicable Contract Standards shall govern. In the event of any inconsistency among the Contract Standards, the City's determination as to the applicable standard shall be binding.

(W) Delivery of Documents in Digital Format. In this Design-Build Contract, the Design-Builder is obligated to deliver reports, records, designs, plans, drawings, specifications, proposals and other documentary submittals in connection with the performance of its duties hereunder. The Design-Builder agrees that all such documents shall

be submitted to the City both in printed form (in the number of copies indicated) and, at the City's request, in digital form. Digital copies shall consist of computer readable data submitted in any standard interchange format which the City may reasonably request to facilitate the administration and enforcement of this Design-Build Contract. In the event that a conflict exists between the signed or the signed and stamped hard copy of any document and the digital copy thereof, the signed or the signed and stamped hard copy shall govern.

(X) Severability. Each provision of this Design-Build Contract shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Design-Build Contract is held to be invalid, unenforceable or illegal to any extent, such provision shall be severed and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this Design-Build Contract, unless such continued effectiveness as modified would be contrary to the basic understandings and intentions of the parties as expressed herein. If any provision of this Design-Build Contract is held to be invalid, unenforceable or illegal, the parties will promptly endeavor in good faith to negotiate new provisions to eliminate such invalidity, unenforceability or illegality and to restore this Design-Build Contract as nearly as possible to its original intent and effect.

(Y) Drafting Responsibility. The parties waive the application of any rule of law which otherwise would be applicable in connection with the construction of this Design-Build Contract to the effect that ambiguous or conflicting terms or provisions should be construed against the party who (or whose counsel) prepared the executed agreement or any earlier draft of the same.

(Z) No Third-Party Rights. This Design-Build Contract is exclusively for the benefit of the City and the Design-Builder and, except as specifically provided in ARTICLE 16 (Indemnification) with respect to City Indemnitees, shall not provide any third parties with any remedy, claim, liability, reimbursement, cause of action or other rights.

(AA) Acting Reasonably and in Good Faith; Discretion. Each party shall act reasonably and in good faith in the exercise of its rights hereunder, except where a party has the right to act in its "discretion" by the express terms hereof. When a party has "discretion", it means that party has the sole, absolute and unfettered discretion, with no requirement to act reasonably or provide reasons unless specifically required under the provisions of this Design-Build Contract. When a party does not have "discretion" it means that the party shall act reasonably.

(BB) Convenience Termination. The City may exercise its right of convenience termination under this Design-Build Contract in its discretion. The exercise by the City of its right of convenience termination under any provision of this Design-Build Contract shall not be deemed a breach of any implied duty of good faith dealing or a City Event of Default, nor shall any damages be payable by the City on account thereof. The only compensation payable by the City upon the exercise of its convenience termination option shall be any amounts specified herein in connection therewith.

(CC) Counterparts. This Design-Build Contract may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Design-Build Contract.

(DD) Governing Law. This Design-Build Contract shall be governed by and construed in accordance with the applicable laws of the State.

(EE) Defined Terms. The definitions set forth in SECTION 1.1 (Definitions) shall control in the event of any conflict with any definitions used in the recitals hereto.

(FF) Interpolation. If any calculation hereunder is to be made by reference to a chart or table of values, and the reference calculation falls between two stated values, the calculation shall be made on the basis of linear interpolation.

(GG) Accounting and Financial Terms. All accounting and financial terms used herein are, unless otherwise indicated, to be interpreted and applied in accordance with GAAP.

(HH) Payments. All payments required to be made by either party hereunder shall be made in lawful money of the United States of America.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE CITY.

The City represents and warrants that:

(A) Existence and Powers. The City is a municipal corporation of the State, with full legal right, power and authority to enter into and to perform its obligations under this Design-Build Contract.

(B) Due Authorization and Binding Obligation. This Design-Build Contract has been duly authorized, executed and delivered by all necessary action of the City and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code and by equitable principles of general application.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES OF THE DESIGN-BUILDER.

In addition to any other representations and warranties made by the Design-Builder in this Design-Build Contract, the Design-Builder represents and warrants that:

(A) Existence and Powers. The Design-Builder is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois and has the authority to do business in the State and in any state in which it conducts its activities, with the full legal right, power and authority to enter into and perform its obligations under this Design-Build Contract.

(B) Due Authorization and Binding Obligation. This Design-Build Contract has been duly authorized, executed and delivered by all necessary corporate action of the Design-Builder and constitutes a legal, valid and binding obligation of the Design-Builder, enforceable against the Design-Builder in accordance with its terms, except to the extent that its enforceability may be limited by the Bankruptcy Code or by equitable principles of general application.

(C) No Conflict. To the best of its knowledge after due inquiry, neither the execution nor delivery by the Design-Builder of this Design-Build Contract nor the performance by the Design-Builder of its obligations in connection with the transactions contemplated hereby nor the fulfillment by the Design-Builder of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any constitution, law, governmental regulation, by-laws or certificates of incorporation applicable to the Design-Builder or (2) conflicts with, violates or results in a breach of any order, judgment or decree, or any contract, agreement or instrument to which the Design-Builder is a party or by which the Design-Builder or any of its properties or assets are bound, or constitutes a default under any of the foregoing.

(D) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Design-Build Contract by the Design-Builder except as such have been duly obtained or made.

(E) City Licensing and Registration Requirements. The Design-Builder possesses a valid Class “A” general contractor/construction manager license issued by the State and is not in violation of any of the terms or conditions of such license.

(F) No Litigation. Except as disclosed in writing to the City, there is no Legal Proceeding, at law or in equity, before or by any court, arbitral tribunal or other Governmental Body pending or, to the best of the Design-Builder’s knowledge after due inquiry, overtly threatened or publicly announced against the Design-Builder, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the execution and delivery of this Design-Build Contract by the Design-Builder or the validity, legality or enforceability of this Design-Build Contract against the Design-Builder, or any other agreement or instrument entered into by the Design-Builder in connection with the transactions contemplated hereby, or on the ability of the Design-Builder to perform its obligations hereunder or under any such other agreement or instrument.

(G) Claims and Demands. There are no material and adverse claims or demands based in environmental, contract or tort law pending or threatened against the Design-Builder or any of its Affiliates with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates that would have a material and adverse effect upon the ability of the Design-Builder to perform the Contract Services.

(H) Applicable Law Compliance. Except as disclosed in writing to the City, the Design-Builder does not have any knowledge of any material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Design-Builder or any of its Affiliates.

(I) Intellectual Property. The Design-Builder owns, or has sufficient rights to use, all Intellectual Property necessary for the Project without any known material conflict with the rights of others.

(J) Practicability of Performance. Subject to, and in accordance with, the terms of this Design-Build Contract, the Design-Builder assumes the risk of the practicability and possibility of performance of the Contract Services in compliance with the requirements of the Contract Standards on the scale, within the time for completion, and in the manner required hereunder, and agrees that sufficient consideration for the assumption of such risk is included in the Contract Compensation.

(K) Information Supplied by the Design-Builder. The information supplied and representations and warranties made by the Design-Builder in all submittals made in response to the RFQ and RFP with respect to the Design-Builder (and to its knowledge, all information supplied in such submittals with respect to any Affiliate or Subcontractor) are true, correct and complete in all material respects.

ARTICLE 3

TERM

SECTION 3.1. EFFECTIVE DATE AND TERM.

(A) Term. This Design-Build Contract shall become effective, and the term hereof (the “Term”) shall commence, on the Contract Date. The Term shall continue to the Expiration Date or, if this Design-Build Contract is earlier terminated by either party in accordance with their respective termination rights under ARTICLE 13 (Breach, Default, Remedies and Termination), to the Termination Date.

(B) Accrued Rights. No termination of this Design-Build Contract shall:

(1) Limit or otherwise affect the respective rights and obligations of the parties hereto accrued prior to the date of such termination; or

(2) Preclude either party from impleading the other party in any Legal Proceeding originated by a third-party as to any matter occurring during the Term.

SECTION 3.2. SURVIVAL.

Notwithstanding any other provision of this Design-Build Contract, this Section and the following provisions hereof shall survive the expiration or any earlier termination of this Design-Build Contract:

(1) Article 2 (Representations and Warranties);

(2) Section 4.11(E) (Preservation of Books and Records);

(3) Section 5.10(F) (Elective Continuance of the Project by the Parties on Other Bases);

(4) Section 5.10(G) (Elective Continuance of the Project by the City with Other Contractors; Project Documents)

(5) SECTION 6.10 (Design-Build Work Deliverable Material);

(6) Section 10.3 (Project Warranties Not Exclusive);

(7) ARTICLE 12 (Dispute Resolution);

(8) ARTICLE 13 (Breach, Default, Remedies and Termination), as applicable to the obligations of the parties following the Termination Date;

(9) ARTICLE 16 (Indemnification), including all of the indemnities referred to therein;

(10) SECTION 18.6 (Property Rights);

(11) Attachment 8C (Schedule of Values and Design-Builder Contingency) of Appendix 8 (Design-Build Price);

(12) Appendix 12 (Insurance Requirements)

(13) All provisions of this Design-Build Contract with respect to payment obligations of the Design-Builder or the City accrued prior to the Termination Date; and

(14) Any other provision of this Design-Build Contract providing for survival by its express terms;

together with any provisions necessary to give effect to the above provisions.

ARTICLE 4

GENERAL PERFORMANCE AND PAYMENT REQUIREMENTS

SECTION 4.1. PROJECT SCOPE.

(A) Project Scope Generally. The Dewatering Facility and the Dewatering Facility Site are described generally in Appendix 1 (Dewatering Facility, Dewatering Facility Site, and Related Projects Description) and in detail in Appendix 4 (Technical Specifications). The Design-Builder recognizes that the Dewatering Facility will ultimately be defined by the Technical Specifications, which will be developed by the Design-Builder as part of the Preliminary Services. The Design-Builder further recognizes that the City intends to provide for the design and construction of certain projects related to the Project through Separate Contractors. These projects are identified in Appendix 1 (Dewatering Facility, Dewatering Facility Site, and Related Projects Description) and are not included within the scope of the Design-Build Work, except as specifically provided in Section 6.11 (Interface and Coordination).

(B) Pricing Established on the Contract Date. The parties acknowledge and agree that the Preliminary Services Fee, the General Conditions Fee, and the Design-Builder Fee were proposed by the Design-Builder as part of the Proposal, negotiated by the parties prior to the Contract Date and included in this Design-Build Contract as executed on the Contract Date, and shall not be the subject of the Definitive Project Submittal or the Definitive Contract Amendment negotiations.

(C) Pricing Established Subsequent to the Contract Date. The parties further acknowledge and agree that all other elements of pricing provided for in this Design-Build Contract are to be negotiated by the parties subsequent to the Contract Date, based on the pricing proposed in the Definitive Project Submittal, in connection with establishing the Definitive Contract Amendment in accordance with the terms and conditions of this Design-Build Contract. These elements include the Guaranteed Maximum Price, which is to be negotiated based on the estimates and assumptions set forth with respect thereto in the Proposal, as modified by the Project cost model updates made during the Preliminary Services Period.

(D) Estimated Acceptance Date. As of the Contract Date, the estimated Scheduled Acceptance Date is November 30, 2023, based on an estimated Preliminary Services Period (including the negotiation of the Definitive Contract Amendment) of 564 days, and an estimated Design-Build Period of 966 days. The Design-Builder shall be responsible for updating and refining the estimated Scheduled Acceptance Date as part of the Preliminary Services. Ultimately, the parties intend to negotiate and agree on the definitive Scheduled Acceptance Date (expressed as a number of days following the Definitive Contract Amendment Date) in accordance with SECTION 5.10 (Definitive Contract Amendment), and to incorporate the agreed-upon Scheduled Acceptance Date in the Definitive Contract Amendment.

SECTION 4.2. DESIGN-BUILDER RESPONSIBILITIES GENERALLY.

(A) Reliance. The Design-Builder acknowledges and agrees that the City is entering into this Design-Build Contract in reliance on the Design-Builder's expertise with respect to the performance of the Contract Services. The Design-Builder recognizes that the Dewatering Facility will serve an essential public service and is critically important in order to enable the City to continue to meet its wastewater treatment needs. The Design-Builder agrees that it will be relieved of its performance obligations under this Design-Build Contract solely to the extent provided in SECTION 15.1 (Uncontrollable Circumstances Generally) with respect to the occurrence of Uncontrollable Circumstances.

(B) Scope of the Contract Services. The Contract Services are divided into the Preliminary Services, the Design-Build Work, the Warranty Work and the Transition Services, each as more particularly described in ARTICLE 5 (Preliminary Services), ARTICLE 6 (Design-Build Work), ARTICLE 8 (Commissioning, Acceptance and Final Completion), ARTICLE 10 (Project Warranties) and ARTICLE 11 (Transition Period). The Design-Builder recognizes that, notwithstanding this division, the Contract Services may overlap and agrees to perform all Contract Services in accordance with the Contract Standards. In no event shall the Design-Builder commence with the Design-Build Work prior to the Definitive Contract Amendment Date or the execution of an Early Work Package Amendment. As of the Contract Date, the Technical Specifications have not yet been fully developed. The Design-Builder shall have responsibility for the development and finalization of the Technical Specifications as part of the Preliminary Services which final Technical Specifications shall be based upon the Technical Specification as of the Contract Date, unless otherwise agreed in writing by the City. Following the Definitive Contract Amendment Date, the Design-Builder shall be solely responsible for completing the design and for the construction of the Dewatering Facility in accordance with the Technical Specifications and this Design-Build Contract, including supervision, coordination and administration of all remaining design work and of all construction work, and all other work reasonably inferable from the Technical Specifications.

(C) City Input as to Operating and Maintenance Considerations. The Design-Builder shall give due consideration to all comments received from the City concerning operation, maintenance, repair and replacement matters and related costs in developing the design of the Dewatering Facility. The City shall be responsible for coordinating comments made by various City departments and individuals regarding such matters so as to communicate such comments to the Design-Builder in a timely and efficient manner.

(D) Cooperation. The Design-Builder agrees to cooperate with the City and any other contractor engaged by the City in connection with the work to be performed toward completion of the Project and any Related Project, including the Owner's Advisor and any Separate Contractor. The Design-Builder recognizes that a cooperative and collaborative environment among all persons engaged in performing such work is essential to the successful implementation of the Project and agrees to use its best efforts to work with all such other persons toward fostering such an environment.

(E) Responsibility for Personnel and Subcontractors. All obligations of the Design-Builder under this Design-Build Contract shall be performed by Design-Builder employees, agents or Subcontractors (subject to the limitations set forth in Article 7 (Management, Labor and Subcontractors)) who are qualified to perform the specific services and meet all licensing and certification requirements of Applicable Law. The Design-Builder shall be fully responsible, in accordance with the terms and conditions of this Design-Build Contract, for all Contract Services performed by its employees, agents or Subcontractors.

(F) Stationing of Key Personnel. Whenever the Design-Builder or any Subcontractor is performing Construction, the Design-Builder's on-site Construction Manager, as defined in subsection 7.1(A) (On-Site Construction Manager), shall on a full-time basis be stationed at the Dewatering Facility Site, and the Design-Build Manager and other appropriate Key Personnel shall also be stationed at the Dewatering Facility Site or be available as required for video or telephonic communications with the City.

SECTION 4.3. ENVIRONMENTAL REVIEW.

(A) EIR Addendum. The City has prepared and certified an Addendum to the Plant Master Plan EIR ("EIR Addendum") and a related Mitigation Monitoring and Reporting

Program (“MMRP”) for the Project under the California Environmental Quality Act, which are set forth as Reference Document 6 to this Design-Build Contract. The EIR Addendum and the MMRP require specific environmental mitigation measures to be completed in connection with the Project (the “Environmental Mitigation Measures”). The additional field investigations required by the Environmental Mitigation Measures will be performed by the City. Except as set forth in the preceding sentence, the Environmental Mitigation Measures, including the actual mitigation and avoidance measures identified therein, constitute part of the Technical Specifications, which the Design-Builder is obligated to perform and comply with hereunder.

(B) Changes to Environmental Mitigation Measures. In the event any change to the Project approved by the City results in a determination that further Project environmental mitigation measures are necessary or appropriate, such measures shall be incorporated in the Environmental Mitigation Measures as part of the Definitive Contract Amendment and the Base Guaranteed Maximum Price shall be determined taking such additional measures into account.

SECTION 4.4. ACCESS TO AND SUITABILITY OF THE DEWATERING FACILITY SITE.

(A) Familiarity with the Dewatering Facility Site. The Design-Builder agrees that, as of the Contract Date, the Design-Builder’s agents and representatives have visited, inspected and become familiar with the Dewatering Facility Site, its physical condition relevant to the obligations of the Design-Builder pursuant to this Design-Build Contract, including surface conditions, normal and usual soil conditions, roads, Utilities, topographical conditions and air and water quality conditions; that the Design-Builder is familiar with all local and other conditions which may be material to the Design-Builder’s performance of the Design-Build Work (including transportation; seasons and climate; access, availability, disposal, handling and storage of materials and equipment; and availability and quality of labor and Utilities); that the Design-Builder has received and reviewed all information regarding the Dewatering Facility Site provided to or developed by it in connection with the RFP; [that the Design-Builder has made all other site investigations that it deems necessary to make a determination as to the suitability of the Dewatering Facility Site;] **[NOTE: Brackets to be removed at Definitive Contract Amendment]** and that, based on the foregoing, the Design-Builder acknowledges that the Dewatering Facility Site constitutes an acceptable and suitable site for the construction of the Dewatering Facility in accordance herewith..

(B) Independent Verification of City-Provided Dewatering Facility Site Information. The Design-Builder acknowledges that it is responsible for the independent verification and confirmation of all information supplied to it by or on behalf of the City relating to the Dewatering Facility Site, and upon which it elects to rely in connection herewith. Except as specifically provided in SECTION 6.3 (Differing Site Conditions) and SECTION 6.4 (Regulated Site Conditions), no error or omission in any such information shall constitute an Uncontrollable Circumstance, or relieve the Design-Builder from the Contract Obligations. Notwithstanding any factual statement, conclusion, or any language or recommendation contained in any information supplied to the Design-Builder by or on behalf of the City, the Design-Builder assumes full responsibility for inspecting the Dewatering Facility Site and for the means and methods of construction that it employs when performing the Design-Build Work.

(C) Access to the Dewatering Facility Site. The execution of this Design-Build Contract shall be deemed to constitute the granting of a license to the Design-Builder to access the Dewatering Facility Site (other than any areas for which an encroachment permit or other governmental or non-governmental clearance or authorization must be obtained in

advance from an entity or party other than the City) for the purposes of performing the Contract Services, including performing engineering, analysis and such additional surface, subsurface and geotechnical studies or tests as deemed necessary by the Design-Builder prior to the commencement of construction, as determined in accordance with Good Engineering and Construction Practice. Prior to the issuance of the Construction Notice to Proceed, such access shall be subject to the City's prior approval, which approval shall not be unreasonably withheld, as to time and scope. The Design-Builder shall perform all such activities in accordance with the Contract Standards, including the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements), and shall provide the City with all reports or analyses generated by such activities promptly after such reports or analyses are generated. Except and to the extent provided in SECTION 6.4 (Regulated Site Conditions) with respect to Regulated Site Conditions, the Design-Builder shall assume all risks associated with such activities and shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in ARTICLE 16 (Indemnification) from and against all Loss-and-Expense resulting therefrom. Following the Definitive Contract Amendment Date and for the duration of the Term, the Design-Builder shall have all Dewatering Facility Site access rights as are necessary for the performance of the Design-Build Work and the Transition Services in accordance with this Design-Build Contract and such access rights shall not be subject to prior City approval. Notwithstanding any of the foregoing, the Design-Builder shall at all times comply with the Dewatering Facility Site access requirements and restrictions set forth in Appendix 5 (General Design-Build Work Requirements) and shall coordinate the Design-Build Work and interface with all Separate Contractors in accordance with Section 6.11 (Interface and Coordination). Upon the receipt of any encroachment permit(s) or other governmental or non-governmental clearance or authorization, following issuance of the Construction Notice to Proceed, the Design-Builder shall have access to areas covered by such encroachment permit(s).

SECTION 4.5. COMPLIANCE WITH APPLICABLE LAW.

(A) Compliance with Applicable Law Generally. The Design-Builder shall, and shall cause all Subcontractors to, perform the Contract Services in accordance with Applicable Law and all other applicable Contract Standards. The Design-Builder shall provide all notices required by Applicable Law and the Contract Standards. The incorporation, reference or citation of specific statutes or other parts of Applicable Law in this Design-Build Contract is not intended, nor shall it be construed, to limit the generality of the Design-Builder's and all Subcontractors' obligations to comply with Applicable Law (whether or not specifically incorporated or referenced in this Design-Build Contract). The Design-Builder shall be entitled to Change in Law relief only to the extent provided in SECTION 15.1 (Uncontrollable Circumstances Generally).

(B) Compliance with Conditions in Governmental Approvals. The Design-Builder shall comply with all conditions and requirements of all Governmental Approvals required to be made, obtained or maintained under Applicable Law in connection with the performance of the Contract Services, including City-Managed Governmental Approvals. The Design-Builder shall report to the City, immediately upon obtaining knowledge thereof, all violations of the terms and conditions of any Governmental Approval or Applicable Law pertaining to the Project. The City, in its capacity as the counterparty to the Design-Builder under this Design-Build Contract, shall have the right independently to enforce compliance with this Design-Build Contract regarding the requirements of any Governmental Approval regardless of whether a concurrent or different regulatory enforcement action has been undertaken by any other Governmental Body. Any violations of or noncompliance with any Governmental Approval, including suspensions caused by the Design-Builder violating or not being in compliance with a Governmental Approval, shall be at the sole risk of the Design-

Builder, and shall not be a basis for Uncontrollable Circumstance relief under this Design-Build Contract.

(C) Fines, Penalties and Remediation. In the event that the Design-Builder or any Subcontractor fails at any time to comply with Applicable Law with respect to the Design-Build Work, the Design-Builder shall: (1) promptly respond to any notice of non-compliance, warning letter, notice of violation or other enforcement action and seek amicable resolution of the issues; (2) immediately correct such failure and resume compliance with Applicable Law; (3) pay any resulting fines, assessments, levies, impositions, penalties or other charges; (4) indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in ARTICLE 16 (Indemnification) from and against all Loss-and-Expense resulting therefrom; (5) make all changes in performing the Contract Services which are necessary to assure that the failure of compliance with Applicable Law will not recur; and (6) comply with any corrective action plan filed with or mandated by any Governmental Body in order to remedy a failure of the Design-Builder to comply with Applicable Law. The Design-Builder's obligations under this subsection shall be subject to Uncontrollable Circumstance relief as and to the extent provided in this Design-Build Contract.

SECTION 4.6. OWNERSHIP AND USE OF DOCUMENTS AND INFORMATION.

(A) Ownership of and Use of Documents and Information. The Design-Builder acknowledges and agrees that the City shall own exclusively the Deliverable Material and any and all other documents and information in whatsoever form and character produced or maintained in accordance with, pursuant to, or as a result of this Design-Build Contract. All such documents and information may be used as the City determines and shall be delivered to the City at no additional cost to the City as required hereunder, upon request, upon Project completion or upon termination of this Design-Build Contract. If the City uses any Deliverable Material for a purpose other than the Project, such use shall be at the City's sole risk and liability.

(B) Liability Regarding Use of Deliverable Material Upon Early Termination. In the event of an early termination of this Design-Builder, the City shall have the right in connection with any City self-performed activities with respect to the Project, based on its ownership of the Deliverable Material as provided in this Section, to use any Deliverable Material in any manner it chooses to complete the design and construction of the Project without the participation of the Design-Builder. In such event, the Design-Builder shall be liable to the City for damages arising from the use of the Deliverable Material solely to the extent of errors or omissions in the Deliverable Material and based upon a standard of care ordinarily used by members of the subject profession, having experience with projects similar in scope and complexity and practicing in major United States urban areas; provided, however, that the Design-Builder will not be liable to the City for damages arising from the use of design work that has not been completed by the Design-Builder as of the Termination Date. The limitation as to the Design-Builder's liability for non-final design work set forth in the preceding sentence is applicable only to the extent the City determines to complete the design and construction of the Project without the participation of the Design-Builder or otherwise terminates this Design-Build Contract and is intended to recognize the City's investment in the Deliverable Material and to provide the City with a meaningful alternative for the design and construction of the Project in such circumstances, while recognizing that the Design-Builder will not have control over the use of the Deliverable Material in such circumstances.

SECTION 4.7. CITY PAYMENT OBLIGATIONS GENERALLY.

(A) Preliminary Services Fee, Design-Build Price, and Transition Services Fee. The City shall pay the Design-Builder (1) the Preliminary Services Fee for the Preliminary Services, as provided in SECTION 5.3 (Compensation for Preliminary Services) and Appendix 2 (Preliminary Services); (2) the Design-Build Price for the Design-Build Work as provided in ARTICLE 9 (Compensation for Design-Build Work) and Appendix 8 (Design-Build Price); and (3) the Transition Services Fee for the Transition Services as provided in Section 11.2 (Compensation for Transition Services) and Appendix 11 (Transition Services).

(B) Interest On Overdue Obligations. Except as otherwise provided for herein, all amounts due hereunder, whether as damages, credits, revenue, charges or reimbursements, that are not paid when due shall bear interest at the rate of interest which is the Overdue Rate, on the amount outstanding from time to time, on the basis of a 365-day year, counting the actual number of days elapsed, and such interest accrued at any time shall, to the extent permitted by Applicable Law, be deemed added to the amount due as accrued.

SECTION 4.8. COST SUBSTANTIATION.

(A) Required Substantiation. The Design-Builder shall substantiate the Design-Build Costs and any other costs for which it claims compensation hereunder, other than (1) the Preliminary Services Fee, (2) the General Conditions Fee, or (3) the Design-Builder Fee, each of which was proposed and negotiated, and any other costs that are part of a negotiated lump sum price.

(B) Cost Substantiation Certificate. Any Payment Request for compensation relating to costs requiring Cost Substantiation shall be accompanied by a certificate stating that the Design-Build Costs or other costs being invoiced (1) are properly payable under this Design-Build Contract, and specifying the provisions of this Design-Build Contract under which compensation is due; and (2) are equal to amounts paid by the Design-Builder for Design-Build Work that has been properly performed. Each Cost Substantiation certificate shall be accompanied by copies of all documentation reasonably necessary to demonstrate that the Design-Build Costs have been paid and are reasonable. Such documentation shall be in a format and level of detail reasonably acceptable to the City. To the extent reasonably necessary to confirm the payment of costs that are subject to Cost Substantiation, copies of timesheets, invoices, canceled checks, expense reports, receipts and other documents, as appropriate, shall be provided.

SECTION 4.9. CITY'S RIGHT OF SET OFF.

Once the City determines that any credits, payments, reimbursements or liquidated damages are owed to the City in accordance with the terms and conditions of this Design-Build Contract and have not been reflected in any previously submitted Payment Request, the City shall notify the Design-Builder and the Design-Builder shall include such amounts as an extraordinary item in the next Payment Request provided to the City. In the event the Design-Builder does not include such amounts in the next Payment Request provided to the City in accordance with this Section, the City shall have the right to offset the amount otherwise payable for such Payment Request by the amount of such credits, payments, reimbursements or liquidated damages.

SECTION 4.10. BILLING STATEMENT DISPUTES.

If the City disputes in good faith any amount billed by the Design-Builder, the City shall pay all undisputed amounts when due but may withhold payment of the disputed amount, and shall provide the Design-Builder with a written objection indicating the amount being disputed and the reasons then known to the City for the dispute. In the event that the Design-Builder disputes any amounts offset by the City, it shall provide the City with a written objection indicating the amount being disputed and the reasons then known to the Design-Builder. When any billing dispute is finally resolved, if payment by the City to the Design-Builder of amounts withheld is required, such payment shall be made within 30 days of the date of resolution of the dispute, together with interest thereon, from the date originally due, determined as provided in subsection 4.7(B) (Interest on Overdue Obligations).

SECTION 4.11. RETENTION AND AUDIT OF BOOKS AND RECORDS.

(A) Books and Records. The Design-Builder shall prepare and maintain proper, accurate and complete books and records regarding the Contract Services and all transactions related thereto, including all books of account, bills, vouchers, invoices, personnel rate sheets, cost estimates and bid computations and analyses, Subcontracts, time books, daily job diaries and reports, correspondence, and any other documents showing all acts and transactions in connection with or relating to or arising by reason of the Contract Services, any Subcontract or any operations or transactions in which the City has or may have a financial or other material interest hereunder (collectively, “Books and Records”). The Design-Builder and its Subcontractors shall produce such Books and Records for inspection, audit and reproduction for all such purposes within 15 days of request by the City. All financial records of the Design-Builder and its Subcontractors shall be maintained in accordance with generally accepted accounting principles and generally accepted auditing standards. The Design-Builder and its Subcontractors shall maintain such Books and Records in accordance with subsection (E) (Preservation of Books and Records) of this Section.

(B) City Rights to Audit and Examine. All payments whatsoever by the City to the Design-Builder and all Contract Services shall be subject to audit at any time by the City. The Design-Builder shall provide all evidence necessary to support Cost Substantiation as required under this Design-Build Contract, and allow the City access to the Design-Builder’s Books and Records. The Design-Builder shall require all Subcontractors to comply with the provisions of this Section and include the requirements hereof in the written contract between the Design-Builder and the Subcontractor. The Design-Builder shall also require all Subcontractors to include the requirements of this Section in any lower tier Subcontracts relating to the Project. In the event that the Design-Builder is a joint venture, such right to examine, copy and audit shall apply collaterally and to the same extent to the Books and Records of the joint venture sponsor, and those of each individual joint venture member.

(C) Notice and Process. Upon written notice by the City, the Design-Builder and its Subcontractors shall promptly (in no event later than 15 days following the notice) make available at its office at all reasonable times the Books and Records for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five days’ prior notice of the examination or audit. The City may take possession of such Books and Records by reproducing such Books and Records for off-site review or audit provided that those Books and Records that are required to remain at the Dewatering Facility Site by Applicable Law must be photocopied at the Dewatering Facility Site. When requested in the City’s written notice of examination or audit, the Design-Builder shall provide the City with copies of electronic and electronically stored Books and Records in a reasonably usable format that allows the City to access and analyze all such Books and

Records. For Books and Records that require proprietary software to access and analyze, the Design-Builder shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such Books and Records. If the Design-Builder is unable to provide the licenses, the Design-Builder shall provide the City with access to the Design-Builder's accounting system whereby the City can obtain applicable Books and Records, including job cost reports, material distribution reports, labor cost reports, labor productivity reports, standard time/overtime analysis reports, manhour reports, and the like.

(D) Selection of Auditor or Examiner and Determination of Scope. The City has discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

(E) Preservation of Books and Records. The Design-Builder shall preserve all of its Books and Records, and the City may examine, audit, or reproduce Books and Records, from the Contract Date until the later of four years after: (1) final payment under this Design-Build Contract; (2) final settlement of a termination for convenience under SECTION 13.6 (City Convenience Termination Rights); or (3) the final resolution of any dispute. The failure by the Design-Builder to make available to the City Books and Records in accordance with this Section or the Design-Builder's refusal to cooperate with a notice of audit or examination shall be deemed a material breach of this Design-Build Contract and grounds for termination.

(F) Overpayment. In the event an audit by the City determines that the Design-Builder cannot document a cost or expense for which payment has been made, or that the City has overpaid the Design-Builder, the Design-Builder, upon demand, shall refund to the City the amounts overpaid or undocumented. If the overpayment exceeds 1% of the total amount that should have been properly paid by the City during the period audited, then the Design-Builder shall, in addition, reimburse the City for any and all fees and costs incurred in connection with the inspection or audit. Payments to the Design-Builder, or approval by the City of any requisition for payment submitted by the Design-Builder, shall in no way affect the Design-Builder's obligation hereunder or the right of the City to obtain a refund of any payment to the Design-Builder which is in excess of that to which it was lawfully entitled.

ARTICLE 5

PRELIMINARY SERVICES

SECTION 5.1. SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The Design-Builder shall render and perform the Preliminary Services to and for the City in accordance with Appendix 2 (Preliminary Services), the Contract Standards and the terms and conditions of this Design-Build Contract. The Design-Builder's responsibility to perform the Preliminary Services shall include the employment of or the subcontracting for all necessary professionals, technicians and engineers, properly qualified, licensed and skilled in the various aspects of the Preliminary Services, and the performance of all services reasonably inferable from the Preliminary Services.

(B) Preliminary Services Tasks; Notices to Proceed. The Design-Builder acknowledges that the Preliminary Services are divided into discrete Preliminary Services Tasks associated with the advancement of the Preliminary Services. The Design-Builder shall commence performing the Preliminary Services associated with each specific Preliminary Services Task identified in Appendix 2 (Preliminary Services) only upon the issuance by the City of a Preliminary Services Task Notice to Proceed with the specific Preliminary Services Task (a "Preliminary Services Task Notice to Proceed"). The City shall have the right to issue a Preliminary Services Task Notice to Proceed with respect to a specific Preliminary Services Task at any time in consultation with the Design-Builder, whether concurrently with or prior or subsequent to the completion by the Design-Builder of any other Preliminary Services Task. In no event shall the Design-Builder be entitled to compensation for the performance of a Preliminary Services Task prior to the issuance by the City of a Preliminary Services Task Notice to Proceed with the specific Preliminary Services Task.

SECTION 5.2. CHANGES TO THE SCOPE OF THE PRELIMINARY SERVICES.

(A) Generally. The City shall have the right to make changes to the scope of the Preliminary Services set forth in Appendix 2 (Preliminary Services) at any time, in its discretion, by written notice to the Design-Builder, subject to the terms and conditions of this Section. Changes to the scope of the Preliminary Services may be made by the City to account for an Uncontrollable Circumstance or any other reason determined by the City.

(B) Additional Preliminary Services. The Design-Builder shall be entitled to an equitable adjustment to the Preliminary Services Fee and the Preliminary Services Schedule in the event of any expansion of the scope of the Base Preliminary Services pursuant to this Section (the "Additional Preliminary Services"). Any expansion of the scope of the Base Preliminary Services under this subsection and the corresponding equitable adjustment to the Preliminary Services Fee and the Preliminary Services Schedule shall be reflected in a Contract Administration Memorandum or a Contract Amendment. The Design-Builder shall not be entitled to compensation for any Additional Preliminary Services beyond the scope of the Base Preliminary Services unless, prior to the performance of any such Additional Preliminary Services, the Design-Builder shall have received express written authorization from the City to perform the Additional Preliminary Services. In the absence of any City-directed change to the scope of the Base Preliminary Services reflected in a Contract Administration Memorandum or a Contract Amendment, the Design-Builder shall have no obligation to perform work outside the scope of the Base Preliminary Services.

(C) Additional Preliminary Services Resulting From Delay. Extra costs resulting from delays caused solely by the City's failure to comply with the Preliminary Services

Schedule, or from Uncontrollable Circumstances, shall be deemed to be costs resulting from Additional Preliminary Services, provided the Design-Builder demonstrates that the costs claimed (1) resulted from time or expenses actually incurred in performing the Preliminary Services, (2) were incurred by Design-Builder as a direct result of the delay and not otherwise within the scope of the Preliminary Services, and (3) are documented to the City's satisfaction.

(D) Exclusions from Additional Preliminary Services. Additional Preliminary Services shall not include work or services necessary because of errors, omissions or conflicts of any type in the Design-Builder's plans and specifications or other Preliminary Services Deliverable Material. All such work or services shall be performed at no cost to the City, and shall include any required corrections or revisions to reports, plans or specifications.

(E) Changes that Reduce the Scope of the Preliminary Services. The City shall have the right to reduce the scope of the Preliminary Services at any time by written notice to the Design-Builder. Changes to the Preliminary Services that reduce the scope of the Preliminary Services shall be effective upon the delivery of the written notice by the City pursuant to this subsection. Any reduction in the scope of the Preliminary Services shall result in an appropriate reduction in the Preliminary Services Fee and an adjustment to the Preliminary Services Schedule, as appropriate, which shall be reflected in a Contract Administration Memorandum.

SECTION 5.3. COMPENSATION FOR PRELIMINARY SERVICES.

(A) Compensation for Base Preliminary Services. The City shall pay the Design-Builder the Preliminary Services Fee in the manner and subject to the terms and conditions set forth in this Design-Build Contract and in Appendix 2 (Preliminary Services). The Design-Builder agrees that the Preliminary Service Fee shall be the Design-Builder's entire compensation and reimbursement for the performance of the Preliminary Services, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit. The Preliminary Services Fee shall be subject to adjustment solely in accordance with Section 5.2 (Changes to the Scope of the Preliminary Services).

(B) Compensation for Additional Preliminary Services. The Design-Builder shall be compensated for any Additional Preliminary Services on a time and materials or lump sum basis, agreed to in writing through a Contract Administration Memorandum or a Contract Amendment executed by the City and the Design-Builder. Compensation for Additional Preliminary Services may consist of compensation on the basis of Design-Builder's and Subcontractors' billing rates approved by the City. The Contract Administration Memorandum or Contract Amendment, as applicable, may set forth additional compensation and Payment Request requirements.

(C) Payment Requests and Payment. The Design-Builder shall provide the City with a Payment Request for the performance of the Preliminary Services on a monthly basis in accordance with the specific requirements set forth in Appendix 2 (Preliminary Services). The Payment Request shall state the amount payable for the month and the total amount paid against the Preliminary Services Fee through the date of the Payment Request, along with a monthly report regarding the performance of the Preliminary Services and such other information or documentation as the City may reasonably require. The City shall make payment to the Design-Builder of all properly supported invoiced amounts within 30 days of receipt of the Payment Request, subject to the terms and conditions of the Design-Build Contract. Payments of the Preliminary Services Fee shall not be subject to retainage holdback

or, except as provided in subsection (D) (Non-Compliant Preliminary Services) of this Section, offset.

(D) Non-Compliant Preliminary Services. Nothing contained in this Design-Build Contract shall require the City to pay for any unsatisfactory or duplicative Preliminary Services or for Preliminary Services that are not in compliance with the terms and conditions of this Design-Build Contract. The City shall not be required to pay the Preliminary Services Fee to the Design-Builder at any time the Design-Builder is in breach or default under this Design-Build Contract.

SECTION 5.4. PRELIMINARY SERVICES SCHEDULE.

SECTION 5.5. The Preliminary Services Schedule is set forth in Attachment 2A (Preliminary Services Schedule) and shall be updated as provided in Appendix 2 (Preliminary Services). Time is of the essence in the performance of the Preliminary Services. The Design-Builder shall complete the various Preliminary Services Tasks under this Design-Build Contract in accordance with the Preliminary Services Schedule. The Design-Builder acknowledges and agrees that any delays in the Design-Builder's completion of its Preliminary Services under this Design-Build Contract or performance beyond the number of days agreed to herein for completion of a Preliminary Services Task will cause injury and damage to the City. The City reserves the right to extend the Preliminary Services Schedule as the City deems necessary or appropriate. CHANGES TO THE PRELIMINARY SERVICES SCHEDULE.

The City may elect to suspend performance of the Preliminary Services for any reason and, in such event, the total time expended by the Design-Builder up to the time of suspension will be charged against the total allowable time in the same manner as if no termination or suspension had occurred. Notwithstanding the foregoing, in the event the City elects to suspend the performance of the Preliminary Services for more than 30 consecutive days, the Preliminary Services Schedule and time for completion shall be equitably adjusted, expanded or lengthened as appropriate to complete the required Preliminary Services. The Design-Builder shall notify the City of any additional time the Design-Builder believes it is entitled to within 15 days of its receipt of a request to resume suspended work or for additional Preliminary Services Deliverable Material outside the scope of the Preliminary Services or changes in the scope of the Preliminary Services, or such claim shall conclusively be deemed to have been waived.

SECTION 5.6. COORDINATION WITH THE CITY.

(A) Meetings and Reports Generally. The Design-Builder shall hold periodic meetings and conferences with the City during the Preliminary Services Period, at least monthly, to verify and confirm that the development of the Project (1) has the full benefit of the City's experience and knowledge of existing needs and facilities, (2) is consistent with the City's current policies and standards, and (3) is proceeding in accordance with the Preliminary Services Schedule. The Design-Builder shall keep the City regularly informed as to the progress of the Preliminary Services through the submittal of periodic reports in accordance with the requirements set forth in this Section and Appendix 2 (Preliminary Services).

(B) Monthly Preliminary Services Reports. The Design-Builder shall provide the City with monthly written reports ("Monthly Preliminary Services Report"), covering the Project and addressing work performed during the past month, percentage of work completion and compliance with the Preliminary Services Schedule. The Design-Builder shall describe Project issues, problems or concerns that the City should be made aware of and how the Design-Builder proposes to address them. The Design-Builder shall update the description of

the work planned for the next three months. The Monthly Preliminary Services Report shall present Project budget information and indicate amounts billed by Preliminary Services Task by the Design-Builder for the past month, cumulatively to date and the amount of funds remaining. For conditions or issues that the Design-Builder believes may create a requirement for additional work outside the Preliminary Services, the Design-Builder shall provide information to the City so that the parties may discuss them and make a determination as to whether or not Additional Preliminary Services are to be provided. The Monthly Preliminary Services Report shall include a section on the progress of the design and list any concerns, actions, changes, and reviews and approvals from the City that the Design-Builder requires. The Design-Builder shall indicate any Governmental Body or Utility requirements and issues that City should be aware of, and if there are City requirements for interacting with such Governmental Bodies, Utilities or other groups. The three-month Preliminary Services Schedule update shall list City actions and dates for actions in order to maintain the Preliminary Services Schedule.

(C) Information Provided by the City. The City shall make available for the Design-Builder's use in the performance of the Preliminary Services all existing plans, maps, field notes, statistics, computations, and other data in the City's possession relating to the Regional Wastewater Facility and to the Project, as requested in writing by the Design-Builder, at no cost to the Design-Builder. All such information is provided to the Design-Builder for the sole purpose of the Design-Builder's convenience and for use in relation to the performance of the Preliminary Services, may not be relied upon by the Design-Builder and must be verified by the Design-Builder as provided in subsection (D) (Required Design Information) of this Section if it is relied upon by the Design-Builder in any manner. The Design-Builder shall promptly notify the City in writing when it reasonably believes or suspects that information provided by the City is not accurate or cannot be checked. Any and all information provided by the City shall remain the property of the City and shall be returned promptly to the City upon written request.

(D) Required Design Information. Notwithstanding the provisions of subsection (C) (Information Provided by the City) of this Section, the Design-Builder shall be responsible for obtaining and verifying all information required as further described in Appendix 2 (Preliminary Services) in order to properly design the Dewatering Facility so that it is designed, constructed and performs in accordance with Applicable Law and the Contract Standards.

(E) Revisions to Drawings and Specifications. Notwithstanding anything in this Design-Build Contract to the contrary, the Design-Builder shall, at no additional expense to the City, provide reasonable minor revisions to any and all drawings and specifications provided to the City, whether or not previously reviewed and accepted by the City, as may be required to satisfy the Preliminary Services established by this Design-Build Contract. It is agreed and understood that the scope of each of the Preliminary Services Tasks in Appendix 2 (Preliminary Services) may require some reasonable minor revisions to drawings and specifications provided to the City, as the scope of the Project is refined, and that such reasonable minor revisions are included within the existing Preliminary Services under this Design-Build Contract. The Design-Builder shall make, without additional expense to the City, such reasonable minor revisions or corrections to the Preliminary Services Deliverable Material as may be required.

SECTION 5.7. PROJECT DESIGN.

(A) Design Considerations. The design for the Project undertaken and performed by the Design-Builder shall:

(1) Be undertaken by a design team exercising such degree of care, skill and diligence as would reasonably be expected from consultants qualified to perform services similar in scope, nature and complexity to the design, as of the date of this Design-Build Contract, and the Design-Builder shall appoint a design team that:

(a) is so qualified;

(b) includes (as required by Applicable Law) licensed or registered professional engineers and architects; and

(c) has sufficient expertise and experience to expeditiously and efficiently perform all of the design in a proper and professional manner to the standard set out in this Design-Build Contract.

(2) include specific consideration of “constructability” and “life cycle” cost issues at all stages of design, as appropriate; and

(3) include consideration of efficient and cost-effective operation and maintenance.

(B) Design-Builder Assumption of Full Design Liability. The Design-Builder acknowledges and agrees that, as provided in Section 6.6 (Final Design Responsibilities and Risk Assumption), and notwithstanding the standard of care provisions of subsection (A) (Design Considerations) of this Section, if and when a Definitive Contract Amendment is executed by the parties, the Design-Builder will have the sole and exclusive responsibility and liability for the design, construction and, in accordance with this Design-Build Contract, the performance of the Dewatering Facility. Accordingly, the Design-Builder shall have the right and the responsibility to develop and provide the Preliminary Design Documents and to perform the Preliminary Services under this Design-Build Contract in a manner that would permit a design-build contractor, acting reasonably and having the experience and qualifications required to successfully undertake and complete the design and construction of a project similar in scale and complexity to the Project, to assume such responsibility and liability. In particular, the Design-Builder shall not propose or agree to any element of the Technical Specifications or other work product to be incorporated in any Definitive Contract Amendment that would, in its reasonable judgment, be inconsistent with the assumption of such responsibility and liability.

SECTION 5.8. CONSTRUCTION PLANNING AND EARLY WORK PACKAGES.

(A) Generally. The Design-Builder shall carry out and perform all of the Preliminary Services involving construction planning, including particularly (1) Preliminary Services Task 1 relating to project implementation and execution plans, and (2) Preliminary Services Task 3 relating to the Design-Builder Basis of Design Report.

(B) Early Work Packages. The parties anticipate that there may be some phases of the Design-Build Work that are ready for commencement before it is appropriate to arrive at an overall agreed-upon Base Guaranteed Maximum Price in accordance with Section 5.9 (Definitive Project Submittal). The Design-Builder shall recommend such phases or elements of the Design-Build Work (“Early Work Packages”) to the City Contract Representative, as appropriate, through the performance of the Preliminary Services, based on Early Work Package Submittals (“Early Work Package Submittals”). The City shall have the discretion to authorize the commencement of Design-Build Work associated with an Early Work Package pursuant to this Section. The agreement of the parties as to an Early Work

Package shall be effectuated through a Contract Amendment authorizing the Design-Build Work associated with the Early Work Package and specifying the terms and conditions of compensation payable to the Design-Builder and the completion dates associated with such Design-Build Work (an “Early Work Package Amendment”). All work performed pursuant to an Early Work Package Amendment shall constitute Design-Build Work hereunder and shall be performed in accordance with the Contract Standards. The City shall have no obligation to enter into an Early Work Package Amendment. All Early Work Package Amendments agreed upon in accordance with this subsection shall be taken into consideration in the preparation of the Definitive Project Submittal submitted in accordance with Section 5.9 (Definitive Project Submittal). The Design-Builder shall furnish performance and payment bonds with a penal sum equal to the guaranteed maximum price or lump sum amount applicable to the Early Work Package, in compliance with the requirements set forth in Section 17.2 (Performance and Payment Bonds). If the Design-Builder provides performance and payment bonds in connection with an Early Work Package, the Design-Builder may, in lieu of providing separate bonds for subsequent Early Work Package(s) or for the balance of the Design-Build Work to be performed pursuant to the Definitive Contract Amendment, increase the penal sums of such original performance and payment bonds to reflect the fixed-price or Guaranteed Maximum Price associated with such Early Work Package or Definitive Contract Amendment.

(C) Early Work Package Submittals. An Early Work Package Submittal shall include and be based upon the Technical Specifications, Acceptance Standards and all other information, analysis, findings and reports developed by the Design-Builder during the performance of the Preliminary Services as developed to the date of submittal, and shall be prepared in accordance with the Contract Standards. An Early Work Package Submittal shall include the following:

Price Submittal:

(1) a proposed lump sum or guaranteed maximum price, as authorized by the City, including the terms and conditions of payment, focused solely on the Design-Build Work associated with the Early Work Package and prepared in accordance with subsection (F) (Complete Early Design-Build Work Package Pricing) of this Section;

Technical Submittal:

(2) a detailed description of the Design-Build Work associated with the Early Work Package Submittal, and its relationship to the associated Technical Specifications;

(3) a proposed schedule for completion of the Design-Build Work associated with the Early Work Package;

(4) a proposal as to the extent to which the provisions and requirements of SECTION 6.2 (Construction Commencement Date) shall apply to the Early Work Package to be authorized under the Early Work Package Amendment;

(5) a listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing the Early Work Package Submittal that are material to any part thereof, including a statement as to what information supplied by the City (if any) the Design-Builder proposes to use as the basis of any portion of its Early Work Package Submittal; and

(6) any other information reasonably requested by the City prior to the due date for the Early Work Package Submittal as necessary or appropriate to negotiate and complete the Early Work Package Amendment.

(D) Early Work Package Submittal Revisions. In the event the City believes the Early Work Package Submittal does not comply with the requirements of the Design-Build Work and this Section, the City shall provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. The Design-Builder, without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required.

(E) Negotiation and Execution. If the City agrees to authorize the commencement of a portion of the Design-Build Work under an Early Work Package Submittal, the Design-Builder and the City shall negotiate and enter into an Early Work Package Amendment. An Early Work Package Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection (C) (Early Work Package Submittals) of this Section, and shall contain any other commercial terms and conditions specific to the Early Work Package, including any applicable construction commencement conditions similar to those provided in subsection (C) (Construction Commencement Date Conditions) and the rights of the City to terminate the work being performed directly by the Design-Builder or by a Subcontractor (including a Supplier) under a Subcontract authorized to be entered into by the Design-Builder by the Early Work Package Amendment. Early Work Packages may be structured in a manner that provides for the commencement of the related Design-Build Work at any time determined by the parties.

(F) Complete Early Design-Build Work Package Pricing. It is the intention of the parties that each Early Work Package Submittal, and any associated Early Work Package Amendment, include complete pricing for the Design-Build Work to be performed thereunder, including (1) the allocable portion of the General Conditions Fee, to be administered in the same manner as the General Conditions Fee, (2) pricing based on a contingency amount for such Design-Build Work, to be administered in the same manner as the Design-Builder Contingency and (3) the allocable portion of the Design-Builder Fee.

(G) Compensation Payable in Connection With Early Work Packages. The City shall pay the Base Early Work Package Price to the Design-Builder for Design-Build Work properly performed and completed pursuant to the terms of the Early Work Package Amendment in accordance with, and subject to the limitations contained in, Appendix 8 (Design-Build Price), notwithstanding the fact that no Definitive Contract Amendment will be in effect at the time the parties execute an Early Work Package Amendment.

(H) Design-Builder Representations in an Early Work Package Amendment. The execution of any Early Work Package Amendment will be deemed to constitute representations by the Design-Builder, with respect to the Early Work Package, to the same effect as the representations made in subsection 5.10(H) (Design-Builder Representations in a Definitive Contract Amendment) with respect to the Definitive Contract Amendment, with references to Design-Build Work referring to the Early Work Package and references to the Base Guaranteed Maximum Price referring to the Base Early Work Package Price.

SECTION 5.9. DEFINITIVE PROJECT SUBMITTAL.

(A) Preliminary Services and Definitive Project Submittal. As part of the Preliminary Services, the Design-Builder is obligated to develop the design of the Dewatering Facility to a level sufficient to make the Definitive Project Submittal. The Definitive Project

Submittal constitutes Preliminary Services Task 6, shall be completed and submitted to the City on a timely basis as required under Appendix 2 (Preliminary Services), and shall remain a firm offer by the Design-Builder for at least 90 days. The Definitive Project Submittal shall include and be based upon the Technical Specifications, Acceptance Standards and all other information, analysis, findings and reports developed by the Design-Builder during the performance of the Preliminary Services, and shall be prepared in accordance with the Contract Standards. Without limiting the requirements of Appendix 2 (Preliminary Services), the Definitive Project Submittal shall include a price submittal, a technical submittal, a commercial terms submittal and an additional information submittal, as follows:

Price Submittal:

- (1) a proposed Base Guaranteed Maximum Price, to be inserted in Section 8.9.2 (Base Guaranteed Maximum Price) of Appendix 8 (Design-Build Price), together with all supporting information required by subsection (B) (Derivation of Proposed Base Guaranteed Maximum Price) of this Section;
- (2) a proposed Transition Services Fee, to be inserted in subsection 11.2(A) (Transition Services Fee);
- (3) a proposed Schedule of Values and a proposed Design-Builder Contingency, to be prepared in accordance with, and attached as part of Attachment 8C (Schedule of Values and Design-Builder Contingency) to Appendix 8 (Design-Build Price);
- (4) a cash flow forecast based on the Design-Build Schedule, Schedule of Values and proposed Base Guaranteed Maximum Price, to be incorporated in Appendix 8 (Design-Build Price);
- (5) if applicable and requested by the City, a list of any proposed allowance items, alternate prices and unit prices;

Technical Submittal:

- (6) proposed Technical Specifications, to be incorporated in and to constitute Appendix 4 (Technical Specifications) of this Design-Build Contract;
- (7) proposed Full Acceptance Standards for percent dewatering, polymer dosing and power efficiency (centrifuge motors) and proposed Acceptance Test procedures, to be incorporated in Appendix 9 (Commissioning and Acceptance);
- (8) the final and complete list of required Governmental Approvals (both for City Managed Governmental Approvals and Design-Builder Managed Governmental Approvals) for the Project (including Governmental Approval Application Dates and Assumed Approval Issuance Dates, all as required by subsection 6.5(A) (Preliminary Services Related to Permitting), to be incorporated in Appendix 3 (Governmental Approvals) of this Design-Build Contract;
- (9) a description of any Change-in-Law that has occurred between the Contract Date and the date of the Definitive Project Submittal;
- (10) a proposed Maintenance of Operations During Construction Plan prepared in accordance with the requirements of subsection 6.11(A) (Maintenance of

Operations During Construction) and Appendix 5 (General Design-Build Requirements), to be incorporated in Attachment 5B to Appendix 5 (General Design-Build Requirements);

(11) an updated and finalized description of the Dewatering Facility Site;

Commercial Terms Submittal:

(12) a proposed Scheduled Acceptance Date (expressed as the number of calendar days following the Definitive Contract Amendment Date by which Acceptance shall be achieved), to be inserted in SECTION 1.1 (Definitions) of this Design-Build Contract;

(13) a proposed update to the Design-Build Schedule, set forth in Attachment 5A to Appendix 5 (General Design-Build Work Requirements);

(14) a proposed delay liquidated damages amount, to be inserted in subsection 8.5(C) (Delay Liquidated Damages) and a proposed formula for the calculation of Buydown Liquidated Damages based upon the principles set forth in subsection 9.3.4 of Appendix 9 (Commissioning and Acceptance) and the residuals transportation and disposition costs to be provided by the City;

Additional Information Submittal:

(15) A proposed final Subcontracting Plan, to be set forth in Attachment 13B to Appendix 13 (Key Personnel and Approved Subcontractors);

(16) The names of proposed Subcontractors and descriptions of their roles for approval by the City as Approved Subcontractors;

(17) A description of the manner in which any Early Work Packages will be integrated into the final Design-Build Work, including price, schedule and performance considerations;

(18) If requested by the City, a description of any proposed Transition Services, Post-Acceptance Performance Tests, and related pricing considerations; A letter from a surety qualified under Section 17.2 (Performance and Payment Bonds) confirming the intent of the surety to provide the Payment Bond and Performance Bond required under such Section on the Definitive Contract Amendment Date;

(19) A description of the manner in which the Design-Builder will comply with the skilled workforce requirements of Section 22164(c) of the California Public Contract Code;

(20) A listing of any assumptions, clarifications or qualifications made by the Design-Builder in providing its Definitive Project Submittal that are material to any part thereof, including a statement as to what information supplied by the City (if any) the Design-Builder proposes to use as the basis of any portion of its Definitive Project Submittal; and

(21) Any other information reasonably requested by the City prior to the due date for the Definitive Project Submittal as necessary or appropriate to negotiate and complete the Definitive Contract Amendment.

(B) Derivation of Proposed Base Guaranteed Maximum Price. The Definitive Project Submittal shall include a detailed and comprehensive description of how the proposed Base Guaranteed Maximum Price was derived and the material factors on which it was based, including any Early Work Packages, all in compliance with the requirements for establishing the Base Guaranteed Maximum Price set forth in Appendix 2 (Preliminary Services), together with any other related information required pursuant to this Section. All costs, bids, quotes, estimates and other information supporting the Definitive Project Submittal shall be made available to the City upon request. The proposed Base Guaranteed Maximum Price and the other elements of the Definitive Project Submittal shall be based upon the risk allocation established by this Design-Build Contract as of the Contract Date.

(C) Preliminary Services Fee, Design-Builder Fee and General Conditions Fee. The parties acknowledge and agree that the Preliminary Services Fee, the Design-Builder Fee and the General Conditions Fee were proposed by the Design-Builder as part of the Proposal, negotiated by the parties prior to the Contract Date and included in this Design-Build Contract as executed on the Contract Date, and shall not be the subject of the Definitive Project Submittal or Definitive Contract Amendment negotiations.

(D) Early Definitive Project Submittal. The parties may agree, each in its discretion, that the Definitive Project Submittal may be made, and the Definitive Contract Amendment negotiated, prior to the 60% design stage. In such event, any Preliminary Services that have not been completed at the time of an early Definitive Contract Amendment shall be performed as part of the Design-Build Work and the compensation therefor paid as part of the Design-Build Price.

SECTION 5.10. DEFINITIVE CONTRACT AMENDMENT.

(A) Non-Compliant Definitive Project Submittal. In the event the City believes the Definitive Project Submittal does not comply with the requirements of this Design-Build Contract, the City shall provide written notice to the Design-Builder of any additions, corrections or revisions required to achieve such compliance. The Design-Builder, at its cost and expense, and without any increase in the Preliminary Services Fee, shall promptly take all necessary rectification action, making multiple re-submittals if required. The failure of the Design-Builder to furnish the Preliminary Services and provide the Definitive Project Submittal in accordance with the Contract Standards shall be a material breach of this Design-Build Contract.

(B) Negotiation and Execution of the Definitive Contract Amendment. The City and the Design-Builder acknowledge and agree that each intends to negotiate and enter into a Contract Amendment based on the Definitive Project Submittal and the completion of the other Preliminary Services (the “Definitive Contract Amendment”). The principles for negotiating the Base Guaranteed Maximum Price are set forth in subsection (C) (Base Guaranteed Maximum Price Negotiating Principles) of this Section. The Definitive Contract Amendment at a minimum shall incorporate and definitively address all of the items identified in subsection 5.9(A) (Preliminary Services and Definitive Project Submittal). In the event the parties elect to execute the Definitive Contract Amendment, the date of execution and delivery thereof shall constitute the “Definitive Contract Amendment Date” hereunder, and thereupon the Design-Build Period shall commence. The Design-Builder acknowledges and agrees that any Definitive Contract Amendment shall be deemed to constitute a representation by the Design-Builder that, to the best of its knowledge based on all information available to the Design-Builder at the time of execution of the Definitive Contract Amendment, subject to the terms and conditions hereof, the Design-Build Work can be completed in accordance with the Contract Standards for the Guaranteed Maximum Price by the Scheduled Acceptance Date.

The parties acknowledge and agree that the Definitive Contract Amendment shall be reflected in an amendment and restatement of this Design-Build Contract, and will not be effective except upon approval by the City Council.

(C) Base Guaranteed Maximum Price Negotiating Principles. Each party acknowledges that it intends to negotiate the Base Guaranteed Maximum Price taking into account the following:

(1) The reasonably estimated costs of completing the design and construction of the Dewatering Facility (including costs payable under Early Work Packages) and achieving Substantial Completion and Acceptance in accordance with the Contract Standards and the cost elements set forth in Appendix 2 (Preliminary Services), based on assumed levels of inflation in the cost of commodities, materials, equipment, labor and services. Considerations of risk shall be taken into account separately, pursuant to item (2) below. Such costs shall be the basis of the items constituting the Schedule of Values; and

(2) An amount reasonably attributable to indeterminable costs that, considered individually and valued in the aggregate based on agreed-upon probability-of-occurrence models adapted specifically to the Project, may be incurred should the risks assumed by the Design-Builder in performing the Design-Build Work occur. Such costs shall be the basis of establishing the Design-Builder Contingency. The risks assumed by the Design-Builder shall be identified in the risk register prepared as part of the Preliminary Services, and include:

(a) The risks identified as excluded from the definitions of “Uncontrollable Circumstances”;

(b) The risk of Subcontractor delay or non-performance;

(c) Changes in the scope or cost of Design-Build Work that may occur as the design is advanced from the level set forth in the Technical Specifications to a fully complete level;

(d) The risk that inflation in the cost of commodities, materials, equipment, labor and services necessary for the completion of the Design-Build Work will exceed the level assumed by the parties in establishing the Base Guaranteed Maximum Price under item (1) above;

(e) The risk that it may be necessary to incur additional capital and operating expenses in connection with and following Commissioning and performance of the Acceptance Test in order to meet the Acceptance Standards and achieve Acceptance;

(f) Any other risk specifically referred to herein as a risk to be borne by the Design-Builder in performing the Design-Build Work.

(3) The fact that Uncontrollable Circumstance Costs constitute Base Guaranteed Maximum Price Adjustments and are separately compensable from the Design-Build Costs that are limited by the Base Guaranteed Maximum Price. Accordingly, no consideration shall be given to any potential Uncontrollable Circumstance Costs in negotiating and establishing the Base Guaranteed Maximum Price.

(D) Obligations of the Design-Builder Relating to the Definitive Contract Amendment. In connection with a potential Definitive Contract Amendment, the Design-Builder shall be obligated (1) to make a complete bona-fide Definitive Project Submittal in accordance with this Section and Section 5.9 (Definitive Project Submittal), and (2) to negotiate in good faith toward a Definitive Contract Amendment based on the Definitive Project Submittal, if and to the extent the City elects pursuant to subsection (E) (No Obligation of the City to Enter into a Definitive Contract Amendment) of this Section to enter into and continue such negotiations. The Preliminary Services do not include negotiating a Definitive Contract Amendment, and the Design-Builder represents that the Preliminary Services Fee does not include consideration for the costs and expenses of negotiating the Definitive Contract Amendment. The Design-Builder shall bear all such negotiating costs and expenses, whether paid or incurred concurrently with or upon completion of the performance of the Preliminary Services and the preparation and delivery of the Definitive Project Submittal.

(E) No Obligation of the City to Enter Into a Definitive Contract Amendment. Notwithstanding the intent of the parties as expressed in subsection (B) (Negotiation and Execution of the Definitive Contract Amendment) of this Section, the City has no obligation whatsoever to negotiate with the Design-Builder to enter into a Definitive Contract Amendment. The City, in its discretion, may elect not to commence or continue negotiations and not to enter into and execute a Definitive Contract Amendment for any reason. The Design-Builder acknowledges and agrees that no failure by the City to negotiate or to enter into the Definitive Contract Amendment shall entitle the Design-Builder to make any claim for damages or compensation as a result of any such failure, and all such claims are hereby waived and released by the Design-Builder. The Design-Builder acknowledges and agrees that neither the intent of the parties to negotiate and enter into the Definitive Contract Amendment, nor the conduct or discontinuance of any such negotiations, shall be construed to limit or affect the City's right to terminate this Design-Build Contract for its convenience at any time as provided in Section 13.6 (City Convenience Termination Rights).

(F) Elective Continuance of the Project by the Parties on Other Bases. The City at any time may request a proposal from the Design-Builder or the lead design Subcontractor acting as Engineer-of-Record to provide professional engineering and other services necessary to advance the design of the Dewatering Facility to the fully complete level so that the Dewatering Facility may be procured and constructed on a design-bid-build basis. The Design-Builder shall, or shall cause such lead design Subcontractor to, make a bona fide proposal to enter into such services on terms and conditions substantially identical to the terms and conditions of this Design-Build Contract pertaining to the design services element of the Preliminary Services, and to negotiate in good faith to enter into a Contract Amendment or a separate agreement with the City to provide such services under the direction of the Engineer-of-Record.

(G) Elective Continuance of the Project by the City with Other Contractors; Project Documents. The City shall have the right at any time in its discretion to proceed to develop and implement the Project with other contractors and service providers, whether during the performance of the Preliminary Services, upon termination of this Design-Build Contract or upon any failure of the parties to execute a Definitive Contract Amendment. The City shall have the further right in connection therewith and with any City self-performed activities with respect to the Project, based on its ownership of the Preliminary Services Deliverable Material as provided in SECTION 4.6 (Ownership and Use of Documents and Information), to use any Preliminary Services Deliverable Material in any manner it chooses to complete the design and construction of the Dewatering Facility, subject to the limitation as to the Design-Builder's liability for non-final design work set forth in SECTION 4.6 (Ownership and Use of Documents and Information) if the City elects to complete the design and construction of the Project without the participation of the Design-Builder.

(H) Design-Builder Representations in a Definitive Contract Amendment. In the event the parties execute a Definitive Contract Amendment, the Definitive Contract Amendment shall be deemed to constitute a representation by the Design-Builder that:

(a) it has examined, carefully studied, and thoroughly understands the Design-Build Contract terms and conditions associated with the Design-Build Work;

(b) it has thoroughly reviewed and verified of all information provided to or obtained by the Design-Builder through the performance of the Preliminary Services, including:

(1) reports of explorations and tests of subsurface conditions at or contiguous to the Dewatering Facility Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Dewatering Facility Site; and

(2) reports as to Regulated Substances, if any, at the Dewatering Facility Site;

(c) it has become familiar with and is satisfied as to the general, local, and Dewatering Facility Site conditions that may affect cost, progress, and performance of the Dewatering Facility;

(d) it is familiar with and is satisfied as to all Applicable Law that may affect cost, progress, and performance of the Design-Build Work;

(e) it is aware of the nature of the Related Projects and is satisfied that the Design-Build Work can be performed in accordance with the requirements concerning the Related Projects, as set forth in the this Design-Build Contract;

(f) it has considered the information known to Design-Builder, including information commonly known to designers and contractors doing business in the locality of the Dewatering Facility Site; information and observations obtained from visits to the Dewatering Facility Site; and the Dewatering Facility Site-related reports and drawings identified in this Design-Build Contract, with respect to the effect of such information, observations, and documents on:

(1) the cost, progress, and performance of the Dewatering Facility;

(2) the means, methods, techniques, sequences, and procedures of construction to be employed by Design-Builder, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by this Design-Build Contract; and

(3) Design-Builder's health and safety precautions and programs;

(g) based on all of the foregoing and the performance of the Preliminary Services, the Dewatering Facility Site constitutes an acceptable and suitable site for the performance of the Design-Build Work;

(h) it does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for it to enter into the Definitive Contract Amendment for the performance of the Design-Build Work for the Base

Guaranteed Maximum Price on or before the Scheduled Acceptance Date, and in accordance with the other terms and conditions of this Design-Build Contract;

(i) the Technical Specifications and Acceptance Standards are sufficient to enable the Design-Builder to determine the Base Guaranteed Maximum Price; and

(j) subject to the terms and conditions of this Design-Build Contract, the Design-Build Work can be completed in accordance with the Contract Standards for the Base Guaranteed Maximum Price.

(l) Performance Bond and Payment Bond. The Design-Builder, as provided in subsection 5.8(B) (Early Work Packages) and in Section 17.2 (Performance and Payment Bonds), shall provide the Performance Bond and the Payment Bond concurrently with the execution of the Definitive Contract Amendment. If the Design-Builder provides performance and payment bonds in connection with an Early Work Package, the Design-Builder may, in lieu of providing separate bonds for the balance of the Design-Build Work to be performed pursuant to the Definitive Contract Amendment, increase the penal sums of such original performance and payment bonds to reflect the Guaranteed Maximum Price.

[NOTE: The parties acknowledge that Section 5.10 and other sections of this Design-Build Contract may be deleted or modified in the Definitive Contract Amendment.]

ARTICLE 6

DESIGN-BUILD WORK

SECTION 6.1. DESIGN-BUILD WORK GENERALLY.

(A) Completion of Preliminary Services and Preliminary Design Documents.

All Preliminary Services shall be completed prior to the Definitive Contract Amendment Date, except as the City may in its discretion otherwise agree. The parties acknowledge that:

- (1) the Preliminary Services include preparation of the Preliminary Design Documents;
- (2) the Preliminary Design Documents shall form the basis of the Technical Specifications;
- (3) the Design-Build Work includes preparation of the Final Design Documents; and
- (4) that the City's rights with respect to the preparation of the Final Design Documents shall be as set forth in this Article.

(B) Commencement and Completion of the Design-Build Work. On the Definitive Contract Amendment Date, the Design-Builder shall promptly proceed to undertake, perform and complete the Design-Build Work in accordance with the Contract Standards; provided, however, that the Design-Builder shall not commence physical construction of the Dewatering Facility until the Construction Commencement Date. The Design-Builder shall be paid the Design-Build Price pursuant to ARTICLE 9 (Compensation for Design-Build Work) as its entitlement to payment of portions of the Design-Build Price arise thereunder. The Design-Builder's failure to achieve Acceptance on or before the Scheduled Acceptance Date shall result in the assessment of delay liquidated damages under SECTION 8.5 (Effect of Unexcused Delay; Extension Period). Failure to achieve Acceptance by the end of the Extension Period shall constitute a Design-Builder Event of Default upon which the City may terminate this Design-Build Contract for cause in accordance with SECTION 13.2 (Events of Default by the Design-Builder).

(C) Elements of the Design-Build Work. In performing the Design-Build Work generally, the Design-Builder shall, in accordance with the Contract Standards:

- (1) apply for, obtain and maintain all Governmental Approvals required for the Design-Build Work (other than City-Managed Governmental Approvals), and assist the City in obtaining City-Managed Governmental Approvals;
- (2) perform all necessary Dewatering Facility Site preparation and excavation activities;
- (3) demolish and remove any existing improvements at the Dewatering Facility Site, as and to the extent required by the Technical Specifications;
- (4) modify, re-route, repair or replace any Utilities, as and to the extent required by the Technical Specifications;

- (5) remove from the Dewatering Facility Site and dispose of any demolition or construction debris resulting from the Design-Build Work and any unused soil excavated therefrom in an environmentally safe manner;
- (6) complete the design and construct the Dewatering Facility;
- (7) conduct Commissioning, including compliance with the Commissioning and Acceptance Test Plan and training of City employees in accordance with the Training Plan;
- (8) prepare and provide the Operation and Maintenance Manual;
- (9) operate and maintain the Dewatering Facility throughout Commissioning and until the achievement of Acceptance;
- (10) conduct the Acceptance Test and achieve Acceptance; and
- (11) achieve Final Completion,

all so that the Dewatering Facility is suitable and adequate for the purposes hereof. The Technical Specifications include certain criteria and features to facilitate the long term maintenance of the Dewatering Facility, and also include requirements associated with connections and tie-ins to the Regional Wastewater Facility.

(D) Sequencing and Staging of Design-Build Work. The Design-Builder shall not be limited in the sequencing or staging of the Design-Build Work, except to the extent that the Contract Standards impose limitations. The City understands and acknowledges that the Design-Builder intends to complete the Design-Build Work in stages, whereby particular segments of the Design-Build Work will be designed and built prior to the completion of the design of the Dewatering Facility as a whole. Although this Design-Build Contract does not require the Design-Builder to fully complete the entire design of the Dewatering Facility prior to proceeding with particular segments of the physical construction of the Dewatering Facility, the Design-Builder shall comply with all requirements of Applicable Law in performing the Design-Build Work and shall further comply with the design submittal requirements set forth in subsection 6.6(C) (City Review and Comment on Final Design Documents).

(E) Laydown and Staging Areas. Laydown and staging areas for construction materials required for the Design-Build Work shall be located at the Construction Enabling Site, as indicated in Appendix 1 (Dewatering Facility, Dewatering Facility Site and Related Projects Description), or at other locations on the Regional Wastewater Facility Site approved by the City.

(F) Design-Build Schedule and Reports. The Design-Build Schedule anticipated as of the Contract Date is attached as Attachment 5A to Appendix 5 (General Design-Build Work Requirements). An updated Design-Build Schedule based on and reflecting the proposed Acceptance Date shall be proposed by the Design-Builder as part of the Definitive Project Submittal, and negotiated and agreed upon by the parties as part of the Definitive Contract Amendment. All activities of the Design-Build Work shall be scheduled and monitored by use of a Gantt or bar chart which presents all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to use in advancing the Project from 60% Design Completion to Final Acceptance and City operation. Throughout the Design-Build Period, the Design-Builder shall further update and maintain the Design-Build Schedule in accordance with Appendix 5 (General Design-Build Work Requirements) and Appendix 7

(Design-Build Work Review Procedures). Throughout the Design-Build Period, the Design-Builder shall submit to the City and the Owner’s Advisor a Monthly Design-Build Work Report, including an update to the Design-Build Schedule (the “Monthly Design-Build Work Report”) in accordance with the requirements of Appendix 7 (Design-Build Work Review Procedures). The Design-Builder agrees that the Design-Builder’s submittal of the Monthly Design-Build Work Report (or any revised progress schedule or report) is for the City’s and the Owner’s Advisors’ information only and shall not limit or otherwise affect the Design-Builder’s obligations to achieve Acceptance by the Scheduled Acceptance Date. The City’s and the Owner’s Advisors’ receipt or acceptance of the Monthly Design-Build Work Report (or any revised progress schedule or report) shall not bind the City in any manner. Thus, the City’s and the Owner’s Advisors’ receipt or acceptance of the Monthly Design-Build Work Report (or any revised monthly progress schedule or report) shall not imply City approval or consent to any of the matters set forth therein. Notwithstanding any of the foregoing, the Design-Builder acknowledges and agrees that it has a material obligation to provide the City with, and to update, maintain and revise, the Design-Build Schedule throughout the Design-Build Period in accordance with the Contract Standards.

(G) Monthly On-Site Meetings and Design and Construction Review. During the Design-Build Period, the Design-Builder, the City and the Owner’s Advisor shall conduct construction progress and management meetings as set forth in Appendix 7 (Design-Build Work Review Procedures). Such meetings shall take place on the Dewatering Facility Site in a field office to be provided by the Design-Builder in accordance with Appendix 5 (General Design-Build Work Requirements) or as otherwise directed by the City. At such meetings, discussions will be held concerning all aspects of the Design-Build Work, including the construction schedule, progress payments, any Change Orders or Unilateral Change Directives, Shop Drawings, progress photographs, and any soil boring data and shop test results. The Monthly Design-Build Work Report shall be prepared by the Design-Builder and provided to the City and the Owner’s Advisor at least five days prior to each monthly meeting.

(H) Engagement of City Representatives. The Design-Builder shall fully cooperate with all Owner’s Advisors and the City Technical Representatives designated by the City from time to time. The services of the Owner’s Advisors and the City Technical Representatives may include, but shall not be limited to, the following:

- (1) reviewing drawings, plans and specifications for compliance with the Technical Specifications;
- (2) reviewing proposed changes to the Technical Specifications;
- (3) determining the completion of specified portions of the Design-Build Work and review the release of funds to the Design-Builder pursuant hereto;
- (4) reviewing and monitoring construction progress, scheduling, payments and procedures;
- (5) monitoring Commissioning activities and the Acceptance Test undertaken by the Design-Builder to determine whether any Acceptance Standard has been satisfied;
- (6) assisting the City in reviewing the validity of the Design-Builder’s written notice that an Uncontrollable Circumstance has occurred; and

(7) reviewing and advising the City with respect to material changes to the Project during the Term.

It is understood that the services intended to be provided by the Owner's Advisors and City Technical Representatives shall be of an observational and review nature only, and that the Owner's Advisors and City Technical Representatives shall not have authority to interfere with, halt or delay in any way the construction of the Dewatering Facility or to require or approve changes to the Technical Specifications or the Design-Builder's plans and specifications made in accordance therewith. Any fees of the Owner's Advisors shall be paid by the City. Nothing in this subsection shall be construed to limit the right of any City personnel or representative having the authority to protect the health and safety from inspecting the Dewatering Facility or otherwise exercising any power permitted under Applicable Law.

(I) Utilities. The City may provide certain Utilities necessary for the performance of the Design-Build Work, which may include electrical power, water, gas and certain chemical feeds, as and to the extent identified in Appendix 4 (Technical Specifications) and subject to the limitations set forth in Appendix 5 (General Design-Build Work Requirements). The Design-Builder shall make all arrangements necessary to secure the availability of all Utilities not provided by the City which will be necessary for the performance of the Design-Build Work and shall be responsible for modifying all existing Utilities at the Dewatering Facility Site in order to support the construction, commissioning and operations of the Dewatering Facility in the capacities required hereunder in accordance with the specific requirements set forth in Appendix 4 (Technical Specifications). Process Control Systems. The Design-Builder's obligation to perform the Design-Build Work includes the obligation to design, construct and program functional, reliable and maintainable instrumentation and control systems for the Dewatering Facility in accordance with the Technical Specifications. The Design-Builder shall be responsible for ensuring that all instrumentation and controls connect to and are fully compatible with the City's existing, plant-wide process control system, as more particularly described in Appendix 4 (Technical Specifications). **[NOTE: Utilities to be provided by the City, if any, will be determined at time of Definitive Contract Amendment.]**

(J) Quality Assurance and Quality Control. The Design-Builder shall develop the Design-Build Quality Management Plan in accordance with the requirements set forth in Appendix 6 (Design-Build Quality Assurance and Quality Control Requirements), and have full responsibility for quality assurance and quality control for the Design-Build Work, including compliance with the Design-Build Quality Management Plan.

(K) Payment of Costs. The Design-Builder shall pay directly all costs and expenses of the Design-Build Work of any kind or nature whatsoever, including all costs of obtaining and maintaining Governmental Approvals (regardless of permittee but excluding (1) permitting fees relating to, and other City costs associated with, City-Managed Governmental Approvals, and (2) building permit application fees); regulatory compliance and Legal Proceedings brought against the Design-Builder; obtaining and maintaining the Security Instruments and Additional Insurance Required From Enrolled Parties and Excluded Parties, as set forth in Article 14 (Insurance) and Appendix 12 (Insurance Requirements) hereto; payments due under the Subcontracts with Subcontractors or otherwise for all labor and materials; legal, financial, engineering, architectural and other professional services of the Design-Builder; Taxes, including all sales, use and similar Taxes on building supplies, materials and equipment; Utilities required for the performance of the Design-Build Work; general supervision by the Design-Builder of all Design-Build Work, including all work performed by Subcontractors; Design-Builder preparation of schedules, budgets and reports; keeping all construction accounts and cost records; and all other costs required to complete

Commissioning, achieve Acceptance and Final Completion, and to provide and perform the Warranty Work and the Transition Services. The only compensation payable by the City for the Design-Build Work and the Transition Services shall be the Design-Build Price and the Transition Services Fee.

(L) Sales Tax. Prior to making any purchase of materials, machinery, tools, fixtures, or equipment in excess of \$1,000,000, the Design-Builder and its Subcontractors shall obtain a jobsite sub-permit of the seller's permit designating the Dewatering Facility Site as the place of use or sale, and designate the Dewatering Facility Site as the place of sale and or place of use for all fixtures and equipment furnished and installed as part of the Project using the State of California Board of Equalization form BOE-530 (Schedule C – Detailed Allocation by Suboutlet of Combined State and Uniform Local Sales and Use Tax). The Design-Builder shall include this provision in all of its Construction Subcontracts for the Project.

(M) Title and Risk of Loss. Title to the structures, improvements, fixtures, machinery, equipment and materials constituting the Dewatering Facility shall pass to the City upon incorporation in the Dewatering Facility or payment therefor by the City, whichever first occurs, free and clear of all Encumbrances as provided in subsection (O) (Encumbrances) of this Section. Except to the extent provided in subsection 6.17(E) (Payment for Restoration Work and Uninsured Costs), however, the Design-Builder shall bear all risk of loss concerning such structures, improvements, fixtures, machinery, equipment and materials until the Acceptance Date, regardless of the extent to which the loss was insured or the availability of insurance proceeds. The procedures set forth in Section 6.177 (Property Damage During the Design-Build Period) shall be applicable in the event of any damage to, loss or the destruction of the Design-Build Work at the Dewatering Facility Site. Notwithstanding anything set forth in this subsection or Section 6.17, the Design-Builder shall bear all risk of loss concerning any structures, improvements, fixtures, machinery, equipment or materials required for the Design-Build Work and stored at any location other than the Dewatering Facility Site, regardless of whether the City has paid for any such structures, improvements, fixtures, machinery, equipment or materials.

(N) Encumbrances. The Design-Builder shall not directly or indirectly create or permit to be created or to remain, and shall promptly discharge or bond any Encumbrance or Lien (other than Permitted Encumbrances) arising in relation to the Dewatering Facility or the Design-Build Work. The Design-Builder's Subcontracts with all materialmen, suppliers, and Subcontractors shall provide that the sole recourse for such materialmen, suppliers, and Subcontractors for non-payment shall be against the Payment Bond.

(O) Notice of Default. The Design-Builder shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval, Subcontract, Security Instrument or other transaction agreement pertaining to the Project.

(P) Required Design-Build Manager Certification. Any notice, certification, report or application delivered by the Design-Builder to the City in connection with the Design-Build Work, or payment therefor, under this Article, ARTICLE 8 (Commissioning, Acceptance and Final Completion); ARTICLE 9 (Compensation for Design-Build Work) or any Appendix relating to the performance of the Design-Build Work shall be accompanied by a signed certificate of the Design-Build Manager affirming the accuracy thereof to the best of his or her knowledge. The form of certification required pursuant to this subsection shall comply with all requirements of Applicable Law.

(Q) Partnering Requirements. The Design-Build Work shall be subject to the City’s formal partnering requirements, as set forth in Appendix 5 (General Design-Build Work Requirements). The Design-Builder shall be responsible for all costs associated with conducting the formal partnering workshops required pursuant to Appendix 5 (General Design-Build Work Requirements) and shall be compensated for such costs through the applicable allowance established in Appendix 8 (Design-Build Price).

(R) Temporary Dewatering Facility Site Facilities. The Design-Builder shall be responsible for ensuring that adequate temporary facilities are provided as necessary to enable Subcontractors to perform their work and that provisions have been made for all Dewatering Facility Site facilities necessary for the Design-Builder to manage, inspect and supervise the Design-Build Work, including all facilities and services the cost of which constitutes a General Conditions Cost.

SECTION 6.2. CONSTRUCTION COMMENCEMENT DATE.

(A) Construction Commencement Date Generally. The “Construction Commencement Date” shall be established pursuant to subsection (C) (Establishment of the Construction Commencement Date) of this Section following satisfaction by the Design-Builder of its obligations pursuant to subsection (B) (Construction Commencement Date Conditions) of this Section. The requirements and conditions set forth in subsection (B) of this Section shall be the “Construction Commencement Date Conditions” hereunder.

(B) Construction Commencement Date Conditions. Except with respect to Early Work Packages as provided in Section 5.8 (Construction Planning and Early Work Packages), in no event shall the Design-Builder commence with the physical construction of the Dewatering Facility prior to the satisfaction of the following Construction Commencement Date Conditions, each of which must be and remain satisfied as of the Construction Commencement Date:

(1) The Design-Builder shall have certified that it has completed all pre-construction requirements set forth in Appendix 5 (General Design-Build Work Requirements) and shall have provided the City with an updated Design-Build Schedule in accordance with Appendix 7 (Design-Build Work Review Procedures), a final, approved Maintenance of Operations During Construction Plan in accordance with subsection 6.11(A) (Maintenance of Operations During Construction) and a final Health and Safety Plan in accordance with subsection 6.14(D)6.14(D) (Health and Safety Plan).

(2) The Design-Builder shall have satisfied all requirements of Applicable Law with respect to the commencement of construction and shall have obtained all Governmental Approvals required for the commencement of the physical construction of the Dewatering Facility. All such Governmental Approvals shall be in full force and effect.

(3) The Design-Builder shall have submitted the Final Design Submittal Protocol in accordance with the requirements of Appendix 7 (Design-Build Work Review Procedures) and shall have complied with the design submittal requirements set forth in subsection 6.6(C) (City Review and Comment on Final Design Documents) to the extent necessary to commence with the physical construction of the Dewatering Facility.

(4) The Design-Builder shall have held a pre-construction conference with the City and its representatives in accordance with Appendix 7 (Design-Build Work Review Procedures).

(C) Establishment of the Construction Commencement Date. The Design-Builder shall provide 10 days' written notice to the City as to the satisfaction of the Construction Commencement Date Conditions and the date it proposes to establish as the Construction Commencement Date hereunder. The date proposed by the Design-Builder shall constitute the Construction Commencement Date hereunder unless the City, by written notice to the Design-Builder delivered not later than three days prior to the Construction Commencement Date proposed by the Design-Builder, determines that the Construction Commencement Date Conditions have not been satisfied or that the City has determined, in its discretion, to delay the Construction Commencement Date notwithstanding the satisfaction of the Construction Commencement Date Conditions until the City delivers a subsequent written notice to the Design-Builder (the "Construction Notice to Proceed"). In the event the City determines to delay the Construction Commencement Date notwithstanding the satisfaction of the Construction Commencement Date Conditions, (1) the Construction Commencement Date shall be the date stipulated as such by the City in the Construction Notice to Proceed, (2) the Scheduled Acceptance Date shall be extended by the number of days between the Construction Commencement Date proposed by the Design-Builder and the actual Construction Commencement Date established by the City in its Construction Notice to Proceed, and (3) the Design-Builder shall be entitled to a Base Guaranteed Maximum Price Adjustment in accordance with and subject to the limitations set forth in Appendix 8 (Design-Build Price). In no event shall the Construction Commencement Date be established prior to the satisfaction by the Design-Builder of the Construction Commencement Date Conditions. In the event the City determines that the Design-Builder has not satisfied the Construction Commencement Date Conditions, notwithstanding the Design-Builder's notice pursuant to this Section, the City shall state which conditions the Design-Builder has failed to satisfy in its notice to the Design-Builder pursuant to this subsection, the Design-Builder shall satisfy all such conditions prior to the establishment of the Construction Commencement Date and there shall be no adjustment to the Scheduled Acceptance Date or a Base Guaranteed Maximum Price Adjustment under this subsection.

(D) Effect of the Establishment of the Construction Commencement Date. Upon the establishment of the Construction Commencement Date, the Design-Builder shall have the right to proceed with the physical construction of the Dewatering Facility. Absent the occurrence of Uncontrollable Circumstances as and to the extent provided in this Design-Build Contract and except as provided in subsection (C) (Establishment of the Construction Commencement Date) of this Section with respect to the City's right to delay the establishment of the Construction Commencement Date notwithstanding the satisfaction of the Construction Commencement Date Conditions, no delay in the establishment of the Construction Commencement Date shall entitle the Design-Builder to any price, schedule or performance relief hereunder.

SECTION 6.3. DIFFERING SITE CONDITIONS.

(A) Preliminary Services Relating to Differing Site Conditions. The Design-Builder shall review all available information and undertake all soils and other site conditions investigations required with respect to the Dewatering Facility Site as provided in Preliminary Services Task 2, and shall furnish the City with the Geotechnical Evaluation Report, the Subsurface Utilities Investigation Report, and the hazardous materials site investigation report as provided in Appendix 2.

(B) Commencing Subsurface Excavations. Prior to commencing any trenching or excavations, the Design-Builder shall, taking into account the information in the Dewatering Facility Site Reference Documents, the information developed by the Design-Builder as required by Appendix 2, and in compliance with Good Engineering and Construction Practice, conduct further site investigations in accordance with Appendix 5 (General Design-Build Work Requirements), including exploratory excavations and further borings, to confirm the location and type of underground structures that could be damaged as a result of the excavations. Such underground structures include, but are not limited to, all sewer, water, gas, and other piping, and manholes, chambers, electrical conduits, wires, tunnels and other existing subsurface work located within or adjacent to the Dewatering Facility Site. The Design-Builder shall carefully sustain in their places and support, or if necessary relocate, all underground and surface structures located within or adjacent to the Dewatering Facility Site and as required by the party owning or controlling such structure. Existing surface facilities which are temporarily removed to facilitate installation of the Design-Build Work shall be replaced and restored to their original condition. The Design-Builder shall notify the City five business days in advance of any work that might impact utilities of business or residents in the area surrounding the Dewatering Facility Site so that the City can notify such businesses or residents of such work.

(C) Discovery of Differing Site Conditions. Upon discovering an alleged Differing Site Condition and before the condition is further disturbed, the Design-Builder shall immediately, after taking appropriate measures to secure the affected Design-Build Work: (1) stop work in and secure the affected area; and (2) notify the City of the alleged Differing Site Condition. The Design-Builder's notice to the City shall be issued by telephone or in person and followed within 24 hours thereafter by written notice, providing a brief description of why the condition encountered is considered a Differing Site Condition. Promptly upon receipt of the Design-Builder's notice, the City will investigate the Dewatering Facility Site conditions. Immediate written notice shall describe the specific ground conditions encountered and the measures taken to deal with the ground conditions. Notwithstanding anything set forth in subsection 6.3(D) (Relief for Differing Site Conditions) or in ARTICLE 15 (Uncontrollable Circumstances), no Uncontrollable Circumstance relief shall be allowed for any alleged Differing Site Condition unless the Design-Builder provides the City with notice in accordance with this subsection.

(D) Relief for Differing Site Conditions. If the Design-Builder establishes that the actual conditions encountered during Construction: (1) meet the criteria for a Differing Site Condition, and (2) directly and materially impact the Design-Builder's cost or time of performance, then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in SECTION 15.1 (Uncontrollable Circumstances Generally).

SECTION 6.4. REGULATED SITE CONDITIONS.

(A) Known Regulated Site Conditions. It is the understanding of the parties that there are potentially Regulated Site Conditions at the Dewatering Facility Site as of the Contract Date, as described in the Reference Documents. The Design-Builder shall conduct all hazardous materials site investigations as set forth in Appendix 2. The Design-Builder shall incorporate all known Regulated Site Conditions, including those identified in its hazardous materials site investigations, into the Definitive Contract Proposal. As part of the hazardous site investigations the Design-Builder will develop protocols for identifying and addressing encountered Regulated Site Conditions.. The Design-Builder shall comply with such protocols upon encountering such Regulated Site Conditions.

(B) Unknown Regulated Site Conditions. If the Design-Builder encounters any unknown Regulated Site Conditions at the Dewatering Facility Site for which no protocol has been established, it shall stop work immediately in the affected part of the Design-Build Work to the extent required to avoid any safety or health hazard until it has taken such action as is necessary, in accordance with Applicable Law, to protect the interests of any affected person. The Design-Builder shall, immediately upon encountering any Regulated Site Conditions at the Dewatering Facility Site, notify the City and, if required by Applicable Law, all Governmental Bodies with jurisdiction over the Project or Dewatering Facility Site.

(C) Remediation of Regulated Substances. The Design-Builder shall take, or cause a Subcontractor to take, subject to subsection (D) (Uncontrollable Circumstance Relief) of this Section and in accordance with any applicable protocols established as a Preliminary Service, all necessary measures required to ensure that Regulated Substances are remediated or rendered harmless in accordance with Applicable Law. The Design-Builder shall, prior to proceeding with any such work: (1) obtain all environmental site assessments of the affected property and submit copies of such assessments to the City for its approval; (2) develop remediation plans for the Regulated Substances, subject to the City's approval; and (3) obtain all applicable Governmental Approvals to implement such plans. During the period of any investigation and remediation efforts, the Design-Builder shall take all necessary measures to isolate and contain such Regulated Substances from the unaffected parts of the Design-Build Work, and shall continue the Design-Build Work to the maximum extent possible on unaffected parts of the Design-Build Work.

(D) Uncontrollable Circumstance Relief. Except for those Regulated Substances identified in subsection (E) (Design-Builder Responsibilities) of this Section and without limiting the Design-Builder's obligations under subsection (C) (Remediation of Regulated Substances) of this Section, if the Design-Builder establishes that the actual conditions encountered during Construction: (1) meet the definition of Regulated Site Conditions, (2) is not a Regulated Site Condition, the existence of which the Design-Builder was, or reasonably should have been, aware of prior to encountering such Regulated Site Condition including through the investigation required to be performed by the Design-Builder as part of the Preliminary Services, and (3) directly and materially impact the Design-Builder's cost or time of performance, then the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in Section 15.1 (Uncontrollable Circumstances Generally). To the fullest extent permitted by Applicable Law, the City shall indemnify and hold harmless the Design-Builder from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from Regulated Site Conditions described in this subsection (D).

(E) Design-Builder Responsibilities. In performing the Design-Build Work, the Design-Builder shall exercise due care, in light of all relevant facts and circumstances, to avoid exacerbating any Regulated Site Condition after the location and existence of such Regulated Site Condition has been disclosed to the Design-Builder or becomes actually known by the Design-Builder through physical observation. Upon encountering a Regulated Site Condition, the Design-Builder shall provide prompt written notice to the City of such condition, which notice shall not be later than five days after such condition is first known to the Design-Builder. The Design-Builder shall, to the extent reasonably possible, provide such notice before the Regulated Site Condition has been disturbed or altered. Notwithstanding anything to the contrary in this Section, the Design-Builder shall bear full responsibility for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to: (1) any Regulated Substance present at, on, in or under, or migrating or emanating to or from the Dewatering Facility Site, that were generated by or brought or caused to be brought on the Dewatering Facility Site by any act or omission of the Design-Builder or any Subcontractor and (2) the creation or exacerbation of any Regulated Site Condition due to

Design-Builder Fault or the negligence, recklessness or willful misconduct of the Design-Builder or any Subcontractor; and all costs resulting from any of the foregoing shall constitute Unallowable Costs. The Design-Builder shall indemnify, defend and hold harmless the City Indemnitees in accordance with and to the extent provided in ARTICLE 16 (Indemnification) from and against all Loss-and-Expense resulting from Regulated Substances or Regulated Site Conditions for which the Design-Builder bears responsibility pursuant to this subsection.

(F) Generator Liability. Nothing contained herein is intended to identify the Design-Builder as the generator of any pre-existing Regulated Substance, except as provided by Applicable Law. Except with respect to those Regulated Substances identified in subsection (E) (Design-Builder Responsibilities) of this Section, as to which the Design-Builder bears responsibility, the City shall execute, as generator, Hazardous Waste manifests required in order for the Design-Builder to fulfill its obligations under this Section, as and to the extent required under Applicable Law.

SECTION 6.5. PERMITTING RESPONSIBILITIES AND SCHEDULE.

(A) Preliminary Services Relating to Permitting. The Design-Builder shall perform the services relating to Governmental Approvals set forth in Preliminary Services Task 5, including identifying all Governmental Approvals required for the Design-Build Work by name, issuing agency and permittee/approval holder. The Preliminary Services Fee is the only compensation payable for such services. Based on such services and discussions with the City:

(1) Governmental Approvals Responsibility Table. The Design-Builder in its Definitive Project Submittal shall propose, with respect to each Governmental Approval not previously identified and included in the table contained in Appendix 3 (Governmental Approvals), which party shall be responsible for (a) managing the Governmental Approval application process, (b) supplying the data and information required by the issuing agency for the Governmental Approval, and (c) paying the fees required for the Governmental Approval, all as necessary to revise, confirm and complete the Governmental Approvals Responsibility Table, provided that such proposed changes would not alter the risk allocation in the government approval table; and

(2) Governmental Approvals Schedule Table. The Design-Builder in its Definitive Project Submittal also shall propose the assumed application dates and the assumed issuance dates with respect to each Governmental Approval, all as necessary to revise, confirm and complete the Governmental Approvals Schedule Table.

The parties shall negotiate and finalize the terms of both tables as part of the Definitive Contract Amendment.

(B) Design-Builder Governmental Approval Responsibility. The Design-Builder shall, except as otherwise provided in the Governmental Approval Responsibility Table, obtain and maintain all Governmental Approvals necessary to commence, continue and complete the Design-Build Work and achieve Acceptance. In connection therewith, the Design-Builder, in accordance with the Contract Standards and irrespective of the permittee under or holder of the Governmental Approval (except as provided in the Governmental Approvals Responsibility Table) shall:

(1) prepare and complete all required filings, applications and reports;

- (2) develop and furnish all necessary data, information, plans, documentation and supporting material;
- (3) familiarize itself with all applicable terms and conditions;
- (4) attend all required meetings and hearings;
- (5) cooperate with and assist the City in carrying out any responsibilities designated as City responsibilities in the Governmental Approval Responsibility Table; and
- (6) pay all required permit and filing fees.

The Design-Builder shall be responsible for identifying, obtaining and maintaining any Governmental Approvals required for the performance of the Design-Build Work that are not listed in the Governmental Approvals Responsibility Table. The costs incurred by the Design-Builder under this subsection are Design-Build Costs, and are subject to the Guaranteed Maximum Price.

(C) Application Process. The City shall be notified by the Design-Builder prior to any application, data submittal, or other communication by the Design-Builder with any Governmental Body regarding Governmental Approvals. The Design-Builder shall not knowingly take any action in any application, data submittal or other communication with any Governmental Body regarding Governmental Approvals or the terms and conditions thereof that would impose any unreasonable cost or unreasonable burden on the City or that would materially contravene any City policies with respect to the matters contained therein. The City reserves the right, after reasonable notification and consultation with the Design-Builder, to modify, alter, amend, delete or supplement any information supplied, or term or condition proposed, by the Design-Builder which would have the effect described in the preceding sentence. The final terms and conditions of any Governmental Approval shall be subject to the City's approval, which approval shall not be unreasonably withheld or delayed. The Design-Builder shall deliver to the City, promptly after the Design-Builder's receipt, a copy of each Governmental Approval, and shall provide a listing of the status of all Governmental Approvals in its monthly Design-Build Work report.

(D) City Governmental Approval Responsibility. The City shall perform, all of its responsibilities set forth in the Governmental Approval Responsibility Table. Further, the City shall provide reasonable assistance to the Design-Builder in connection with the Design-Builder's obligations with respect to the Governmental Approvals including, as appropriate, signing permit applications, attending public hearings and meetings of the Governmental Bodies charged with issuing the Governmental Approvals, and providing the Design-Builder with existing relevant data and documents that are within the City's custody or control or are reasonably obtainable by the City and which are reasonably required for such purpose; provided, however, that the City's obligation to provide such reasonable assistance shall be limited, in light of the Design-Builder's primary role in the permitting and development of the Dewatering Facility, only to those actions which are legally required to be taken by the City as permittee or co-permittee or which involve providing information which is in the possession of or reasonably obtainable by the City. Any such assistance shall be provided only upon the reasonable request of the Design-Builder made directly to the City, and the City shall have no affirmative obligation independently to initiate or to provide such assistance. This covenant shall not obligate the City to staff the Design-Builder's permitting or development efforts, to undertake any new studies or investigations with respect to the Dewatering Facility, or to affirmatively seek to obtain the issuance of the Governmental Approvals required to be obtained by the Design-Builder pursuant the Governmental Approval Responsibility Table.

(E) Adjustment to Scheduled Acceptance Date Based on Delays Affecting Design-Builder Managed Governmental Approvals. If in seeking to obtain a Governmental Approval, (1) the Design-Builder has complied with the requirements of this Design-Build Contract; (2) the Design-Builder has submitted all applications, data, studies, reports, responses and other information required under Applicable Law and the adopted administrative practice of the Governmental Body in order to obtain the Governmental Approval; (3) the Design-Builder has in all respects used its best efforts to obtain the Governmental Approval; (4) the Design-Builder has consistently maintained a fully responsive, engaged and respectful professional relationship with the staff and management of the Governmental Body in a manner that, while not expressly required under Applicable Law, is generally recognized among regular practitioners in the permitting field as necessary on a practical level to secure similar permits in a timely manner in light of the discretion accorded Governmental Bodies under administrative law; and (5) there has been a failure to issue the Governmental Approval by the “Assumed Approval Issuance Date” set forth in the Governmental Approvals Schedule Table, then an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to an adjustment to the Scheduled Acceptance Date in accordance with Article 15 (Uncontrollable Circumstances) and to the extent provided therein and in subsection (F) (Assumed Approval Issuance Dates for Design-Builder Managed Governmental Approvals) of this Section.

(F) Assumed Approval Issuance Dates for Design-Builder Managed Governmental Approvals. The Design-Builder shall submit completed applications for each of the Governmental Approvals listed in the Governmental Approvals Schedule Table by the applicable “Governmental Approval Application Date”. Each such date shall be the date which is the number of days indicated in such table following the Contract Date. The “Assumed Approval Issuance Date” is the date by which the applicable Governmental Approval is expected to be obtained, as measured from the Contract Date and assuming completed application submittals in accordance with Applicable Law and the adopted administrative practice of the applicable Governmental Body by the applicable Governmental Approval Application Date. The Scheduled Acceptance Date shall be adjusted to account for the number of days of delay by a Governmental Body in issuing any required Governmental Approval listed in the Governmental Approvals Schedule Table beyond the Assumed Approval Issuance Date, reduced by (1) the number of days of Design-Builder delay in submitting a complete application in accordance with this Section beyond the applicable Governmental Approval Application Date, and (2) the number of days of delay by any Governmental Body in issuing the required Governmental Approval due to the failure of the Design-Builder to exercise reasonable diligence in accordance with this Section in securing the Governmental Approval following submittal of the complete application, but only to the extent any such Governmental Body delay actually causes delay in the Design-Builder’s critical path completion schedule after the exercise of all reasonable mitigation efforts by the Design-Builder. The Design-Builder shall not be entitled to an adjustment of the Base Guaranteed Maximum Price in connection with any delay caused by the applicable Governmental Body in accordance with this subsection. The Design-Builder shall bear the burden of proving any claim of entitlement to an adjustment to the Scheduled Acceptance Date under this Section, and shall promptly and regularly inform the City as matters arise which may culminate in any such claim in order to permit timely intervention by the City should it so elect.

(G) Adjustment to the Scheduled Acceptance Date Based on Delays Affecting the City Managed Governmental Approvals. In the event any delay in the issuance of a City Managed Governmental Approval, if any (as indicated in the Governmental Approvals Responsibility Table), materially delays the achievement of Substantial Completion and Acceptance, an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to an adjustment to the Scheduled Acceptance Date as and to the extent provided in Article 15 (Uncontrollable Circumstances), except to the extent the

Design-Builder fails to comply with its obligations with respect thereto under this Section, under the Governmental Approvals Responsibility Table, or under Section 18.7 (General Duty to Mitigate). Relief shall be granted under this subsection only if the delay in issuance of a City Managed Governmental Approval adds a material activity to, or materially affects an activity that is on the Design-Build Schedule's critical path.

(H) Relief Based on Certain Permitting Terms and Conditions. In the event that a Governmental Body imposes terms and conditions in connection with a Governmental Approval that require material changes to the Technical Specifications or the Acceptance Standards, an Uncontrollable Circumstance shall be deemed to have occurred and the Design-Builder shall be entitled to a Base Guaranteed Maximum Price Adjustment as and to the extent provided in Article 15 (Uncontrollable Circumstances).

SECTION 6.6. FINAL DESIGN RESPONSIBILITIES AND RISK ASSUMPTION.

(A) Performance of the Design Work. Following the Definitive Contract Amendment Date, the Design-Builder agrees to undertake, perform, and complete the designs and plans for the Dewatering Facility in accordance with the Contract Standards and to prepare all Final Design Documents necessary or appropriate to carry out and complete the Design-Build Work. All Design-Builder working design documents and Final Design Documents shall comply with the Technical Specifications set forth in Appendix 4 (Technical Specifications) and shall ensure that the Dewatering Facility is constructed to a standard of quality, integrity, durability and reliability which is equal to or better than the standard established by the Technical Specifications. The Design-Builder shall be responsible for the professional quality, technical accuracy, timely completion and coordination of all Final Design Documents and shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the Technical Specifications or the Final Design Documents.

(B) Sole Responsibility and Liability. The Design-Builder shall have the sole and exclusive responsibility and liability for the design, construction, and performance capability of the Dewatering Facility hereunder in accordance with the Contract Standards, notwithstanding the fact that (1) the RFP and the PDR included certain design criteria and requirements for the Design-Build Work and certain performance standards that the Dewatering Facility would be required to meet, (2) the City may have provided input on operations and maintenance considerations that may bear on the design, and (3) the City's role in defining the nature and extent of the Preliminary Services, reviewing and commenting on the Preliminary Services Deliverable Material, and negotiating and agreeing upon the Definitive Contract Amendment. The Design-Builder acknowledges that, in the RFP process, the performance of the Preliminary Services, the delivery of the Definitive Project Submittal and the negotiation of the Definitive Contract Amendment, the Design-Builder had the unrestricted right and opportunity not to submit its Proposal and not to execute this Design-Build Contract or the Definitive Contract Amendment if the Design-Builder had determined that such design criteria and requirements or the establishment of the Contract Standards would in any manner or to any degree impair the Design-Builder's ability to perform the Design-Build Work in compliance herewith. Without limiting the Design-Builder's right to claim relief in the event of Uncontrollable Circumstances as and to the extent provided in this Design-Build Contract, all risks relating to the design, construction and performance capability of the Dewatering Facility, as demonstrated through the Acceptance Test, including all risks of design defects, constructability and efficacy, have been transferred to the Design-Builder under this Design-Build Contract.

(C) City Review and Comment on Final Design Documents. The Design-Builder shall provide the City with the Final Design Submittal Protocol in accordance with the

specific requirements set forth in Appendix 7 (Design-Build Work Review Procedures). The City shall have the right to review and comment on all Final Design Documents within the time frames specified in Appendix 7 (Design-Build Work Review Procedures) in order to confirm the compliance and consistency of the Final Design Documents with the Technical Specifications. In no event shall the Design-Builder proceed with the physical construction of any particular segment of the Design-Build Work without first complying with the requirements of the Final Design Submittal Protocol and Appendix 7 (Design-Build Work Review Procedures). The Design-Builder shall give due consideration and provide written responses, in the time and manner provided in Appendix 7 (Design-Build Work Review Procedures), to any comments delivered by the City or its representatives as to the Design-Builder's design submittals. Neither compliance by the Design-Builder with the Technical Specifications, nor review and comment by the City, any City Technical Representative or the Owner's Advisor on the Design-Builder's Preliminary or Final Design Documents, nor any failure by the City, any City Technical Representative or the Owner's Advisor to comment on any design submittals shall in any way relieve the Design-Builder of full responsibility for the design, construction and performance capability of the Dewatering Facility, as demonstrated through the Acceptance Test, in accordance with the Contract Standards. The parties acknowledge and agree that the review and comment rights of the City under this subsection are intended for the informational purposes of the City and for the City to determine whether the Final Design Documents comply with the Technical Specifications. Without limiting the City's review and comment rights under this subsection, the City's approval of any Final Design Document shall not be required in order for the Design-Builder to proceed with the performance of the Design-Build Work.

(D) Documents at the Dewatering Facility Site. The Design-Builder shall maintain at the Dewatering Facility Site all Final Design Documents, including a complete set of record drawings, in accordance with the Contract Standards. These documents shall be available to the City for reference, copying and use, and a complete set thereof shall be delivered to the City upon completion of the Design-Build Work.

(E) Licensing Requirements. Architects and engineers engaged by the Design-Builder for design services shall be licensed and registered in good standing to practice in the City and shall be experienced and qualified to perform such services.

SECTION 6.7. CHANGES TO THE TECHNICAL SPECIFICATIONS AT DESIGN-BUILDER REQUEST.

(A) City Consent Required; Exceptions. The Design-Builder acknowledges the City's material interest in each provision of the Technical Specifications, and agrees that, subject to Section 6.8 (Other Changes to the Technical Specifications), no material change to the Technical Specifications shall be made except with the consent of the City, which may be withheld or conditioned in its discretion taking into account the standards of quality, integrity, durability and reliability established for the Project by the Contract Standards. Any such changes shall be evidenced by a Contract Administration Memorandum, Contract Amendment or Change Order, as applicable. The City reserves the right to review and comment upon the Final Design Documents insofar as they relate to all matters of architectural treatment and exterior visual aesthetics, so as to assure that the appearance of the Project is in compliance with the Technical Specifications applicable to such matters. The parties acknowledge that reasonable, minor variations from the Technical Specifications shall be permitted in the Final Design Documents without the need for City consent to the extent such variations do not diminish the quality, integrity, durability, functionality and reliability of the Project. Examples of elements of the Technical Specifications from which there may be reasonable, minor variations in the Final Design Documents include thickness, level and composition of individual structural members; exact dimensions of rooms and buildings (to the extent overall

functionality, accessibility and maintainability are not impaired or total square footage decreased); routes and depths of pipe work; exact size, weight and height of mechanical components; and dimensions, ratings and positions of electrical cables, switch gear, transformers and control panels.

(B) Notice and Information as to Proposed Change. The Design-Builder shall give the City written notice of, and reasonable opportunity to review and comment upon, any Technical Specifications Change proposed to be made at the Design-Builder's request. The notice shall contain sufficient information for the City to determine that the proposed Technical Specifications Change:

- (1) Does not diminish the capacity of the Project to be operated so as to meet the Contract Standards;
- (2) Does not impair the quality, integrity, durability and reliability of the Project;
- (3) Is reasonably necessary or is advantageous for the Design-Builder to fulfill its obligations under this Design-Build Contract; and
- (4) Is feasible.

SECTION 6.8. OTHER CHANGES TO THE TECHNICAL SPECIFICATIONS.

(A) Changes Made Due to Uncontrollable Circumstances. Upon the occurrence of an Uncontrollable Circumstance after the Definitive Contract Amendment Date, the Design-Builder shall promptly proceed, subject to the terms, conditions and procedures set forth in ARTICLE 15 (Uncontrollable Circumstances) and subject to the City's approval, to make or cause to be made all Technical Specifications Changes reasonably necessary to address the Uncontrollable Circumstance. The Design-Builder shall consult with the City concerning possible means of addressing and mitigating the effect of any Uncontrollable Circumstance, and the Design-Builder and the City shall cooperate in order to minimize any delay, lessen any additional cost and modify the Design-Build Work so as to permit the Design-Builder to continue performing the Design-Build Work in light of such Uncontrollable Circumstance. The Design-Build Costs resulting from any such Technical Specifications Change shall result in a Base Guaranteed Maximum Price Adjustment. The Design-Builder shall be entitled to schedule relief resulting from any such Technical Specifications Change to the extent provided in ARTICLE 15 (Uncontrollable Circumstances). Without limiting the right of the City to issue a Unilateral Change Directive under Section 6.9 (Unilateral Change Directives), any Technical Specifications Change made on account of Uncontrollable Circumstances, and any related change in the terms and conditions of this Design-Build Contract, shall be reflected in a Change Order.

(B) Changes Required by Governmental Bodies. The parties recognize that a Governmental Body may impose terms and conditions in connection with a Governmental Approval after the Definitive Contract Amendment Date that require a Technical Specifications Change. In the event of the imposition of any such additional terms and conditions imposed by a Governmental Body, the Design-Builder shall promptly proceed, subject to the City's approval, to make or cause to be made all Technical Specifications Changes reasonably necessary to comply with such additional terms and conditions, or the City may elect to contest any such additional terms and conditions if such terms and conditions are not acceptable to the City; provided that, if such contest by the City delays the performance of the Design-Build Work, the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the

extent provided in ARTICLE 15 (Uncontrollable Circumstances). Pursuant to and to the extent provided in subsection 6.5(H) (Relief Based on Certain Permitting Terms and Conditions), the City shall bear the risk of the imposition of any such additional terms and conditions imposed by a Governmental Body in connection with a Governmental Approval. Accordingly, the Design-Build Costs paid in connection with any Technical Specifications Change required under this subsection shall result in a Base Guaranteed Maximum Price Adjustment. Without limiting the right of the City to issue a Unilateral Change Directive under Section 6.9 (Unilateral Change Directives), any such Technical Specifications Change and any related change in the terms and conditions of this Design-Build Contract shall be reflected in a Change Order.

(C) Changes Required by the City. The City shall have the right to require the Design-Builder to make Technical Specifications Changes at any time prior to Final Completion in its discretion for any reason whatsoever, whether and however the exercise of such rights affects this Design-Build Contract so long as the Design-Builder's rights are protected as provided in this subsection. The Design-Builder shall be entitled to a Change Order providing appropriate price, schedule, performance and other relief in the event of a Technical Specifications Change made at the direction of the City under this subsection, and the Design-Build Costs paid in connection therewith shall result in a Base Guaranteed Maximum Price Adjustment; provided, however, that the Design-Builder shall not be entitled to any such price, schedule, performance or other relief to the extent that any such Technical Specifications Change is required due to Design-Builder Fault. The City shall have no obligation to make any Technical Specifications Change on account of its rights under this subsection.

SECTION 6.9. UNILATERAL CHANGE DIRECTIVES.

(A) City Right to Issue. The parties intend to negotiate the terms of any Change Order providing for a Technical Specifications Change pursuant to SECTION 6.88 (Other Changes to the Technical Specifications) prior to the Design-Builder incurring any costs with respect to any such change or adjustment. The Design-Builder shall consult with the City concerning possible means of addressing any proposed Technical Specifications Change pursuant to Section 6.8 (Other Changes to the Technical Specifications) and, without limiting any of the rights of the City under Section 6.7 (Changes to the Technical Specifications at Design-Builder Request), the Design-Builder and the City shall cooperate in order to minimize any delay and lessen any additional cost in light of such proposed Technical Specifications Change. However, notwithstanding the foregoing, the City shall have the right to issue a written order directing a Technical Specifications Change pursuant to this subsection, which order shall specify any appropriate price, performance or schedule relief, if any, associated with the Technical Specifications Change (a "Unilateral Change Directive"). No Unilateral Change Directive shall be made that would be contrary to Applicable Law. Upon receipt of a Unilateral Change Directive, the Design-Builder shall promptly proceed with the performance of any change in the Design-Build Work as instructed and shall promptly advise the City in writing of the Design-Builder's agreement (or disagreement) with any price, performance or schedule relief, if any, as may be proposed by the City in the Unilateral Change Directive. If the Design-Builder receives a written communication signed on behalf of the City, which the Design-Builder believes is a Unilateral Change Directive that is not so identified, it shall not proceed with the purported change in the Design-Build Work until it receives written confirmation from the City that such communication is in fact a Unilateral Change Directive. A Unilateral Change Directive that is signed by the Design-Builder and approved by the City in accordance with its procurement rules and regulations, reflecting the scope of work and any price, schedule and performance relief, if any, shall be deemed a Change Order, and the Design-Build Costs paid in connection therewith shall result in a Base Guaranteed Maximum Price Adjustment.

(B) Disagreement with Terms of a Unilateral Change Directive. If the Design-Builder disagrees in writing with the suggested price, schedule or performance relief, if any, set out in the Unilateral Change Directive, the Design-Builder may elect to initiate dispute resolution procedures in accordance with SECTION 12.2 (Non-Binding Mediation). In such case, the Design-Builder shall proceed with the performance of the Design-Build Work in accordance with the Unilateral Change Directive and shall keep and present, in such form as the City may request, an itemized accounting to go with the appropriate supporting data with respect to the Design-Builder's position, including all information necessary to support Cost Substantiation. The Design-Builder shall provide notice of any disagreement pursuant to this subsection within 15 days after receipt of the Unilateral Change Directive.

SECTION 6.10. DESIGN-BUILD WORK DELIVERABLE MATERIAL.

As the Design-Build Work progresses (or upon the termination of the Design-Builder's right to perform the Design-Build Work), the Design-Builder shall deliver to the City all Design-Build Work Deliverable Material. The provisions of SECTION 18.6 (Property Rights) shall apply to any Design-Build Work Deliverable Material used by the Design-Builder in the Design-Build Work that is proprietary in nature or otherwise subject to the property rights of a third party. The City shall have the right from and after the Contract Date to use (or permit use of) all such Design-Build Work Deliverable Material, all oral information received by the City in connection with the Design-Build Work, and all ideas or methods represented by such Design-Build Work Deliverable Material, without additional compensation; provided, however, that the City shall not publish, distribute, or sell such Design-Build Work Deliverable Material to third parties not employed by or under contract to the City, except as required by Applicable Law with respect to public records requests or in connection with requests for proposals to perform construction work or design, or consulting services on behalf of the City and in connection with the performance of such work. The City's use of any such Design-Build Work Deliverable Material for any purpose other than the Dewatering Facility shall be at its own risk and the Design-Builder shall have no liability therefor.

SECTION 6.11. INTERFACE AND COORDINATION.

(A) Maintenance of Operations During Construction. The Design-Builder shall undertake and execute the Design-Build Work in a manner which does not interfere with or impair the ongoing operations of the Regional Wastewater Facility, including the continued operations of the existing digesters, digested sludge transfer pumps and export pump station. Within 30 days following the Definitive Contract Amendment Date, the Design-Builder shall provide, for the City's review and approval, a plan for the maintenance of operations during construction, Commissioning and Acceptance Testing (the "Maintenance of Operations During Construction Plan") in accordance with Appendix 5 (General Design-Build Work Requirements). The Design-Builder shall provide a final Maintenance of Operations During Construction Plan, approved by the City, as a precondition to the establishment of the Construction Commencement Date under Section 6.2 (Construction Commencement Date). The Design-Builder shall coordinate all Design-Build Work with the City in accordance with the Contract Standards, including the approved Maintenance of Operations During Construction Plan. The Design-Builder acknowledges that the operation of the Regional Wastewater Facility may require a stoppage of Design-Build Work on all or a portion of the Dewatering Facility Site from time-to-time, subject to Section 6.12 (Suspension of Work). The Design-Builder assumes the risk that the Design-Build Work can be accomplished in accordance with the Contract Standards in the manner required by this subsection.

(B) Related Projects. The Design-Builder acknowledges that the City is undertaking several other projects at the Regional Wastewater Facility and agrees to coordinate

the Design-Build Work with the work associated with such other projects in accordance with this Section. The other projects the City is undertaking at the Regional Wastewater Facility are referred to herein as the “Related Projects” and are further described in Appendix 1 (Dewatering Facility and Dewatering Facility Site Description). Nothing in this Design-Build Contract shall be interpreted as granting the Design-Builder exclusive occupancy of the Dewatering Facility Site. The Design-Builder must ascertain to its own satisfaction the scope of the Project and the nature of any other contracts that have been or may be awarded by the City in relation to its overall capital improvement program. The Design-Builder shall not cause any unnecessary hindrance or delay to any other contractors working at the Dewatering Facility Site. The Design-Builder agrees to reasonably cooperate and coordinate its activities with those of all Separate Contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption. Without limiting any of the foregoing, the Design-Builder shall comply with the Related Projects Coordination Protocol, which is intended to establish a management framework for creating a cooperative and collaborative project environment among the Design-Builder and the Separate Contractors. The Design-Builder shall promptly notify the City if it believes that a Separate Contractor’s work on a Related Project will adversely affect the Design-Builder’s critical path schedule for the Design-Build Work in order to provide the City with a reasonable period of time to exercise its rights under subsection (F) (Disputes Associated with Separate Work) of this Section. In the event of delays in the Design-Builder’s critical path schedule for the Design-Build Work due to the City’s determination to halt or delay the performance of the Design-Build Work by the Design-Builder as a result of the notice provided by the Design-Builder pursuant to the preceding sentence, the Design-Builder shall be entitled to Uncontrollable Circumstance relief as set forth in subsection (F) (Disputes Associated with Separate Work) of this Section. In the event any delays in the Design-Builder’s critical path schedule for the Design-Build Work are caused by a Separate Contractor’s work on a Related Project and are not addressed pursuant to the preceding sentence, then any claims for relief on account of such delays shall be subject to ARTICLE 15 (Uncontrollable Circumstances). Notwithstanding anything to the contrary in the Related Projects Coordination Protocol or this Design-Build Contract, the Design-Builder’s agreement to comply with the Related Projects Coordination Protocol shall not be construed to: (1) confer upon the Design-Builder any liability for the acts or omissions of the Separate Contractors; (2) impose upon the Design-Builder joint or several liability for the acts or omissions of the Separate Contractors; (3) create a partnership, consortium or joint venture relationship among the Design-Builder and any Separate Contractor; or (4) expand the Design-Builder’s liabilities beyond those set forth in this Design-Build Contract.

(C) Coordination Meetings. The City intends to have coordination meetings among the Design-Builder and the various Separate Contractors in an effort to manage the overall program associated with the work being performed at the Dewatering Facility Site and to avoid or mitigate cost and time impacts to the overall capital improvements program. The Design-Builder agrees that it will attend and participate in these logistics meetings and shall cooperate with the City and the Separate Contractors to the extent reasonably necessary for the performance by such other contractors of their work.

(D) Equipment and Materials Storage at Construction Enabling Site and Dewatering Facility Site. The Design-Builder shall afford the City and any Separate Contractors reasonable opportunity for the introduction and storage of their equipment and materials and the execution of their work at the Construction Enabling Site and Dewatering Facility Site and shall properly connect and coordinate the Design-Build Work with such other work. The Design-Builder shall coordinate with the City and any Separate Contractors to store apparatus, materials, supplies and equipment in such orderly fashion at the Construction Enabling Site and Dewatering Facility Site or any other site provided by the City as will not unduly interfere with the progress of the Design-Build Work or the work of the City or any Separate Contractors.

(E) Interrelated Work. If the execution or result of any part of the Design-Build Work depends upon any work of any Separate Contractor, the Design-Builder shall, prior to proceeding with the particular Design-Build Work, inspect and promptly notify the City of any apparent discrepancies or defects in such work that render it unsuitable for the proper execution or result of any part of the Design-Build Work. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in ARTICLE 15 (Uncontrollable Circumstances) in the event that defects in the work of any Separate Contractor render the work unsuitable for the proper execution or result of any part of the Design-Build Work. However, failure of the Design-Builder to inspect and report any apparent discrepancies or defects in the work of any Separate Contractor pursuant to this subsection shall constitute an acceptance of such Separate Contractor's work as fit and proper to receive the Design-Build Work, except as to defects which Design-Builder could not have reasonably discovered by its inspection prior to completion of the Design-Build Work. The Design-Builder shall be entitled to Uncontrollable Circumstance relief in accordance with and to the extent provided in ARTICLE 15 (Uncontrollable Circumstances) in the event of the failure of a Separate Contractor to achieve substantial completion of a Related Project by the applicable date set forth in Appendix 4 (Technical Specifications).

(F) Disputes Associated with Separate Work. If the performance of any work by the City or a Separate Contractor is likely to be interfered with by the simultaneous performance of some other contract or contracts, the City shall decide which contractor shall cease work temporarily and which contractor shall continue or whether the work under the contracts can be coordinated so that the contractors may proceed simultaneously. On all questions concerning conflicting interest of contractors performing related work, the decision of the City shall be binding upon the Design-Builder and all contractors concerned and the City shall not be responsible for any damages suffered or extra costs incurred by the Design-Builder resulting directly or indirectly from the award or performance or attempted performance of any other contract or contracts at the Dewatering Facility Site or, except as specifically provided in the next sentence of this subsection, caused by a decision or omission of the City respecting the order of precedence in the performance of all such contracts. Any decision by the City to halt or delay the performance of the Design-Build Work by the Design-Builder pursuant to this Section shall be made in accordance with Section 6.12 (Suspension of Work), and the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided therein.

SECTION 6.12. SUSPENSION OF WORK.

(A) Generally. The City may, through a written notice executed by the City Contract Representative, order the Design-Builder to suspend, delay or interrupt all or any part of the Design-Build Work for such period of time as the City Contract Representative may determine to be appropriate for the coordination of the Related Projects or otherwise for the convenience of the City.

(B) Uncontrollable Circumstance Relief. In the event the City exercises its right to suspend, delay or interrupt all or any part of the Design-Build Work pursuant to this Section, the Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in ARTICLE 15 (Uncontrollable Circumstances). However, no adjustment will be made pursuant to this Section or ARTICLE 15 for any suspension, delay or interruption to the extent caused by Design-Builder Fault, including any failure of the Design-Builder to comply with the Maintenance of Operations During Construction Plan or suspension under subsection 6.14(E) (Health and Safety Compliance Requirements). Any adjustment under this subsection shall be subject to the terms and conditions of ARTICLE 15 (Uncontrollable Circumstances), including, in particular, subsection 15.1(A) (Extent of Relief Available to the

Design-Builder), so that the Design-Builder shall not be entitled to any relief pursuant to this Section absent the required demonstration of the impact of the suspension, delay or interruption on the critical path of the Design-Build Schedule.

SECTION 6.13. CONSTRUCTION PRACTICE.

(A) Exclusive Responsibility of Design-Builder. The Design-Builder shall perform the Design-Build Work in accordance with the Contract Standards and shall have exclusive responsibility for all construction means, methods, techniques, sequences, and procedures necessary or desirable for the correct, prompt, and orderly prosecution and completion of the Design-Build Work as required by this Design-Build Contract. The responsibility to provide the construction means, methods, techniques, sequences and procedures referred to above shall include, but shall not be limited to, the obligation of the Design-Builder to provide the following construction requirements: temporary offices and construction trailers; required design certifications; required approvals; weather protection; clean-up and housekeeping of the Dewatering Facility Site; construction trade management; temporary parking; vehicle traffic; health, safety and first aid facilities and equipment; correction of or compensation for defective work or equipment; Subcontractors' insurance; storage areas; workshops and warehouses; temporary fire protection; security of the Dewatering Facility Site; temporary utilities; Utility relocations necessary or convenient to its performance of the Design-Build Work; potable water; sanitary services; Subcontractor and vendor qualification; receipt and unloading of delivered materials and equipment; erection rigging; temporary supports; and construction coordination.

(B) Dewatering Facility Site Debris, Trash and Waste. The Design-Builder shall keep the Dewatering Facility Site reasonably free from debris, trash and construction wastes to permit the Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas and without causing complaints from Separate Contractors, adjacent property owners, local public officials or members of the public. Upon Acceptance and prior to Final Completion, the Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Design-Build Work or applicable portions thereof (and not otherwise incorporated into the Dewatering Facility in accordance with the Technical Specifications) to permit the City to occupy the Dewatering Facility for its intended use.

SECTION 6.14. RESPONSIBILITY FOR HEALTH AND SAFETY.

(A) Health and Safety Representative. The Design-Builder recognizes the importance of performing the Design-Build Work in a safe manner so as to prevent damage, injury or loss to: (1) all individuals at the Dewatering Facility Site, whether working or visiting; (2) the Design-Build Work, including equipment and materials stored on or off the Dewatering Facility Site; and (3) all other property at the Dewatering Facility Site or adjacent thereto. The Design-Builder assumes responsibility for implementing and monitoring all health and safety precautions and programs related to the performance of the Design-Build Work. The Design-Builder shall, prior to commencing construction, designate an individual with the qualifications and experience necessary under Good Engineering and Construction Practice to supervise the implementation and monitoring of all health and safety precautions and programs related to the Design-Build Work (the "Health and Safety Representative"). The Health and Safety Representative shall be an individual stationed at the Dewatering Facility Site who shall have no other responsibilities with respect to the Project other than supervising the implementation and monitoring of all health and safety precautions and programs related to the Design-Build Work. The Health and Safety Representative shall make routine daily inspections of the Dewatering Facility Site and shall hold weekly health and safety meetings with the Design-

Builder’s personnel, Subcontractors and others as applicable. The Design-Builder shall provide minutes of each health and safety meeting to the City within five days of such meeting.

(B) Precautions and Protection. The Design-Builder shall take all reasonable precautions for the health and safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

(1) All employees on the Dewatering Facility Site and all other persons who may be affected thereby;

(2) All the Design-Build Work, whether in storage on or off the Dewatering Facility Site, under the care, custody or control of Design-Builder or any of its Subcontractors. Machinery and equipment shall have proper guards in place and all hazards shall be eliminated in accordance with the latest health and safety provisions of the OSHA Construction Industry Regulations 29 CFR, Parts 1910 and 1926; and

(3) Other property at the Dewatering Facility Site or adjacent thereto, including plant facilities, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

(C) Health and Safety Inspections. The Design-Builder is solely responsible to inspect, survey, and assess the Dewatering Facility Site and identify the existence of all permit-required confined spaces and non-permit confined spaces and comply with applicable OSHA regulations and standards. The Design-Builder’s Dewatering Facility Site assessment shall begin upon the initiation of Design-Build Work and continue throughout the duration of the Design-Build Period. The Design-Builder shall comply with the City of San Jose Occupational Safety and Health Regulations, and 29 CFR 1910.146 in the performance of the Design-Build Work.

(D) Health and Safety Plan. Within 30 days following the Contract Date, the Design-Builder shall provide, for the City’s review and comment, a Health and Safety Plan in accordance with the Contract Standards (the “Health and Safety Plan”). The Health and Safety Plan shall include, but not be limited to, electrical safety, lock-out/tag-out, arc flash safety personal protection equipment while working in vicinity of energized electrical equipment, hazard communication, fire protection plan, emergency access plan, health and safety inspections of mechanized equipment, machinery, hoists, cranes, scaffolding, excavations, shoring, traffic control, and related items. The Design-Builder shall not perform any construction-related activity (including any activity that disturbs the Dewatering Facility Site) until the City has had an opportunity to review and comment on the Health and Safety Plan in accordance with the timeframes set forth in this subsection. The Design-Builder shall provide a final Health and Safety Plan, having addressed any comments provided by the City, as a pre-condition to the establishment of the Construction Commencement Date under SECTION 6.2 (Construction Commencement Date).

(E) Health and Safety Compliance Requirements. The Design-Builder and all Subcontractors shall comply with: (1) all Applicable Law relating to safety; (2) the Health and Safety Plan; and (3) any City-specific health and safety requirements provided to the Design-Builder, provided that such City-specific requirements do not violate any Applicable Law. The Design-Builder shall immediately report (no later than within 12 hours after its occurrence), in writing, any health and safety-related injury, loss, damage, accident or near miss arising from the Design-Build Work to the City and, to the extent mandated by Applicable Law, to all Governmental Bodies having jurisdiction over health and safety-related matters involving the

Project. The City, through the City Contract Representative, shall have the right to suspend any or all Design-Build Work if the Design-Builder fails to comply with its obligations hereunder without any requirements of providing the Design-Builder with Uncontrollable Circumstance relief hereunder.

(F) Emergencies. The Design-Builder shall develop an emergency response plan in accordance with the requirements set forth in Appendix 5 (General Design-Build Work Requirements). The emergency response plan shall be subject to the approval of the City and shall establish the protocols for the Design-Builder in dealing with emergencies impacting the performance of the Design-Build Work. In case of an emergency which threatens immediate loss or damage to property or health and safety of life, the Design-Builder shall act immediately to prevent threatened loss, damage, injury or death. The Design-Builder shall notify the City of the situation and all actions taken immediately thereafter. If, in the opinion of the Design-Builder, immediate action is not required, the Design-Builder shall notify the City of the emergency situation and proceed in accordance with the City's instructions. However, if any loss, damage, injury or death occurs that could have been prevented by the Design-Builder's prompt and immediate action, Design-Builder shall be fully liable for all costs, damages, claims, actions, suits, attorneys' fees and all other expenses arising therefrom or relating thereto. Prior to commencing its Design-Build Work and at all times during the performance of the Design-Build Work, the Design-Builder shall provide the City with two 24 hour emergency phone numbers where its representatives can be contacted.

SECTION 6.15. CONSTRUCTION MONITORING, OBSERVATIONS, TESTING AND UNCOVERING OF WORK.

(A) Observations and Design-Build Work Review Protocol. During the progress of the Design-Build Work through Final Completion, the Design-Builder shall at all times during normal working hours afford the City and its designated representative every reasonable opportunity for observing all Design-Build Work at the Dewatering Facility Site, and shall comply with the Design-Build Work review procedures set forth in Appendix 7 (Design-Build Work Review Procedures). During any such observation, all representatives of the City, including any City Technical Representative or Owner's Advisor, shall comply with all reasonable health and safety and other rules and regulations applicable to presence in or upon the Dewatering Facility Site, and shall in no material way interfere with the Design-Builder's performance of any Design-Build Work.

(B) Factory Fabrication and Testing. The City reserves the right to have its designated representatives witness any factory fabrication or testing. The Design-Builder shall provide the City with its anticipated schedule for such fabrication and testing at the initial Project meeting and shall provide 30 days advanced written notice of any actual factory fabrication or test. The City shall be responsible for the its costs associated with witnessing any factory fabrication or testing, including travel costs; provided, however, the Design-Builder shall reimburse the City for its reasonable costs in connection with witnessing any re-testing unless such re-testing is due to Uncontrollable Circumstances. The City shall provide the Design-Builder with reasonable advance notice (at least 10 business days) of its intention to witness any factory fabrication or test pursuant to this subsection, which notice shall indicate the identity and number of designated representatives of the City who will witness the fabrication or test and any limitations associated with the reimbursable costs to be incurred by such designated representatives.

(C) Design-Builder Tests. The Design-Builder shall conduct all tests of the Design-Build Work (including shop and factory tests) or inspections required by the Contract Standards. The Design-Builder shall give the City and the Owner's Advisor reasonable advance

notice (consistent with the approved Design-Build Quality Management Plan described in Appendix 6 (Design-Build Quality Assurance and Quality Control Requirements) of tests or inspections required by the Contract Standards prior to the conduct thereof. In no event shall the inability, failure, or refusal of the City or any of its representatives to attend or be present at or during any such test or inspection delay the conduct of such test or inspection, delay the performance of the Design-Build Work, or otherwise serve as the basis for relief from the Design-Builder's obligations hereunder unless otherwise agreed in writing. The Engineer-of-Record shall conduct or witness any such test or inspection to the extent required by the Contract Standards. All analyses of test samples shall be conducted by persons appearing on lists of laboratories authorized to perform such tests by the City or federal agency having jurisdiction or, in the absence of such an authorized list in any particular case, shall be subject to the approval of the City, which approval shall not be unreasonably withheld or delayed. Acceptance Test shall be conducted in accordance with ARTICLE 8 (Commissioning, Acceptance and Final Completion).

(D) Certificates and Reports. The Design-Builder shall secure and deliver to the City promptly all required certificates of inspection, test reports, work logs, or approvals with respect to the Design-Build Work as and when required by the Contract Standards.

(E) City Tests, Observations and Inspections. The City, its employees, agents, representatives and contractors (which may be selected in the City's discretion), and all Governmental Bodies having lawful jurisdiction, may at any reasonable time and with reasonable notice conduct such on-site observations and inspections, and such civil, structural, mechanical, electrical or other tests as the City deems necessary or desirable to ascertain whether the Design-Build Work complies with the Contract Standards. The Design-Build Costs paid in connection with any of such test, observation or inspection shall result in a Base Guaranteed Maximum Price Adjustment unless such test, observation or inspection reveals a material failure of the Design-Build Work to comply with this Design-Build Contract or Applicable Law, in which event the costs and expenses of such observation, inspection or test shall be Unallowable Costs. The Design-Builder shall be entitled to Uncontrollable Circumstance relief as and to the extent provided in ARTICLE 15 (Uncontrollable Circumstances) in the event that any requested test, observation or inspection causes a delay in the critical path of the Design-Build Schedule, but only if such testing, observation or inspection does not reveal any material failure or non-compliance as set forth herein.

(F) Notice of Covering Design-Build Work. The Design-Builder shall give the City notice in the Monthly Design-Build Work Report of its upcoming schedule with respect to the covering and completion of any Design-Build Work, and shall update such notice, if necessary, within a reasonable time period (at least five business days) before such covering and completion. The City shall give the Design-Builder reasonable notice (a minimum of 48 hours) of any intended inspection or testing of such Design-Build Work in progress prior to its covering or completion. If the City provides such notice, the Design-Builder shall afford the City a reasonable opportunity to conduct such tests or inspections, which the City shall promptly complete. At the City's written request, the Design-Builder shall take apart or uncover for inspection or testing any previously-covered or completed Design-Build Work; provided, however, that the City's right to make such requests shall be limited to circumstances where there is a reasonable basis for concern by the City as to whether the disputed Design-Build Work complies with the requirements of this Design-Build Contract. The cost of uncovering, taking apart, or replacing such Design-Build Work along with the costs related to any delay in performing Design-Build Work caused by such actions, shall:

(1) be Unallowable Costs, if such Design-Build Work was covered prior to any observation or test required by the Contract Standards or for which the City was

not provided reasonable advance notice hereunder, or prior to the date on which the City was to conduct any observation or test as to which the City has provided notice of its intention to conduct in accordance with this subsection; and

(2) in all other cases, as follows:

(a) be Unallowable Costs, if such observation or test reveals that the Design-Build Work does not comply with this Design-Build Contract; or

(b) be Design-Build Costs, if such observation or test reveals that the Design-Build Work complies with this Design-Build Contract, and shall result in a Base Guaranteed Maximum Price Adjustment.

Except as provided in item (1) of this subsection, in the event such Design-Build Work does not comply with this Design-Build Contract, the delay caused by such observation or test shall be treated as having been caused by an Uncontrollable Circumstance and any costs incurred with respect to such observation or test shall be Costs for the Account of the City in accordance with ARTICLE 15 (Uncontrollable Circumstances).

SECTION 6.16. CORRECTION OF WORK.

(A) Correction of Non-Conforming Design-Build Work. The Design-Builder shall complete, repair, replace, restore, re-perform, rebuild and correct promptly any Design-Build Work that does not conform with the Contract Standards. If the non-conformance with the Contract Standards of such Design-Build Work is due to the Design-Builder's or its Subcontractors' negligence or willful misconduct, the costs of such completion, repair, replacement, restoration, re-performance, rebuild or correction shall be Unallowable Costs. If the non-conformance is not due to the Design-Builder's or its Subcontractors' negligence or willful misconduct, the associated restoration cost shall be a Design-Build Cost; provided, however, that the City may elect, at its sole discretion, to withhold the Design-Builder Fee and General Condition Fee associated with such work in accordance with Appendix 8 (Design-Build Price). In the event of a failure of the Design-Builder to correct any such nonconforming Design-Build Work in a timely manner, the City shall have the right, but not the obligation, to correct or provide for the correction of such nonconforming Design-Build Work and the costs and expenses reasonably incurred by the City in connection therewith shall be reimbursed by the Design-Builder to the City, subject to Cost Substantiation. The City shall provide the Design-Builder with seven days' advance written notice prior to exercising its right to correct or provide for the correction of any nonconforming Design-Build Work pursuant to this subsection.

(B) Election to Accept Non-Conforming Design-Build Work. The City may elect by Change Order, at the Design-Builder's request, to accept non-conforming Design-Build Work and charge the Design-Builder for the amount agreed upon by the parties as reflecting the reduction in value of the Design-Build Work. The City shall have no obligation to accept non-conforming Design-Build Work pursuant to this subsection.

(C) Relation to Other Obligations. The obligations specified in this Section establish only the Design-Builder's specific obligation to correct the Design-Build Work and shall not be construed to establish any limitation with respect to any other obligations or liabilities of the Design-Builder under this Design-Build Contract. This Section is intended to supplement (and not to limit) the Design-Builder's obligations under the Acceptance Standards and any other provisions of this Design-Build Contract or Applicable Law.

SECTION 6.17. PROPERTY DAMAGE.

(A) Damage Prevention. In performing the Design-Build Work, the Design-Builder shall use care and diligence, and shall take all appropriate precautions in accordance with Good Engineering and Construction Practice, Applicable Law and the Insurance Requirements to protect the Design-Build Work from loss, damage or destruction.

(B) Restoration. In case of damage to the Design-Build Work, and regardless of the extent thereof or the estimated cost of restoration, and whether or not any insurance proceeds are sufficient or available for the purpose, the Design-Builder shall promptly undertake and complete restoration of the damage to the Design-Build Work to the character and condition existing immediately prior to the damage and in accordance with the procedures set forth herein, as applicable, regarding Uncontrollable Circumstances, Change Orders and Unilateral Change Directives. The City shall have the right to monitor, review and inspect the performance of any repair, replacement and restoration work by the Design-Builder in accordance with this Article. If the Design-Builder fails to undertake restoration of the damage, or having so commenced fails to complete restoration in accordance with this Design-Build Contract, the City may (but shall not be obligated to) undertake or complete restoration at the Design-Builder's expense to the extent applicable in accordance with this Section. The City shall provide the Design-Builder with seven days' advance written notice prior to exercising its right to undertake or complete restoration pursuant to this subsection. Notwithstanding any of the foregoing, to the extent that Uncontrollable Circumstances cause damage to the Design-Build Work and insurance proceeds or other third-party payments are not sufficiently available to pay for restoration work pursuant to this subsection, the Design-Builder's obligation to perform such restoration work shall be subject to the receipt of reasonable assurances from the City of its ability to pay the costs for which it is financially responsible under this Section.

(C) Notice and Reports. In addition to the notification requirements set forth in subsection 6.14(E) (Health and Safety Compliance Requirements), the Design-Builder shall notify the appropriate parties in compliance with the OCIP Manual included in Appendix 12 (Insurance Requirements) to this Contract. of any incident causing property damage to the Design-Build Work in excess of \$5,000 or of any OSHA recordable injury accident on the Dewatering Facility Site related to the Design-Build Work, as promptly as reasonably possible after the Design-Builder learns of any such damage or accident. As soon as practicable after learning of any such incident or accident (but in no event later than 72 hours), the Design-Builder shall submit a written report to the City. Such report shall be updated on a weekly basis and upon culmination of all tests, analysis and reviews, a final report incorporating all of the tests, analysis and reviews and the findings thereof shall be submitted to the City. The Design-Builder shall also submit to the City copies of all accident and other reports filed with (or given to the Design-Builder by) any insurance company, adjuster, or Governmental Body or otherwise prepared or filed in connection with the damage or accident.

(D) Insurance and Other Third-Party Payments. To the extent that any repair, replacement or restoration costs incurred pursuant to this Section can be recovered from any insurer or from another third party, each party shall assist each other in exercising such rights as it may have to effectuate such recovery. Each party shall provide the other with copies of all relevant documentation, and shall cooperate with and assist the other party upon request by participating in conferences, negotiations and litigation regarding insurance claims; provided, however, that neither party shall be obligated pursuant to this subsection to provide the other party with documents subject to the attorney-client privilege under the laws of the State.

(E) Payment for Restoration Work and Uninsured Costs. All insurance proceeds and recoveries from third parties resulting from damage to or the loss or destruction of the Design-Build Work, including proceeds from all policies of Required Insurance, shall be for the benefit of the City. The City shall pay the Design-Builder for restoration work required pursuant to this Section with such proceeds and recoveries and, as necessary, other funds of the City obtained pursuant to the Change Order provisions of this Article and the payment provisions of ARTICLE 9 (Compensation for Design-Build Work), as applicable. All costs not covered by insurance proceeds or third-party payments shall constitute Design-Build Costs; provided, however, that such costs be Unallowable Costs to the extent the loss, damage or destruction was caused by Design-Builder Fault or to the extent insurance proceeds are not available due to a failure of the Design-Builder to obtain or maintain any applicable policy of Additional Insurance Required From Enrolled Parties and Excluded Parties, as set forth in Article 14 (Insurance) and Appendix 12 (Insurance Requirements) hereto.

(F) Repair of City and Private Property. The Design-Builder shall promptly repair or replace all City Property and all private property damaged by the Design-Builder or any officer, director, employee, representative, agent or Subcontractor of the Design-Builder in connection with the performance of, or the failure to perform, the Design-Build Work. The repair and replacement work shall restore the damaged property, to the maximum extent reasonably practicable, to its character and condition existing immediately prior to the damage. Nothing in this subsection is intended to waive any rights of recovery under applicable policies of insurance.

SECTION 6.18. OPERATIONS AND MAINTENANCE MANUAL.

The Design-Builder shall develop a comprehensive Operations and Maintenance Manual in accordance with the Contract Standards, including the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements) and Appendix 11 (Transition Services). The Operations and Maintenance Manual shall contain a detailed description of the means and methods of properly operating and maintaining the Dewatering Facility; shall integrate all equipment and systems service manuals; shall document standard operating procedures and predictive, preventive and corrective maintenance procedures, practices and schedules; and shall otherwise be sufficiently detailed to permit the Dewatering Facility to be operated and maintained by the City operations and maintenance staff. The Design-Builder shall submit preliminary, interim, pre-final and final versions of the Operations and Maintenance Manual for the City's review, comment and approval in accordance with Appendix 5 (General Design-Build Work Requirements). A pre-final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements) shall be submitted to and approved by the City as a condition precedent to the achievement of Substantial Completion in accordance with Section 6.1919 (Substantial Completion). A final Operations and Maintenance Manual meeting the specific requirements set forth in Appendix 5 (General Design-Build Work Requirements) shall be submitted to and approved by the City as a condition precedent to the achievement of Final Completion in accordance with SECTION 8.6 (Final Completion).

SECTION 6.19. SUBSTANTIAL COMPLETION.

(A) Commissioning and Acceptance Test Plan. The Design-Builder shall prepare and submit to the City for its approval a detailed Commissioning and Acceptance Test Plan in accordance with the requirements of Appendix 9 (Commissioning and Acceptance). The schedule requirements for the submittal and review of the Commissioning and Acceptance Test Plan are set forth in Appendix 9 (Commissioning and Acceptance). City approval of the Commissioning and Acceptance Test Plan, however, is a condition precedent to certain testing

required for the achievement of Substantial Completion in accordance with this Section, including Functional Testing. If the Design-Builder and the City are unable to agree upon the Commissioning and Acceptance Test Plan within a reasonable period following submission (not to exceed 45 days), either party may elect to initiate dispute resolution procedures in accordance with SECTION 12.2 (Non-Binding Mediation).

(B) Conditions Precedent to Substantial Completion. “Substantial Completion” shall be deemed to have occurred only when all of the following conditions have been satisfied:

(1) the Design-Builder has submitted and the City has approved in writing, such approval not to be unreasonably withheld or delayed, a certification by the Design-Builder that construction of the Dewatering Facility is physically complete and all other Design-Build Work pertaining to the Dewatering Facility, excepting Commissioning, Acceptance Test and the items on the Punch List, is complete and in all respects is in compliance with this Design-Build Contract;

(2) the Design-Builder has submitted and the City has approved in writing, such approval not to be unreasonably withheld or delayed, the Commissioning and Acceptance Test Plan in accordance with subsection (A) (Commissioning and Acceptance Test Plan) of this Section;

(3) the Design-Builder has submitted and the City has approved in writing, such approval not to be unreasonably withheld or delayed, a certification by the Design-Builder, along with all required test reports, that Functional Testing has been completed in accordance with the Commissioning and Acceptance Test Plan and the specific requirements set forth in Appendix 9 (Commissioning and Acceptance);

(4) the Design-Builder has completed all other obligations set forth in Appendix 9 (Commissioning and Acceptance) with respect to the achievement of Substantial Completion, including all pre-conditions to the commencement of Commissioning;

(5) the Design-Builder and the City have agreed in writing upon the Punch List (or, if they are unable to agree, the City shall have prepared and issued the Punch List to the Design-Builder within 30 days of the Design-Builder having submitted its proposed Punch List to the City);

(6) the Design-Builder has delivered to the City written certification from the equipment manufacturers (including information technology systems and instrumentation and controls) that all major items of machinery and equipment included in the Dewatering Facility have been properly installed and tested in accordance with the manufacturers’ recommendations and requirements;

(7) the Design-Builder has delivered to the City and the City has approved in writing, such approval not to be unreasonably withheld or delayed, the Training Plan in accordance with Appendix 5 (General Design-Build Work Requirements);

(8) the Design-Builder has delivered to the City and the City has approved in writing, such approval not to be unreasonably withheld or delayed, the pre-final Operations and Maintenance Manual in accordance with the requirements set forth in Appendix 5 (General Design-Build Work Requirements);

(9) the Design-Builder is authorized by all appropriate Governmental Bodies to commence Commissioning under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended; and

(10) the Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the City has approved the Design-Builder's certification, which approval shall be effective as of the date of the Design-Builder's certification.

The City shall have the right, in its discretion, to waive any of the foregoing conditions.

(C) Notice of Substantial Completion. The Design-Builder shall give the City at least 30 days' prior written notice of the expected date of Substantial Completion.

SECTION 6.20. PUNCH LIST ITEMS.

(A) Punch List Requirements. The Design-Builder shall submit a proposed Punch List to the City and the Owner's Advisor when the Design-Builder believes that the Design-Build Work has been substantially completed in compliance with this Design-Build Contract. The "Punch List" shall be a statement of repairs, corrections and adjustments to the Design-Build Work, and incomplete aspects of the Design-Build Work (excluding Commissioning and Acceptance Test activities), which in the Design-Builder's opinion:

(1) the Design-Builder can complete before the date specified in subsection (B) (Completion of Punch List Items) of this Section, and with minimal interference to the occupancy, use and lawful operation of the Dewatering Facility; and

(2) would represent, to perform or complete, a total cost of not more than 0.5% of the Guaranteed Maximum Price (unless the City determines that a higher percentage is acceptable, as evidenced by the written approval of the City Contract Representative).

In no event shall the Punch List contain any incomplete items necessary for Commissioning or the performance of the Acceptance Test. The City shall have the right to approve the Punch List in its discretion.

(B) Completion of Punch List Items. The Design-Builder shall complete all items on the Punch List within 45 days following the Acceptance Date. The Design-Builder acknowledges the long-term nature of the Commissioning and Acceptance Test activities required under this Design-Build Contract and agrees that the City has a material interest in the completion of the items to be included on the Punch List by the date established in this subsection, notwithstanding the schedule requirements in this Design-Build Contract concerning Acceptance and Final Completion. The Design-Builder shall be required to maintain the Dewatering Facility during Commissioning and Acceptance Test and shall be required to achieve Final Completion in accordance with SECTION 8.6 (Final Completion). All work associated with the Punch List items shall constitute Design-Build Work hereunder and shall be performed by the Design-Builder in accordance with the Contract Standards.

ARTICLE 7

MANAGEMENT, LABOR AND SUBCONTRACTORS

SECTION 7.1. MANAGEMENT.

(A) Design-Build Manager. The Design-Builder shall designate an employee of the Design-Builder, any Affiliate of the Design-Builder, or the Design-Builder's construction manager as the "Design-Build Manager". The Design-Build Manager shall, among other things:

- (1) be familiar with the Contract Services and all requirements of this Design-Build Contract;
- (2) coordinate the Contract Services and give the Contract Services regular and careful attention and supervision;
- (3) maintain a daily status log of the Design-Build Work when being performed; and
- (4) attend all Project meetings (including meetings concerning scope, review, pre-bid, pre-construction, and construction matters) with the City and its representatives.

The Design-Builder represents and warrants that the Design-Build Manager shall be vested with the authority to act on behalf of the Design-Builder in connection with the performance of the Contract Services and to bind the Design-Builder with respect to any certification required under this Design-Build Contract to be made by the Design-Build Manager. If the Design-Builder is comprised of two or more persons functioning as a joint venture, the Design-Builder shall have the authority to represent and act for the joint venture. The Design-Build Manager may be a different individual for the Preliminary Services Period, the Design-Build Period, and the Transition Services Period. The Design-Builder may change the person assigned as the Design-Build Manager solely in accordance with the provisions of subsection (C) (City Rights With Respect to Key Personnel) of this Section.

(B) Replacement of Design-Build Manager. If the Design-Builder formally or informally replaces the Design-Build Manager absent the City's request and absent good cause shown (as defined in subsection (C) (City Rights With Respect to Key Personnel) of this Section), a deduction of \$150,000 shall be applied to the Contract Compensation. Any successor Design-Build Manager shall be subject to the approval of the City in its discretion.

(C) City Rights With Respect to Key Personnel. The Design-Builder acknowledges that the identity of the Design-Build Manager and the other key management and supervisory personnel proposed by the Design-Builder and its Subcontractors in its Proposal was a material factor in the selection of the Design-Builder to perform this Design-Build Contract. Such personnel, their affiliations and their anticipated roles in the performance of the Contract Services are set forth in Appendix 13 (Key Personnel and Approved Subcontractors). The Design-Builder shall utilize such personnel to perform such services unless (i) such personnel are unavailable for good cause shown or (ii) the City has approved in writing the utilization of other personnel for such services. "Good cause shown" shall not include performing services on other projects for the Design-Builder or any of its Affiliates, but shall include termination for cause, employee death, disability, retirement or resignation. In the event of any such permissible unavailability, the Design-Builder shall utilize replacement

key management and supervisory personnel of equivalent skill, experience and reputation. Any on-site personnel change shall be proposed to the City with reasonable advance notice for its review and approval, which shall not be unreasonably withheld or delayed. The Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Contract Services if the City, acting reasonably, determines that an unworkable relationship has developed between the City and the individual.

(D) On Site Construction Manager. The Design-Builder shall designate an employee of the Design-Builder or any Affiliate of the Design-Builder as the “On-Site Construction Manager”. When the Design-Builder or any Subcontractor is performing Construction, the On-Site Construction Manager (or his designee if approved by the City) shall be present at the Dewatering Facility Site.

SECTION 7.2. LABOR.

(A) Personnel Performance. The Design-Builder shall enforce discipline and good order at all times among the Design-Builder’s employees and all Subcontractors. All persons engaged by the Design-Builder for performance of the Contract Services shall have requisite skills for the tasks assigned. The Design-Builder shall employ or engage and compensate engineers and other consultants to perform all engineering and other services required for the Contract Services. The Design-Builder shall ensure that all persons performing Contract Services, including all Subcontractors, comply with all registration, licensing and certification requirements imposed by any Governmental Body or otherwise under Applicable Law.

(B) Labor Relations. The Design-Builder shall furnish labor that can work in harmony with all other elements of labor employed for the performance of the Design-Build Work. The Design-Builder shall have exclusive responsibility for disputes or jurisdictional issues among unions or trade organizations representing employees of the Design-Builder or its Subcontractors, whether pertaining to organization of the Design-Build Work, arrangement or subdivision of the Technical Specifications, employee hiring, or any other matters. The City shall have no responsibility whatsoever for any such disputes or issues and the Design-Builder shall indemnify, defend and hold harmless the City and the City Indemnitees in accordance with and to the extent provided in SECTION 16.1 (Design-Builder’s Obligation to Indemnify) from and against all Loss-and-Expense resulting from any such labor dispute.

(C) Notice of Labor Disputes. If the Design-Builder has knowledge of an actual or potential labor dispute that may affect any of the Contract Services, the Design-Builder shall promptly:

- (1) Give notice thereof to the City, including all relevant information related to the dispute of which the Design-Builder has knowledge; and
- (2) Take all reasonable steps to ensure that such labor dispute does not affect the performance of any of the Contract Services including by applying for relief to appropriate forums or courts.

(D) Prevailing Wage Rate. The Design-Builder shall, and shall cause all Subcontractors to, pay not less than the prevailing wage rate for all types and classifications of any of the Design-Build Work specified in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code or workers at the Dewatering Facility Site in job classifications covered thereby, including all applicable shift, weekend, holiday, foreman,

health and welfare, pension, vacation, travel, training, subsistence and other pay established for each classification of work. The Design-Builder shall cause a copy of the prevailing rates of wages to be posted at the Dewatering Facility Site, shall keep and maintain payroll and other relevant information in order to permit the City to monitor compliance with this requirement, and shall furnish certified copies of such payrolls and other information to the City or its designee upon request. The prevailing wage rates must be posted at the Dewatering Facility Site. Failure to pay the prevailing wage rate is a material breach of this Design-Build Contract.

(E) Non-Discrimination in Employment. During the performance of the Contract Services, the Design-Builder agrees as follows:

(1) The Design-Builder will not discriminate against any employee or applicant for employment because of race, religion, color, gender, sexual orientation or national origin, except where religion, gender, sexual orientation or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the Design-Builder, and the Design-Builder agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause;

(2) The Design-Builder, in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder, will state that the Design-Builder is an equal opportunity employer;

(3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation, shall be deemed sufficient for the purpose of meeting the requirements of this provision; and

(4) The Design-Builder shall include the provisions of items (1), (2) and (3) above in every Subcontract of over \$10,000 so that the provisions will be binding upon every Subcontractor or vendor.

(F) Skilled Workforce Requirements. The Design-Builder shall comply with the requirements of Section 22164(c) of the California Public Contract Code obligating the Design-Builder to use a skilled workforce in performing the Design-Build Work, and shall report to the City monthly on actions taken to achieve such compliance.

(G) Drug-Free Workplace. During the performance of this Design-Build Contract, the Design-Builder agrees to (1) provide a drug-free workplace for the Design-Builder's employees; (2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Design-Builder's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (3) state in all solicitations or advertisements for employees placed by or on behalf of the Design-Builder that the Design-Builder maintains a drug-free workplace; and (4) include the provisions of the foregoing clauses in every Subcontract of over \$10,000, so that the provisions will be binding upon each Subcontractor. For the purposes of this Section, "drug-free workplace" means a site for the performance of Contract Services performed in conjunction with this Design-Build Contract. The Design-Builder's employees, in accordance with this Section, are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Design-Build Contract. The Design-Builder shall adhere to and certify that its employees comply with this substance abuse program.

SECTION 7.3. SUBCONTRACTING GENERALLY.

(A) Right to Subcontract. The Design-Builder may carry out the Design-Build Work and other Contract Services by contracting such obligations to one or more Subcontractors in accordance with the requirements of this Article. The Design-Builder shall retain full responsibility to the City under this Design-Build Contract for all matters related to the Contract Services, notwithstanding the execution of, or the terms and conditions contained in, any Subcontract. Subcontracts entered into by the Design-Builder for the performance of the Contract Services shall neither supersede nor abrogate any of the terms or provisions of this Design-Build Contract.

(B) Performance Failure. No failure of any Subcontractor used by the Design-Builder in connection with the provision of the Contract Services shall constitute an Uncontrollable Circumstance or otherwise relieve the Design-Builder from its obligations hereunder to perform the Contract Services, except as provided in items (k) and (l) of the list of “Inclusions” in the definition of Uncontrollable Circumstances. The Design-Builder shall be responsible for settling and resolving with all Subcontractors all claims (1) arising out of delay, disruption, interference, hindrance, schedule extension caused by the Design Builder, (2) arising from the actions or inactions of the Design-Builder or a Subcontractor, or (3) inflicted on the Design-Builder or a Subcontractor by the actions of another Subcontractor.

(C) Restricted Persons. In providing the Contract Services, the Design-Builder shall not contract with, or allow any of its Subcontractors to contract with, any person that, in the reasonable opinion of the City, is a Restricted Person.

(D) Subcontractor Licensing. All trade Subcontractors shall possess a valid contractor license as required by Applicable Law for the classification required for the work to be performed by the Subcontractor at the time of the Subcontract and throughout the duration of the Subcontract. Subsection 6.6(E) (Licensing Requirements) shall be applicable to all Subcontractors performing design services.

(E) Availability of Material Subcontractors and Key Personnel. At the request of the City, the Design-Builder shall make the key representatives of Material Subcontractors available for meetings between the City and the Design-Builder concerning design review, construction progress, Commissioning, Acceptance or any other matter relating to the performance of the Design-Build Work. The Design-Builder shall provide the City with periodic human resource allocation summary reports concerning the personnel of the Material Subcontractors, which reports shall include anticipated personnel allocations for all ongoing and planned projects and shall demonstrate human resource sufficiency.

(F) Indemnity for Subcontractor Claims. The Design-Builder shall pay or cause to be paid to all Subcontractors all amounts due in accordance with their respective Subcontracts and the requirements of this Article. No Subcontractor shall have any right or claim against the City for labor, services, materials or equipment furnished for the Contract Services. The Design-Builder acknowledges that its indemnity obligations under Article 16 (Indemnification) shall extend to all claims for payment or damages by any Subcontractor who furnishes or claims to have furnished any labor, services, materials or equipment in connection with the Design-Build Work.

(G) Assignability. All Subcontracts entered into by the Design-Builder with respect to the Project shall be assignable to the City, solely at the City’s election and without cost or penalty, upon any termination of this Design-Build Contract, including convenience termination under Section 13.6 (City Convenience Termination Rights).

SECTION 7.4. SELF-PERFORMANCE AND SUBCONTRACTOR SELECTION.

(A) Self-Performed Construction Work Generally. Construction work on the Project shall not be performed by the Design-Builder or its Affiliates, except with the approval of the City given in its discretion pursuant to subsection (G) (Alternative Procedures for Construction Work) of this Section.

(B) Subcontractor Selection Generally. Subcontractors shall be selected on a competitive basis, unless the City approves otherwise in accordance with subsection (G) (Alternative Procedures for Construction Work) of this Section.

(C) Subcontracting Plan. The Design-Builder shall comply with the subcontracting plan set forth as Attachment 13B (Subcontracting Plan) to Appendix 13 (Key Personnel and Approved Subcontractors). A final Subcontracting Plan shall be proposed by the Design-Builder as part of the Definitive Project Submittal, and negotiated and agreed upon by the parties as part of the Definitive Contract Amendment.

(D) Division of Work. The Design-Builder shall coordinate and develop with the City Contract Representative bid packages and work scope descriptions for each separate bid category that represents the entirety of the scope of the Design-Build Work for each phase and stage of the Project. The Design-Builder shall be responsible for determining the Technical Specifications that are applicable to each Subcontractor performing Design-Build Work, including all trade Subcontractors and Suppliers. The Design-Builder shall be responsible for the assembly, reproduction and distribution of all documents defining the scope of work for each Subcontractor.

(E) Pre-Bid Conferences. The Design-Builder shall schedule and conduct pre-bid or pre-proposed conferences with trade Subcontractors and Suppliers for the purpose of generating interest in the Project among potential Subcontractors. The Design-Builder shall coordinate such pre-bid conferences with the City Representative and shall record and preserve conference minutes.

(F) Competitive Procedures for Construction Work. Except as may otherwise be approved in writing by the City Contract Representative in accordance with subsection (G) (Alternative Procedures for Construction Work) of this Section, the Design-Builder shall enter into Subcontracts for the performance of all Construction work and, in connection therewith, shall utilize a competitive bidding or competitive proposal process approved by the City in its discretion. In connection with any such procurement, the Design-Builder shall, in accordance with the Contract Standards:

- (1) develop procurement procedures in consultation with the City Contract Representative and prepare all necessary procurement documents;
- (2) publicly advertise and receive bids or proposals;
- (3) unless waived by the City, require line-item bids or proposals based on unit pricing for Construction work to be performed pursuant to a Material Subcontract;
- (4) open and review all bids or proposals in a manner that does not disclose the contents of the bids or proposals to persons not employed by the Design-Builder, the City or Owner's Advisor;

(5) evaluate the bids or proposals in accordance with the selection criteria established in the procurement documents; and

(6) recommend a bid or proposal for approval by the City Contract Representative in accordance with such evaluation.

Any Subcontract awarded for the performance of Construction work shall be subject to the City's approval and shall have terms and conditions and a risk allocation substantially identical to that established by this Design-Build Contract. The City reserves the right to require the Design-Builder to prequalify subcontractors and to establish performance requirements for specific equipment. The City Contract Representative's approval of a bid or proposal recommended by the Design-Builder in accordance with this Section shall not be unreasonably withheld.

(G) Alternative Procedures for Construction Work. The Design-Builder may propose to the City Contract Representative alternative procedures for the procurement of construction work, including performance of construction work by labor forces of the Design-Builder, any Affiliate of the Design-Builder or by an Approved Subcontractor. The City Contract Representative's approval of any such alternative procedure shall be in the City Contract Representative's discretion. The Design-Builder recognizes that, if the Designer-Builder wishes to perform construction work with its own labor forces or the labor forces of an Affiliate or an Approved Subcontractor, the City Contract Representative may, but is not obligated to, require that the Design-Builder, Affiliate or approved Subcontractor submit a bid or proposal for the work on a competitive basis, as contemplated by subsection (F) (Competitive Procedures for Construction Work) of this Section. If the Design-Builder or any Affiliate of the Design-Builder intends to submit a competitive bid or proposal for construction work, the Design-Builder shall notify the City Contract Representative in writing prior to the issuance of procurement documents for the work, and the City Contract Representative shall have the right to require the submittal of all bids or proposals directly to the City (and not to the Design-Builder) for review, evaluation and selection. Any decision by the City Contract Representative to approve the performance of construction work without obtaining competitive bids or proposals shall be:

(1) subject to an "open book" process to provide the City Contract Representative with sufficient information to determine whether the proposed pricing of the work is fair, reasonable and consistent with industry standards for similar services; and

(2) supported by a written determination by the City Contract Representative that the proposed pricing is fair, reasonable and consistent with industry standards for similar services.

(H) Procurement of Subcontractors Prior to the Definitive Contract Amendment Date. The Design-Builder, during the Preliminary Services Period, in the development of the proposed Base Guaranteed Maximum Price to be submitted to the City in the Definitive Project Submittal (1) may conduct discussions with and obtain indicative pricing information from potential Construction Subcontractors, and (2) may initiate, subject to the approval of the City given in its discretion, the formal procurement process for selecting Construction Subcontractors. Any such formal procurement process shall be conducted in accordance with the requirements of this Section. No Subcontract resulting from such procurement process shall be executed prior to the Definitive Contract Amendment Date without the City's consent given its discretion and unless the Subcontract complies with the

requirements for an Early Work Package as set forth in subsection 5.8(B) (Early Work Packages).

(I) Inapplicability of Construction Subcontractor Non-Substitution Requirements. The Design-Builder acknowledges that no Construction Subcontractors were proposed as part of the Proposal to which, by operation of Section 22166(a) of the California Public Contract Code, the anti-substitution requirements set forth in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the California Public Contract Code (the “Subletting and Subcontracting Fair Practices Act”) would apply.

(J) Systems Integration Subcontractor. In subcontracting for systems integration services, the Design-Builder shall select from among the pre-qualified systems integration firms designated by the City as a Required Subcontractor. Systems integration work may be self-performed by the Design-Builder, rather than subcontracted to a third party Required Subcontractor, if the Design-Builder is among the pre-qualified firms and the City agrees to have such work performed by the Design-Builder.

(K) Required Subcontractor. The Design-Builder acknowledges that it is responsible for the performance of the Required Subcontractor, in accordance with the terms and conditions of this Design-Build Contract, notwithstanding the fact that the City required the Design-Builder to enter into a Subcontract with the Required Subcontractor for the performance of certain aspects of the Design-Build Work. The Design-Builder represents and warrants that it entered into this Design-Build Contract with the full understanding that the Design-Builder would be required to assume responsibility for the performance of the Required Subcontractor in accordance with this Design-Build Contract, having performed all necessary due diligence with respect to the Required Subcontractor.

(L) City Rights Regarding Design-Builder Bidding. The Design-Builder shall notify the City prior to issuing any Design-Build Work package solicitation documents if the Design-Builder intends on bidding on any such Design-Build Work packages. The City reserves the right to prohibit the Design-Builder from bidding on Design-Build Work packages if the City determines that participation by the Design-Builder will adversely affect the ability of the City (or Design-Builder, as applicable) to receive competitive bids for such work.

SECTION 7.5. TERMINATION, AMENDMENT, ASSIGNMENT AND REPLACEMENT OF MATERIAL SUBCONTRACTS.

(A) Termination, Amendment and Assignment. Unless the Design-Builder has, at its earliest practicable opportunity, submitted to the City notice of the proposed course of action (and any relevant documentation) and the City has consented in writing to such course of action, such consent not to be unreasonably withheld or delayed, the Design-Builder shall not:

- (1) Terminate, or agree to, or permit the termination of, any Material Subcontract;
- (2) Make, or agree to, or permit the making of (a) any material amendment of any Material Subcontract; or (b) any departure by any party from any material provision of any Material Subcontract; or

(3) Permit any Material Subcontract party to assign or transfer to any person any of such Material Subcontract party's rights or obligations under a Material Subcontract.

(B) Replacement. If any Material Subcontract at any time lapses, terminates, or otherwise ceases to be in full force and effect (whether by reason of expiration or otherwise), unless the goods, services or rights which were the subject matter of such Material Subcontract are no longer reasonably required for the Project, the Design-Builder will forthwith enter into, or cause to be entered into, a replacement contract or contracts upon the same or substantially similar terms as the contract so replaced (to the extent reasonably practicable). If at any time any amendment is made to any Material Subcontract, or a replacement Material Subcontract (or any agreement which materially affects the interpretation or application of any Material Subcontract) is entered into, the Design-Builder shall deliver to the City a copy of each such amendment or agreement within 10 Business Days of the date of its execution or creation, certified as a true copy by an officer of the Design-Builder.

ARTICLE 8

COMMISSIONING, ACCEPTANCE AND FINAL COMPLETION

SECTION 8.1. COMMISSIONING.

(A) Commencement of Commissioning. The Design-Builder may commence Commissioning on elements of the Dewatering Facility at its election at any time, whether prior to or subsequent to the achievement of Substantial Completion; provided, however, that, prior to the commencement of Commissioning, the Design-Builder shall (1) have obtained City approval of the Commissioning and Acceptance Test Plan in accordance with subsection 6.19(A) (Commissioning and Acceptance Test Plan); (2) have satisfied all preconditions to the commencement of Commissioning set forth in Appendix 9 (Commissioning and Acceptance); and (3) be authorized by all appropriate Governmental Bodies to commence Commissioning under Applicable Law. The Design-Builder shall give the City at least 14 days' prior written notice of the expected date of commencement of Commissioning, which notice shall include a certification of compliance with this subsection.

(B) Performance of Commissioning. During Commissioning, the Design-Builder shall be responsible for operating and maintaining the Dewatering Facility and training the City operations and maintenance staff in accordance with the Training Plan. The Design-Builder shall perform all Commissioning activities in accordance with the Contract Standards, including the Commissioning and Acceptance Test Plan and all requirements set forth in Appendix 9 (Commissioning and Acceptance).

(C) Maintenance of Operations During Construction. The Design-Builder shall be responsible for sequencing, staging and performing Commissioning and the Acceptance Test in a manner that enables the City to continue to operate the Regional Wastewater Facility (including the Existing Dewatering Facility) during construction of the Dewatering Facility. Specific requirements and constraints associated with the City's continued operation of the Existing Dewatering Facility are set forth in Appendix 9 (Commissioning and Acceptance). The Design-Builder shall comply with the approved Maintenance of Operations During Construction Plan in the performance of all Commissioning and Acceptance Test activities.

(D) Training of City Employees. The Design-Builder shall prepare and submit the Training Plan to the City for its review and approval in accordance with Appendix 5 (General Design-Build Work Requirements). The City's approval of the Training Plan shall be a condition precedent to the achievement of Substantial Completion. During Commissioning, the Design-Builder shall train designated City employees in accordance with the Contract Standards, including the approved Training Plan, in order to enable such City employees to assume operation and maintenance responsibility for the Dewatering Facility upon Acceptance.

SECTION 8.2. ACCEPTANCE TESTING.

(A) Submittal of Commissioning and Acceptance Test Plan. The Design-Builder shall submit the Commissioning and Acceptance Test Plan to the City and the Owner's Advisor pertaining to each system or subsystem of the Dewatering Facility in accordance with Appendix 9 (Commissioning and Acceptance). In no event may the Design-Builder commence with the performance of the Acceptance Test prior to City approval of the Commissioning and Acceptance Test Plan. If the Design-Builder and the City are unable to agree upon a Commissioning and Acceptance Test Plan within 45 days following submission, either party may elect to initiate dispute resolution procedures in accordance with SECTION 12.2 (Non-Binding Mediation).

(B) Notice of Commencement of the Acceptance Test. The Design-Builder shall provide the City with at least 20 days' prior written notice of the expected initiation of any portion of Acceptance Test in accordance with the requirements of Appendix 9 (Commissioning and Acceptance). At least seven days prior to the actual commencement of the Acceptance Test, the Design-Builder shall certify in writing that it is ready to begin the Acceptance Test in accordance with the requirements of this Section and the applicable Acceptance Test requirements and Appendix 9 (Commissioning and Acceptance).

(C) Conditions to Commencement of the Acceptance Test. The Design-Builder shall not commence the Acceptance Test until the following events have occurred:

(1) The requirements of subsections (A) (Submittal of Commissioning and Acceptance Test Plan) and (B) (Notice of Commencement of the Acceptance Test) of this Section have been met and the City has approved the Commissioning and Acceptance Test Plan and the applicable system and subsystem tests in the Commissioning and Acceptance Test Plan, as required by Appendix 9 (Commissioning and Acceptance);

(2) Substantial Completion has occurred;

(3) The Design-Builder has completed Commissioning of the applicable components of the Dewatering Facility to be tested in accordance with Appendix 9 (Commissioning and Acceptance);

(4) The Design-Builder is authorized by all appropriate Governmental Bodies to perform the procedures necessary to achieve Acceptance and to conduct the Acceptance Tests under Applicable Law, and such authorization has not been withdrawn, revoked, suspended, superseded, or materially impaired or amended; and

(5) The Design-Builder has certified that it has complied with all pre-Acceptance Test requirements included in Appendix 9 (Commissioning and Acceptance).

(D) Conduct of the Acceptance Test. In accordance with the Commissioning and Acceptance Test Plan and Appendix 9 (Commissioning and Acceptance), the Design-Builder shall conduct the Acceptance Test under the oversight of the City. The Design-Builder shall permit the Owner's Advisors, the City Technical Representatives and any other designated representatives of the City to inspect the preparations for the Acceptance Test and to be present for the conduct of the Acceptance Test for purposes of ensuring compliance with the Commissioning and Acceptance Test Plan and the integrity of the Acceptance Test results.

(E) Acceptance Test Report. Within 45 days following completion of the Acceptance Test, the Design-Builder shall furnish the City and the Owner's Advisor with ten copies of a written Acceptance Test report consistent with the requirements specified in Appendix 9 (Commissioning and Acceptance), certified as true, complete and correct by the Design-Build Manager and the Engineer-of-Record. The Acceptance Test report shall describe and certify (1) each system and subsystem test conducted, (2) the results of the Acceptance Test, (3) the extent to which the results met or exceeded the Acceptance Standards relating thereto, and (4) the level of satisfaction of all Acceptance Date Conditions set forth in SECTION 8.3 (Acceptance Date Conditions). The written test report shall include copies of the original data sheets, log sheets and all calculations used to determine performance during the Acceptance Test, and copies of laboratory reports conducted in conjunction with the Acceptance Test, including all laboratory sampling and test results. No failure of the Design-

Builder to furnish the certified Acceptance Test report within the 45-day period following the conclusion of the Acceptance Test shall operate to adjust the Scheduled Acceptance Date or extend the Extension Period.

SECTION 8.3. ACCEPTANCE DATE CONDITIONS.

The following conditions shall constitute the “Acceptance Date Conditions”, each of which must be satisfied in all material respects by the Design-Builder in order for the Acceptance Date to occur, and each of which must be and remain satisfied as of the Acceptance Date:

(1) Achievement of Acceptance Test Standards. The Design-Builder shall have completed the Acceptance Test and such test shall have demonstrated that the Dewatering Facility has met all of the Full Acceptance Standards, as certified by the Design-Builder pursuant to subsection 8.2(E) (Acceptance Test Report) and agreed to by the City pursuant to subsection 8.4(A) (Acceptance Date Concurrence), or if pursuant to subsection 8.5(D) (Option to Establish Acceptance at a Reduced Acceptance Standard), the Design-Builder has certified that it has met the Minimum Acceptance Standards, the City has concurred with such certification and the Design-Builder has paid the liquidated damages pursuant to subsection 8.5(E) (Buydown Liquidated Damages);

(2) Governmental Approvals. All Governmental Approvals required under Applicable Law and this Design-Build Contract to be obtained by the Design-Builder which are necessary for the continued routine operation of the Dewatering Facility shall be in full force and effect and certified copies of all such Governmental Approvals shall have been delivered to the City;

(3) Equipment Warranties and Manuals. The Design-Builder shall be in possession of, and shall have delivered to the City, copies of the warranties of machinery, equipment and fixtures constituting a part of the Dewatering Facility, together with copies of all related operating manuals supplied by the equipment supplier;

(4) Updated Operations and Maintenance Manual. The Design-Builder shall have delivered to the City the updated Operations and Maintenance Manual in accordance with Section 6.18 (Operations and Maintenance Manual) and Appendix 5 (General Design-Build Work Requirements);

(5) Training Complete. The Design-Builder shall have satisfied its training obligations with respect to the City operations and maintenance staff in accordance with the approved Training Plan and the specific requirements of Appendix 5 (General Design-Build Work Requirements); and

(6) No Default. The Design-Builder shall have certified that there is no Event of Default by the Design-Builder existing under this Design-Build Contract, or event which with the giving of notice or the passage of time would constitute an Event of Default by the Design-Builder hereunder.

SECTION 8.4. CONCURRENCE OR DISAGREEMENT WITH TEST RESULTS.

(A) Acceptance Date Concurrence. The Acceptance Date shall be the day on which the Acceptance Date Conditions have been achieved, as determined in accordance with this Section. If the Design-Builder certifies in its written report delivered pursuant to subsection 8.2(E) (Acceptance Test Report) that the Acceptance Date Conditions have been achieved, the City shall determine, within 30 days following its receipt of such report, whether it concurs in such certification. If the City states in writing that it concurs with the Design-Builder's certification, the Dewatering Facility shall be deemed to have achieved Acceptance and the Acceptance Date shall be deemed to have been established on the date of the Design-Builder's original certification.

(B) Acceptance Date Disagreement. If the City determines at any time during such 30-day review period that it does not concur with the Design-Builder's certification of Acceptance, the City shall immediately send written notice to the Design-Builder of the basis for its disagreement. In the event of any such non-concurrence by the City, either party may elect to initiate dispute resolution procedures in accordance with SECTION 12.2 (Non-Binding Mediation). Acceptance shall not be deemed to have been achieved unless the Acceptance Test, conducted in a unified and continuous manner as provided in the Commissioning and Acceptance Test Plan and in Appendix 9 (Commissioning and Acceptance), demonstrate that all of the Acceptance Standards have been met, including the Performance Guarantees. In the event the Design-Builder, in conducting the Acceptance Test, does not successfully meet the Acceptance Standards, the Design-Builder shall, at its sole cost and expense, take all action necessary (including making all capital investments, improvements or modifications, repairs and replacements and operating and management practices changes) in order for the Dewatering Facility to comply with the Acceptance Standards and shall re-test the Dewatering Facility in accordance with Appendix 9 (Commissioning and Acceptance). The Design-Builder shall provide the City with at least three days' written notice of any repetition of the Acceptance Test. Any capital investment, improvement or modification required to be made pursuant to this subsection and reasonably expected to result in a change to the Technical Specifications, shall be subject to the City's rights under Section 6.7 (Changes to the Technical Specifications at Design-Builder Request).

SECTION 8.5. EFFECT OF UNEXCUSED DELAY; EXTENSION PERIOD.

(A) Schedule for Completing the Design-Build Work. The Design-Builder shall achieve Acceptance by the Scheduled Acceptance Date, as such date may be extended in accordance with this Section. In the event one or more delays in the Design-Build Work caused by an Uncontrollable Circumstance or a Change Order, occurring during the Design-Build Period, the Scheduled Acceptance Date shall be the date determined by adding to the Scheduled Acceptance Date the aggregate number of days of delay in the performance of the Design-Build Work by the Design-Builder caused by such occurrence.

(B) Unexcused Delay. It is agreed that time is of the essence in the performance of the Design-Build Work. If Acceptance has not occurred on or before the Scheduled Acceptance Date, the Design-Builder shall be entitled to conduct or repeat the Acceptance Test as often as it desires in order to secure Acceptance of the Dewatering Facility during the Extension Period in accordance with Appendix 9 (Commissioning and Acceptance), subject to the City's right to terminate this Design-Build Contract in accordance with subsection (D) (Failure to Achieve Acceptance by End of Extension Period) of this Section.

During the Extension Period, the Design-Builder shall pay delay liquidated damages, as and to the extent provided in subsection (C) (Delay Liquidated Damages) of this Section.

(C) Delay Liquidated Damages. Subject to relief in accordance with the terms and conditions of this Design-Build Contract in the event of Uncontrollable Circumstances, if the Acceptance Date occurs subsequent to the Scheduled Acceptance Date, the Design-Builder shall pay to the City delay liquidated damages in the amount of [\$_____] **[NOTE: To be Finalized on the Definitive Contract Amendment Date]** per day for each day that the Acceptance Date falls after the Scheduled Acceptance Date, up to the end of the Extension Period and thereafter until any termination of this Design-Build Contract for an Event of Default.

(D) Option to Establish Acceptance Date at a Reduced Acceptance Standard. The Design-Builder shall have the option to establish the Acceptance Date notwithstanding the failure of the Dewatering Facility to meet the full Acceptance Standard if, at the end of the Extension Period, (1) the Design-Builder, in accordance with the procedures set forth in Section 8.4 (Concurrence or Disagreement with Test Results) hereof, certifies and calls for concurrence by the City that the Acceptance Tests have demonstrated that the Dewatering Facility meets or exceeds the Minimum Acceptance Standard, and the City concurs with such certificate, (2) all other conditions for Acceptance set forth in Section 8.3 (Acceptance Date Conditions) have been achieved and (3) the Design-Builder credits or pays the City the damages amount calculated pursuant to subsection 8.5(E) (Buydown Liquidated Damages).

(E) Buydown Liquidated Damages. To the extent that Acceptance was demonstrated only at a reduced Acceptance Standard, (i.e., the project met or exceeded the Minimum Acceptance Standards but not the Full Acceptance Standards) the Design-Builder shall pay the City damages in an amount calculated in accordance with Attachment 9E to Appendix 9 (Commissioning and Acceptance) (“Buydown Liquidated Damages”).

(F) Failure to Achieve Acceptance by End of Extension Period. If, as of the last day of the Extension Period, the Design-Builder has not achieved Acceptance at or above the Minimum Acceptance Standard in accordance with this Article, an Event of Default by the Design-Builder shall be deemed to have occurred under SECTION 13.2 (Events of Default by the Design-Builder), notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Design-Builder thereunder, and the City shall thereupon have the right to terminate this Design-Build Contract upon written notice to the Design-Builder. Upon any such termination, the City shall have all of the rights provided in ARTICLE 13 (Breach, Default, Remedies and Termination) upon a termination of this Design-Build Contract for cause.

SECTION 8.6. FINAL COMPLETION.

(A) Requirements. The Design-Builder shall achieve Final Completion within 120 days following the Acceptance Date. “Final Completion” shall be deemed to have occurred when all of the following conditions have been satisfied:

(1) Acceptance Achieved. The Design-Builder has achieved Acceptance of the Dewatering Facility in accordance with this Article, including full compliance with the Performance Guarantees;

(2) Design-Build Work Completed. All applicable Design-Build Work (including all repairs identified during or required due to the performance of Commissioning and Acceptance Test and all clean up and removal of construction materials, demolition debris and temporary facilities) and all other punch list items are complete and in all respects is in compliance with this Design-Build Contract;

(3) Design-Build Work Deliverable Material. The Design-Builder shall have delivered to the City all Design-Build Work Deliverable Material required by Section 6.10 (Design-Build Work Deliverable Material);

(4) Final Operations and Maintenance Manual. The Design-Builder shall have delivered to the City the final, approved Operations and Maintenance Manual in accordance with Section 6.18 (Operations and Maintenance Manual) and Appendix 5 (General Design-Build Work Requirements);

(5) Final Record Drawings and Specifications. The Design-Builder shall have delivered to the City a final and complete reproducible set of “as-built” construction record drawings and specifications, as required by Appendix 7 (Design-Build Work Review Procedures);

(6) Spare Parts In Storage. All spare parts required by the applicable Technical Specifications have been delivered and are in storage at the Dewatering Facility Site or other area designated by the City;

(7) Input into Asset Management Database. The Design-Builder shall have provided a complete list of all mechanical, electrical and instrumentation equipment incorporated into the Dewatering Facility and shall have submitted equipment data sheets in an electronic format compatible with the City’s asset management system in accordance with the requirements set forth in Appendix 4 (Technical Specifications);

(8) Consent of Surety. The Surety has consented to the release of final payment to the Design-Builder as provided in subsection 9.4(A) (Final Completion Payment Request);

(9) Payment of Claims. The Design-Builder has certified to the City that all of its claims against the City have been paid as provided in subsection 9.4(A) (Final Completion Payment Request); and

(10) Certification. The Design-Builder has submitted written certification that all of the foregoing conditions have been satisfied and the City has approved the Design-Builder’s certification, which approval shall be effective as of the date of the Design-Builder’s certification.

(B) Failure to Achieve Final Completion. The Design-Builder shall achieve Final Completion by the date specified in subsection (A) (Requirements) of this Section. If Final Completion has not been achieved by such date, an Event of Default by the Design-Builder shall be deemed to have occurred under SECTION 13.2 (Events of Default by the Design-Builder), notwithstanding any absence of notice, further cure opportunity or other procedural rights accorded the Design-Builder thereunder, and the City shall thereupon have the right to terminate this Design-Build Contract upon written notice to the Design-Builder. Upon any

such termination, the City shall have all of the rights provided in ARTICLE 13 (Breach, Default, Remedies and Termination) upon a termination of this Design-Build Contract for cause.

ARTICLE 9

COMPENSATION FOR DESIGN-BUILD WORK

SECTION 9.1. DESIGN-BUILD PRICE.

The City shall pay the Design-Builder the Design-Build Price for properly performed and completed Design-Build Work. The Design-Build Price and the components thereof are defined in Appendix 8 (Design-Build Price). The City's obligation to pay the Design-Build Price is subject to the Guaranteed Maximum Price and the terms and conditions of this Article and Appendix 8 (Design-Build Price). Except with respect to (1) payments of the Preliminary Services Fee in accordance with SECTION 5.3 (Compensation for Preliminary Services), and (2) Design-Build Work performed pursuant to an Early Work Package Amendment, the Design-Builder shall not be entitled to any compensation for costs or expenses incurred, or Design-Build Work performed, prior to the Definitive Contract Amendment Date. Any amount payable for Design-Build Work performed pursuant to an Early Work Package shall be part of the Design-Build Price and subject to the Guaranteed Maximum Price and all other terms and conditions of this Article and Appendix 8 (Design-Build Price).

SECTION 9.2. DESIGN-BUILD PRICE PAYMENT PROCEDURE.

(A) Progress Payments. The Design-Builder shall be paid the Design-Build Price on a progress payment basis in accordance with the Schedule of Values and the terms and conditions of this Section. The Design-Builder shall prepare and submit to the City for its approval preliminary and final drafts of the Schedule of Values in accordance with the Contract Standards. After the final Schedule of Values is accepted by the City, it shall be used to assist in the estimating of the value of the Design-Build Work performed for payment purposes. The Design-Builder shall not submit requests for progress payments of the Design-Build Price unless a final Schedule of Values has been approved.

(B) Payment Request. The Design-Builder shall be entitled to submit Payment Requests to the City on a monthly basis and to receive from the City the payments, which (1) shall be made on a percent complete basis in accordance with the Schedule of Values; (2) shall be subject to the Guaranteed Maximum Price limitations; and (3) shall be subject to the conditions to payment set forth in this Article. Each Payment Request shall be in a form reasonably acceptable to the City and must be accompanied by a monthly requisition report, which shall include:

- (1) a reasonably detailed description of all Design-Build Work actually completed to date;
- (2) revisions to the Design-Build Schedule, which shall reflect changes in the Design-Builder's cost loaded, critical path schedule since the date of the last Payment Request and any changes to the Schedule of Values;
- (3) a certificate of the Design-Build Manager and Design-Builder Contract Representative certifying (1) the portion of the Design-Build Price payable to the Design-Builder for completed Design-Build Work; (2) that the Design-Builder is neither in default under this Design-Build Contract nor in breach of any material provision of this Design-Build Contract such that the breach would, with the giving of notice or passage of time, constitute an Event of Default; and (3) that all items applicable to the Design-Build Work entitling the Design-Builder to the requested payment under the Schedule of Values have been completed in accordance therewith and with the Technical Specifications;

(4) notice of any Encumbrances which have been filed together with evidence that the Design-Builder has discharged any such Encumbrances or made timely notification to the Payment Bond Surety regarding such Encumbrances; and

(5) any other documents or information relating to the Design-Build Work or this Design-Build Contract reasonably requested by the City or the Owner's Advisor or as may be required by Applicable Law, this Design-Build Contract or generally accepted accounting practices or principles, including payrolls, receipts, invoices with check vouchers or other evidence of Design-Build Costs incurred which deems necessary to support the amount requested in the Payment Request.

The General Conditions Fee shall be shown as a separate line item on each Payment Request in accordance with Appendix 8 (Design-Build Price). In determining the percentage of completion of the Design-Build Work, the parties shall use the lesser of the percentage of the Design-Build Work actually completed for each classification on the Schedule of Values or the percentage of the Guaranteed Maximum Price allocable to that item which has been actually incurred and demonstrated as a Design-Build Cost by the Design-Builder. The Design-Builder Fee shall also be shown as a separate line item on each Payment Request. The Design-Builder shall identify the dollar amount of the total expected Design-Builder Fee in each Payment Request based on the total expected Design-Build Costs, including a breakout between work self-performed and the work subcontracted, to which the Design-Builder Fee applies in accordance with Appendix 8 (Design-Build Price). The amount requested for the Design-Builder Fee in each Payment Request shall be in the same proportion to the total expected Design-Builder Fee as the amount requested for the applicable Design-Build Costs bears to the total expected Design-Build Costs to which the Design-Builder Fee applies, subject to the Guaranteed Maximum Price.

(C) Review and Payment. Prior to submitting a Payment Request for the Design-Build Price to the City, the Design-Builder shall submit a draft Payment Request to the City, including all information required pursuant to this Section. The City shall have no fewer than 10 days to review each draft Payment Request. Within such 10-day period, the City shall verify or dispute in writing (or by telecommunication promptly confirmed in writing) the Design-Builder's certification that the Design-Builder has achieved the level of progress indicated and is entitled to payment. If the City determines that the Design-Build Work has progressed as indicated in the draft Payment Request, the City shall notify the Design-Builder, and the Design-Builder shall submit a final, certified Payment Request to the City, which may not contain any material change from the draft Payment Request reviewed by the City. The City shall pay the Design-Builder the requisitioned amount included in the final, certified Payment Request within 30 days following receipt, subject to the City's rights to withhold payments under SECTION 9.3 (Permissible Withholdings). Disputes regarding payments of the Design-Build Price shall be resolved in accordance with subsection (D) (Payment Dispute Procedures) of this Section. Any undisputed amounts of the Design-Build Price shall be paid within 30 days after receipt of the Design-Builder's final, certified Payment Request.

(D) Payment Dispute Procedures. If the City determines, pursuant to subsection (C) (Review and Payment) of this Section, that the Design-Build Work required for any payment has not progressed as indicated by the Design-Builder in the draft Payment Request, or otherwise disputes any draft Payment Request, the City shall provide prompt written notice to the Design-Builder as to the City's reasons, in reasonable detail, for such determination or the basis for such dispute. After receiving such determination notice, the Design-Builder may make the necessary corrections and resubmit a draft Payment Request to the City, or the City may agree on a revised amount or draft Payment Request, as applicable, in

which case the Design-Builder shall promptly notify the City of such agreement and submit a final, certified Payment Request to the City as to any undisputed amount. If the Design-Builder is unable to reach agreement with the City as to the progress of the Design-Build Work and the draft Payment Request, the Design-Builder may exercise its right to contest the City's determination in accordance with the dispute resolution procedures set forth in ARTICLE 12 (Dispute Resolution). Any proceedings undertaken to resolve a dispute arising under this subsection shall immediately terminate if (1) the Design-Builder demonstrates to the City that the Design-Build Work has progressed as indicated in the draft Payment Request giving rise to the dispute and that the disputed draft Payment Request is correct, and (2) the City concurs with such demonstration. The Design-Builder shall not be entitled to payment of the amount so requisitioned and disputed except upon resolution of the dispute in accordance with this subsection; provided, however, that the City shall pay all requisitioned amounts which are not in dispute in accordance with subsection (C) (Review and Payment) of this Section. In the event that upon resolution of any such dispute, it is determined that the Design-Builder was properly entitled to the disputed amount as of a date earlier than the date on which payment is actually made, the Design-Builder shall be entitled to receive, promptly following such resolution, such disputed amount plus interest on such disputed amount as and to the extent provided under Applicable Law.

(E) Retainage. Each Design-Build Price payment will be subject to a 5% retainage holdback. Pursuant to Section 22300 of the California Public Contract Code, the Design-Builder shall have the option to request in writing that the City make payments of all retained funds directly to an escrow agent, or to deposit securities valued in an amount equal to 5% of each Design-Build Price payment with an escrow agent or the City as a substitute for retained funds. The parties acknowledge that a "retainage bond" shall not constitute "securities" for purposes of the preceding sentence. The City shall release to the Design-Builder or the escrow agent, as applicable, all of the accumulated funds retained from all prior drawdown payments or the escrow agent shall release all of the securities deposited with the escrow agent upon Final Completion in accordance with SECTION 9.4 (Payment upon Final Completion). The Design-Builder acknowledges and agrees that the performance of the Design-Build Work and the Warranty Work under this Design-Build Contract is not complete until the expiration of the Warranty Period. In the event the Design-Builder deposits securities in lieu of retained funds or requests that the City make payments of all retained funds to an escrow agent, the Design-Builder shall be responsible for paying all fees incurred by the escrow agent. Any interest earned on the retainage held by the City shall be for the City's benefit only. Any interest earned on securities or retained funds held in escrow pursuant to Section 22300 of the California Public Contract Code shall be for the Design-Builder's benefit only.

(F) Cost Control and Reporting. The Design-Builder shall develop and monitor an effective system of Design-Build Work cost control, which system shall be disclosed to and reviewed and approved by the City and the Owner's Advisor. The Design-Builder shall develop cash flow reports and forecasts as reasonably requested or required by the City and the Owner's Advisor, including a good faith calendar quarterly estimate of payments of the Design-Build Price throughout the Design-Build Period, specifying the range of minimum and maximum monthly payments, which shall not exceed the Guaranteed Maximum Price or any line item on the Schedule of Values. The Design-Builder shall promptly (within seven days) after acquiring such information, identify and report to the City and the Owner's Advisor all variances between estimated costs and actual costs of the Design-Build Work, including any proposed corrective action to be taken by the Design-Builder.

(G) Certification of Amounts Due. Whenever requested by the City or the Owner's Advisor, the Design-Builder shall submit a sworn statement certifying all amounts then due (or yet to become due) the Design-Builder for the Design-Build Work (or any portion

thereof) and describing any payment or other dispute which may exist between the Design-Builder and any Subcontractor.

SECTION 9.3. PERMISSIBLE WITHHOLDINGS.

In addition to the amounts required to be retained pursuant to subsection 9.2(E) (Retainage), the City may disapprove and withhold and retain all or any portion of any payment requested in any Payment Request for Design-Build Work in an amount equal to the sum of:

- (1) any liquidated damages or reimbursement payments which are due and owing to the City hereunder;
- (2) any indemnification amounts which are due and owing to the City hereunder and with respect to which a claim has been filed against a City Indemnitee by a third party in accordance with Applicable Law;
- (3) any amount determined pursuant to subsection 14.1(D) (Failure to Provide Insurance Coverage) of Appendix 12 (Insurance Requirements);
- (4) any other deductions which are required by Applicable Law;
- (5) any payments with respect to which documents to be delivered in connection therewith are not correct and complete;
- (6) any payments with respect to which the Design-Build Work covered by such Payment Request (or any previous Payment Request) does not comply with this Design-Build Contract;
- (7) damage to the work of a Separate Contractor to the extent caused by the Design-Builder or any Subcontractor;
- (8) any payments with respect to which any person has filed a Lien resulting from the acts or omissions of the Design-Builder in performing the Design-Build Work and such Lien remains unreleased or unbonded;
- (9) all requisitioned payments if an Event of Default of the Design-Builder has occurred under SECTION 13.2 (Events of Default by the Design-Builder); and
- (10) in the event the Design-Builder fails to pay any Taxes, assessments, penalties or fees imposed by any Governmental Body, then the Design-Builder authorizes the City to deduct and withhold or pay over to the appropriate Governmental Body those unpaid amounts upon demand by the Governmental Body.

In addition, the City may withhold payment for persistent and uncured Design-Builder noncompliance with the administrative provisions of this Design-Build Contract, including failure to electronically submit monthly Subcontractor payment information. In the event of any permissible withholding under this Section, the City shall notify the Design-Builder in writing at least seven days prior to the date payment is otherwise due. The notice shall indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Design-Builder must take to rectify the City's concerns. Any dispute associated with any such withholding shall be handled in accordance with subsection 9.2(D) (Payment Dispute Procedures).

SECTION 9.4. PAYMENT UPON FINAL COMPLETION.

(A) Final Completion Payment Request. In connection with the achievement of Final Completion in accordance with SECTION 8.6 (Final Completion), the Design-Builder shall prepare and submit to the City and the Owner’s Advisor a Final Completion Payment Request. The Final Completion Payment Request shall enclose:

(1) A notarized affidavit in duplicate stating under oath that all Subcontractors, vendors, and other persons or firms who have furnished or performed labor or furnished materials for the Design-Build Work have been fully paid or satisfactorily secured;

(2) A certificate of the Surety for both the Performance Bond and the Payment Bond certifying that the Surety consents to payment for Final Completion and agrees that such payment shall not relieve the Surety of any of its obligations under the Performance Bond or the Payment Bond;

(3) A general release executed by the Design-Builder waiving, upon receipt of payment for Final Completion, all claims arising out of or resulting from the Design-Build Work, except those claims made in writing to the City and remaining unsettled at the time of such payment, which claims shall be specifically listed in an attachment to the general release, identifying the claimant and the nature of the claim; and

(4) Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of this Design-Build Contract.

(B) Final Completion Payment. If based on the Owner’s Advisor’s (1) observation of the Design-Build Work, (2) final inspection, and (3) review of the Final Completion Payment Request and other documents required by subsections (A) (Final Completion Payment Request) and (C) (Final Determination and Approval of Design-Build Price) of this Section and SECTION 8.6 (Final Completion), the Owner’s Advisor is satisfied that the conditions for Final Completion have been achieved, the Owner’s Advisor shall, within 15 days after receipt of the Final Completion Payment Request, furnish to the City and the Design-Builder the Owner’s Advisor’s recommendation of payment for Final Completion. If the Owner’s Advisor is not satisfied, the Owner’s Advisor shall return the Final Completion Payment Request to the Design-Builder, indicating in writing the reasons for not recommending payment, in which case the Design-Builder shall either (1) exercise its right to contest the Owner’s Advisor’s determination in accordance with subsection 9.2(D) (Payment Dispute Procedures), or (2) make the necessary corrections and resubmit the Final Completion Payment Request.

(1) City Concurrence. If the City concurs with the Owner’s Advisor’s recommendation of payment for Final Completion, the City shall, within 15 days, file a written notice of Final Completion and notify the Design-Builder of such concurrence. As soon as reasonably practicable (but in no event later than 45 days after the City’s original receipt of the Design-Builder’s Final Completion Payment Request, subject to the City’s right to dispute payment in accordance with this Design-Build Contract and Applicable Law) after filing such notice, the City shall pay to the Design-Builder the balance of the Design-Build Price, subject to any withholdings and any other provisions governing final payment specified herein.

(2) City Non-Concurrence. If the City does not concur with the Owner’s Advisor’s determination, the City shall return the Payment Request to the Design-Builder, indicating in writing its reasons for refusing payment for Final Completion. The Design-Builder shall promptly make the necessary corrections and resubmit the Payment Request to the City and the Owner’s Advisor. The City’s written determination shall bind the Design-Builder, unless the Design-Builder delivers to the City written notice of a claim within 30 days after receipt of the City’s determination.

Payment for Final Completion does not constitute a waiver by the City of any rights relating to the Design-Builder’s obligations under this Design-Build Contract. Except as specifically provided in subsection (A) (Final Completion Payment Request) of this Section with respect to exceptions taken in the Design-Builder’s general release, payment for Final Completion constitutes a waiver of all claims by the Design-Builder against the City, including all claims associated with Uncontrollable Circumstances, relating to the Design-Build Work, the payment of the Design-Build Costs or otherwise in connection with the Design-Build Period.

(C) Final Determination and Approval of Design-Build Price. Notwithstanding any of the foregoing, the City shall have no obligation to make payment for Final Completion hereunder until a final accounting of the Design-Build Costs has been submitted by the Design-Builder and has been verified by the City and the Owner’s Advisor. Such accounting shall be provided by the Design-Builder in connection with the Final Completion Payment Request. The aggregate total of payments to the Design-Builder with respect to the Design-Build Price (including amounts retained pursuant to subsection 9.2(E) (Retainage)) shall not exceed the total of the actual Design-Build Costs, as verified by the City and the Owner’s Advisor from the Design-Builder’s final accounting, plus the Design-Builder Fee and the General Conditions Fee, which together shall not exceed the Guaranteed Maximum Price. If payments to the Design-Builder exceed that which is due and owing the Design-Builder pursuant to this Article, the Design-Builder shall promptly refund the excess to the City. The Design-Builder acknowledges and agrees that the City shall have the right to withhold and retain amounts from payment for Final Completion in accordance with SECTION 9.3 (Permissible Withholdings).

(D) Completion of Design-Build Work. Notwithstanding payment for Final Completion pursuant to this Section, the Design-Builder acknowledges and agrees that the performance of the Design-Build Work is not complete until the expiration of the Warranty Period, and that the Design-Builder shall have the continuing obligation to perform Warranty Work pursuant to the terms and conditions of ARTICLE 10 (Project Warranties) until the expiration of the Warranty Period. Final payment of any amount retained by the City as of the expiration of the Warranty Period shall be made in accordance with and subject to the terms and conditions of subsection 9.2(E) (Retainage). To the extent the Design-Builder is entitled to payment in accordance with subsection 9.2(E) (Retainage) upon expiration of the Warranty Period, the Design-Builder shall provide the City with a final Payment Request in a form reasonably acceptable to the City, and the City shall pay the amount due within 30 days following receipt of the final Payment Request.

SECTION 9.5. NO ACCEPTANCE, WAIVER OR RELEASE.

Unless other provisions of this Design-Build Contract specifically provide to the contrary, none of the following, without limitation, shall be construed as (i) the City’s acceptance of any Design-Build Work which is defective, incomplete, or otherwise not in compliance with this Design-Build Contract, (ii) the City’s release of the Design-Builder from any obligation under this Design-Build Contract, (iii) the City’s extension of the Design-

Builder’s time for performance, (iv) an estoppel against the City, or (v) the City’s acceptance of any claim by the Design-Builder:

- (1) the City’s payment to the Design-Builder or any other person with respect to performance of the Design-Build Work;
- (2) the review, consent, approval or acceptance, as applicable, of any submissions, permit applications, punch lists, other documents, certifications, or Design-Build Work of the Design-Builder or any Subcontractor by the City, the Owner’s Advisor or any other person;
- (3) the review of (or failure to prohibit) any construction applications, means, methods, techniques, sequences, or procedures for the Design-Build Work by the City, the Owner’s Advisor or any other person;
- (4) the entry at any time on the Project Site (including any area in which the Design-Build Work is being performed) by the City, the Owner’s Advisor or any other person;
- (5) any observation, inspection or testing of (or failure to observe, inspect or test) any Design-Build Work (whether finished or in progress) by the City, the Owner’s Advisor or any other person;
- (6) the failure of the City, the Owner’s Advisor or any other person to respond in writing to any notice or other communication of the Design-Builder; or
- (7) any other exercise of rights or failure to exercise rights by the City hereunder.

ARTICLE 10

PROJECT WARRANTIES

SECTION 10.1. PROJECT WARRANTIES.

(A) Project Warranties Defined. The Design-Builder warrants to the City that the Design-Build Work, including all completed materials, equipment and structures comprising the Dewatering Facility, shall (1) be new, of recent manufacture and of good quality; (2) conform to the requirements of this Design-Build Contract; (3) be free of faults or defects, including design defects; and (4) be suitable for its intended purposes, as established by the Technical Specifications (the “Project Warranties”). The Project Warranties are further subject to the following:

(1) Inclusions. The Project Warranties include remedy for damage or defect caused by (a) Commissioning and Acceptance Test performed by the Design-Builder; and (b) any defects or errors in the Operations and Maintenance Manual prepared by the Design-Builder pursuant to this Design-Build Contract.

(2) Exclusions. The Project Warranties exclude remedy for damage or defect caused by capital modifications not undertaken or executed by the Design-Builder under this Design-Build Contract. In addition, except as provided in Item (1), above, the Project Warranties exclude remedy for damage or defect caused by improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

(B) Term of the Project Warranties. The Project Warranties set forth in this Article shall be in full force and effect for the period of time beginning on the Acceptance Date and, subject to subsection 10.2(D) (Extension of Warranties), continuing for one year following the Acceptance Date (the “Warranty Period”). The term of the Warranty Period shall not, however, operate in any manner to limit the Design-Builder’s Transition Period or Performance Period obligations or Performance Guarantees.

SECTION 10.2. WARRANTY WORK.

(A) “Call-Back” Obligations. If, at any time during the Warranty Period, the Dewatering Facility or any of the Design-Build Work is found to be malfunctioning, defective or otherwise not in accordance with the requirements of the Project Warranties, the Design-Builder shall correct the condition promptly after receipt of written notice from the City to do so. The City shall provide such notice promptly after discovery of the condition. The Design-Builder shall respond to critical or emergency service calls from the City within four hours and to non-critical or non-emergency calls within eight hours. Such response shall require that a competent representative or representatives of the Design-Builder familiar with the Project, including its specific equipment, design and operational requirements, inspect the Dewatering Facility and, while on site, either correct the problem or initiate a course of action that will fully correct the problem within a reasonable period of time in accordance with Good Engineering and Construction Practice and the specific requirements of this subsection. In critical or emergency situations, the time period for correction shall not exceed six hours after the on-site inspection, and, for non-emergencies, the time period for correction shall not exceed seven days; provided, however, that if such time periods are not practicable in accordance with Good Engineering and Construction Practice, then the time period for correction shall be the minimum amount of time required in accordance with Good Engineering and Construction Practice.

(B) Right of the City to Proceed with Corrective Action; Design-Builder Liability. If the Design-Builder fails to commence and complete the steps set forth in

subsection (A) (“Call-Back” Obligations) of this Section within the required time frames, in addition to any other remedies provided under this Design-Build Contract, the Security Instruments or Applicable Law, the City may commence and complete the correction of such nonconforming Design-Build Work with its own forces or with third party contractors. If the City does perform such corrective work, the Design-Builder shall be responsible for all costs reasonably incurred in performing such correction, subject to Cost Substantiation in accordance with this Design-Build Contract.

(C) No Period of Limitation on Other Obligations. Nothing contained in this Section shall be construed to establish a period of limitation with respect to other obligations that the Design-Builder has under this Design-Build Contract or under Applicable Law with respect to the Design-Build Work, including warranties and obligations with respect to latent defects. The Warranty Period relates only to the specific obligations of the Design-Builder to respond to notices from the City under the Project Warranties, and has no relationship to the time within which the obligation of the Design-Builder to comply with this Design-Build Contract may be enforced, nor the time within which proceedings may be commenced to establish the Design-Builder’s liability with respect to its obligations under this Design-Build Contract.

(D) Extension of Warranties. The “call-back” obligations set forth in this Section shall apply to all Design-Build Work re-done or corrected pursuant to this Design-Build Contract. The “call-back” obligations for re-done or corrected elements of the Design-Build Work shall extend beyond the Warranty Period, if necessary, to provide a one-year period following acceptance by the City of such re-done or corrected Design-Build Work; provided, however, that in no event shall such “call-back” obligations extend beyond one year following the expiration of the Warranty Period.

(E) Manufacturers’ Warranties. During the Warranty Period, the Design-Builder (or the City) shall be permitted to enforce all warranties provided by manufacturers, suppliers and other third parties with respect to the Design-Build Work. However, as provided in subsection 10.4(A) (Manufacturers’ Warranties Generally), no such warranty shall relieve the Design-Builder of any obligation with respect to the Project Warranties.

(F) Performance of Warranty Work. The Design-Builder acknowledges that time is of the essence in the performance of all Warranty Work required under this Section in light of the Dewatering Facility’s essential public purpose. Accordingly, all Warranty Work shall be performed in accordance with the Contract Standards and, without limiting any of the specific time requirements set forth in subsection (A) (“Call-Back” Obligations) of this Section, within the minimum amount of time required in accordance with Good Engineering and Construction Practice. The Design-Builder shall perform or cause to be performed all Warranty Work performed under this Section in a manner that will minimize interference with the ongoing operations of the Dewatering Facility and the Regional Wastewater Facility. The Design-Builder shall provide a written plan for all proposed Warranty Work (unless expressly waived by the City).

(G) Responsibility for Costs. The Design-Builder shall be fully responsible for the costs associated with all Warranty Work (which costs shall constitute Design-Build Costs, subject to the Guaranteed Maximum Price), and shall reimburse the City for its costs resulting from a breach of the Project Warranties, subject to the terms and conditions of this Design-Build Contract.

SECTION 10.3. PROJECT WARRANTIES NOT EXCLUSIVE.

The Design-Builder acknowledges and agrees that the Project Warranties are in addition to, and not in limitation of, any other warranties, rights and remedies available under his Design-Build Contract or Applicable Law, and shall not limit the Design-Builder's liability or responsibility imposed by this Design-Build Contract or Applicable Law with respect to the Design-Build Work, including liability for design defects, latent construction defects, strict liability, negligence or fraud.

SECTION 10.4. MANUFACTURERS' WARRANTIES.

(A) Manufacturers' Warranties Generally. Without limiting any of the Project Warranties, the Design-Builder shall, for the protection of the City, obtain from all Subcontractors, vendors, suppliers and other persons from which the Design-Builder procures structures, improvements, fixtures, machinery, equipment and materials such warranties and guarantees as are normally provided with respect thereto and as may be specifically required by the Contract Standards, each of which is hereby assigned to the City to the full extent of the terms thereof. No such warranty or guarantee shall relieve the Design-Builder of any obligation hereunder, and no failure of any warranted or guaranteed structures, improvements, fixtures, machinery, equipment or material shall be the cause for any increase in the Guaranteed Maximum Price or otherwise excuse the Design-Builder from the performance of any Design-Build Work or Warranty Work obligations, unless such failure is itself attributable to an Uncontrollable Circumstance.

(B) No Limitation on Third Party Warranties. Nothing in this Design-Build Contract is intended to limit any third party warranty that provides the City with greater warranty rights than those provided under the Project Warranties, as set forth in this Design-Build Contract.

ARTICLE 11

TRANSITION PERIOD

SECTION 11.1. TRANSITION SERVICES. The Design-Builder shall, following the Acceptance Date, provide Transition Services described in Appendix 11 (Transition Services). These services generally consist of monitoring and advising on the City's operations and maintenance of the Dewatering Facility and assisting the City in training City staff. **[NOTE: If any Transition Services are requested by the City and agreed to by the Design-Builder, the Transition Services provisions will be developed with the Definitive Contract Amendment, and finalized and incorporated on the Definitive Contract Amendment Date].**

SECTION 11.2. COMPENSATION FOR TRANSITION SERVICES.

(A) Transition Services Fee. The Design-Builder shall be entitled to receive the fixed sum of [\$_____] **[NOTE: To be Finalized on the Definitive Contract Amendment Date]** (the "Transition Services Fee") as total compensation for the performance of the Transition Services. The Design-Builder agrees that the Transition Services Fee shall be the Design-Builder's entire compensation and reimbursement for the performance of the Transition Services, inclusive of all costs, expenses and disbursements paid or incurred by the Design-Builder, as well as all overhead, administration, risk and profit. The Design-Builder shall not be entitled to any payment in excess of the Transition Services Fee, notwithstanding any cost overruns the Design-Builder may incur.

(B) Payment Procedures. The Transition Services Fee shall be payable on a monthly, pro-rata basis for Transition Services performed during the Transition Period. The amount payable each month shall be on account of Transition Services rendered during the prior month. The Design-Builder shall provide the City with a Payment Request in a form reasonably acceptable to the City by the fifteenth day of each month, which shall state the amount payable for the month and the total amount paid against the Transition Services Fee through the date of the Payment Request, along with a monthly Transition Period report and such other information or documentation as the City may reasonably require. The City shall pay the amount due in accordance with this Section within 30 days following receipt of the Payment Request. The Transition Services Fee is not included in the Design-Build Price and is not subject to retainage holdback; provided, however, that the City shall have the right to withhold payment for Transition Services that are not performed in accordance with the Contract Standards and otherwise as provided in SECTION 9.3 (Permissible Withholdings). The City shall not be required to make any payment to the Design-Builder at any time the Design-Builder is in breach or default under this Design-Build Contract.

SECTION 11.3. LABOR AND WAGE REQUIREMENTS.

The Design-Builder acknowledges that the prevailing wage and related requirements of the California Labor Code apply to "maintenance work" as defined at California Code of Regulations Title 8, Section 16000 and that the Transition Services include or may include such maintenance work. Therefore, the Design-Builder shall comply with the Labor Code provisions concerning payment of prevailing wage rates, penalties, and retention of payroll records, and related requirements with regard to any employees performing maintenance work as part of the Transition Services, as may be required by Labor Code section 1771 and California Code of Regulations title 8, chapter 8, subchapter 3.

SECTION 11.4. POST-ACCEPTANCE PERFORMANCE TESTS.

The Design-Builder as part of the Definitive Project Submittal will prepare and submit to the City a proposed plan for conducting Post-Acceptance Performance Tests during the Performance Period as provided in Appendix 10 (Post-Acceptance Performance Tests) that the City deems necessary. The City shall indicate to the Design-Builder whether the proposed plan is acceptable in terms of testing procedures and dates for completion, and if not acceptable, what changes the City requires. The Design-Builder shall revise its plan to meet City requirements, conduct such Post-Acceptance Performance Tests accordingly, and comply with the performance standards set forth therein. **[NOTE: The provisions pertaining to the Post-Acceptance Performance Tests will be developed with the Definitive Contract Amendment, and finalized and incorporated on the Definitive Contract Amendment Date if the City requires performance Tests during the Transition Period.]**

SECTION 11.5. PAYMENT FOR POST-ACCEPTANCE PERFORMANCE TESTS.

[NOTE: The provisions pertaining to payment for Post-Acceptance Performance Tests will be developed with the Definitive Contract Amendment, and finalized and incorporated on the Definitive Contract Amendment Date if the City requires performance Tests during the Transition Period.]

SECTION 11.6. COMPLIANCE WITH PERFORMANCE GUARANTEES DURING THE TRANSITION PERIOD.

(A) General. The Design-Builder guarantees that the Project shall meet the Performance Guarantees set forth in Appendix 9 (Commissioning and Acceptance) during the Transition Period. **[NOTE: The provisions pertaining to payment for the Performance Guarantees during the Transition Period will be developed with the Definitive Contract Amendment and finalized and incorporated on the Definitive Contract Amendment Date.]**

(B) Relief from Performance Guarantees. The Design-Builder shall be provided relief from the requirement that the Project meet the Performance Guarantees during the Transition Period in the event any failure to meet the Performance Guarantees is due to (1) the failure of the City to operate and maintain the Project in accordance with the Operation and Maintenance Manual, or (2) the City's negligence or willful misconduct; provided, however, that the Design-Builder shall not be provided relief to the extent that any such City failure to properly operate or maintain the Project is attributable to any errors or defects in the Operation and Maintenance Manual prepared by the Design-Builder or (3) Uncontrollable Circumstances.

(C) City Remedies for Noncompliance with Performance Guarantees. In the event the Project fails to meet the Performance Guarantees during the Transition Period, except if such failure is directly due to a reason set forth in subsection (B) (Relief from Performance Guarantees) of this Section, the Design-Builder shall, without relief under any other warranty, or under any other remedy provided herein, allowed by Applicable Law or required by a Governmental Body:

- (1) pay any resulting damages, fines, levies, assessments, impositions, penalties or other charges resulting therefrom; and
- (2) take any action (including making all repairs and replacements and performing additional training) necessary in order to comply with the Performance Guarantees, and eliminate the cause of, and avoid or prevent recurrences of, non-

compliance with the Performance Guarantees. Failure by the Design-Builder to comply with its obligations under this Section shall be deemed to be a material breach of this Design-Build Contract. **[NOTE: The provisions in this Section pertaining to Performance Guarantees will be developed with the Definitive Contract Amendment, and finalized and incorporated on the Definitive Contract Amendment Date if the City requires performance Tests during the Transition Period.]**

ARTICLE 12

DISPUTE RESOLUTION

SECTION 12.1. FORUM FOR DISPUTE RESOLUTION.

It is the express intention of the parties that all Legal Proceedings related to this Design-Build Contract or to the Project or to any rights or any relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State or federal courts located in the County of Santa Clara, California. The Design-Builder and the City each irrevocably consents to the jurisdiction of such courts in any such Legal Proceeding and waives any objection it may have to the laying of the jurisdiction of any such Legal Proceeding.

SECTION 12.2. NON-BINDING MEDIATION.

(A) Rights to Request and Decline. Either party may request Non-Binding Mediation of any dispute arising under this Design-Build Contract. The non-requesting party may decline the request in its discretion. If there is concurrence that any particular matter shall be mediated, the provisions of this Section shall apply. The costs of the Mediator shall be divided equally between the City and the Design-Builder.

(B) Procedure. The Mediator shall be a professional mutually acceptable to the parties who has no current or on-going relationship to either party. The Mediator shall have full discretion as to the conduct of the mediation. Each party shall participate in the Mediator's program to resolve the dispute until and unless the parties reach agreement with respect to the disputed matter or one party determines in its discretion that its interests are not being served by the mediation.

(C) Non-Binding Effect. Mediation is intended to assist the parties in resolving disputes over the correct interpretation of this Design-Build Contract. No Mediator shall be empowered to render a binding decision.

(D) Relation to Judicial Legal Proceedings. Nothing in this Section shall operate to limit, interfere with or delay the right of either party under this Article to commence judicial Legal Proceedings upon a breach of this Design-Build Contract by the other party, whether in lieu of, concurrently with, or at the conclusion of any Non-Binding Mediation.

SECTION 12.3. CONTINUANCE OF PERFORMANCE DURING DISPUTE.

Unless otherwise directed in writing by the City, at all times during the course of any dispute resolution procedure or Legal Proceeding, the Design-Builder shall continue with the performance of the Contract Services in a diligent manner and in accordance with the applicable provisions of this Design-Build Contract. The City shall continue to satisfy its uncontested payment obligations to the Design-Builder during the pendency of any such dispute, subject to the terms and conditions of this Design-Build Contract. Records of the Contract Services performed during such time shall be kept in accordance with the applicable provisions of this Design-Build Contract.

ARTICLE 13

BREACH, DEFAULT, REMEDIES AND TERMINATION

SECTION 13.1. REMEDIES FOR BREACH.

(A) Generally. The parties agree that in the event that either party breaches this Design-Build Contract, the other party may exercise any legal rights it may have under this Design-Build Contract and under Applicable Law to recover damages or to secure specific performance, and that such rights to recover damages and to secure specific performance shall ordinarily constitute adequate remedies for any such breach. Neither party shall have the right to terminate this Design-Build Contract except as expressly provided in this Article.

(B) No Effect On Contract Obligations. The exercise by the City of any of its rights under this Article shall not reduce or affect in any way the Design-Builder's responsibility hereunder to perform the Contract Obligations.

(C) Waiver of Remedies. No failure to exercise, and no delay in exercising, any right or remedy under this Design-Build Contract will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Design-Build Contract will be deemed to be a waiver of any subsequent breach of that provision or of any similar provision.

(D) Exercise of Remedies. The rights and remedies of the parties under this Design-Build Contract are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise. A party will not be prevented from enforcing a right or remedy on the basis that another right or remedy hereunder deals with the same or similar subject matter. No single or partial exercise by a party of any right or remedy precludes or otherwise affects the exercise of any other right or remedy to which that party may be entitled.

(E) No Duplicative Recovery or Claims Outside Contract. Every right to claim compensation, indemnification or reimbursement under this Design-Build Contract shall be construed so that recovery is without duplication to any other amount recoverable under this Design-Build Contract. Neither party shall be entitled to make any claim against the other party for compensation, indemnification or reimbursement other than as provided under this Design-Build Contract.

SECTION 13.2. EVENTS OF DEFAULT BY THE DESIGN-BUILDER.

(A) Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination. Each of the following shall constitute an Event of Default by the Design-Builder upon which the City, by notice to the Design-Builder, may terminate this Design-Build Contract without any requirement of having given notice previously or of providing any further cure opportunity:

(1) Failure to Achieve Acceptance. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Acceptance prior to the end of the Extension Period;

(2) Failure to Achieve Final Completion. Except to the extent excused due to the occurrence of Uncontrollable Circumstances, the failure of the Design-Builder to achieve Final Completion by the date set forth in SECTION 8.6 (Final Completion);

(3) Security for Performance. The failure of the Design-Builder to obtain and maintain in full force and effect in accordance with the requirements of this Design-Build Contract any Security Instrument required by ARTICLE 17 (Security for Performance) as security for the performance of this Design-Build Contract;

(4) Insolvency. The insolvency of the Design-Builder or the Guarantor, as determined under the Bankruptcy Code;

(5) Voluntary Bankruptcy. The filing by the Design-Builder or the Guarantor of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Design-Builder or the Guarantor to the filing of any bankruptcy or reorganization petition against the Design-Builder or the Guarantor under the Bankruptcy Code; or the filing by the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code; or

(6) Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Design-Builder or the Guarantor or of a major part of the property of the Design-Builder or the Guarantor, or the filing against the Design-Builder or the Guarantor of a petition to reorganize the Design-Builder or the Guarantor pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within 90 days after such issuance or filing.

(B) Events of Default Requiring Previous Notice and Cure Opportunity for Termination. It shall be an Event of Default by the Design-Builder upon which the City may terminate this Design-Build Contract, by notice to the Design-Builder and subject to the Design-Builder's cure rights set forth in subsection (C) (Notice and Cure Opportunity) of this Section, if:

(1) Any representation or warranty of the Design-Builder hereunder was false or inaccurate in any material respect when made, and the legality of this Design-Build Contract or the ability of the Design-Builder to carry out its obligations hereunder is thereby materially and adversely affected;

(2) The Design-Builder fails, refuses or otherwise defaults in its duty to pay any amount required to be paid to the City under this Design-Build Contract within 60 days following the due date for such payment;

(3) The Design-Builder suspends, ceases, stops or abandons the Design-Build Work or fails to continuously and diligently prosecute the Design-Build Work, exclusive of work stoppages due to an Uncontrollable Circumstance;

(4) The Design-Builder fails to resume performance of the Design-Build Work which has been suspended or stopped within a reasonable time after receipt of notice from the City to do so or (if applicable) after cessation of the event preventing performance;

(5) The Design-Builder fails materially to comply with any Applicable Law or fails unreasonably to comply with the instructions of the City consistent with the Design-Build Contract;

(6) The Design-Builder assigns or transfers (or attempts to assign or transfer) the Design-Build Contract or any right or interest therein without the City's prior written consent; or

(7) The Design-Builder otherwise fails to perform any other material obligation under this Design-Build Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein).

(C) Notice and Cure Opportunity. The Design-Builder acknowledges that the City has an immediate termination right upon the occurrence of any of the defaults listed in subsection (A) (Events of Default Not Requiring Previous Notice or Cure Opportunity for Termination) of this Section and that the Design-Builder has no further right of notice or cure in such circumstances of default. Conversely, no default listed in subsection (B) (Events of Default Requiring Previous Notice and Cure Opportunity for Termination) of this Section shall constitute an Event of Default giving the City the right to terminate this Design-Build Contract for cause under this Section unless:

(1) The City has given prior written notice to the Design-Builder stating that a specified default has occurred which gives the City a right to terminate this Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The Design-Builder has not initiated within a reasonable time (in any event not more than 20 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the Design-Builder shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the Design-Builder shall continue with due diligence to carry out to completion all such actions.

(D) Other Remedies Upon Design-Builder Event of Default. The right of termination provided under this Section upon an Event of Default by the Design-Builder is not exclusive. If this Design-Build Contract is terminated by the City for an Event of Default by the Design-Builder, the City shall have the right to pursue a cause of action for actual damages and to exercise all other remedies which are available to it under this Design-Build Contract, under the Security Instruments and under Applicable Law. The Design-Builder shall not be entitled to any compensation for services provided subsequent to receiving any notice of termination for an Event of Default under this Section.

(E) Relationship to Liquidated Damages. Termination by the City pursuant to this Section shall not relieve the Design-Builder or its Surety from liability for the liquidated damages provided for under this Design-Build Contract. The parties acknowledge and agree that such liquidated damages are intended solely to compensate the City for costs and expenses associated with unexcused delay or non-performance in the specific circumstances identified in the specific provisions providing for such liquidated damages and are not intended to liquidate all damages that the City is likely to suffer in the event of a Design-Builder Event of Default under this Article. Accordingly, except with respect to damages relating solely to the specific circumstances of unexcused delay or non-performance for which liquidated damages are provided under this Design-Build Contract, the payment of any such liquidated damages

by the Design-Builder shall not serve to limit or otherwise affect the City’s right to pursue and recover damages under subsection (D) (Other Remedies upon Design-Builder Event of Default) of this Section.

SECTION 13.3. LIMITATION ON DESIGN-BUILDER LIABILITY.

(A) Design-Builder Liability Limit. Subject to subsection (B) (Liquidated Damages Sub-Limit) of this Section, the Design-Builder’s aggregate liability under this Design-Build Contract and, accordingly, the liability of the Guarantor under the Guaranty Agreement, with respect to damages of any kind payable to the City arising out of the performance or unexcused nonperformance of the Design-Build Work as a consequence of a claim or suit initiated by the City shall not exceed an amount equal to 100% of the Design-Build Price.

(B) Liquidated Damages Sub-Limit. The aggregate liability of the Design-Builder, with respect to any liquidated damages payable pursuant subsection 8.5 (Delay Liquidated Damages), shall not exceed an amount equal to 25% of the Design-Build Price. The payment by the Design-Builder of any such liquidated damages shall reduce commensurately the liability limit set forth in subsection (A) (Design-Builder Liability Limit) of this Section.

SECTION 13.4. APPLICABILITY AND INTERPRETATION OF THE LIMITATION ON LIABILITY.

The limitation on Design-Builder liability provided for in SECTION 13.3 (Limitation on Design-Builder Liability) applies solely to the liability of the Design-Builder and the Guarantor for damages to the City arising out of the performance or unexcused nonperformance of this Design-Build Contract as a consequence of a claim or suit initiated by the City. The limitation on liability provided for in SECTION 13.3 (Limitation on Design-Builder Liability) (a) shall not apply in the event the Design-Builder abandons the Project, and (b) does not apply to any other liability, loss, damage, cost or expense that may be incurred by the Design-Builder or the Guarantor in connection with this Design-Build Contract, that are not recoverable by or payable to the City hereunder (except to the extent in items (3), (5), (6) and (7) below), including any of the following liabilities, losses, damages, costs or expenses:

- (1) Any loss, cost or expense sustained by the Design-Builder in the performance of the Design-Build Work or any other loss sustained by the Design-Builder, the Guarantor, or any other party in connection with this Design-Build Contract, the Guaranty Agreement or other agreement relating to the Project;
- (2) Any loss, cost or expense sustained by the Design-Builder, the Guarantor, or the Design-Builder’s surety in seeking to cure or prevent any breach of this Design-Build Contract by the Design-Builder;
- (3) Any fines or penalties levied or imposed by any Governmental Body;
- (4) Any claims, losses or penalties incurred by the Design-Builder or the Guarantor to third parties in any Legal Proceedings;
- (5) Any indemnity payment (resulting from third party claims) made by the Design-Builder or the Guarantor to the City;
- (6) Payment of any defense costs, including attorney’s fees, to, for, or on behalf of the City with respect to any third party claim; and

(7) Any claims, losses, penalties or settlement payments paid to the City in connection with any tort claim by the City against the Design-Builder based on gross negligence, willful misconduct, fraud, misrepresentation or false claims.

SECTION 13.5. EVENTS OF DEFAULT BY THE CITY.

(A) Events of Default Permitting Termination. The failure, refusal or other default by the City in its duty: (1) to pay any undisputed amount required to be paid to the Design-Builder under this Design-Build Contract within 60 days following the due date for such payment; or (2) to perform any other material obligation under this Design-Build Contract (unless such default is excused by an Uncontrollable Circumstance as and to the extent provided herein), shall constitute an Event of Default by the City upon which the Design-Builder, by notice to the City, may terminate this Design-Build Contract.

(B) Notice and Cure Opportunity. No such default described in subsection (A) (Events of Default Permitting Termination) of this Section shall constitute an Event of Default giving the Design-Builder the right to terminate this Design-Build Contract for cause under this subsection unless:

(1) The Design-Builder has given prior written notice to the City stating that a specified default has occurred which gives the Design-Builder a right to terminate this Design-Build Contract for cause under this Section, and describing the default in reasonable detail; and

(2) The City has neither challenged in an appropriate forum the Design-Builder's conclusion that such default has occurred or constitutes a material breach of this Design-Build Contract nor initiated within a reasonable time (in any event not more than 30 days from the initial default notice) and continued with due diligence to carry out to completion all actions reasonably necessary to correct the default and prevent its recurrence.

If the City shall have initiated and continued with due diligence to carry out to completion all actions required under item (2), above, the default shall not constitute an Event of Default during such period of time (in any event not more than 60 days from the initial default notice) as the City shall continue with due diligence to carry out to completion all such actions.

(C) Termination Liquidated Damages. If this Design-Build Contract is terminated by the Design-Builder for cause as a result of an Event of Default by the City, the City shall pay the Design-Builder, as liquidated damages upon any such termination, the same amount which would be payable under SECTION 13.6 (City Convenience Termination Rights) if this Design-Build Contract were terminated at the election of the City for convenience and without cause. Such damages shall be the only amounts payable by the City upon any such termination.

(D) Payment of Amounts Owning Through the Termination Date. Without duplicating any amount required to be paid pursuant to subsection (C) (Termination Liquidated Damages) of this Section, upon any termination pursuant to this Section, the Design-Builder shall be paid all amounts due for the Design-Build Work performed prior to the Termination Date to be paid as part of the Design-Build Price but not yet paid as of the Termination Date.

SECTION 13.6. CITY CONVENIENCE TERMINATION RIGHTS.

(A) Convenience Termination Right and Payment. The City shall have the right at any time following the Contract Date, exercisable in its discretion for any reason upon 30 days' written notice to the Design-Builder, to terminate this Design-Build Contract.

(B) Convenience Termination Payment for Preliminary Services and Transition Services. In the event of a convenience termination pursuant to this Section of the Preliminary Services or the Transition Services, the Design-Builder shall not be entitled to a convenience termination settlement payment, but shall be entitled to payment of that portion of the Preliminary Services Fee or the Transition Service Fee that has been earned by the terms hereof as of the Termination Date but not yet paid by the City. No other compensation shall be payable by the City on account of the City's convenience termination of the Preliminary Services or the Transition Services.

(C) Convenience Termination Payment for Design-Build Work. In the event of a convenience termination pursuant to this Section of the Design-Build Work, the Design-Builder shall be entitled to a convenience termination settlement payment in an amount equal to the sum of: (1) the difference between, (a) the value of all Design-Build Work performed up to the Termination Date, and (b) all payments already made to the Design-Builder pursuant to this Design-Build Contract; and (2) the reasonable costs incurred by the Design-Builder in connection with the termination, including all actual and reasonable demobilization costs and amounts due in settlement of terminated Subcontracts. The amount payable to the Design-Builder pursuant to this subsection may include a reasonable allowance for profit solely on Design-Build Work that has been performed as of the Termination Date. In the event of a termination for convenience under this Section, the Design-Builder acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the Design-Build Work performed plus its settlement and closeout costs. Under no circumstances shall the Design-Builder or any Subcontractor be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages as a result of a termination for convenience under this Section.

(D) Settlement of Subcontracts. The obligation of the City to pay amounts due in settlement of Subcontracts under subsection 13.6(C) (Convenience Termination Payment for Design-Build Work) shall be limited to the reasonable costs incurred by the Design-Builder in settling and closing out Subcontracts that the City does not elect to have assigned to it pursuant to SECTION 13.7 (Obligations of the Design-Builder Upon Termination) and shall be subject to Cost Substantiation. Any convenience termination settlement payment under any Subcontract shall be calculated in the same manner as provided in subsection 13.6(C) (Convenience Termination Payment for Design-Build Work) with respect to the convenience termination settlement payment to the Design-Builder. In no event shall the City be responsible for anticipatory or unearned profits, unabsorbed overhead, opportunity costs, or consequential or other damages payable to any Subcontractor as a result of the termination of any Subcontract.

(E) Payment of Amounts Due as a Result of Convenience Termination. The Design-Builder shall submit a termination for convenience claim, in the form and with the certification prescribed by the City, promptly following the Termination Date but in any event not later than 60 days following the Termination Date. In the event of a failure of the Design-Builder to submit a termination for convenience claim within the time allowed pursuant to this subsection, the City may determine, on the basis of information available to the City, the amount, if any, due to the Design-Builder by reason of the convenience termination and shall

thereupon pay to the Design-Builder the amount so determined, if any. Notwithstanding the fact that the amount payable to the Design-Builder pursuant to subsection 13.6(C) (Convenience Termination Payment for Design-Build Work) may include a reasonable allowance for profit solely on Design-Build Work that has been performed as of the Termination Date, in no event shall the amount payable to the Design-Builder pursuant to this Section, exclusive of reasonable demobilization and settlement costs, exceed the Guaranteed Maximum Price as reduced by the amount of payments otherwise made. In addition, any amount payable to the Design-Builder pursuant to this Section shall be reduced in the amount of (1) any claim the City may have against the Design-Builder under this Design-Build Contract, and (2) the fair value, as determined by the City, of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the City, excluding normal spoilage and except to the extent that the City shall have otherwise expressly assumed the risk of loss with respect to such property. Any payment required to be made to the Design-Builder pursuant to this Section shall be made within 120 days following the Termination Date, subject to compliance by the Design-Builder with its obligations under SECTION 13.7 (Obligations of the Design-Builder Upon Termination). Any payment required to be made by the Design-Builder to the City pursuant to this Section shall be made within 120 days following the Termination Date. In the event of a dispute between the parties as to the amount of any payment required to be made pursuant to this Section, either party may elect to initiate dispute resolution procedures in accordance with SECTION 12.2 (Non-Binding Mediation).

(F) Delivery of Design-Build Work to the City. Upon any termination of this Design-Build Contract under this Section, the Design-Builder shall deliver to the City all of its work product produced during the period commencing on the Contract Date to the Termination Date hereunder, which work product immediately shall become the property of the City, and the Design-Builder's liability with respect thereof shall be subject to SECTION 4.6 (Ownership and Use of Documents and Information).

(G) Completion or Continuance by the City. After the date of any termination under this Section, the City may at any time (but without any obligation to do so) take any and all actions necessary or desirable to continue and complete the Contract Services so terminated, including entering into contracts with other contractors.

SECTION 13.7. OBLIGATIONS OF THE DESIGN-BUILDER UPON TERMINATION.

Upon any termination of the Design-Builder's right to perform this Design-Build Contract, the Design-Builder shall, as applicable and as set forth in any written directions provided by the City:

- (1) Stop any further Contract Services at the Dewatering Facility Site or otherwise in connection with the Project;
- (2) Cease incurring any further obligations or liabilities pertaining to the Contract Services;
- (3) Promptly take all action as necessary to protect and preserve all materials, equipment, tools, facilities, and other property pertaining to the Project;
- (4) Vacate possession of the Dewatering Facility Site and turn possession of the Dewatering Facility Site over to the City;

- (5) Clean up and remove all debris and trash from the Dewatering Facility Site;
- (6) Promptly remove from the Dewatering Facility Site all equipment, tools, or material owned by the Design-Builder, or its Subcontractors, agents or representatives;
- (7) Promptly deliver a list of all suppliers, materials, machinery, equipment, property or other pending items being fabricated or on order for delivery to the Project but not yet delivered to the Dewatering Facility Site or incorporated into the Design-Build Work, and comply with the written instructions of the City with respect to such matters;
- (8) Deliver a complete copy of all books, notes, and records of the Design-Builder pertaining to the Design-Build Contract performance or planned construction or design activities;
- (9) Promptly provide a list of all files (and make available to the City for review or copying) all files pertaining to the Design-Build Work, including any and all access and security codes, and including instructions and demonstrations that show how to open and modify such codes;
- (10) Promptly deliver complete copies of all Subcontracts to the City, together with a detailed report on the status of such Subcontracts (status of orders and work performed and not performed or delivered under each Subcontract); a record of proposals made and balances due under each Subcontract; any cancellation penalties pertaining thereto; and any further information required by the City, and furthermore assist the City in contacting such Subcontractors to verify such information or answer any questions of the City;
- (11) assign to the City any Subcontract that the City elects in writing, at its sole election and without obligation, to have assigned to it, with the City assuming, and the Design-Builder being relieved of, all obligations under the Subcontract from the date of the assignment;
- (12) cancel or terminate all Subcontracts that the City does not elect to have assigned to the City, in accordance with the written instructions of the City;
- (13) Promptly assign and transfer to the City all right, title, and interest of Design-Builder to any items ordered for the Contract Services (but not yet delivered to the Dewatering Facility Site or incorporated into the Project) as requested by the City; provided the City (or Surety) assumes responsibility for payment thereof;
- (14) Promptly deliver and assign to the City all warranties or guarantees by any vendor, supplier, manufacturer, or subcontractor pertaining to the Project;
- (15) Promptly notify the City (in writing) of any Legal Proceedings against the Design-Builder pending or threatening relating to the Project or the Contract Services;
- (16) Promptly assist the City in the modification to any of the insurance policies required under the Design-Build Contract appropriate or necessary by reason of the termination;

(17) Make arrangements with its employees to avoid any “successor clauses” or other similar provisions with respect to salaries or benefits, to allow the City to enter into new employment or independent contractor agreements with employees of the Design-Builder deemed available or necessary by the City to complete (or correct defects) in the Design-Build Work; and

(18) Promptly take such other action and execute such documents as requested by the City, and to assist in the transition of the Contract Services to the Surety or the City, or as reasonably deemed necessary or appropriate by the City, and avoid any action or conduct that would increase any expense or cost that would become an obligation or liability to the City unless requested or directed by the City Contract Representative in writing.

With respect to any of the foregoing obligations that cannot reasonably be completed by the Termination Date, the Design-Builder shall complete such obligations as promptly as is practicable, but in no event later than 30 days following the Termination Date. Compliance with these obligations shall be conditions precedent to the payment of any sums otherwise due the Design-Builder by reason of the termination. If any Subcontracts are assigned to the City under this Section, the City shall not be directly liable to any Subcontractors for amounts owed to such parties for Design-Build Work performed prior to termination, and the Design-Builder shall remain liable to any such parties for such amounts.

SECTION 13.8. NO WAIVERS.

No action of the City or the Design-Builder pursuant to this Design-Build Contract (including any investigation or payment), and no failure to act, shall constitute a waiver by either party of the other party’s compliance with any term or provision of this Design-Build Contract. No course of dealing or delay by the City or the Design-Builder in exercising any right, power or remedy under this Design-Build Contract shall operate as a waiver thereof or otherwise prejudice such party’s rights, powers and remedies. No single or partial exercise of (or failure to exercise) any right, power or remedy of the City or the Design-Builder under this Design-Build Contract shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

SECTION 13.9. WAIVER OF CONSEQUENTIAL AND PUNITIVE DAMAGES.

In no event shall either party hereto be liable to the other or obligated in any manner to pay to the other any consequential or punitive damages based upon claims arising out of or in connection with the performance or non-performance of its obligations or otherwise under this Design-Build Contract, or the material falsity or inaccuracy of any representation made in this Design-Build Contract, whether such claims are based upon contract, tort, negligence, warranty or other legal theory; provided, however, that the waiver of the foregoing damages under this Section is intended to apply only to disputes and claims as between the City and the Design-Builder. Nothing in this Section shall limit the obligation of the Design-Builder to indemnify, defend and hold harmless the City Indemnitees for any consequential or punitive damages payable to third parties resulting from any act or circumstance for which the Design-Builder is obligated to indemnify the City Indemnitees hereunder. In addition, the parties acknowledge and agree that nothing in this Section shall serve as a limitation or defense with respect to any obligation of a party to pay any liquidated damages specifically provided for under this Design-Build Contract.

ARTICLE 14

INSURANCE

SECTION 14.1. INSURANCE.

(A) Required Insurance. At all times during the Term, the Design-Builder shall comply with the insurance requirements set forth in this Article 14 (Insurance) and Appendix 12 (Insurance Requirements) hereto. Such insurance requirements include (1) enrollment in the City's OCIP, which will provide the OCIP Coverages and Other Coverages Provided by the City, as such coverages are described in Appendix 12 (Insurance Requirements) hereto, and (2) obtaining and maintaining Additional Insurance Required From Enrolled Parties and Excluded Parties, as such coverages are described in Appendix 12 (Insurance Requirements) (collectively, the "Required Insurance"). The City shall pay all premiums associated with the OCIP Coverages and the Other Coverages Provided by the City. The Design-Builder shall pay all other premiums, including the premiums for the Additional Insurance Required From Enrolled Parties and Excluded Parties. The Required Insurance shall be in place concurrent with the execution and delivery of this Design-Build Contract (or as otherwise specified in Appendix 12 (Insurance Requirements) and remain in effect for the periods specified in Appendix 12 (Insurance Requirements). The Design-Builder's liability insurance, including professional liability, shall not include any exclusions that would compromise coverages because of the design-build nature of the work to be performed pursuant to this Design-Build Contract.

(B) Subcontractors. The Design-Builder shall ensure that all eligible Subcontractors enroll in the City's OCIP and secure and maintain all insurance coverage and other financial sureties pursuant to and as required by Appendix 12 (Insurance Requirements) and by Applicable Law in connection with their presence and the performance of their duties at or concerning the Project.

(C) Compliance with Insurer Requirements. The Design-Builder shall comply promptly with the requirements of all insurers providing the Required Insurance pertaining to the Project. The Design-Builder shall not knowingly do or permit anything to be done that results in the cancellation or the reduction of coverage under any policy of Required Insurance.

(D) Proof of Insurance Coverage for Additional Insurance Required From Enrolled Parties and Excluded Parties. Annually, the Design-Builder shall furnish, or shall cause a Subcontractor to furnish, the City with (1) additional insured waiver of subrogation and primary/non-contributory endorsements to the Additional Insurance Required From Enrolled Parties and Excluded Parties policies for the Project, and (2) certificates of insurance from each insurance carrier showing that the insurance obtained by the Design-Builder is in force, the amount of the carrier's liability thereunder, and further providing that the insurance will not be canceled, changed or not renewed until the expiration of at least 30 days (or 10 days in the case of cancellation due to non-payment of premiums after written notice (by certified mail, return receipt requested) of such cancellation, change or non-renewal has been received by the City). With the exception of worker's compensation/employer's liability and professional liability, each policy of Additional Insurance Required From Enrolled Parties and Excluded Parties (or renewal policy of insurance) maintained hereunder shall show the City as an "additional insured" as required by Appendix 12 (Insurance Requirements) for the particular policy with coverage being primary and non-contributory to any of the OCIP Coverages and Other Coverages Provided by the City.

(E) Failure to Provide Insurance Coverage. If the Design-Builder fails to pay or cause to be paid any premium for Additional Insurance Required From Enrolled Parties and Excluded Parties, or if any insurer cancels any policy of Additional Insurance Required From Enrolled Parties and Excluded Parties and the Design-Builder fails to obtain replacement coverage so that the Required Insurance is maintained on a continuous basis, the City may, but is not obligated to, pay such premium or procure similar insurance coverage from another insurer and upon such payment by the City the amount thereof shall be immediately reimbursable to the City by the Design-Builder. The failure of the Design-Builder to obtain and maintain any Additional Insurance Required From Enrolled Parties and Excluded Parties shall not relieve the Design-Builder of its liability for any losses, be a satisfaction of any Design-Builder liability under this Design-Build Contract or in any way limit, modify or satisfy the Design-Builder's indemnity obligations hereunder.

ARTICLE 15

UNCONTROLLABLE CIRCUMSTANCES

SECTION 15.1. UNCONTROLLABLE CIRCUMSTANCES GENERALLY.

(A) Extent of Relief Available to the Design-Builder. If an Uncontrollable Circumstance occurs, the Design-Builder may be entitled to relief from its obligations and extensions of time, and may claim compensation, but only as and to the extent provided in SECTION 15.3 (Uncontrollable Circumstances Relief). Such relief shall be available irrespective of whether an obligation of this Design-Build Contract expressly states that it is excused by Uncontrollable Circumstances.

(B) Mitigation Given Effect. Any relief to which the Design-Builder is entitled under this Article on account of Uncontrollable Circumstances shall be adjusted to account for the effect of the mitigation measures which were or should have been taken by the Design-Builder in compliance with its duty to mitigate under SECTION 18.7 (General Duty to Mitigate).

(C) Applicable Law Compliance. Nothing in this Article shall be interpreted as relieving the Design-Builder of its obligation, following any and all Uncontrollable Circumstances, to perform its obligations under this Design-Build Contract in compliance with Applicable Law.

SECTION 15.2. UNCONTROLLABLE CIRCUMSTANCE CLAIM PROCEDURES.

(A) Notice and Written Report. In order to assert an entitlement based on the occurrence of an Uncontrollable Circumstance, the Design-Builder shall give notice of the occurrence of the Uncontrollable Circumstance to the City as soon as practicable, and in any event within ten Business Days of the date the Design-Builder has knowledge that the Uncontrollable Circumstance has caused or is likely to cause an entitlement under this Design-Build Contract. The Design-Builder's notice shall include a written report:

- (1) Describing the Uncontrollable Circumstance and the cause thereof, to the extent known;
- (2) Stating the date on which the Uncontrollable Circumstance began and its estimated duration, to the extent known;
- (3) Summarizing the consequences of the Uncontrollable Circumstance and the expected impact on the performance of the Design-Builder's obligations under this Design-Build Contract; and
- (4) Indicating the nature and scope of the Design-Builder's potential entitlement to relief.

(B) Updates. The Design-Builder shall provide the City with periodic updates, together with further details and supporting documentation, as it receives or develops additional information pertaining to the Uncontrollable Circumstance and the matters described in subsection 15.2(A) (Notice and Written Report). In particular, the Design-Builder shall notify the City as soon as the Uncontrollable Circumstance has ceased and of the time when performance of its affected obligations can be resumed.

(C) Submittal of Relief Request. The Design-Builder shall submit to the City a further notice making its request for specific relief, the basis therefor and the event giving rise to the requested relief within 30 days after the notice referred to in subsection 15.2(A) (Notice and Written Report). If the specific relief cannot reasonably be ascertained within such 30-day period, the Design-Builder shall furnish such notice within such longer period as necessary to detail the event and ascertain such relief.

(D) Delay in Notification. If any Uncontrollable Circumstance notice or any required information is submitted by the Design-Builder to the City after the dates required under this Section, then the Design-Builder shall be entitled to relief provided due to the occurrence of the Uncontrollable Circumstance except to the extent that the ability to mitigate was adversely affected as a result of the delay in providing such notice or information.

(E) Multiple and Overlapping Claims. The Design-Builder may make multiple but not duplicative claims with respect to an Uncontrollable Circumstance.

(F) Burden of Proof and Mitigation. The Design-Builder shall bear the burden of proof in establishing the occurrence of an Uncontrollable Circumstance and the entitlement to relief based thereon, and shall demonstrate that the Design-Builder complied with its mitigation obligations under SECTION 18.7 (General Duty to Mitigate).

(G) Resumption of Performance. Promptly following the occurrence of an Uncontrollable Circumstance, the Design-Builder shall use all reasonable efforts to eliminate the cause thereof and resume performance of this Design-Build Contract.

(H) Design-Builder Information. The City shall provide the Design-Builder information reasonably requested in order for the Design-Builder to reasonably assert an Uncontrollable Circumstance claim.

(I) City Response. Within 30 days after receipt of a relief request by the Design-Builder pursuant to subsection 15.2(C) (Submittal of Relief Request), the City shall issue a written determination as to the extent, if any, to which it concurs with the Design-Builder's request, and the reasons therefor.

(J) Agreement or Dispute. The agreement of the parties as to the specific relief to be given the Design-Builder on account of an Uncontrollable Circumstance shall be evidenced by a Contract Administration Memorandum or a Contract Amendment, as applicable. Either party may refer any dispute for resolution pursuant to ARTICLE 12 (Dispute Resolution).

(K) Certifications. Each submittal made under this Section by the Design-Builder shall be accompanied by a certification of the Design-Builder Representative that the submittal is made in good faith; that the supporting data are complete and accurate at the time of the submittal to the best knowledge of the Design-Builder; and that the requested relief accurately reflects the relief to which the Design-Builder reasonably believes it is entitled. The Design-Builder shall have no entitlement to relief for uncertified claims.

SECTION 15.3. UNCONTROLLABLE CIRCUMSTANCES RELIEF.

If and to the extent that an Uncontrollable Circumstance interferes with, delays or increases the cost to the Design-Builder performing the Design-Build Work in accordance herewith, the Design-Builder shall be entitled to (1) relief from its performance obligations, (2) a delay in the Design-Build Schedule and the Scheduled Acceptance Date, (3) compensation for

such costs, which shall constitute Design-Build Costs; or (4) a Base Guaranteed Maximum Price Adjustment (except as and to the extent provided in this Section, SECTION 15.2 (Uncontrollable Circumstances Claim Procedures) and ARTICLE 16 (Indemnification)), or any combination thereof, each of which properly reflects the interference with performance, the time lost as a result thereof, or the amount of the increased cost, in each case only to the minimum extent necessary to compensate the Design-Builder or provide performance or schedule relief and only to the extent directly attributable to the Uncontrollable Circumstance. The Design-Builder shall perform all other Design-Build Work not affected by the Uncontrollable Circumstances. Any cost reduction achieved, or which should have been achieved, through the mitigation measures undertaken by the Design-Builder pursuant to SECTION 18.7 (General Duty to Mitigate) shall be reflected in a reduction of the amount of the additional Design-Build Costs and Base Guaranteed Maximum Price Adjustment as appropriate to reflect such mitigation measures. The Design-Builder shall not be entitled to any price relief on account of any costs incurred as the result of an act, event or circumstance that the Design-Builder is obligated to insure against under ARTICLE 14 (Insurance), irrespective of any limits of coverage and of any deductible applicable under any policy of insurance maintained or required to be maintained thereunder.

ARTICLE 16

INDEMNIFICATION

SECTION 16.1. DESIGN-BUILDER'S OBLIGATION TO INDEMNIFY.

The Design-Builder shall indemnify and keep elected officials, members, appointed officers, employees, representatives, agents and contractors of the City (each a "City Indemnatee") indemnified at all times from and against all Loss-and-Expense that any City Indemnatee may sustain in connection with any loss of or physical damage to property or assets of any City Indemnatee, or any claim made by one or more third parties (including for loss of or physical damage to property or assets), or any claim for, or in respect of, the death, personal injury, disease or illness of any person, including any City Indemnatee, arising by reason of any:

- (1) Breach of any representation or warranty by the Design-Builder under this Design-Build Contract;
- (2) Negligent act or omission of the Design-Builder;
- (3) Willful misconduct of the Design-Builder;
- (4) Non-compliance by the Design-Builder with any of the provisions of this Design-Build Contract or any document, instrument or agreement delivered to the City as required under this Design-Build Contract;
- (5) Activities on the Dewatering Facility Site, as provided in subsection 4.4(C) (Access to the Dewatering Facility Site);
- (6) Non-compliance with Applicable Law, as provided in subsection 4.5(C) (Fines, Penalties and Remediation);
- (7) Release of Regulated Substances by the Design-Builder, as provided in subsection 6.4(E) (Design-Builder Responsibilities);
- (8) Labor disputes, as provided in subsection 7.2(B) (Labor Relations);
- (9) Subcontractor claims, as provided in subsection 7.3(F) (Indemnity for Subcontractor Claims);
- (10) Intellectual Property claims, as provided in subsection 18.6(A) (Protection from Infringement);
- (11) Failure by the Design-Builder to advise the City of any potential infringement or unauthorized use resulting from a City-directed Change Order, as provided in subsection 18.6(C) (Exceptions to Infringement Protection);
- (12) Any claims of harassment arising from the conduct of the Design-Builder or any Design-Builder Person;
- (13) Breach by the Design-Builder of, or non-compliance by the Design-Builder with, any Governmental Approval or Applicable Law, or the failure of the

Design-Builder Company to obtain all necessary Governmental Approvals in accordance with this Design-Build Contract; or

(14) Any other act, event or circumstance as to which the Design-Builder is obligated to provide an indemnity hereunder;

except to the extent caused by City Fault. The Design-Builder's indemnity obligations under this Section shall not be limited by any coverage exclusions or other provisions in any policy of Required Insurance or other insurance maintained by the Design-Builder which is intended to respond to such events. Notwithstanding the foregoing, the City Indemnitees' right to indemnification pursuant to this Section shall be reduced by all insurance, settlement proceeds or third party indemnification proceeds actually received by the City Indemnitees. This Section may be relied upon by the City Indemnitees and may be enforced directly by any of them against the Design-Builder in the same manner and for the same purpose as if pursuant to a contractual indemnity directly between them and the Design-Builder.

SECTION 16.2. INDEMNIFICATION PROCEDURES.

(A) Notice. If a City Indemnitee receives any notice, demand, letter or other document concerning any claim for which it appears that the City Indemnitee is, or may become entitled to, indemnification or compensation under this Design-Build Contract in respect of the entire claim, the City Indemnitee shall give notice in writing to the Design-Builder as soon as reasonably practicable and in any event within 10 Business Days of receipt thereof.

(B) Design-Builder Right to Dispute Claim. If notice is given as provided in subsection 16.2(A) (Indemnification Procedures - Notice), the Design-Builder shall be entitled to dispute the claim in the name of the City Indemnitee at the Design-Builder's own expense and take conduct of any defense, dispute, compromise, or appeal of the claim and of any incidental negotiations. The City Indemnitee will give the Design-Builder all reasonable cooperation, access and assistance for the purposes of considering and resisting such claim.

(C) Conflicts of Interest. In defending any claim as described in subsection 16.2(B) (Indemnification Procedures - Design-Builder Right to Dispute Claim) in which there is a conflict of interest between the Design-Builder and the City Indemnitee, the City Indemnitee may appoint independent legal counsel in respect of such claim and, if it is determined that the City Indemnitee is entitled to indemnification by or compensation from the Design-Builder, all reasonable costs and expenses incurred by the City Indemnitee in so doing will be included in the indemnity or compensation from the Design-Builder.

(D) Rights and Duties of the Parties. With respect to any claim conducted by the Design-Builder pursuant to subsection 16.2(B) (Indemnification Procedures - Design-Builder Right to Dispute Claim):

(1) The Design-Builder shall keep the City Indemnitee fully informed and consult with it about material elements of the conduct of such defense;

(2) The Design-Builder shall demonstrate to the City Indemnitee, at the reasonable request of the City Indemnitee, that the Design-Builder has sufficient means to pay all costs and expenses that it may incur by reason of conducting such defense; and

(3) The Design-Builder shall have full control of such defense and proceedings, including any compromise or settlement thereof; provided, however, that any such compromise or settlement involving non-monetary obligations of the City, or otherwise having a direct effect upon its continuing operations, shall (1) contain a full release of the City and (2) be subject to the consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed. If requested by the Design-Builder, the City Indemnitee shall, at the sole cost and expense of the Design-Builder, cooperate with the Design-Builder and its counsel in contesting any claim which the Design-Builder elects to contest, including, without limitation, the making of any related counterclaim against the person asserting the claim or any cross-complaint against any person.

(E) City Indemnitee Rights to Conduct Defense. The City Indemnitee may take conduct of any defense, dispute, compromise or appeal of the claim and of any incidental negotiations if:

(1) The Design-Builder is not entitled to take conduct of the claim in accordance with subsection 16.2(B) (Indemnification Procedures – Design-Builder Right to Dispute Claim); or

(2) The Design-Builder fails to notify the City Indemnitee of its intention to take conduct of the relevant claim within 10 Business Days of the notice from the City Indemnitee under subsection 16.2(B) (Indemnification Procedures – Design-Builder Right to Dispute Claim) or notifies the City Indemnitee that it does not intend to take conduct of the claim; or

(3) The Design-Builder fails to comply in any material respect with subsection 16.2(D) (Indemnification Procedures - Rights and Duties of the Parties).

(F) Transfer of Conduct of Claim to City Indemnitee. The City Indemnitee may at any time give notice to the Design-Builder that it is retaining or taking over, as the case may be, the conduct of any defense, dispute, compromise, settlement or appeal of any claim, or of any incidental negotiations, to which subsection 16.2(E) (Indemnification Procedures – City Indemnitee Rights to Conduct Defense) applies. On receipt of such notice the Design-Builder will promptly take all steps necessary to transfer the conduct of such claim to the City Indemnitee, and will provide to the City Indemnitee all reasonable co-operation, access and assistance for the purposes of considering and resisting such claim.

ARTICLE 17

SECURITY FOR PERFORMANCE

SECTION 17.1. GUARANTOR

(A) Guarantor Agreement. The Company, concurrently with the execution and delivery of this Service Contract, has caused the Guaranty Agreement to be provided by the Guarantor in the form attached hereto as a Transaction Form.

(B) Reports and Notifications Concerning the Financial Condition of the Guarantor. The Design-Builder shall provide to the City, within 180 days after the end of each fiscal year of the Guarantor, the consolidated balance sheet and income statement for the Guarantor attached to the audited year-end financial statements for that fiscal year reported upon by the independent public accountant of the Guarantor. If applicable, the Design-Builder shall also furnish the City with copies of the quarterly and annual reports and other filings of the Guarantor filed with the Securities and Exchange Commission. If the Guarantor is not required to file quarterly reports with the Securities and Exchange Commission, the Design-Builder, at the request of the City, shall provide the City with unaudited quarterly financial statements of the Guarantor within 60 days following the end of each quarter based on the fiscal year of the Guarantor. In addition, the Design-Builder shall provide reasonable notice to the City of any change to the financial condition of the Guarantor that would reasonably be anticipated to impair the ability of the Guarantor to meet its obligations under the Guaranty Agreement.

SECTION 17.2. PERFORMANCE AND PAYMENT BONDS.

(A) Requirements. On or before the Definitive Contract Amendment Date, the Design-Builder shall provide the Performance Bond and the Payment Bond in an amount equal to the Base Guaranteed Maximum Price as financial security for the faithful performance and payment of its obligations hereunder. The amount of the Performance Bond and Payment Bond shall be increased by the Design-Builder to reflect any Base Guaranteed Maximum Price Adjustment at the time such adjustment is implemented by the parties and as a condition to its entitlement to the adjustment. If the Design-Builder provides performance and payment bonds in connection with an Early Work Package, the Design-Builder may, in lieu of providing separate bonds for subsequent Early Work Package(s) or for the balance of the Design-Build Work to be performed pursuant to the Definitive Contract Amendment, increase the penal sums of such original performance and payment bonds to reflect the fixed-price or Guaranteed Maximum Price associated with such Early Work Package or Definitive Contract Amendment. The Performance Bond and the Payment Bond shall be in the forms set forth in the Transaction Forms and shall be issued by a surety company: (1) approved by the City having a rating of "A" in the latest revision of the A.M. Best Company's Insurance Report; (2) be listed in the United States Treasury Department's Circular 570, "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsurance Companies"; and (3) holding a certificate of authority to transact surety business in the City. The Payment Bond shall remain open until Final Completion. The Performance Bond shall secure the performance of the Warranty Work as well as the Design-Build Work and shall remain open indefinitely. To the extent required by Applicable Law, the Design-Builder shall provide such further performance and payment bonds as may be necessary under Applicable Law to secure the performance of any Warranty Work; and such performance and payment bonds shall comply with the requirements of Applicable Law and this Section.

(B) Monitoring of Sureties. The Design-Builder shall be responsible throughout the Term for monitoring the financial condition of any surety company issuing bonds under this Design-Build Contract and for making inquiries no less often than annually

to confirm that each such surety company maintains at least the minimum rating level specified in this Section. In the event the rating of any issuing surety company falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has the rights to do business in the City terminated, the Design-Builder shall promptly notify the City of such event and shall promptly take steps to ensure continued compliance with this Section. In the event the rating of any issuing surety company falls below such minimum level, or if any surety company is declared bankrupt or becomes insolvent or has the rights to do business in the City terminated, the Design-Builder shall promptly notify the City of such event and shall promptly take steps to ensure continued compliance with this Section by furnishing or arranging for the furnishing of a substitute or additional bond of a surety company whose rating and other qualifications satisfy all above requirements, unless the City agrees to accept the surety company that no longer satisfies the minimum rating level specified above, or agrees to an alternative method of assurance.

SECTION 17.3. COSTS OF PROVIDING SECURITY INSTRUMENTS.

The cost and expense of obtaining and maintaining the Security Instruments required under this Article as security for the performance of the Design-Builder's obligations hereunder shall be borne by the Design-Builder. Premiums for the Performance Bonds and the Payment Bonds shall be Design-Build Costs that may be requisitioned by the Design-Builder in accordance with the provisions of Appendix 8 (Design-Build Price). Premiums or payments for the Guaranty Agreement are Unallowable Costs which cannot be requisitioned.

ARTICLE 18

MISCELLANEOUS PROVISIONS

SECTION 18.1. OWNERSHIP OF THE REGIONAL WASTEWATER FACILITY AND THE DEWATERING FACILITY.

The Regional Wastewater Facility is and shall be owned by the City of San Jose and the City of Santa Clara at all times; title to the Dewatering Facility shall pass to the City as provided in subsection 6.1(N) (Title and Risk of Loss).

SECTION 18.2. RELATIONSHIP OF THE PARTIES.

The Design-Builder is an independent contractor of the City and the relationship between the parties shall be limited to performance of this Design-Build Contract in accordance with its terms. Neither party shall have any responsibility with respect to the services to be provided or contractual benefits assumed by the other party. Nothing in this Design-Build Contract shall be deemed to constitute either party a partner, agent or legal representative of the other party. No liability or benefits, such as workers compensation, pension rights or liabilities, or other provisions or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to any party's agent or employee as a result of this Design-Build Contract or the performance thereof.

SECTION 18.3. CONTRACT ADMINISTRATION.

(A) Administrative Communications. The parties recognize that a variety of contract administrative matters will routinely arise throughout the performance of this Design-Build Contract. These matters will by their nature involve requests, notices, questions, assertions, responses, objections, reports, claims, and other communications made personally, in meetings, by phone, by mail and by electronic and computer communications. The purpose of this Section is to set forth a process by which the resolution of the matters at issue in such communications, once resolution is reached, can be formally reflected in the common records of the parties so as to permit the orderly and effective administration of this Design-Build Contract.

(B) Contract Administration Memoranda. The principal formal tool for the administration of routine matters arising under this Design-Build Contract between the parties that do not require a Contract Amendment shall be a "Contract Administration Memorandum." A Contract Administration Memorandum shall be prepared, once all preliminary communications have been concluded, to evidence the resolution reached by the City and the Design-Builder as to matters of interpretation and application arising during the course of the performance of their obligations hereunder. Such matters may include, for example: (1) issues as to the meaning, interpretation or application of this Design-Build Contract in particular circumstances or conditions; (2) calculations required to be made; (3) notices, waivers, releases, satisfactions, confirmations, further assurances, consents and approvals given hereunder; and (4) other similar routine contract administration matters.

(C) Procedure. Either party may request the execution of a Contract Administration Memorandum. When resolution of the matter is reached, a Contract Administration Memorandum shall be prepared by or at the direction of the City reflecting the resolution. Contract Administration Memoranda shall be serially numbered, dated, signed by the Contract Representative of each party, and, at the request of the City, co-signed by a Senior Supervisor for the Design-Builder. The City and the Design-Builder each shall maintain a parallel, identical file of all Contract Administration Memoranda, separate and distinct from the

Contract Amendments and all other documents relating to the administration and performance of this Design-Build Contract.

(D) Effect. Executed Contract Administration Memoranda shall serve to guide the ongoing interpretation and application of the terms and conditions of this Design-Build Contract. Any material change, alteration, revision or modification of this Design-Build Contract, however, shall be effectuated only through a formal Contract Amendment authorized, approved or ratified by resolution of the governing body of the City and properly authorized by the Design-Builder.

SECTION 18.4. CONTRACT AMENDMENTS.

(A) Amendments Generally. Notwithstanding the provisions of SECTION 18.3 (Contract Administration), no material change, alteration, revision or modification of the terms and conditions of this Design-Build Contract shall be made except through a written amendment to this Design-Build Contract, duly authorized, approved or ratified by the City Council (as and to the extent required by the laws governing the City) and duly authorized by the Design-Builder (a “Contract Amendment”).

(B) Procedure. Contract Amendments shall be serially numbered, dated and signed by a Senior Supervisor for the Design-Builder and by the City Contract Representative, as determined in accordance with subsection 18.5(B) (City Contract Representative). The City and the Design-Builder each shall maintain a parallel, identical file of all Contract Amendments, separate and distinct from the Contract Administration Memoranda and all other documents relating to the administration and performance of this Design-Build Contract.

SECTION 18.5. CONTRACT REPRESENTATIVES.

(A) Design-Builder Contract Representative and Senior Supervisors. The Design-Builder shall appoint and inform the City in writing from time to time of the identity of (1) the individual with the responsibility and power from time to time to administer this Design-Build Contract and to bind the Design-Builder with respect to any Contract Administration Memorandum and Design-Build Contract Amendment (which may be the same or different individual with respect to the Preliminary Services, the Design-Build Work and the Transition Services) (the “Design-Builder Contract Representative”), and (2) the corporate officials of the Design-Builder with senior supervisory responsibility for the Project and the performance of this Design-Build Contract (the “Senior Supervisors”). The Design-Builder shall promptly notify the City in writing of the appointment of any successor Senior Supervisors. The Senior Supervisors shall cooperate with the City in any reviews of the performance of the Design-Build Manager and the Design-Builder Contract Representative which the City may undertake from time to time, and shall give full consideration to any issues raised by the City in conducting such performance reviews.

(B) City Contract Representative. The City shall appoint an individual or individuals to act as “City Contract Representative” for this Design-Build Contract. Such appointment shall be in writing and include a specific description of the extent of the Contract Representative’s power to administer this Design-Build Contract, including specific dollar limitations of his or her authority. The Design-Builder shall be entitled to a copy of any such written appointment. The Design-Builder understands and agrees that any such delegation may provide only limited authority with respect to the implementation of this Design-Build Contract, which may or may not include the authority to bind the City with respect to any Contract Amendment. Within such limitations, the Design-Builder shall be entitled to rely on the written directions of any City Contract Representative. The City Contract Representative shall have the right at any time to issue the Design-Builder a written request for information

relating to this Design-Build Contract. Any written request designated as a “priority request” shall be responded to by the Design-Builder within three business days.

(C) City Approvals and Consents. When this Design-Build Contract requires any approval or consent by the City to a Design-Builder submission, request or report, the approval or consent shall, within the limits of the authority of subsection (B) (City Contract Representative) of this Section, be given by the City Contract Representative in writing and such writing shall be conclusive evidence of such approval or consent, subject only to compliance by the City with the Applicable Law that generally governs its affairs. Unless expressly stated otherwise in this Design-Build Contract, and except for requests, reports and submittals made by the Design-Builder that do not, by their terms or the terms of this Design-Build Contract, require a response or action, if the City does not find a request, report or submittal acceptable, it shall provide written response to the Design-Builder describing its objections and the reasons therefor within 14 days of the City’s receipt thereof. If no response is received, the request, report or submittal shall be deemed rejected unless the City’s approval or consent may not be unreasonably delayed by the express terms hereof, and the Design-Builder may resubmit the same, with or without modification. Requests, reports and submittals that do not require a response or other action by the City pursuant to some specific term of this Design-Build Contract shall be deemed acceptable to the City if the City shall not have objected thereto within 30 days of the receipt thereof.

SECTION 18.6. PROPERTY RIGHTS.

(A) Protection from Infringement. The Design-Builder shall pay all royalties and license fees in connection with the Contract Services during the Term. Except as provided in subsections (C) (Exceptions to the Infringement Protection) and (D) (Intellectual Property Developed by the Design-Builder) of this Section, the Design-Builder shall indemnify, defend and hold harmless the City Indemnities in accordance with and to the extent provided in SECTION 16.1 (Design-Builder’s Obligation to Indemnify) from and against all Loss-and-Expense arising out of or related to the infringement or unauthorized use of any patent, trademark, copyright or trade secret relating to, or for the Contract Services. The Design-Builder’s indemnity pursuant to this Section shall apply only when infringement occurs or is alleged to occur from the intended use for which the Deliverable Material, process or equipment was provided by the Design-Builder pursuant to this Design-Build Contract.

(B) Substitutes for Deliverable Material, Process or Equipment. Except as provided in subsection (D) (Intellectual Property Developed by the Design-Builder) of this Section, in the event the Design-Builder or the City is enjoined from using any Deliverable Material, process or equipment, the Design-Builder, at its sole cost and expense, shall:

(1) acquire the right to legally use such infringing Deliverable Material, process or equipment (or any affected Design-Build Work) under infringed patents or copyrights; or

(2) modify or replace such Deliverable Material, process or equipment (or any affected Design-Build Work) with un-infringed Deliverable Material, process or equipment (or any affected Design-Build Work) equivalent in quality, performance, useful life and technical characteristics and development; provided, however, that any such modification or replacement shall be subject to the City’s approval, which shall not be unreasonably withheld or delayed.

(C) Exceptions to Infringement Protection. Unless otherwise agreed to by the parties, the Design-Builder’s obligations under this Section shall not apply to:

- (1) infringement resulting from City-directed Change Orders issued under subsection 6.8(C) (Changes Required by the City) or Section 6.9 (Unilateral Change Directives);
- (2) infringement resulting from unauthorized additions, changes or modifications to the Deliverable Material, process or equipment made or caused to be made by the City subsequent to delivery by the Design-Builder; or
- (3) any claimed infringement which is settled without the consent of the Design-Builder.

The Design-Builder shall promptly advise the City as to whether any City-directed Change Order issued under subsection 6.8(C) (Changes Required by the City) or Section 6.9 (Unilateral Change Directives) may result in any infringement or unauthorized use and, in the event of any failure by the Design-Builder to so advise the City, the Design-Builder will indemnify the City for any Loss-and-Expense resulting from any such infringement or unauthorized use.

(D) Intellectual Property Developed by the Design-Builder. All Intellectual Property developed by the Design-Builder at or through the use of the Project or otherwise in connection with the performance of the Contract Services shall be owned by the Design-Builder subject to the terms and conditions of this Section, and is hereby licensed to the City on a non-exclusive, cost free, perpetual basis for use by the City and any successor operator of the Dewatering Facility (but, with respect to any successor operator, only in connection with the operation of the Dewatering Facility). Such Intellectual Property shall include technology, inventions, innovations, processes, know-how, formulas and software, whether protected as proprietary information, trade secrets, or patents. The City shall have an irrevocable, perpetual and unrestricted right to use such Intellectual Property for any City purpose, whether before or following the Termination Date. The City shall not license, transfer or otherwise make available such Intellectual Property to any third-party without the written consent of the Design-Builder, which consent is hereby granted for purposes of operating the Dewatering Facility following the Termination Date. The City's and any successor operator's use of any such Intellectual Property for purposes other than in connection with the Dewatering Facility shall be at its own risk and the Design-Builder shall have no liability therefor.

SECTION 18.7. GENERAL DUTY TO MITIGATE.

(A) Mitigation by the Design-Builder. In all cases where the Design-Builder is entitled to receive any relief from the City or exercise any rights, including the right to receive any payments, costs, damages or extensions of time, whether on account of Uncontrollable Circumstance or otherwise, the Design-Builder shall use all reasonable efforts to mitigate such amount required to be paid by the City to the Design-Builder under this Design-Build Contract, or the length of the extension of time. Upon request from the City, the Design-Builder shall promptly submit a detailed description, supported by all such documentation as the City may reasonably require, of the measures and steps taken by the Design-Builder to mitigate and meet its obligations under this Section.

(B) Mitigation by the City. In all cases where the City is entitled to receive from the Design-Builder any compensation, costs or damages, but not in any other cases, the City shall use all reasonable efforts to mitigate such amount required to be paid by the Design-Builder to the City under this Design-Build Contract, provided that such obligation shall not require the City to:

- (1) Take any action which is contrary to the public interest, as determined by the City in its discretion;

(2) Undertake any mitigation measures that might be available arising out of its status as a Governmental Body, but which measure would not normally be available to a private commercial party; or

(3) Alter the amount of liquidated damages it is entitled to receive in accordance with subsection 1.2(Q) (Liquidated Damages).

The City shall have no obligation to mitigate, implied or otherwise, except as set forth in this Section or otherwise as expressly provided in this Design-Build Contract. Upon request by the Design-Builder, the City shall promptly submit a detailed description, supported by all such documentation as the Design-Builder may reasonably require, of the measures and steps taken by the City to mitigate and meet its obligations under this Section.

SECTION 18.8. ASSIGNMENT OF ANTI-TRUST CLAIMS.

Upon final Completion and final payment of the Design-Build Price by the City the Design-Builder agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) arising from purchases of goods, services, or materials pursuant to this Design-Build Contract.

SECTION 18.9. ACTIONS OF THE CITY IN ITS GOVERNMENTAL CAPACITY.

Nothing in this Design-Build Contract shall be interpreted as limiting the rights and obligations of the City under Applicable Law in its governmental capacity (including police power actions to protect health, safety and welfare or to protect the environment), or as limiting the right of the Design-Builder to bring any action against the City, not based on this Design-Build Contract, arising out of any act or omission of the City in its governmental capacity.

SECTION 18.10. ASSIGNMENT.

The Design-Builder shall not assign, transfer, convey, lease, encumber or otherwise dispose of this Design-Build Contract, its right to execute the same, or its right, title or interest in all or any part of this Design-Build Contract or any monies due hereunder whatsoever prior to their payment to the Design-Builder, whether legally or equitably, by power of attorney or otherwise, without the prior written consent of the City. Any such approval given in one instance shall not relieve the Design-Builder of its obligation to obtain the prior written approval of the City to any further assignment. Any such assignment of this Design-Build Contract which is approved by the City, shall require the assignee of the Design-Builder to assume the performance of and observe all obligations, representations and warranties of the Design-Builder under this Design-Build Contract which shall remain in full force and effect during this Design-Build Contract. The approval of any assignment, transfer or conveyance shall not operate to release the Design-Builder in any way from any of its obligations under this Design-Build Contract unless such approval specifically provides otherwise.

SECTION 18.11. COMPLIANCE WITH MATERIAL AGREEMENTS.

The Design-Builder shall comply with its obligations under agreements of the Design-Builder, which are material to the performance of its obligations under this Design-Build Contract. The City shall comply with its obligations under agreements of the City, which are material to the performance of its obligations hereunder.

SECTION 18.12. BINDING EFFECT.

This Design-Build Contract shall inure to the benefit of and shall be binding upon the City and the Design-Builder and any assignee acquiring an interest hereunder consistent with SECTION 18.10 (Assignment).

SECTION 18.13. AMENDMENT AND WAIVER.

This Design-Build Contract may not be amended except by a written agreement signed by the parties in accordance with SECTION 18.4 (Contract Amendments). Any of the terms, covenants, and conditions of this Design-Build Contract may be waived at any time by the party entitled to the benefit of such term, covenant or condition if such waiver is in writing and executed by the party against whom such waiver is asserted.

SECTION 18.14. NOTICES.

(A) Procedure. All notices, consents, approvals or written communications (unless otherwise provided in the communication plan required to be developed pursuant to Appendix 2 (Preliminary Services) given pursuant to the terms of this Design-Build Contract shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States Mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(B) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Attn: Mariana Chavez-Vazquez
Telephone No.: 408-635-4008
Email: Mariana.Chavez-Vazquez@SanJoseCA.gov

with a copy to:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Attn: City Attorney – Jennifer Pousho
Telephone No.: 408-535-1922
Facsimile No.: 408-998-3131
Email: Jennifer.Pousho@SanJoseCA.gov

(C) Owner’s Advisor Notice Address. Notices required to be given to the Owner’s Advisor shall be addressed as follows:

Brown & Caldwell
701 Pike Street, Suite 1200
Seattle, WA 98104
Attn: Pat Tangora
Telephone No.: 206-749-2321
Email: PTangora@brwncald.com

With copies to the City at the addresses provided in (B) above.

(D) Design-Builder Notice Address. Notices required to be given to the Design-Builder shall be addressed as follows:

Walsh Construction Company II, LLC
1390 Willow Pass Road, Suite 950
Concord, CA 94520
Telephone No.: 925-627-1700
Attn: Manny E. Diaz, DB Project Manager
Email: mediaz@walshgroup.com

SECTION 18.15. NOTICE OF LITIGATION.

In the event the Design-Builder or the City receives notice of or undertakes the defense or the prosecution of any Legal Proceedings, claims, or investigations in connection with the Project, the party receiving such notice or undertaking such defense or prosecution shall give the other party timely notice of such proceedings and shall inform the other party in advance of all hearings regarding such proceedings. For purposes of this Section only, “timely notice” shall be deemed given if the receiving party has a reasonable opportunity to provide objections or comments or to proffer to assume the defense or prosecution of the matter in question, given the deadlines for response established by the relevant rules of procedure.

SECTION 18.16. FURTHER ASSURANCES.

The City and Design-Builder each agree to execute and deliver such further instruments and to perform any acts that may be necessary or reasonably requested in order to give full effect to this Design-Build Contract. The City and the Design-Builder, in order to carry out this Design-Build Contract, each shall use all commercially reasonable efforts to provide such information, execute such further instruments and documents and take such actions as may be reasonably requested by the other and not inconsistent with the provisions of this Design-Build Contract and not involving the assumption of obligations or liabilities different from or in excess of or in addition to those expressly provided for herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Design-Build Contract to be executed by their duly authorized representatives as of the day and year first above written.

THE CITY OF SAN JOSE

WALSH CONSTRUCTION COMPANY II, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

ATTEST:

Printed Name:

CITY CLERK

APPROVED AS TO FORM:

Printed Name:

[SR.] DEPUTY CITY ATTORNEY

TRANSACTION FORMS
TO THE
DESIGN-BUILD CONTRACT
FOR THE DIGESTED SLUDGE DEWATERING FACILITY
(CPMS NO. 7758)
AT THE
SAN JOSE – SANTA CLARA
REGIONAL WASTEWATER FACILITY

between

THE CITY OF SAN JOSE,
as administering agency of
The Regional Wastewater Facility

and

WALSH CONSTRUCTION COMPANY II, LLC

Dated

_____, 2019

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TRANSACTION FORM A
FORM OF GUARANTY AGREEMENT

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GUARANTY AGREEMENT

from

WALSH CONSTRUCTION GROUP, LLC

to

THE CITY OF SAN JOSE, CALIFORNIA

Dated as of

_____, 2019

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TABLE OF CONTENTS

Page

ARTICLE 1
DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS..... A-2
SECTION 1.2. INTERPRETATION..... A-2

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR A-4

ARTICLE 3
GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY..... A-6
SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR A-6
SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL A-6
SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS A-8
SECTION 3.5. WAIVERS BY THE GUARANTOR..... A-8
SECTION 3.6. PAYMENT OF COSTS AND EXPENSES A-9
SECTION 3.7. SUBORDINATION OF RIGHTS A-9
SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT..... A-9
SECTION 3.9. TERM A-9

ARTICLE 4
GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE A-10
SECTION 4.2. ASSIGNMENT A-10
SECTION 4.3. QUALIFICATION IN CALIFORNIA..... A-10
SECTION 4.4. CONSENT TO JURISDICTION..... A-10
SECTION 4.5. BINDING EFFECT A-11
SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS..... A-11
SECTION 4.7. LIABILITY A-11
SECTION 4.8. NOTICES A-11

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GUARANTY AGREEMENT

THIS GUARANTY AGREEMENT is made and dated as of _____, 2019, between Walsh Construction Group, LLC, a limited liability company organized and existing under the laws of the State of Illinois (together with any permitted successors and assigns hereunder, the “Guarantor”), and the City of San Jose, California (the “City”).

RECITALS

The City and Walsh Construction Company II, LLC, a limited liability company organized and existing under the laws of the State of Illinois (the “Design-Builder”), have entered into a Design-Build Contract for the Dewatering Facility at the San Jose – Santa Clara Regional Wastewater Facility, dated as of _____, 2019, as amended from time to time (the “Design-Build Contract”), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, start up, commission, and acceptance test, certain upgrades and improvements to the City’s San Jose – Santa Clara Regional Wastewater Facility in San Jose, California, all as more particularly described therein.

The Design-Builder is an indirect subsidiary of the Guarantor.

Performance by the City and the Design-Builder of their obligations under the Design-Build Contract will result in a direct and substantial benefit to the Guarantor.

The City will enter into the Design-Build Contract only if, concurrently with its execution and delivery by the Design-Builder, the Guarantor guarantees the performance by the Design-Builder of all of the Design-Builder’s Obligations under the Design-Build Contract as set forth in this Guaranty Agreement.

In order to induce the execution and delivery of the Design-Build Contract by the City and in consideration thereof, the Guarantor agrees as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

SECTION 1.1. DEFINITIONS.

For the purposes of this Guaranty, the following words and terms shall have the respective meanings set forth as follows. Any other capitalized word or term used but not defined herein is used as defined in the Design-Build Contract.

“Obligations” means the amounts payable by, and the covenants and agreements of, the Design-Builder pursuant to the terms of the Design-Build Contract.

“Transaction Agreement” means any agreement entered into by the Design-Builder or the City in connection with the transactions contemplated by the Design-Build Contract, including the Design-Build Contract, and any supplements thereto.

SECTION 1.2. INTERPRETATION.

In this Guaranty, unless the context otherwise requires:

(A) References Hereto. The terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms refer to this Guaranty, and the term “hereafter” means after, and the term “heretofore” means before, the date of execution and delivery of this Guaranty.

(B) Plurality. Words importing the singular number mean and include the plural number and vice versa.

(C) Persons. Words importing persons include firms, companies, associations, general partnerships, limited partnerships, trusts, business trusts, corporations and other legal entities, including public bodies, as well as individuals.

(D) Headings. The table of contents and any headings preceding the text of the Articles, Sections and subsections of this Guaranty shall be solely for convenience of reference and shall not constitute a part of this Guaranty, nor shall they affect its meaning, construction or effect.

(E) Entire Agreement. This Guaranty constitutes the entire agreement between the parties hereto with respect to the transactions contemplated by this Guaranty. Nothing in this Guaranty is intended to confer on any person other than the Guarantor, the City and their permitted successors and assigns hereunder any rights or remedies under or by reason of this Guaranty.

(F) Counterparts. This Guaranty may be executed in any number of original counterparts. All such counterparts shall constitute but one and the same Guaranty.

(G) Applicable Law. This Guaranty shall be governed by and construed in accordance with the applicable laws of the State of California.

(H) Severability. If any clause, provision, subsection, Section or Article of this Guaranty shall be ruled invalid by any court of competent jurisdiction, the invalidity of any such clause, provision, subsection, Section or Article shall not affect any of the remaining provisions hereof, and this Guaranty shall be construed and

enforced as if such invalid portion did not exist provided that such construction and enforcement shall not increase the Guarantor's liability beyond that expressly set forth herein.

(I) Approvals. All approvals, consents and acceptances required to be given or made by any party hereto shall be at the discretion of the party whose approval, consent or acceptance is required.

(J) Payments. All payments required to be made by the Guarantor hereunder shall be made in lawful money of the United States of America.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR

SECTION 2.1. REPRESENTATIONS AND WARRANTIES OF THE GUARANTOR.

The Guarantor hereby represents and warrants that:

(K) Existence and Powers. The Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Illinois, with the full legal right, power and authority to enter into and perform its obligations under this Guaranty.

(L) Due Authorization and Binding Obligation. This Guaranty has been duly authorized, executed and delivered by all necessary corporate action of the Guarantor and constitutes the legal, valid and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms, except to the extent that its enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights from time to time in effect and equitable principles of general application.

(M) No Conflict. To the best of its knowledge, neither the execution nor delivery by the Guarantor of this Guaranty nor the performance by the Guarantor of its obligations in connection with the transaction contemplated hereby or the fulfillment by the Guarantor of the terms and conditions hereof: (a) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Guarantor; (b) conflicts with, violates or results in a breach of any term or condition of the Guarantor's corporate charter or by-laws or any order, judgment or decree, or any contract, agreement or instrument to which the Guarantor is a party or by which the Guarantor or any of its properties or assets are bound, or constitutes a default under any of the foregoing; or (c) will result in the creation or imposition of any material encumbrance of any nature whatsoever upon any of the properties or assets of the Guarantor except as permitted hereby.

(N) No Approvals Required. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Body is required for the valid execution and delivery of this Guaranty by the Guarantor or the performance of its payment or other obligations hereunder, except as such shall have been duly obtained or made.

(O) No Litigation. Except as disclosed in writing to the City, there is no Legal Proceeding, at law or in equity, before or by any Governmental Body pending or, to the best of the Guarantor's knowledge, overtly threatened or publicly announced against the Guarantor, in which an unfavorable decision, ruling or finding could reasonably be expected to have a material and adverse effect on the validity, legality or enforceability of this Guaranty against the Guarantor, or on the ability of the Guarantor to perform its obligations hereunder.

(P) No Legal Prohibition. The Guarantor has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the Guarantor of this Guaranty and the transactions contemplated by this Guaranty.

(Q) Consent to Agreements. The Guarantor is fully aware of and consents to the terms and conditions of the Design-Build Contract.

(R) Consideration. This Guaranty is made in furtherance of the purposes for which the Guarantor has been organized, and the assumption by the Guarantor of its obligations hereunder will result in a material benefit to the Guarantor.

(S) Applicable Law Compliance. Except as disclosed in writing to the City, the Guarantor does not have knowledge of any material violation of any law, order, rule or regulation with respect to any facilities designed or constructed by the Guarantor, Design-Builder or any of their Affiliates.

ARTICLE 3

GUARANTY COVENANTS

SECTION 3.1. GUARANTY TO THE CITY.

The Guarantor hereby absolutely, presently, irrevocably and unconditionally guarantees to the City for the benefit of the City (1) the full and prompt payment when due of each and all of the payments required to be credited or made by the Design-Builder under the Design-Build Contract (including all amendments and supplements thereto) to, or for the account of, the City, when the same shall become due and payable pursuant to this Guaranty, and (2) the full and prompt performance and observance of each and all of the Obligations. Notwithstanding the unconditional nature of the Guarantor's obligations as set forth herein, the Guarantor shall have the right to assert the defenses provided in Section 3.4 hereof against claims made under this Guaranty.

SECTION 3.2. RIGHT OF CITY TO PROCEED AGAINST GUARANTOR.

This Guaranty shall constitute a guaranty of payment and of performance and not of collection, and the Guarantor specifically agrees that in the event of a failure by the Design-Builder to pay or perform any Obligation guaranteed hereunder, the City shall have the right to proceed first and directly against the Guarantor under this Guaranty and without proceeding against the Design-Builder or exhausting any other remedies against the Design-Builder which the City may have. Without limiting the foregoing, the Guarantor agrees that it shall not be necessary, and that the Guarantor shall not be entitled to require, as a condition of enforcing the liability of the Guarantor hereunder, that the City: (1) file suit or proceed to obtain a personal judgment against the Design-Builder or any other person that may be liable for the Obligations or any part of the Obligations; (2) make any other effort to obtain payment or performance of the Obligations from the Design-Builder other than providing the Design-Builder with any notice of such payment or performance as may be required by the terms of the Design-Build Contract or required to be given to the Design-Builder under Applicable Law; (3) foreclose against or seek to realize upon any security for the Obligations; or (4) exercise any other right or remedy to which the City is or may be entitled in connection with the Obligations or any security therefor or any other guarantee thereof, except to the extent that any such exercise of such other right or remedy may be a condition to the Obligations of the Design-Builder or to the enforcement of remedies under the Design-Build Contract. Upon any unexcused failure by the Design-Builder in the payment or performance of any Obligation and the giving of such notice or demand, if any, to the Design-Builder and the Guarantor as may be required in connection with such Obligation and this Guaranty, the liability of the Guarantor shall be effective and shall immediately be paid or performed. Notwithstanding the City's right to proceed directly against the Guarantor, the City (or any successor) shall not be entitled to more than a single full performance of the Obligations in regard to any breach or non-performance thereof.

SECTION 3.3. GUARANTY ABSOLUTE AND UNCONDITIONAL.

The obligations of the Guarantor hereunder are absolute, present, irrevocable and unconditional and shall remain in full force and effect until the Design-Builder shall have fully discharged the Obligations in accordance with their respective terms and conditions, and, except as provided in Section 3.4, shall not be subject to any counterclaim, set-off, deduction or defense (other than full and strict compliance with, or release, discharge or satisfaction of, such Obligations) based on any claim that the Guarantor may have against the Design-Builder, the City or any other person. Without limiting the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged or in any way modified by reason of any of the following (whether with or without notice to, knowledge by, or further consent, of the Guarantor):

- (1) the extension or renewal of this Guaranty or the Design-Build Contract up to the specified Terms of each agreement;
- (2) any exercise or failure, omission or delay by the City in the exercise of any right, power or remedy conferred on the City with respect to this Guaranty or the Design-Build Contract except to the extent such failure, omission or delay gives rise to an applicable statute of limitations defense with respect to a specific claim;
- (3) any permitted transfer or assignment of rights or obligations under the Design-Build Contract or under any other Transaction Agreement by any party thereto, or any permitted assignment, conveyance or other transfer of any of their respective interests in the Project Improvements or in, to or under any of the Transaction Agreements;
- (4) any permitted assignment for the purpose of creating a security interest or mortgage of all or any part of the respective interests of the City or any other person in any Transaction Agreement or in the Project Improvements;
- (5) any renewal, amendment, change or modification in respect of any of the Obligations or terms or conditions of any Transaction Agreement;
- (6) any failure of title with respect to all or any part of the respective interests of any person in the Project Site or the Project Improvements;
- (7) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, moratorium, arrangement, composition with creditors or readjustment of, or other similar proceedings against the Design-Builder or the Guarantor, or any of the property of either of them, or any allegation or contest of the validity of this Guaranty or any other Transaction Agreement in any such proceeding (it is specifically understood, consented and agreed to that, to the extent permitted by law, this Guaranty shall remain and continue in full force and effect and shall be enforceable against the Guarantor to the same extent and with the same force and effect as if any such proceeding had not been instituted and as if no rejection, stay, termination, assumption or modification has occurred as a result thereof, it being the intent and purpose of this Guaranty that the Guarantor shall and does hereby waive all rights and benefits which might accrue to it by reason of any such proceeding);
- (8) except as permitted by Section 4.1 or 4.2 hereof, any sale or other transfer by the Guarantor or any Affiliate of any of the capital stock or other interest of the Guarantor or any Affiliate in the Design-Builder now or hereafter owned, directly or indirectly, by the Guarantor or any Affiliate, or any change in composition of the interests in the Design-Builder;
- (9) any failure on the part of the Design-Builder for any reason to perform or comply with any agreement with the Guarantor;
- (10) the failure on the part of the City to provide any notice to the Guarantor which is not required to be given to the Guarantor pursuant to this Guaranty and to the Design-Builder as a condition to the enforcement of Obligations pursuant to the Design-Build Contract;

(11) any failure of any party to the Transaction Agreements to mitigate damages resulting from any default by the Design-Builder or the Guarantor under any Transaction Agreement;

(12) the merger or consolidation of any party to the Transaction Agreements into or with any other person, or any sale, lease, transfer, abandonment or other disposition of any or all of the property of any of the foregoing to any person;

(13) any legal disability or incapacity of any party to the Transaction Agreements; or

(14) the fact that entering into any Transaction Agreement by the Design-Builder or the Guarantor was invalid or in excess of the powers of such party.

Should any money due or owing under this Guaranty not be recoverable from the Guarantor due to any of the matters specified in subparagraphs (1) through (14) above, then, in any such case, such money, together with all additional sums due hereunder, shall nevertheless be recoverable from the Guarantor as though the Guarantor were principal obligor in place of the Design-Builder pursuant to the terms of the Design-Build Contract and not merely a guarantor and shall be paid by the Guarantor forthwith subject to the terms of this Guaranty. Notwithstanding anything to the contrary expressed in this Guaranty, nothing in this Guaranty shall be deemed to amend, modify, clarify, expand or reduce the Design-Builder's rights, benefits, duties or obligations under the Design-Build Contract. To the extent that any of the matters specified in subparagraphs (1) through (6) and (8) through (14) would provide a defense to, release, discharge or otherwise affect the Design-Builder's Obligations, the Guarantor's obligations under this Guaranty shall be treated the same.

SECTION 3.4. DEFENSES, SET-OFFS AND COUNTERCLAIMS.

Notwithstanding any provision contained herein to the contrary, the Guarantor shall be entitled to exercise or assert any and all legal or equitable rights or defenses which the Design-Builder may have under the Design-Build Contract or under Applicable Law (other than bankruptcy or insolvency of the Design-Builder and other than any defense which the Design-Builder has expressly waived in the Design-Build Contract or the Guarantor has expressly waived in Section 3.5 hereof or elsewhere hereunder), and the obligations of the Guarantor hereunder are subject to such counterclaims, set-offs or deductions which the Design-Builder is permitted to assert pursuant to the Design-Build Contract, if any.

SECTION 3.5. WAIVERS BY THE GUARANTOR.

The Guarantor hereby unconditionally and irrevocably waives:

- (i) notice from the City of its acceptance of this Guaranty;
- (ii) notice of any of the events referred to in Section 3.3 hereof, except to the extent that notice is required to be given as a condition to the enforcement of the Obligations;
- (iii) to the fullest extent lawfully possible, all notices which may be required by statute, rule of law or otherwise to preserve intact any rights against the Guarantor, except any notice to the Design-Builder required pursuant to the Design-Build Contract or Applicable Law as a condition to the performance of any Obligation;

- (iv) to the fullest extent lawfully possible, any statute of limitations defense based on a statute of limitations period which may be applicable to guarantors (or parties in similar relationships) which would be shorter than the applicable statute of limitations period for the underlying claim;
- (v) any right to require a proceeding first against the Design-Builder;
- (vi) any right to require a proceeding first against any person or the security provided by or under any Transaction Agreement except to the extent such Transaction Agreement specifically requires a proceeding first against any person (except the Design-Builder) or security;
- (vii) any requirement that the Design-Builder be joined as a party to any proceeding for the enforcement of any term of any Transaction Agreement;
- (viii) the requirement of, or the notice of, the filing of claims by the City in the event of the receivership or bankruptcy of the Design-Builder; and
- (ix) all demands upon the Design-Builder or any other person and all other formalities the omission of any of which, or delay in performance of which, might, but for the provisions of this Section 3.5, by rule of law or otherwise, constitute grounds for relieving or discharging the Guarantor in whole or in part from its absolute, present, irrevocable, unconditional and continuing obligations hereunder.

SECTION 3.6. PAYMENT OF COSTS AND EXPENSES.

The Guarantor agrees to pay the City on demand all Fees and Costs incurred by or on behalf of the City to enforce observance of the covenants, agreements and obligations contained in this Guaranty against the Guarantor, other than the Fees and Costs that the City incurs in performing any of its obligations under the Design-Build Contract, or other applicable Transaction Agreement where such obligations are a condition to performance by the Design-Builder of its Obligations.

SECTION 3.7. SUBORDINATION OF RIGHTS.

The Guarantor agrees that any right of subrogation or contribution which it may have against the Design-Builder as a result of any payment or performance hereunder is hereby fully subordinated to the rights of the City hereunder and under the Transaction Agreements and that the Guarantor shall not recover or seek to recover any payment made by it hereunder from the Design-Builder until the Design-Builder and the Guarantor shall have fully and satisfactorily paid or performed and discharged the Obligations giving rise to a claim under this Guaranty.

SECTION 3.8. SEPARATE OBLIGATIONS; REINSTATEMENT.

The obligations of the Guarantor to make any payment or to perform and discharge any other duties, agreements, covenants, undertakings or obligations hereunder shall: (1) to the extent permitted by applicable law, constitute separate and independent obligations of the Guarantor from its other obligations under this Guaranty; (2) give rise to separate and independent causes of action against the Guarantor; and (3) apply irrespective of any indulgence granted from time to time by the City. The Guarantor agrees that this Guaranty shall be automatically reinstated if and to the extent that for any reason any payment or performance by or on behalf of the Design-Builder is rescinded or must be otherwise restored by the City,

whether as a result of any proceedings in bankruptcy, reorganization or similar proceeding, unless such rescission or restoration is pursuant to the terms of the Design-Build Contract, or any applicable Transaction Agreement or the Design-Builder's enforcement of such terms under Applicable Law.

SECTION 3.9. TERM.

This Guaranty shall remain in full force and effect from the date of execution and delivery hereof until all of the Obligations of the Design-Builder have been fully paid and performed.

ARTICLE 4

GENERAL COVENANTS

SECTION 4.1. MAINTENANCE OF CORPORATE EXISTENCE.

(A) Consolidation, Merger, Sale or Transfer. The Guarantor covenants that during the term of this Guaranty it will maintain its corporate existence, will not dissolve or otherwise dispose of all or substantially all of its assets and will not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it unless the successor is the Guarantor; provided, however, that the Guarantor may consolidate with or merge into another entity, or permit one or more other entities to consolidate with or merge into it, or sell or otherwise transfer to another entity all or substantially all of its assets as an entirety and thereafter dissolve if the successor entity (if other than the Guarantor) (a) assumes in writing all the obligations of the Guarantor hereunder and, if required by law, is duly qualified to do business in the State of California, (b) delivers to the City an opinion of counsel to the effect that its obligations under this Guaranty are legal, valid, binding and enforceable subject to applicable bankruptcy and similar insolvency or moratorium laws; and (c) has a net worth at the time of any such transaction at least equal to the net worth of the Guarantor immediately prior to such time.

(B) Continuance of Obligations. If a consolidation, merger or sale or other transfer is made as permitted by this Section, the provisions of this Section shall continue in full force and effect and no further consolidation, merger or sale or other transfer shall be made except in compliance with the provisions of this Section. No such consolidation, merger or sale or other transfer shall have the effect of releasing the initial Guarantor from its liability hereunder unless a successor entity has assumed responsibility for this Guaranty as provided in this Section.

SECTION 4.2. ASSIGNMENT.

Except as provided in Section 4.1, this Guaranty may not be assigned by the Guarantor without the prior written consent of the City.

SECTION 4.3. QUALIFICATION IN CALIFORNIA.

The Guarantor agrees that, so long as this Guaranty is in effect, if required by law, the Guarantor will be duly qualified to do business in the State of California.

SECTION 4.4. CONSENT TO JURISDICTION.

The Guarantor irrevocably: (1) agrees that any Legal Proceeding related to this Guaranty or to any rights or relationship between the parties arising therefrom shall be solely and exclusively initiated and maintained in State courts located in Santa Clara County, California or in federal courts located in the Northern District of California, having appropriate jurisdiction therefor; (2) consents to the jurisdiction of such courts in any such Legal Proceeding; and (3) waives any objection which it may have to the laying of the jurisdiction of any such Legal Proceeding in any such court.

SECTION 4.5. BINDING EFFECT.

This Guaranty shall inure to the benefit of the City and its permitted successors and assigns and shall be binding upon the Guarantor and its successors and assigns.

SECTION 4.6. AMENDMENTS, CHANGES AND MODIFICATIONS.

This Guaranty may not be amended, changed or modified or terminated and none of its provisions may be waived, except with the prior written consent of the City and the Guarantor.

SECTION 4.7. LIABILITY.

It is understood and agreed to by the City that nothing contained herein shall create any obligation of, or right to look, to any director, officer, employee or stockholder of the Guarantor (or any Affiliate of the Guarantor) for the satisfaction of any obligations hereunder, and no judgment, order or execution with respect to or in connection with this Guaranty shall be taken against any such director, officer, employee or stockholder.

SECTION 4.8. NOTICES.

Procedure. All notices, demands or written communications given pursuant to the terms of this Guaranty shall be: (1) in writing and delivered in person; (2) transmitted by certified mail, return, receipt requested, postage prepaid or by overnight courier utilizing the services of a nationally-recognized overnight courier service with signed verification of delivery; or (3) given by email transmission, if a signed original of the emailed letter or other communication is deposited in the United States mail within two days after transmission. Notices shall be deemed given only when actually received at the address first given below with respect to each party. Either party may, by like notice, designate further or different addresses to which subsequent notices shall be sent.

(A) City Notice Address. Notices required to be given to the City shall be addressed as follows:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Attn: Mariana Chavez-Vazquez
Telephone No.: 408-635-4008
Email: Mariana.Chavez-Vazquez@SanJoseCA.gov

with a copy to:

City of San Jose
200 East Santa Clara Street
San Jose, CA 95113
Attn: City Attorney – Jennifer Pousho
Telephone No.: 408-535-1922
Facsimile No.: 408-998-3131
Email: Jennifer.Pousho@SanJoseCA.gov

(B) Guarantor Notice Address. Notices required to be given to the Guarantor shall be addressed as follows:

Walsh Construction Group, LLC
929 West Adams Street
Chicago, IL 60607
Telephone No.: 312-563-5400
Attn: Sean Walsh, President
Email: swalsh@walshgroup.com

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

WALSH CONSTRUCTION GROUP, LLC, as
Guarantor

By: _____

Name: _____

Title: _____

ACCEPTED AND AGREED TO BY:

THE CITY OF SAN JOSE

By: _____

Name: _____

Title: _____

TRANSACTION FORM B
FORM OF PERFORMANCE BOND

FORM OF PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Walsh Construction Company II, LLC, hereinafter referred to as “Design-Builder”, as principal, and _____ as surety, are held and firmly bound unto the City of San Jose, California (the “Owner”), in the sum of _____ dollars (\$_____) lawful money of the United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and entered into the annexed Design-Build Contract with the Owner for the Dewatering Facility at the San Jose – Santa Clara Regional Wastewater Facility, dated as of _____, 2019, as amended from time to time (the “Design-Build Contract”), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, commission, and acceptance test, improvements to the existing, and a new, replacement, dewatering facility in San Jose, California, all as more particularly described therein, and is required by the Owner to give this bond on the Definitive Contract Amendment Date (as defined in the Design-Build Contract) pursuant to said Design-Build Contract;

NOW, THEREFORE, if the Design-Builder, its heirs, executors, administrators, successors, and assigns shall well and truly do and perform all of the covenants and obligations of the Design-Build Contract and any alteration thereof made as therein provided, on its part to be done and performed at the times and in the manner specified therein, then this obligation shall be null and void, otherwise it shall be and remain in full force and effect inclusive of any period of any guarantees or warranties required under the Design-Build Contract.

Any alterations in the work to be done or the material to be furnished, which may be made pursuant to the terms of the Design-Build Contract, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Contract release either the Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Contract is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety’s rights as to other security held by the creditor).

In the event suit is brought upon this bond by the Owner and judgment is recovered, the surety shall pay all costs incurred by the Owner in such suit, including, but not limited to, reasonable attorneys’ fees and administrative and consultant costs to be fixed by the court. Any proceeding, legal or equitable, under this bond shall be instituted in State courts located in Santa Clara County, California or in federal courts located in the Northern District of California.

The address or addresses at which the principal and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following: _____.

WITNESS our hands this _____ day of _____, 20__.

(Seal)

Design-Builder

By _____

Title

(Surety's Corporate Seal)

Surety

By _____

Title

Address of Surety

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, § 1189]

State of California)
County of)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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TRANSACTION FORM C
FORM OF PAYMENT BOND

FORM OF PAYMENT BOND FOR MATERIALS AND LABOR

KNOW ALL PERSONS BY THESE PRESENTS:

That we, Walsh Construction Company II, LLC, hereinafter referred to as “Design-Builder”, as principal, and _____ as surety, are held and firmly bound unto the City of San Jose, California (the “Owner”), in the sum of _____ dollars (\$_____) lawful money of United States of America, for the payment of which sum, well and truly to be made, we bind ourselves, heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that,

WHEREAS, the Design-Builder has been awarded and entered into the annexed Design-Build Contract with the Owner for the Dewatering Facility at the San Jose – Santa Clara Regional Wastewater Facility, dated as of _____, 2019, as amended from time to time (the “Design-Build Contract”), whereby the Design-Builder has agreed to obtain governmental approvals for, design, construct, commission, and acceptance test, improvements to the existing, and a new, replacement, dewatering facility in San Jose, California, all as more particularly described therein, and is required by the Owner to give this bond on the Definitive Contract Amendment Date (as defined in the Design-Build Contract) pursuant to said Design-Build Contract;

NOW, THEREFORE, if Design-Builder, or its subcontractors, fails to pay any of the persons referred to in Section 9100 of the Civil Code of the State of California for any materials, provisions, provender, equipment, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Code or for any amounts required to be deducted, withheld and paid over to the Employment Development Department from the wages of employees of the Design-Builder and its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such 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, reasonable attorneys’ fees, to be fixed by the court. This bond shall inure to the benefit of any and all persons entitled to file claims under Section 9100 of the Civil Code of the State of California so as to give a right of action to them or their assigns in any suit brought upon this bond.

Any alterations in the work to be done, or the materials to be furnished, which may be made pursuant to the terms of the Design-Build Contract, shall not in any way release either the Design-Builder or the surety, nor shall any extensions of time granted under the provisions of the Design-Build Contract release either Design-Builder or the surety, and notice of such alterations or extensions of the Design-Build Contract is hereby waived by the surety.

The surety hereby waives the provisions of California Civil Code Sections 2819 (regarding exoneration of sureties in certain circumstances), 2845 (regarding certain limitations on remedies against sureties) and 2849 (regarding a surety’s rights as to other security held by the creditor).

The address or addresses at which the Design-Builder and surety may be served with notices, papers and other documents under the California Bond and Undertaking Law (California Code of Civil Procedure Section 995.010 et seq.) is the following:

_____.

WITNESS our hands this _____ day of _____, 20__.

(Seal)

Design-Builder

By _____

Title

(Surety's Corporate Seal)

Surety

By _____

Title

Address of Surety

Notice: No substitution or revision to this bond form will be accepted.

ACKNOWLEDGMENT BY NOTARY PUBLIC

[Cal. Civ. Code, § 1189]

State of California)
County of)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

[Any acknowledgement taken in another state shall be sufficient if it is taken in accordance with the laws of the state where the acknowledgement is made.]

(Attach proof of authority of attorney in fact of surety.)

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REFERENCE DOCUMENTS
TO THE
DESIGN-BUILD CONTRACT
FOR THE DIGESTED SLUDGE DEWATERING FACILITY
(CPMS NO. 7758)
AT THE
SAN JOSE – SANTA CLARA
REGIONAL WASTEWATER FACILITY

between

THE CITY OF SAN JOSE,
as administering agency of
The Regional Wastewater Facility

and

WALSH CONSTRUCTION COMPANY II, LLC

Dated as of

_____, 2019

DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

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REFERENCE DOCUMENT 1
PROJECT DEFINITION REPORT

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REFERENCE DOCUMENT 2
TECHNICAL MEMORANDUM NO. 1

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REFERENCE DOCUMENT 3
TECHNICAL MEMORANDUM NO. 2

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REFERENCE DOCUMENT 4
TECHNICAL MEMORANDUM NO. 3

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REFERENCE DOCUMENT 5
TECHNICAL MEMORANDUM NO. 4

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REFERENCE DOCUMENT 6

SAN JOSE-SANTA CLARA WATER POLLUTION CONTROL PLANT MASTER PLAN PROJECT
EIR (PLANNING FILE NO. PP11-043) AND THE ADDENDUM THERETO AND RELATED
MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PROJECT

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[The San José-Santa Clara Water Pollution Control Plant Master Plan Project EIR (Planning File No. PP11-043) and the Addendum thereto and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, and are available for inspection by any interested person at that location.]

APPENDICES

to the

DESIGN-BUILD CONTRACT
FOR THE DIGESTED SLUDGE DEWATERING FACILITY
(CPMS NO. 7758)
AT THE
SAN JOSE – SANTA CLARA
REGIONAL WASTEWATER FACILITY

between

THE CITY OF SAN JOSE, CALIFORNIA,
as administering agency of
The Regional Wastewater Facility

and

WALSH CONSTRUCTION COMPANY II, LLC

Dated

_____, 2019

TABLE OF CONTENTS

	Page
APPENDIX 1	DIGESTED SLUDGE DEWATERING FACILITY, DIGESTED SLUDGE DEWATERING FACILITY SITE AND RELATED PROJECTS
	DESCRIPTION 1-1
1.1	PURPOSE 1-1
1.2	BACKGROUND 1-1
1.3	DIGESTED SLUDGE DEWATERING FACILITY SITE 1-6
1.3.1	Construction Enabling Site 1-6
1.3.2	Environmentally Sensitive Areas..... 1-6
1.4	PROPOSED DIGESTED SLUDGE DEWATERING FACILITY 1-8
1.4.1	Indicative Design 1-8
1.5	RELATED PROJECTS AND BACKGROUND STUDIES AND INFORMATION..... 1-17
1.5.1	Related Projects 1-17
1.5.2	Background Studies and Information 1-17
1.6	DEWATERING FACILITY SITE ACCESS AND SECURITY 1-18
APPENDIX 2	PRELIMINARY SERVICES 2-1
2.1	PRELIMINARY SERVICES TASK #1 – PROJECT MANAGEMENT..... 2-1
2.1.1	General Project Management 2-1
2.1.2	Weekly Project Management Meetings and Technical Workshops and Meetings 2-2
2.1.3	Risk Management Requirements 2-4
2.1.4	Change Management Requirements..... 2-5
2.1.5	Project Execution Plan 2-6
2.1.6	Communication Plan..... 2-9
2.1.7	Permits and Approvals Plan..... 2-10
2.1.8	Preliminary Services Schedule and Design-Build Schedule..... 2-10
2.1.9	Document Submittal Procedures 2-11
2.1.10	Monthly Preliminary Services Report Requirements 2-12
2.1.11	Records Management System 2-12
2.1.12	Computerized Maintenance Management System..... 2-13
2.1.13	Kickoff Meeting & Partnering 2-14
2.1.14	Constructability Reviews 2-15
2.1.15	Value Engineering..... 2-16
2.1.16	Cost Model..... 2-16
2.1.17	Equipment and Subcontractor Procurement 2-17
2.2	PRELIMINARY SERVICES TASK #2 – PRELIMINARY INVESTIGATIONS 2-18
2.2.1	Information Review and Verification 2-18
2.2.2	Review of Reference Documents..... 2-18
2.2.3	Site Analysis 2-19
2.2.4	Existing Facilities Condition Assessments..... 2-19
2.2.5	Subsurface Utilities investigation 2-20
2.2.6	Geotechnical Investigations 2-21
2.2.7	Sludge characterization..... 2-26
2.2.8	Regulated Site Conditions – Hazardous Materials (Asbestos, Lead and PCBs)..... 2-30
2.2.9	Regulated Site Conditions – Soils Testing..... 2-31
2.2.10	Odor Modeling 2-33
2.2.11	Options Analysis 2-34
2.3	PRELIMINARY SERVICES TASK #3 – BASIS OF DESIGN REPORT 2-35
2.3.1	Basis of Design Development..... 2-35
2.3.2	Draft Basis of Design Report (BDR)..... 2-37

	2.3.3	Basis of Design Review Workshop.....	2-40
	2.3.4	Final Basis of Design Report.....	2-40
2.4		PRELIMINARY SERVICES TASK #4 – 30 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)	2-40
	2.4.1	Period of Performance	2-40
	2.4.2	Minimum Requirements	2-41
	2.4.3	Criteria	2-41
	2.4.4	30 Percent Design	2-42
	2.4.5	Corrosion Engineering.....	2-43
	2.4.6	30 Percent Design Workshop.....	2-44
	2.4.7	Updated Estimated Design-Build Cost	2-44
	2.4.8	Updated Initial Design-Build Schedule	2-45
	2.4.9	City Review	2-45
2.5		PRELIMINARY SERVICES TASK #5 – 60 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)	2-45
	2.5.1	Inclusion of the Technical Specifications.....	2-45
	2.5.2	60% DCD Deliverables	2-45
	2.5.3	Minimum Requirements	2-46
	2.5.4	Criteria	2-48
	2.5.5	Updated Design-Build Cost Model	2-48
	2.5.6	Updated Design-Build Schedule	2-49
	2.5.7	Required Permits and Approvals.....	2-49
	2.5.8	Performance Guarantees	2-49
	2.5.9	Training Plan Requirements	2-50
	2.5.10	Draft Maintenance of Operations During Construction Plan	2-50
	2.5.11	City Review	2-51
	2.5.12	60 Percent Design Workshop.....	2-51
2.6		PRELIMINARY SERVICES TASK #6 – DEFINITIVE PROJECT SUBMITTAL AND SUPPORTING COST ESTIMATES	2-51
	2.6.1	Definitive Project Submittal.....	2-51
	2.6.2	Basis of the Proposed Base Guaranteed Maximum Price	2-51
	2.6.3	Preparation of the Definitive Project Submittal.....	2-53
	2.6.4	Definitive Project Submittal Workshop.....	2-54
2.7		PRELIMINARY SERVICES TASK #7 – POTENTIAL ADDITIONAL PRELIMINARY SERVICES	2-54
2.8		PRELIMINARY SERVICES FEE	2-55
	2.8.1	Compensation for Base Preliminary Services.....	2-55
	2.8.2	Payment Requests.....	2-56
	2.8.3	Compensation for Additional Preliminary Services	2-56
APPENDIX 3		GOVERNMENTAL APPROVALS	3-1
	3.1	PURPOSE	3-1
	3.2	GOVERNMENTAL APPROVALS	3-1
APPENDIX 4		TECHNICAL SPECIFICATIONS	4-1
	4.1	PURPOSE	4-1
	4.2	DESIGN GUIDANCE DOCUMENTS AND STANDARD SPECIFICATIONS.....	4-1
	4.3	CODES AND REGULATIONS	4-3
	4.4	PROJECT ELEMENTS	4-3
	4.5	PRELIMINARY MINIMUM TECHNICAL REQUIREMENTS	4-4
	4.5.1	Operating Strategy	4-4
	4.5.2	Digested Sludge Flows, Loads, and Design Years	4-5
	4.5.3	Phased Design and Construction.....	4-5
	4.5.4	Allowable Alternatives	4-6
	4.5.5	City Specifications and Standards	4-6
	4.5.6	Environmental Mitigation Measures	4-7
	4.5.7	Other Minimum Technical Requirements.....	4-7

APPENDIX 5	GENERAL DESIGN-BUILD WORK REQUIREMENTS	5-1
5.1	PURPOSE	5-1
5.2	MANAGEMENT AND COORDINATION	5-1
	5.2.1 Coordination	5-1
	5.2.2 Partnering Sessions	5-1
5.3	DESIGN-BUILD SCHEDULE.....	5-2
	5.3.1 Design-Build Schedule	5-2
	5.3.2 Design-Build Schedule Updates.....	5-2
	5.3.3 City Review	5-3
	5.3.4 Events Affecting the Design-Build Schedule.....	5-4
5.4	CONSTRUCTION MEETINGS AND REPORTS	5-4
	5.4.1 Preconstruction Conference.....	5-4
	5.4.2 Construction Progress Meetings - Scheduling and Attendance.....	5-5
	5.4.3 Construction Progress Meetings - Agenda	5-6
	5.4.4 Monthly Progress Reports.....	5-7
	5.4.5 Project Records	5-9
5.5	CONSTRUCTION WORK GENERALLY.....	5-11
	5.5.1 Deliverable Material	5-11
	5.5.2 Signs	5-11
	5.5.3 Laydown Areas and City Construction Office Space.....	5-11
	5.5.4 Maintenance of the Dewatering Facility Site.....	5-11
	5.5.5 Temporary Utilities.....	5-12
	5.5.6 Relocation of Existing Utilities	5-12
	5.5.7 Noise Control	5-12
	5.5.8 Notice of Default	5-12
5.6	COORDINATION OF CONSTRUCTION WORK AND OPERATIONS	5-12
	5.6.1 Regional Wastewater Facilities Shutdowns during Construction.....	5-12
	5.6.2 Maintenance of Regional Wastewater Facilities Performance during Construction.....	5-13
	5.6.3 Operations and Maintenance Records.....	5-13
5.7	CONSTRUCTION SAFETY AND SECURITY.....	5-13
	5.7.1 Safety and Security	5-13
	5.7.2 Perimeter Security.....	5-15
5.8	OPERATIONS AND MAINTENANCE MANUAL.....	5-15
	5.8.1 Development by the Design-Builder	5-15
	5.8.2 Content of the Operations and Maintenance Manual.....	5-15
5.9	SERVICE MANUALS	5-17
	5.9.2 DCS Information and Electronic Requirements	5-18
5.10	ENVIRONMENTAL REVIEW AND PROTECTION	5-19
	5.10.1 Existing Regulated Substances.....	5-19
	5.10.2 Wildlife and Protected Species Protection	5-19
	5.10.3 Design-Builder Construction Environmental Monitor	5-19
	5.10.4 Regulated Substances Management Program	5-20
	5.10.5 Design-Builder Regulated Substances	5-21
	5.10.6 Emergency/Spill Response Plan	5-21
	5.10.7 Dust Control	5-21
APPENDIX 6	DESIGN-BUILD QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS	6-1
6.1	PURPOSE	6-1
6.2	CITY'S QUALITY OBJECTIVES	6-1
6.3	ROLES AND RESPONSIBILITIES	6-2
	6.3.1 Design-Builder's Role and Responsibilities for QA/QC	6-2
	6.3.2 City's Role and Responsibilities for QA/QC	6-2

6.4	DESIGN-BUILD QUALITY MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION	6-2
6.4.1	General Requirements.....	6-2
6.4.2	Design-Build Quality Management Plan Requirements.....	6-3
6.4.3	Changes to the Design-Build Quality Management Plan.....	6-4
6.5	DESIGN QUALITY CONTROL AND QUALITY ASSURANCE REQUIREMENTS	6-4
6.5.1	Design QA/QC Program	6-4
6.5.2	Design Quality Assurance Manager	6-5
6.6	CONSTRUCTION QUALITY CONTROL REQUIREMENTS	6-5
6.6.1	Construction QA/QC Program.....	6-5
6.6.2	Non-Conforming Work.....	6-6
6.6.3	Construction Quality Assurance Manager.....	6-7
6.6.4	Materials and Equipment.....	6-7
6.6.5	Construction Management and Testing.....	6-8
6.6.6	Laboratories.....	6-8
6.7	INSPECTION OF DESIGN-BUILD WORK.....	6-9
6.7.1	Inspection and Correction	6-9
6.7.2	City Access	6-9
6.7.3	Materials Inspection.....	6-9
6.8	TIME OF INSPECTION AND TESTS	6-10
6.9	MATERIALS SAMPLING AND TESTING.....	6-10
6.9.1	Materials Testing and Removal.....	6-10
6.9.2	Materials Rejection.....	6-11
6.10	MATERIALS TESTING SERVICES.....	6-11
6.10.1	Design-Builder’s Laboratories.....	6-11
6.10.2	Interruptions For Testing and Sampling	6-11
6.10.3	Test Reports.....	6-11
6.10.4	City’s Laboratories	6-12
6.10.5	Materials to be Tested	6-12
6.11	INSTALLATION	6-13
6.11.1	Inspection and Measurement	6-13
6.11.2	Manufacturer’s Instructions	6-13
6.12	PERSONNEL QUALIFICATIONS.....	6-13
APPENDIX 7	DESIGN-BUILD WORK REVIEW PROCEDURES	7-1
7.1	OVERVIEW.....	7-1
7.1.1	Purpose	7-1
7.2	DOCUMENTS TO BE SUBMITTED	7-1
7.2.2	Design-Construction Work Package Information	7-1
7.3	CITY REVIEW DURING GOVERNMENTAL APPROVAL PROCESS	7-4
7.4	CITY DOCUMENT REVIEW	7-4
7.4.1	City Review Responsibilities	7-4
7.4.2	Changes to Technical Specifications	7-5
7.4.3	Time for City Review.....	7-5
7.4.4	Time for Design-Builder Response	7-6
7.4.5	Design-Build Progress Meetings	7-6
7.4.6	Design Submittals During Construction	7-6
7.4.7	Design Change Authority	7-7
7.5	CITY CONSTRUCTION INSPECTION	7-7
7.5.1	Construction Review Intent	7-7
7.5.2	“Or Equals”.....	7-8
7.5.3	Named Suppliers.....	7-8
7.5.4	Functionally Equal.....	7-8
7.5.5	Corrections and Changes	7-9
7.6	RECORD DRAWINGS AND RECORD SPECIFICATIONS	7-9

APPENDIX 8	DESIGN-BUILD PRICE	8-1
8.1	PURPOSE	8-1
8.2	DESIGN-BUILD PRICE	8-1
8.2.1	Payment	8-1
8.2.2	Design-Build Price Defined	8-1
8.2.3	Related Definitions	8-1
8.2.4	Certification and Cost Substantiation	8-2
8.2.5	Relation to General Conditions Costs	8-3
8.2.6	Discounts, Rebates and Refunds	8-3
8.3	DESIGN-BUILD COSTS	8-3
8.3.1	Third-Party Professional Services Fees	8-4
8.3.2	Construction Subcontractor and Major Equipment Supplier Costs	8-4
8.3.3	Design-Builder's Own Labor Costs	8-4
8.3.4	Costs of Materials, Equipment and Supplies	8-5
8.3.5	Other Costs	8-6
8.3.6	City Travel Policy Cost Limits	8-7
8.3.7	Compensation for On-Going Design Costs During the Negotiation of the Definitive Contract Amendment	8-8
8.4	UNALLOWABLE COSTS	8-8
8.4.1	No Payment Obligation	8-8
8.4.2	Unallowable Costs Defined	8-8
8.5	GENERAL CONDITIONS FEE	8-10
8.6	DESIGN-BUILDER FEE	8-11
8.7	GUARANTEED MAXIMUM PRICE	8-11
8.7.1	Guaranteed Maximum Price Generally	8-11
8.7.2	Base Guaranteed Maximum Price	8-12
8.7.3	Base Guaranteed Maximum Price Adjustments	8-12
8.7.4	Value of Base Guaranteed Maximum Price Adjustments	8-12
8.8	SHARED SAVINGS AMOUNT	8-13
APPENDIX 9	COMMISSIONING AND ACCEPTANCE	9-1
9.1	Introduction and Objectives	9-1
9.2	Commissioning and Acceptance Test Plan	9-1
9.2.1	Minimum Requirements:	9-1
9.2.2	Required Submittals and Time Frames	9-6
9.3	MINIMUM COMMISSIONING AND ACCEPTANCE TEST REQUIREMENTS	9-7
9.3.1	General	9-7
9.3.2	Required Tests	9-7
9.3.3	Minimum Acceptance Standards and Full Acceptance Standards	9-9
9.3.4	Buydown Liquidated Damages	9-15
9.3.5	Duration of Acceptance Test	9-16
APPENDIX 10	POST-ACCEPTANCE PERFORMANCE TESTS	10-1
APPENDIX 11	TRANSITION SERVICES	11-1
11.1	PURPOSE	11-1
APPENDIX 12	OWNER CONTROLLED INSURANCE PROGRAM INSURANCE REQUIREMENTS	12-1
APPENDIX 13	KEY PERSONNEL AND APPROVED SUBCONTRACTORS	13-1
13.1	PURPOSE	13-1
13.2	KEY PERSONNEL	13-1
13.3	SUBCONTRACTORS	13-1
13.3.1	Required Subcontractors	13-1
13.3.2	Approved Subcontractors	13-1

APPENDIX 1

**DEWATERING FACILITY, DEWATERING FACILITY SITE AND RELATED PROJECTS
DESCRIPTION**

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APPENDIX 1

DIGESTED SLUDGE DEWATERING FACILITY, DIGESTED SLUDGE DEWATERING FACILITY SITE AND RELATED PROJECTS DESCRIPTION

1.1 PURPOSE

The purpose of this Appendix is to describe the proposed Digested Sludge Dewatering Facility Project (Dewatering Facility), show the location and boundaries of the Dewatering Facility Site, and identify relevant projects, studies, reports and other documents.

1.2 BACKGROUND

The San José–Santa Clara Regional Wastewater Facility (RWF) is an advanced wastewater treatment facility jointly owned by the cities of San José and Santa Clara and operated by the City of San José’s (City) Environmental Services Department (ESD). The RWF serves eight South Bay cities and four special districts including: San José, Santa Clara, Milpitas, Cupertino Sanitary District (Cupertino), West Valley Sanitation District (Campbell, Los Gatos, Monte Sereno, and Saratoga), County Sanitation Districts 2-3 (unincorporated), and Burbank Sanitary District (unincorporated). **Figure 1-1** shows the RWF site plan with the location of major treatment processes areas.

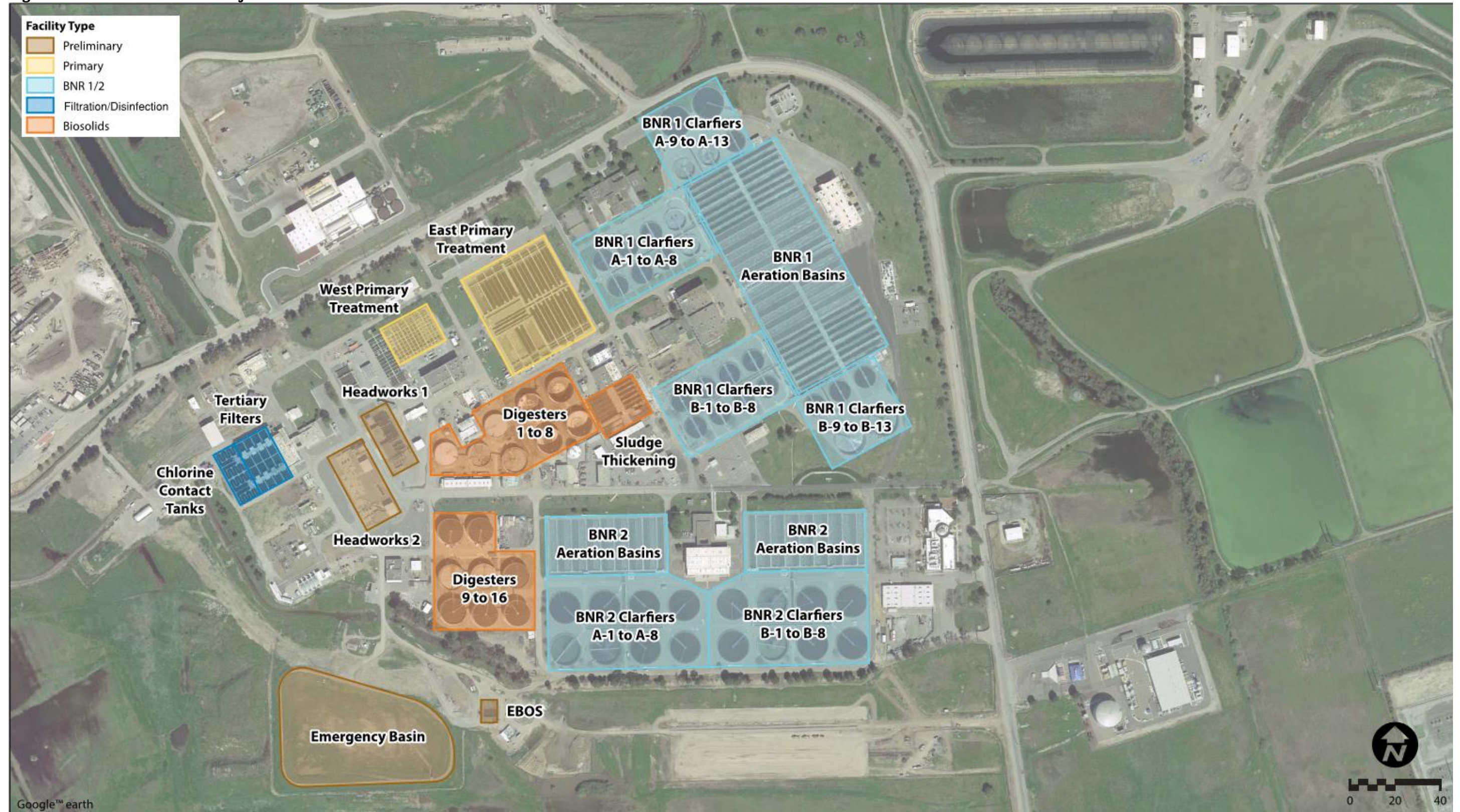
Sludge generated in the primary and secondary treatment processes is thickened and anaerobically digested. This digested sludge (DS) is then transferred to open-air, sludge stabilization lagoons for approximately three and a half years and then to the open-air drying beds for another six months. The resulting Class A biosolids product is loaded into trucks and hauled to the adjacent Newby Island Landfill for use as alternative daily cover (ADC). A process flow diagram of the current liquids and biosolids treatment operations is provided in **Figure 1-2**. The Lagoons and Drying Beds are shown in **Figure 1-3**.

In 2008, the RWF embarked on a master planning process to rehabilitate and upgrade its facilities and explore potential process changes. The San José/Santa Clara Water Pollution Control Plant Master Plan (PMP) used an extensive community engagement process to develop overarching environmental, economic, social, and operational goals for the RWF. To support these goals, the PMP envisioned a comprehensive Biosolids Management Plan that would transition from the current open lagoons and drying bed process to an enclosed, mechanical treatment system with the resulting dewatered biosolids hauled off-site. This transition was intended to reduce the footprint of the biosolids management facilities to enable other uses of land currently occupied by sludge stabilization lagoons and drying beds, reduce odors in the surrounding community, allow the City to develop multiple and diversified biosolids end-use

options, and create flexibility to respond to future regulations governing the beneficial use of biosolids.

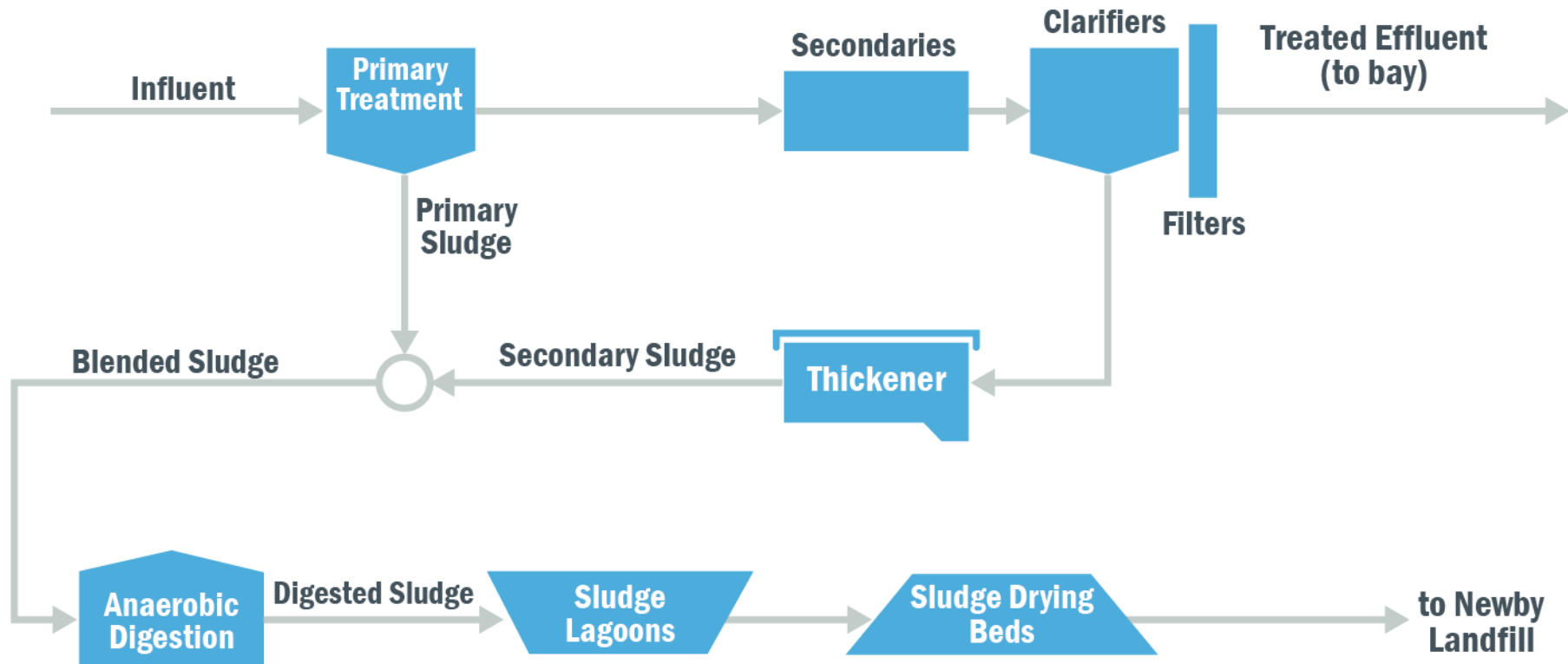
The PMP was adopted by the San José City Council in November 2013 and by Santa Clara City Council in December 2013, allowing staff to begin critical infrastructure improvement at the Regional Wastewater Facility, including the related projects described in Section 1.5 (Related Projects and Background Studies and Information) of this Appendix. The Digested Sludge Dewatering Facility project is one of the major and high priority CIP projects.

Figure 1-1 RWF Site Plan – Major Treatment Processes



In 2014, a Biosolids Transition Strategy was developed to address certain specific issues regarding implementation of the transition from the existing biosolids management system to the PMP's recommended system, taking into consideration the changes that have occurred since the technical aspects of the PMP were developed. A new mechanical DS dewatering facility is an integral component of this Biosolids Transition Strategy. The implementation of the new Digested Sludge Dewatering Facility project (Project) was approved at the June 2, 2015, City Council meeting.

Figure 1-2 Process Flow Diagram – Existing RWF Liquids and Biosolids Treatment Operations



1.3 DIGESTED SLUDGE DEWATERING FACILITY SITE

Figure 1-3 is the RWF site plan showing the Dewatering Facility Site to the east of Zanker Road. It also shows elements of the project that will be built within the fence line of the RWF, such as the transfer pumps, DS storage and export pump station, and pipeline corridors. These sites and all of the sites described below comprise the Dewatering Facility Site.

1.3.1 Construction Enabling Site

The Construction Enabling Site is also shown in **Figure 1-4**, at the bottom of the aerial photograph, labeled as “Worker Parking” and “Staging Area.” Additional areas may be designated for construction staging, storage, trailers and laydown for the Dewatering Facility.

1.3.2 Environmentally Sensitive Areas

Figures 1-5 through 1-8 show environmentally sensitive areas at the rear of the Dewatering Facility Site. Work near this area requires setbacks per City Policy and work in this area requires a permit. It is anticipated that these areas will be cordoned off during construction and that the Project will proceed without access to them. If work is required in this area, full environmental review will be required prior to permit applications.

There is also the potential for burrowing owls to nest or forage at all planned sites at RWF. All work in this area must be in compliance with the Santa Clara Valley Habitat Conservation Plan.

The Design-Builder shall also comply with all Environmental Mitigation Measures in accordance with Section 4.3 (Environmental Review) of this Design-Build Contract.

Figure 1-3 RWF Site Plan – Existing Site and Potential Locations of Project Elements



1.4 PROPOSED DIGESTED SLUDGE DEWATERING FACILITY

The new Dewatering Facility is anticipated to include new dewatering buildings that would house a mechanical DS dewatering system (i.e. centrifuges); polymer storage, blending and dosage facilities; dewatered cake conveyance and storage facilities; truck loading bays with weighing scales; and, a maintenance shop and various support facilities and systems. It will also include a process control room, Motor Control Center, transformers, switchgear, heating/ventilating/air conditioning systems, break room, kitchen, conference room, showers, lockers, bathrooms, and a parts storage area.

Within the fence line of the RWF, the Project includes transfer pumps and pipelines to convey DS from existing digesters to storage facilities; a new DS storage facility with necessary conveying, pumping, and tankage; new DS pumping systems and pipelines to convey DS from DS storage to the new dewatering building; new centrate pumping systems and pipelines to convey centrate from the dewatering process to RWF; and, various new and modified ancillary facilities and systems.

The potential major elements of the Project and their intended functions are further described in the Digested Sludge Dewatering Facility Project Definition Report, prepared by Brown and Caldwell and issued on October 1, 2018, which is hereby incorporated by reference. The Project's technical specifications are more particularly described in Appendix 4 (Technical Specifications). **[Note: The Dewatering Facility Site description will be further developed as part of the Preliminary Services and delineated in the Definitive Contract Amendment. The Site description in Appendix 1 will be updated to reflect the Design-Builder's work, and Site-related requirements will be included as part of Appendix 4 (Technical Specifications).]**

1.4.1 Indicative Design.

The PDR includes two indicative designs, and information presented in this section, is excerpted from the complete indicative designs that was provided in the PDR. The indicative designs outlines the baseline concept and scope of the Project developed during the planning stages to assist in obtaining environmental permits and cost estimates. The indicative designs should be used as guidance, but it is not intended to prescribe to the Design-Builder the final design of the Project. The Basis of Design Report (BDR) and the final design for the Project will be developed by the Design-Builder by advancing or modifying the indicative designs to incorporate the results of the Design-Builder's preliminary investigations (e.g. condition

assessments, geotechnical investigations, etc.) and to address changes made subsequent to the completion of the indicative designs.

Figures 1-4 through 1-8 present the overall site plans for the indicative designs. **Figures 1-9 and 1-10** show process flow diagrams for the indicative designs. The indicative design criteria include a mass balance that was derived from the Project flow and load design criteria to establish preliminary sizes and numbers of facilities and system used in the indicative design drawings. A new mass balance should be prepared for future detailed design.

As shown in the figures, the indicative design includes construction of the following:

- Two-building dewatering facility
- DS transfer pumps and pipes from the existing digesters to DS storage tanks
- DS storage tanks
- DS export pump station
- DS conveyance pipelines from DS storage to the dewatering facility
- New emulsion polymer system with storage tanks, blending and metering units
- DS feed pumps suitable for metering DS into centrifuges
- High-solids decanter centrifuges specifically designed for dewatering DS
- Dewatered cake conveyance system
- Dewatered cake storage
- Dewatered cake truck loading bays with weigh scales
- Centrate pump station and conveyance to the Emergency Basin Overflow Structure (EBOS) or the interceptors (if allowed).
- Storm water, plant drain and sewer pipelines from the dewatering facility to the (EBOS)
- Struvite management measures
- Foul-air ventilation

During the Alternative Analysis phase of the Project, several locations were considered for the dewatering facility and DS storage tanks. The City selected the locations shown in **Figure 1-4**. In addition, the City selected high-solids decanter centrifuges specifically designed for dewatering DS as the dewatering technology for this Project.

The Design-Builder shall assume that these are the technology and locations to be used for the Project unless significant financial, technical, or constructability concerns are identified that may cause the Design-Builder to recommend to the City that this decision be revisited.

Figure 1-4 RWF Site Plan for Digested Sludge Dewatering Facility Project

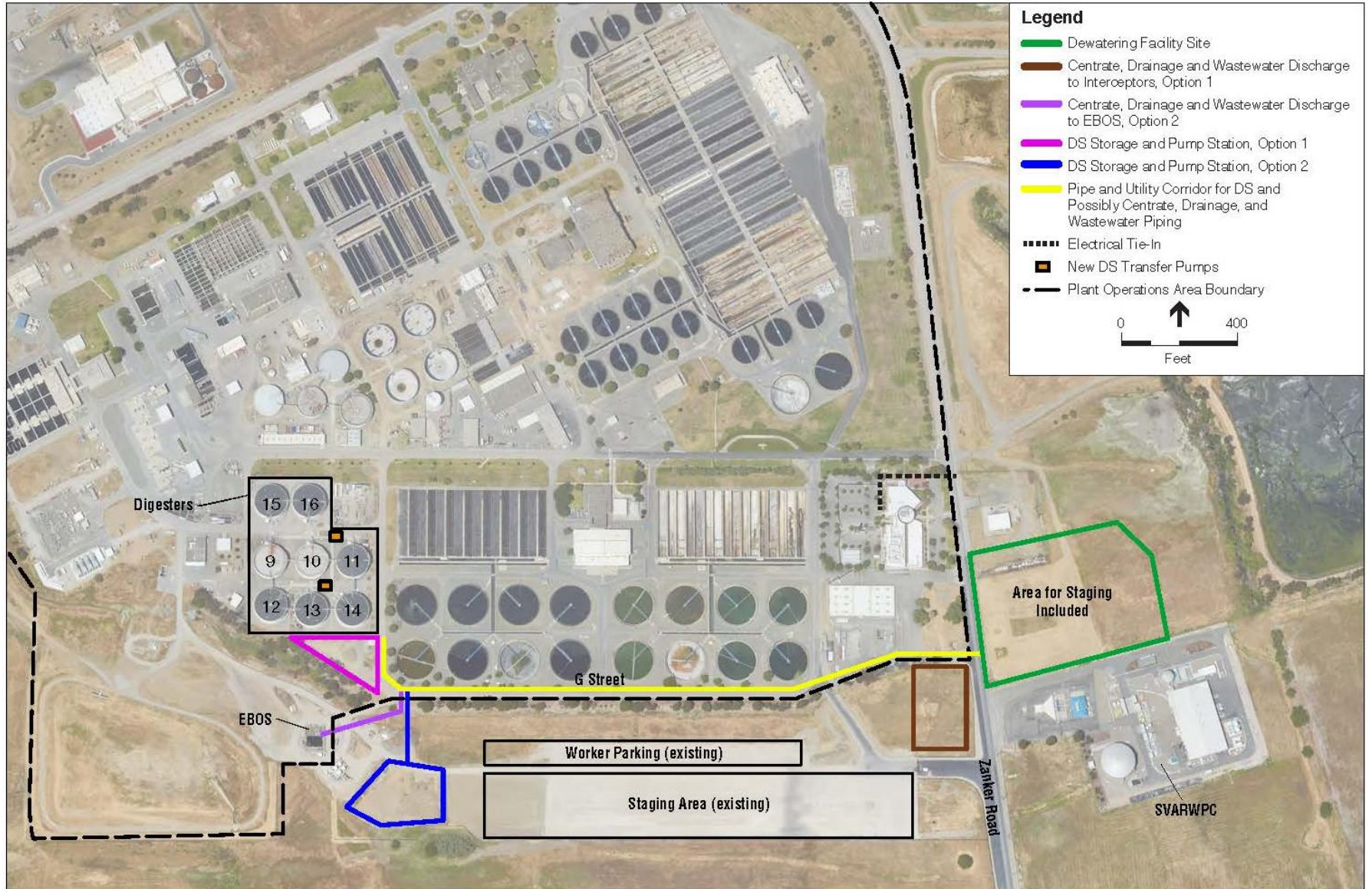


Figure 1-5 Indicative Design for Alternative 1 – 4-Story Building (Gravity Chute), Setback of 120 Feet from Zanker Road

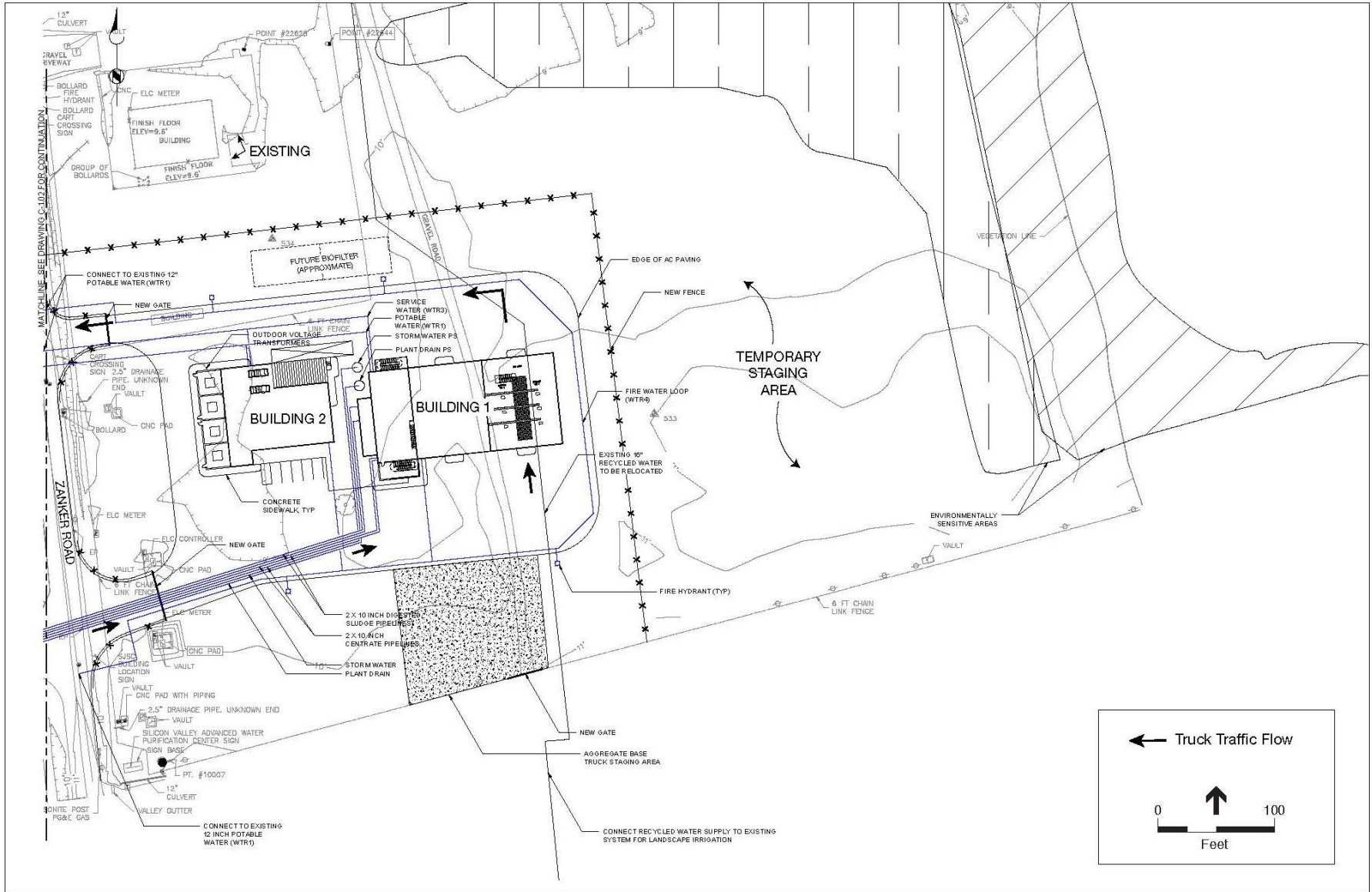


Figure 1-6 Indicative Design for Alternative 1 - 4-Story Building (Gravity Chute), Setback of 280 Feet from Zanker Road

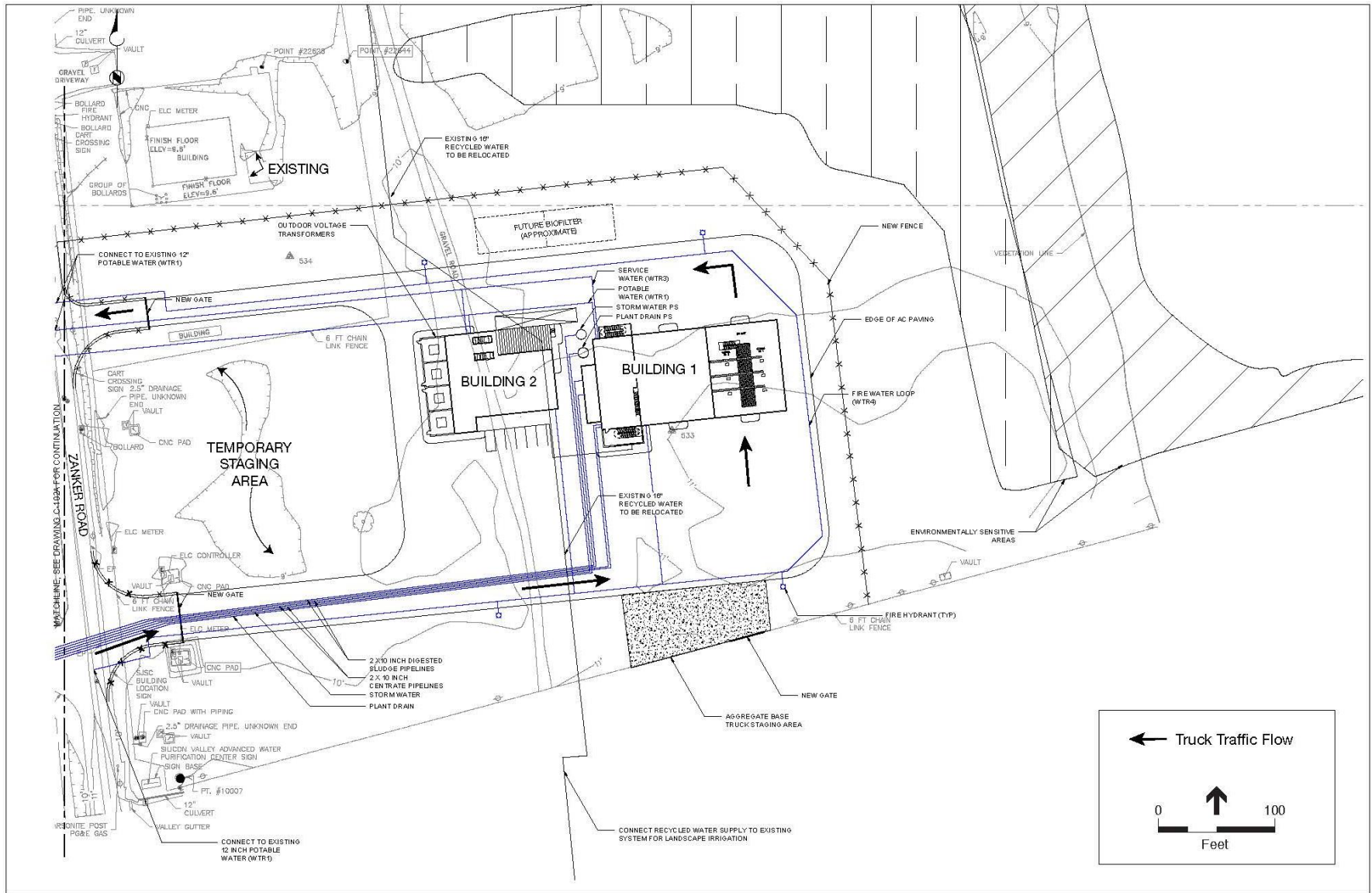


Figure 1-7 Indicative Design for Alternative 2 – 2-Story Building (Piston Pump), Setback of 120 Feet from Zanker Road

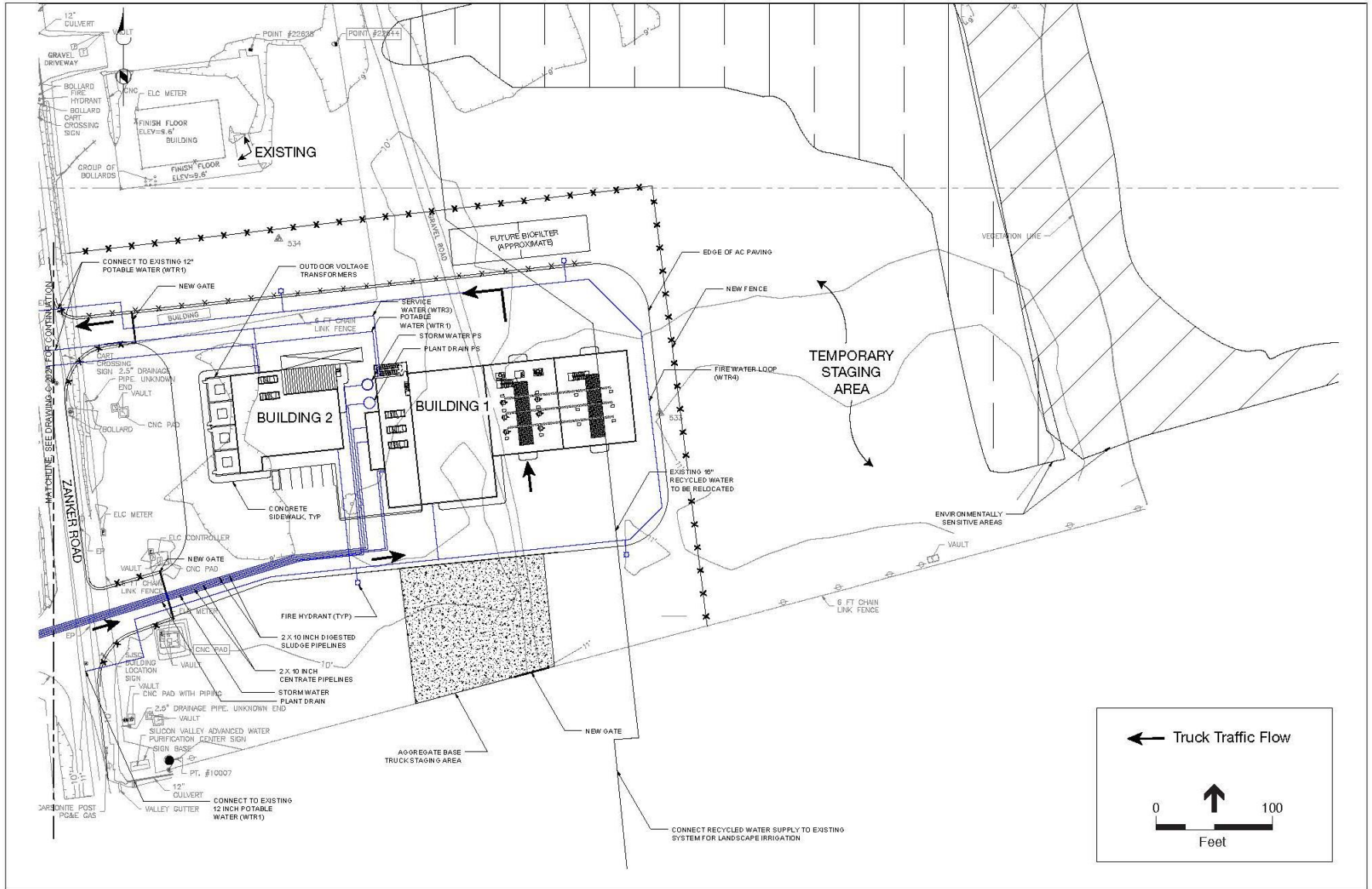


Figure 1-8 Indicative Design for Alternative 2 – 2-Story (Piston Pump), Setback of 280 Feet from Zanker Road

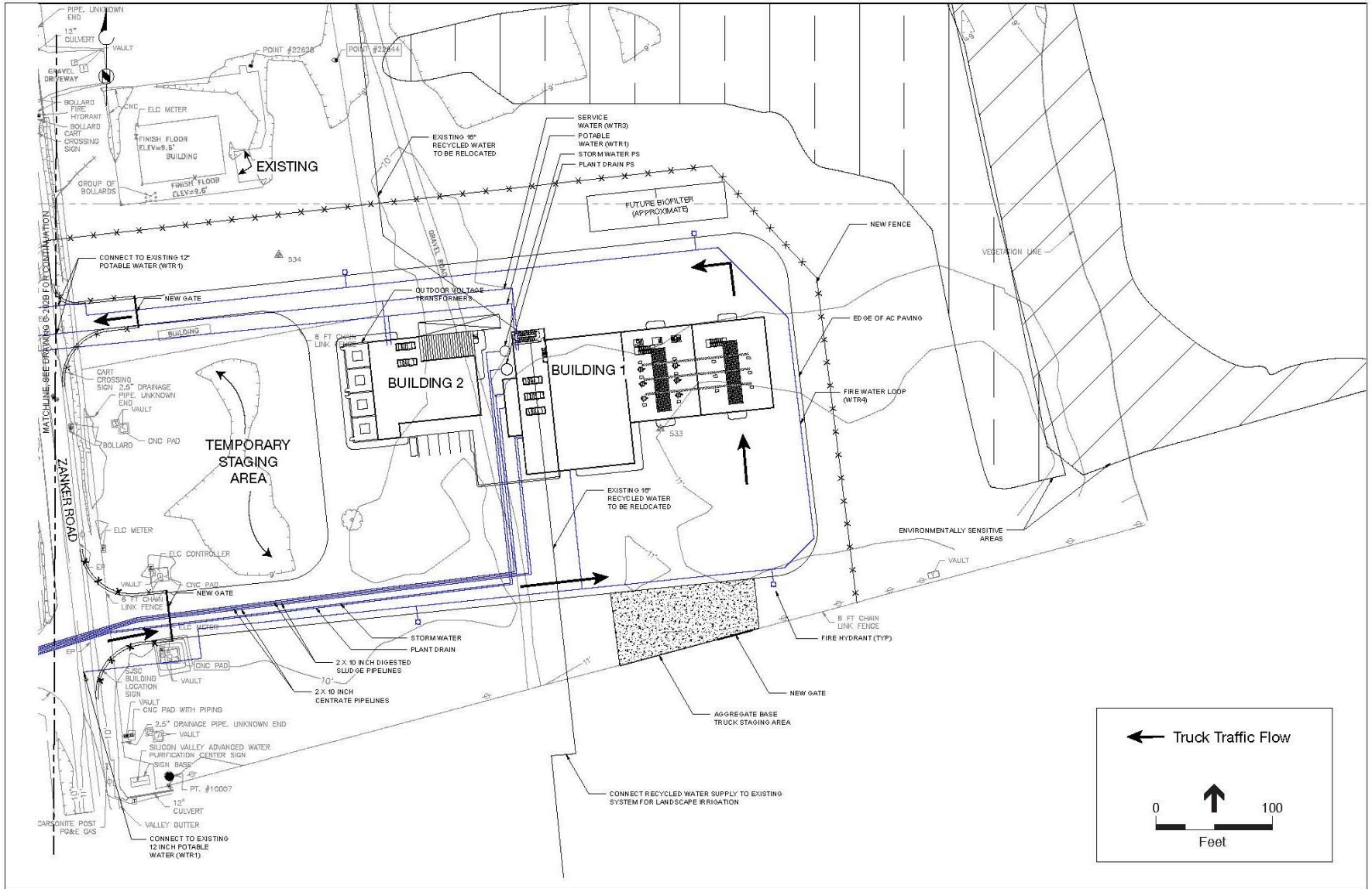


Figure 1-9 RWF Process Flow Diagram for Alternative 1 (Gravity Chute)

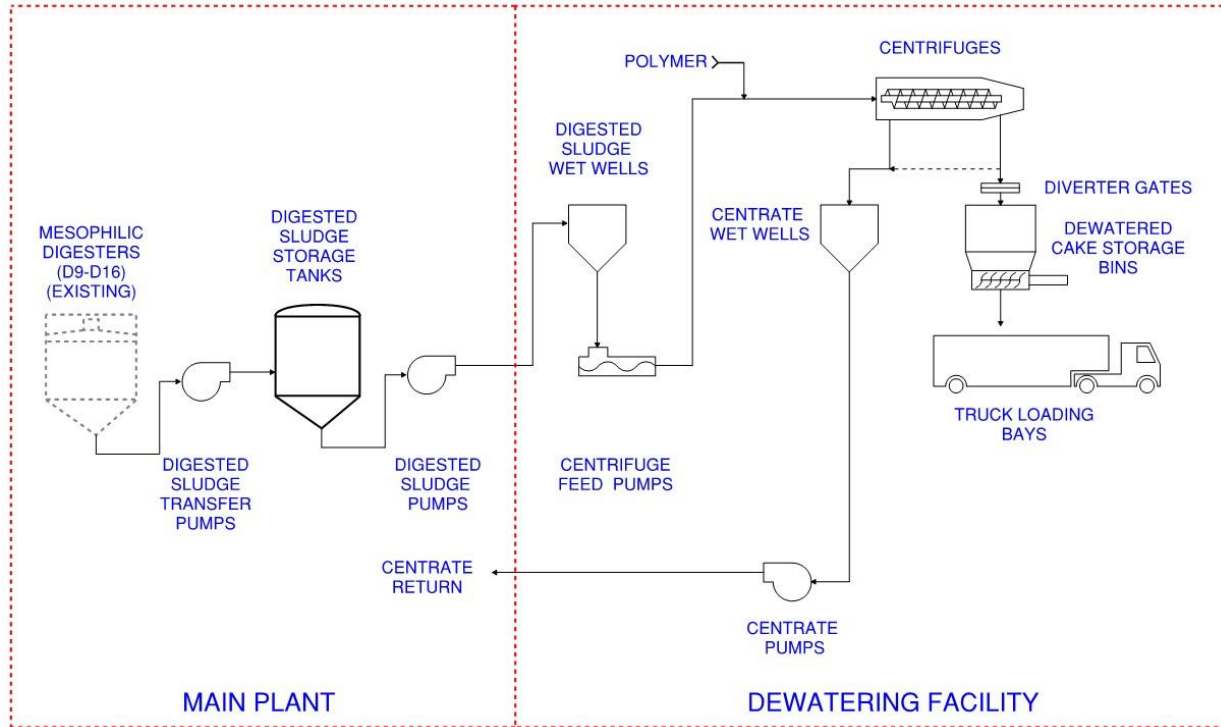
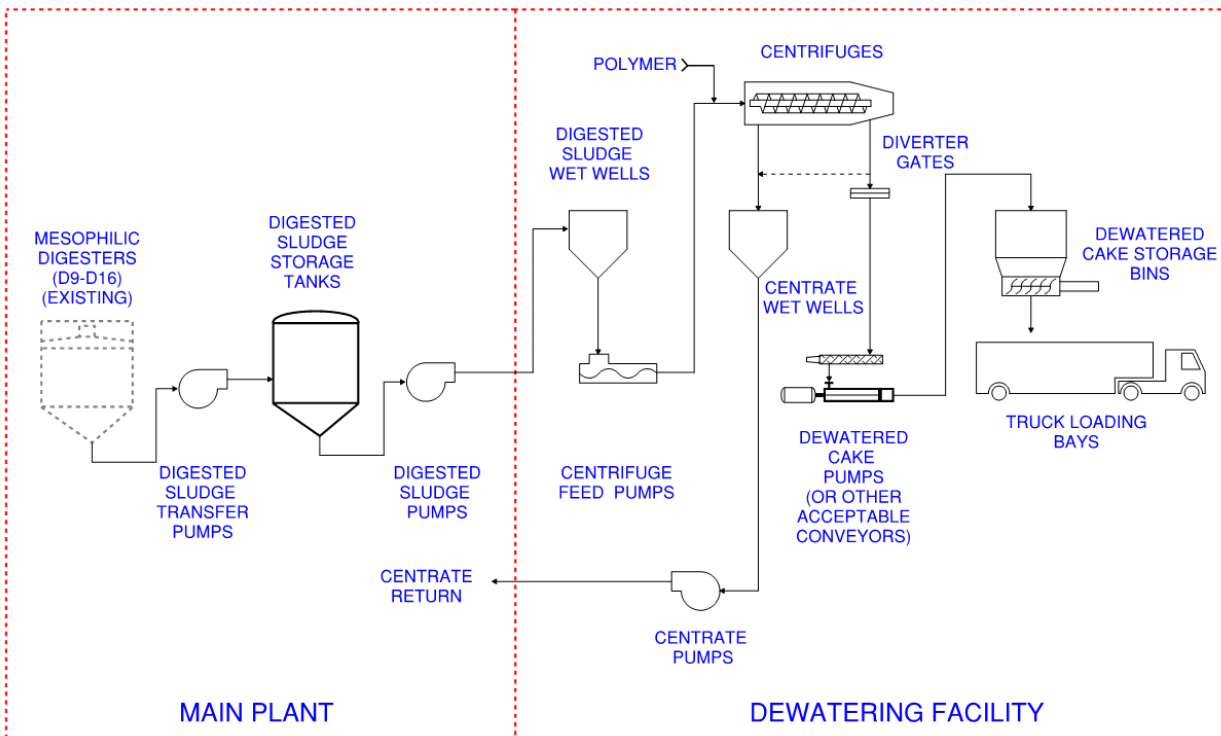


Figure 1-10 RWF Process Flow Diagram for Alternative 2 (Piston Pump)



1.5 RELATED PROJECTS AND BACKGROUND STUDIES AND INFORMATION

The Dewatering Facility Project is part of the overall Capital Improvement Project (CIP) established to rebuild and revitalize the RWF. A number of studies, tasks, plans, and projects under the CIP will have bearing on the Project. The following studies, tasks, plans, and projects will interface with the Project. The list is provided for reference and shall not limit or excuse the Design-Builder’s performance of the Contract Services.

1.5.1 Related Projects.

The table below contains a list of Related Projects with which the Design-Builder will need to coordinate during the Preliminary Services Period (including any Early Work Packages) and Design-Build Period.

Related Projects	
1	Digester and Thickener Facilities Upgrade – Adjacent Construction
2	Advanced Facility Control and Meter Replacement Phases 1 and 2
3	Facility Wide Water Systems Improvements
4	Cogeneration Facility
5	Tertiary Filter Rehabilitation
6	Yard Piping and Road Improvements
7	Nitrification Clarifiers Rehabilitation
8	Blower Improvements
9	Aeration Tank Rehabilitation
10	New Headworks
11	Flood Protection

1.5.2 Background Studies and Information.

The following memoranda, studies, plans, specifications and data have been provided separately by the City to the Design-Builder as background information related to the Project.

Previous Studies and Information		
1	Digested Sludge Dewatering Facility Project Definition Report (Brown and Caldwell)	Oct-18
2	Technical Memorandum – Odor and Hydrogen Sulfide Impact Assessment (Brown and Caldwell)	Sep-18
3	Technical Memorandum No. 4 – Facility and Site Civil Arrangement Alternatives Analysis (Brown and Caldwell)	Mar-18
4	Technical Memorandum No. 3 – Conveyance, Storage and Pumping Alternatives Analysis (Brown and Caldwell)	Mar-18
5	Technical Memorandum No. 2 – Dewatering Technology Analysis (Brown and Caldwell)	Aug-17
6	Technical Memorandum No. 1 – Flow and Loads/Preliminary Operating Strategy (Brown and Caldwell)	Jun-17

7	RWF Flow Management Study (San José CIP Study 14)	Jul-17
8	RWF CIP Program Structural Design Guidelines	Apr-17
9	Final Flood Protection Summary Report (San José CIP Study 13)	Apr-16
10	RWF CIP Program Electrical Design Guidelines	Feb-16
11	RWF CIP Program Piping Design Guidelines	Feb-16
12	Traffic Circulation and Impacts (Fehr Peers, San José CIP Study 12)	Dec-15
13	Automation Master Plan (Black and Veatch, San José CIP Study 04)	Dec-15
14	RWF CIP Program CAD Standard Guidelines	Nov-15
15	RWF CIP Program Architectural Design Guidelines (San José CIP Study 07)	Oct-15
16	Odor and Corrosion Control Study (CH2M Hill, San José CIP Study 03)	Aug-15
17	RWF CIP Program Flow and Loads Projection Update (RWF CIP Program Design Guidelines)	Oct-14
18	San José/Santa Clara Water Pollution Control Plant Master Plan (City of San José)	Nov-13
Plant Performance Data		
1	RWF 2017 Annual Self-Monitoring Report	Feb-18

1.6 DEWATERING FACILITY SITE ACCESS AND SECURITY

Primary access to the Dewatering Facility Site shall be from Zanker Road via a secure gate located near the southwestern corner of the Dewatering Facility Site. Access to the RWF shall be from the Construction Enabling Gate and via the main gate at 700 Los Esteros Road.

APPENDIX 2
PRELIMINARY SERVICES

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APPENDIX 2

PRELIMINARY SERVICES

GENERAL REQUIREMENTS

Scope of Base Preliminary Services. The Base Preliminary Services shall consist of the following six Preliminary Services Tasks:

- Task #1: Project Management
- Task #2: Preliminary Investigations
- Task #3: Basis of Design Report (BDR)
- Task #4: 30% Design Completion Documents
- Task #5: 60% Design Completion Documents
- Task #6: Definitive Project Submittal and Supporting Cost Estimates
- Task #7: Potential Additional Preliminary Services

Unless specifically excluded from this Design-Build Contract, the Design-Builder shall provide to the City all surveying, architectural, engineering, geotechnical, landscape, Project management, cost estimating and other professional services necessary to perform the Base Preliminary Services required by this Design-Build Contract.

Deliverable Material. Required Deliverable Material for each Preliminary Services Task is identified in this Appendix. All Deliverable Material identified in this Appendix shall be reviewed with representatives of the City. The Design-Builder shall promptly correct deficiencies in Deliverable Material and shall promptly make modifications to conform to Project requirements and modifications to achieve acceptability of the Deliverable Material to the City. Draft deliverables shall be provided to the City in .pdf format and in Microsoft® WORD, Microsoft® EXCEL, or native CAD formats, as applicable. Unless specified otherwise, the Design-Builder shall provide electronic copies of all final deliverables in .pdf format. For draft and final design drawing and specification deliverables the Design-Builder shall provide six (6) hard copies to the City. Drawing hardcopies shall be ½-size printed single sided on 11 x 17 paper and spiral bound.

Standards. The Deliverable Materials shall comply with the City's standard design details and specifications and industry standards, including, without limitation, those design criteria and specifications included in Appendix 4 (Technical Specifications).

2.1 PRELIMINARY SERVICES TASK #1 – PROJECT MANAGEMENT

2.1.1 General Project Management.

The Design-Builder shall provide Project management of the Project team, including management of staffing, budget, schedule, scope and coordination with the City.

This Preliminary Services Task includes managing the scope of work, schedule and budget, preparing a draft Design-Build Quality Management Plan that meets the requirements set forth in Appendix 6 of this Design-Build Contract (Design-Build Work Quality Control Requirements) (including quality control and quality assurance requirements), and communication and coordination with the City. The Design-Builder will prepare invoices, progress reports, and design progression and design decision log updates on a monthly basis. Other activities include keeping the City informed and soliciting input from the City when making key decisions, coordination with Subcontractors, scheduling of staff, and coordinating the quality assurance effort.

Task 2.1.1 Deliverables:

- Draft and final Project Execution Plan
- Monthly Preliminary Services Reports (including narrative, cash flow curve and summary schedule update)

2.1.2 Weekly Project Management Meetings and Technical Workshops and Meetings.

The Design-Builder shall conduct weekly Project management meetings with the Design-Builder Project managers and City Project managers. An agenda will be distributed by the Design-Builder to the City prior to the meetings, and the Design-Builder will distribute meeting notes and action items within three days after each meeting. Each meeting agenda shall include:

- (a) Ongoing activities
- (b) Upcoming activities
- (c) Scope, schedule and budget
- (d) Project risks
- (e) Issues
- (f) Decisions and actions
- (g) Change management
- (h) Health and safety

Technical Workshops shall be incorporated into Base Preliminary Services to address specific subjects and facilitate collaboration and development of ideas and decisions to be carried forward during design development. Each workshop will last up to four hours in length and will be facilitated by the Design-Builder, the City Project Manager and technical support staff, the Program Manager (Stantec/Carollo) and Owner's Advisor (Brown and Caldwell). An agenda (including desired outcomes) as well as technical background documents will be distributed to workshop attendees by the Design-Builder prior to the meetings. The Design-Builder will document the outcome of each workshop and distribute meeting notes and action items within three days after each workshop. Technical Workshops may be conducted on the following subjects:

- (a) Project Kickoff and Partnering (See Appendix 5 (General Design-Build Work Requirements) for details on Partnering)
- (b) Preliminary Investigations Planning
- (c) Flows and Loads Modifications and Impacts on Project Sizing and Redundancy Requirements
- (d) Alternative Analysis and Recommended Project Concept(s)
- (e) Schedule

- (f) Documents Control Requirements
- (g) Project Scope Definition
- (h) Hydraulic and Process Modeling, including updated mass balance modeling
- (i) Odor Modeling
- (j) Sludge Characterization of TPAD Sludge
- (k) Primary Project Components and Process Equipment Selection
- (l) Additional Alternatives Analysis and Phasing Plan
- (m) Site Planning
- (n) Dewatering Building Architectural, Structural and Landscape Concepts and Hazardous Area Classifications
- (o) Electrical Requirements
- (p) Instrumentation & Control Requirements
- (q) Building Mechanical (HVAC) Requirements
- (r) Process Mechanical Requirements
- (s) Site/Civil Requirements
- (t) Existing Facilities Connection
- (u) Subsurface Utility Investigations Results
- (v) Hazardous Materials Investigation Results
- (w) Dynamic Cost Model
- (x) Schedule and Construction Sequencing
- (y) CEQA and Permitting Requirements
- (z) Project Interface Requirements
- (aa) Process Hazard Analysis
- (bb) Equipment and Subcontractor Procurement
- (cc) Commissioning, Acceptance Testing and Transition Services Requirements
- (dd) Other topics as determined by the City and Design-Builder

Preliminary details on the issues to be discussed at each workshop, potential grouping of topics, as well as the key outcomes/decisions to be made, are summarized in Attachment 2B.

Additional meetings may be required to address O&M or other stakeholder concerns and/or to discuss other issues not identified above. The Design-Builder and the City will work together to identify if additional meetings are required and any such additional meetings, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

Task 2.1.2 Deliverables:

- Meeting Agendas, Materials and Notes
- Technical Workshop Agendas and Notes

2.1.3 Risk Management Requirements.

The Design-Builder shall incorporate risk management into the delivery of the Project in accordance with the Contract Standards as defined in this Design-Build Contract. A risk management workshop shall be conducted with the team within 60 Business Days of the kick-off meeting. The workshop shall be used to identify key Project risks and opportunities for avoiding and minimizing risks. A risk register shall be developed and maintained by the Design-Builder using the risk register format provided by the City. The register shall be initially populated with risks identified in the risk management workshop. The risk register shall include the following information:

- (a) Risk identification
- (b) Activities affected (tied to schedule activities)
- (c) Risk description including qualitative categorization of risk
- (d) Estimated/calculated percent likelihood that risk may occur. (Note: this will be output from quantitative analysis performed on key risks that could exceed target cost or schedule thresholds.)
- (e) Phase of Project that risk could impact
- (f) Potential schedule impact should risk occur
- (g) Potential cost impact should risk occur
- (h) Potential health and safety impacts should risk occur
- (i) Risk trigger
- (j) Risk owner
- (k) Risk strategy (transfer, mitigate, accept, exploit)

Risks shall be reviewed at the weekly Project management meetings.

Additionally, the following risk management workshops shall be conducted to provide for re-evaluation of overall risks, a deeper level of risk analysis for identified risks, identification of new risks, and review of risk avoidance, and mitigation measures:

- (a) During the development of the BDR
- (b) Upon submission of the 30% DCD
- (c) Upon submission of the 60% DCD

These workshops are in addition to those listed under Task 2.1.2, above. The risk workshops will last up to four hours in length each and will be facilitated by the Design-Builder. The City Project Manager and technical support staff, the Program Manager (Stantec/Carollo) and Owner's Advisor (Brown and Caldwell) will attend. An agenda (including desired outcomes) as well as technical background documents will be distributed to workshop attendees by the Design-Builder prior to the meetings. The Design-Builder will document the outcomes of the workshops and distribute draft meeting minutes and action items within five days after each workshop. The City will have five days for review and comment and the Design -Builder will distribute final meeting minutes within five days of receiving City comments.

Ongoing qualitative risk analysis shall be conducted by Design-Builder with review and input from the City. Upon submission of the BDR, the Design-Builder shall conduct quantitative risk analysis (Monte Carlo simulation or similar) to further analyze and understand the possible impacts due to risks. The Design-Builder shall present the findings of such quantitative risk analysis to the City. The Design-Builder shall update the risk register to reflect any such findings.

Task 2.1.3 Deliverables:

- Risk register and updates
- Risk management workshop agendas and workshop notes

2.1.4 Change Management Requirements.

The Design-Builder shall prepare and maintain a change management log for the duration of the Base Preliminary Services. The change management log shall integrate with the Project decision log and be used to document proposed and approved changes to the Project Definition Report requirements, price, schedule, or changes to the Design-Build Contract. At a minimum, the change management log shall include the following information:

- (a) Change identification number
- (b) Brief description of change
- (c) Status of change (pending, approved, rejected)
- (d) Dates associated with change including initial proposal date and change acceptance date
- (e) Back-up information including cost, schedule, and technical information

Change management shall be a standing agenda item at Project management meetings. Following approval of the BDR, the change management log shall be used to track changes to the approved Project and their associated cost and schedule impacts.

Task 2.1.4 Deliverables:

- Change management log and updates
- Back-up information including cost and schedule updates for proposed changes

2.1.5 Project Execution Plan.

2.1.5.1 Submission of Project Execution Plan. In accordance with the Preliminary Services Schedule, the Design-Builder shall develop and submit a Project Execution Plan to the City for review and comment. The Project Execution Plan shall serve as a Project management tool for the City and Design-Builder (including Subcontractors) and will include guidelines and procedures for execution of the work and issues resolution. The Project Execution Plan will be in compliance with the Contract Standards and include:

- (a) a description of Design-Builder's organization, roles, and responsibilities, including an organization chart that identifies all key discipline design leads for the Project and the engineer-of-record for each discipline;
- (b) a Scope Management Plan that describes how the scope will be defined, developed, monitored, controlled, and verified, including:
 - (1) process for preparing the Project scope statement;
 - (2) creation of the Records Management System from the detailed scope statement, and how the Records Management System will be maintained; and
 - (3) procedures for obtaining formal acceptance of completed Project deliverables and processing of the detailed scope statement;
- (c) a Schedule Management Plan that describes the criteria and activities for developing, monitoring, and controlling the Design-Build Schedule, including:
 - (1) Design-Build Schedule model development;
 - (2) scheduling methodology and scheduling tools;
 - (3) level of accuracy and the acceptable range used in determining realistic activity durations;
 - (4) units of measure, such as staff hours, staff days, or weeks, as well as physical units of measurement;
 - (5) organizational procedures links with activities tied to the approved Records Management System;
 - (6) Design-Build Schedule model maintenance and the process used to update status and record progress of the Project during execution;
 - (7) control thresholds, variance thresholds for monitoring schedule performance and agreed-upon amounts of variation to be allowed;

- (8) rules of performance management, such as earned value management rules, rules for establishing percent complete, control accounts, earned value measurement techniques, and schedule performance measurements;
 - (9) reporting formats, including the formats and frequency of schedule reports; and
 - (10) descriptions of each of the schedule management processes;
- (d) a Requirements Management Plan that describes how requirements contained in the Design-Build Contract (e.g. Governmental Approvals requirements, General Design-Build Work requirements, QA/QC requirements, insurance requirements etc.) will be analyzed, documented, and managed, including documentation of how requirements activities will be planned, tracked and reported.
 - (e) a Budget Management Plan that describes how the Project budget will be planned, structured, and controlled, including:
 - (1) units of measure, the level of precision and accuracy;
 - (2) coordination with approved Records Management System; and
 - (3) control thresholds for monitoring budget performance, including the rules of performance measurement (earned value management);
 - (f) a Process Improvements Plan that details the steps for analyzing Project management and design development processes to identify activities that enhance their value;
 - (g) a Risk Management Plan that describes how risk management activities will be structured and performed, including:
 - (1) the methodology, approaches, tools, and data sources that will be used to perform risk management on the Project;
 - (2) roles and responsibilities, defining the lead and support risk management team members for each type of activity and their responsibilities;
 - (3) budgeting to establish estimates of funds needed based on assigned resources for inclusion in the cost baseline and protocols for application of contingency and management reserves;
 - (4) timing of risk management processes to be performed through the Project life cycle; and
 - (5) protocols for application of schedule contingency reserves and risk management activities associated with the Design-Build Schedule;
 - (h) a Procurement Management Plan that describes how the Design-Builder will acquire goods or services from outside its organization, including:

- (1) management of procurement processes from developing procurement documents through contract closure;
 - (2) guidance for the types of contracts to be used and use of independent estimates and standardized documents;
 - (3) handling of long lead items, requests to self-perform and linking them into activity resources and schedule; and
 - (4) handling of proprietary and specialized equipment and materials requiring early procurement and design coordination.
- (i) a Design-Build Quality Management Plan that meets the requirements set forth in Appendix 6 (Design-Build Work Quality Control Requirements);
- (j) a Stakeholder Engagement Plan that identifies the management strategies required to effectively engage stakeholders, including:
- (1) stakeholder register (identification of key stakeholders) and the desired and current engagement level of key stakeholders;
 - (2) scope and impact of change to stakeholders, interrelationships and potential overlap between stakeholders;
 - (3) coordination with the Communications Management Plan; and
 - (4) the method for updating and refining the stakeholder engagement plan;
- (k) a Change Management/Integration Management Plan that includes:
- (1) identification of procedures that will be used to document any changes from the accepted Reports, Drawings and Specifications;
 - (2) identification of procedures that will be used to document the communication flow to the appropriate contractor's construction personnel;
 - (3) description of the process for reviewing all change requests, approving changes and managing changes to deliverables, organization process assets, Project documents, the Project Execution Plan, and communicating their disposition;
 - (4) Trend Management Log; and
 - (5) Project Decision Log;
- (l) a Document Control Plan that identifies how documents will be managed throughout the Project life cycle, including:
- (1) the process of organizing, storing, protecting, and sharing documents;
 - (2) the management of both the hard copy and electronic repositories of documents, historical information, and a consistent approach to the creation, update and format of documents;

- (m) a Project Team Structure and Staffing Plan that provides guidance on how the Project will be staffed, managed, and eventually released, including:
 - (1) roles and responsibilities defining positions, skills and competencies that the Project demands;
 - (2) Project organization charts indicating the number of people needed for the Project; and
 - (3) a staffing management plan delineating the time periods each Project team member will be needed and other information important to engage the Project team;

2.1.5.2 Establishment of and Compliance with Project Execution Plan. The City will review the draft Project Execution Plan and return comments in accordance with the Preliminary Services Schedule. The Project Execution Plan will be accepted by the City only after the Design-Builder has addressed all City comments to the reasonable satisfaction of the Project Manager. The Project Execution Plan shall be updated whenever a material change occurs affecting how the Project will be managed and executed. Any subsequent amendments or updates to the Project Execution Plan will be submitted to the Project Manager for review and comment in the same manner as the initial Project Execution Plan. The Design-Builder will implement and comply with the accepted Project Execution Plan, and any accepted amendments or updates thereto, in connection with the performance of the Design-Build Work.

Task 2.1.5 Deliverables:

- Draft and Final Project Execution Plan
- Updates to Project Execution Plan

2.1.6 Communication Plan.

The Design-Builder shall submit seven copies of a draft Communication Plan for review and comment by the City no later than 45 days after the Contract Date. The Communication Plan shall be prepared in collaboration with the City and shall provide contact information for both the Design-Builder and the City (including phone numbers, facsimile numbers, e-mail addresses, and points of contact), communication requirements for the Design-Builder and the City (including frequency and time frame of communications, information to be communicated, and methods or technologies used to convey information), resources allocated for communication activities, the method of updating and refining the plan, flow charts for information flow, and a glossary of common terminology. The Communication Plan shall be organized as a directory available to Design-Builder and City personnel and shall outline points of contact under various circumstances, including emergencies. The Communication Plan will describe procedures the Design-Builder will use to present information to the City's communication team to alert the public about any critical events such as traffic impacts associated with material or equipment deliveries.

The City will review the draft Communication Plan and return comments within 15 days of the initial submittal. Fifteen days following the return of comments on a draft Communication Plan, the Design-Builder shall submit to the City seven copies of a final version of the Communication Plan incorporating the City's requested changes. The Communication Plan shall be updated and resubmitted semi-annually or sooner if needed to remain current during the Design-Build Period.

Task 2.1.6 Deliverables:

- Draft and Final Communication Plan

2.1.7 Permits and Approvals Plan.

The Design-Builder shall develop a Permits and Approvals Plan that identifies all required Governmental Approvals, tracks the requirements of the Governmental Approvals and the status of the Governmental Approval application, and communicates any changes to Governmental Approval requirements or changes in conditions affecting Governmental Approvals. The Permits and Approvals Plan shall also include a Specifications and Building Code Report that identifies all applicable City building codes and specifications requirements, describes how the Design-Builder plans to comply with such requirements, and incorporates the CIP Design/Facility Standards and City Standards. The Permits and Approvals Plan shall be updated whenever a material change affecting the plan occurs.

Task 2.1.7 Deliverables:

- Permits and Approvals Plan

2.1.8 Preliminary Services Schedule and Design-Build Schedule.

2.1.8.1 Preparation. The Design-Builder shall prepare the Preliminary Services Schedule and Design-Build Schedule using Primavera P6 scheduling software (latest version), and shall submit the Preliminary Services Schedule and Design-Build Schedule as electronic files (native and pdf) and hardcopy.

2.1.8.2 Preliminary Services Schedule. The Preliminary Services Schedule shall be developed using the critical path method, and it shall reflect the schedule, by use of a Gantt or Bar Chart, for all activities comprising the Preliminary Services, and shall set forth all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to utilize in taking the Project from execution of the Design-Build Contract to the Definitive Contract Amendment.

The Design-Builder shall submit the Initial Preliminary Services Schedule on the Contract Date. During the Preliminary Services Period, the Design-Builder shall update the Initial Preliminary Services Schedule on a monthly basis. The Initial Preliminary Services Schedule, as updated pursuant to this subsection, is referred to herein as the Preliminary Services Schedule.

The Design-Builder shall undertake and complete the Preliminary Services in accordance with the Preliminary Services Schedule. Updates on the Design-Builder's compliance with the Preliminary Services Schedule shall be submitted monthly with the Monthly Project Report required by Section 2.1.7 (Monthly Project Report Requirements) of this Appendix and Section 5.6(B) (Monthly Preliminary Services Reports) of this Design-Build Contract. The Initial Preliminary Services Schedule, prepared in accordance with the requirements set forth in this subsection, is included as Attachment 2A (Initial Preliminary Services Schedule) to this Appendix.

2.1.8.3 Design-Build Schedule. The Design-Builder shall submit the draft Initial Design-Build Schedule at the kick-off meeting required by Section 2.1.13 (Kickoff Meeting and Partnering) of this Appendix, and shall update the draft Initial Design-Build Schedule during the Preliminary Services Period in accordance with this Appendix. The Design-Build Schedule

shall meet the requirements set forth in this Appendix and Appendix 5 (General Design-Build Work Requirements).

During the Design-Build Period, the Design-Builder shall update the Initial Design-Build Schedule in accordance with the requirements set forth in Section 5.3 (Design-Build Schedule) of Appendix 5 (General Design-Build Work Requirements).

2.1.8.4 Minimum Requirements. At a minimum, the Preliminary Services Schedule and the Design-Build Schedule shall generally include:

- (a) Start date for each activity
- (b) Finish date for each activity
- (c) Major milestones
- (d) Meeting and workshop dates
- (e) Submittal dates including draft submission dates, City review periods, and final submission dates
- (f) Identification of critical path
- (g) Float

2.1.8.5 City Review. The City shall review and comment on the Initial Preliminary Services Schedule and the draft Initial Design-Build Schedule within 15 days of receipt. Comments on the Initial Preliminary Services Schedule or draft Initial Design-Build Schedule shall be discussed at the weekly Project management meeting following receipt of any comments provided by the City. The Design-Builder shall provide a revised Preliminary Services Schedule or revised draft Initial Design-Build Schedule, as applicable, based on agreed-to changes at the next weekly Project management meeting.

The City shall review and comment on the update to the Preliminary Services Schedule or the draft Initial Design-Build Schedule. The review process shall include evaluation of missing logic, critical path, leads and lags, and float, percent complete, and changes in schedule logic or activity durations. Comments on the updates to the Preliminary Services Schedule or the draft Initial Design-Build Schedule shall be discussed at the weekly Project management meeting following receipt of any comments provided by the City. The Design-Builder shall provide an updated Design-Build Schedule or Preliminary Services Schedule based on agreed-to changes on a monthly basis.

Task 2.1.8 Deliverables:

- Draft and Final Preliminary Services Schedule and Design-Build Schedule and monthly updates

2.1.9 Document Submittal Procedures.

Within 10 Business Days following the Contract Date, the Design-Builder shall submit to the City a set of document submittal procedures (“Document Submittal Procedures”). The Document Submittal Procedures shall identify the key document submittal packages to be prepared by the Design-Builder and the expected submittal dates to the City. Documents submittal packages to be submitted include, but are not limited to, reports, studies, technical

memorandums, BOD, 30% DCD, 60% DCD and Final DCD. The Document Submittal Procedures shall also identify the frequency of the Design-Builder's design progress meetings during various phases of the design. The Document Submittal Procedures shall require the Design-Builder to submit a minimum of one original and six paper copies of each document submittal with electronic and CD copies as requested by the City. The Document Submittal Procedures shall also require the Design-Builder to distribute the document submittals as directed by the City. The Design-Builder may propose to create a project web site, accessible to the City and City-designated representatives and compatible with the City's EADOC site, for posting all document submittals and other reference information. Implementation of the project website shall be subject to the City's approval. The City may reduce the requirements for hard copies and electronic and CD copies of submittals in consideration of access to information on the web site.

Task 2.1.9 Deliverables:

- Document Submittal Procedures

2.1.10 Monthly Preliminary Services Report Requirements

The Design-Builder shall submit Monthly Preliminary Services Reports during the Preliminary Services Period which meet the requirements set forth in Section 5.6(B) (Monthly Preliminary Services Reports) of this Design-Build Contract. The Monthly Preliminary Services Reports will include a summary of activities that occurred over the calendar month and the activities that are anticipated for the upcoming month, updated design decision logs, a summary of the budget indicating total expenditures, percent of budget expended and a summary of progress for the each of the various Preliminary Services Tasks.

Task 2.1.10 Deliverables:

- Monthly Preliminary Services Reports

2.1.11 Records Management System.

The Design-Builder will work within the City's electronic records management systems (City Web Portal and EADOC) to facilitate work flow and transmit and store written documents associated with the Project. The system will be utilized by the City, Design-Builder, and their Subcontractors and vendors to transmit, review and respond, log, and store Project related documents. The records management system will incorporate the following:

- (a) Overall Project tracking and monitoring of key performance indicators;
- (b) Meeting and workshops agendas, presentations, and notes;
- (c) Action items, issues, decision logs, and tracking;
- (d) Budget and schedule tracking;
- (e) Risk tracking and mitigation;
- (f) Submitting and tracking requests for information (RFIs);
- (g) Document submittals and transmittals including drawings (pdf format);

- (h) Quality management documentation including comments, responses, and confirmations;
- (i) Value engineering submissions;
- (j) Invoices and monthly reports;
- (k) Templates and tools;
- (l) Project related communication; and
- (m) Dashboards of Project progress for the City.

Task 2.1.11 Deliverables:

- Records Management System documentation
- Posting of deliverables required by this Appendix
- Entry and updating of on-line logs (action, issue, decision)
- Posting of RFIs

2.1.12 Computerized Maintenance Management System.

The Design-Builder shall work within the City’s Computerized Maintenance Management System (“CMMS”) in accordance with the Contract Standards. A plan for integrating with the CMMS will be provided to the City not later than 365 days following the Contract Date.

In preparing the CMMS input, the Design-Builder shall, in consultation with the City, conform to the established standardized equipment hierarchy, failure codes, and a preventive maintenance program, with detailed job plans. The Design-Builder shall tailor the CMMS preventive maintenance program to the specific requirements of the Digested Sludge Dewatering Facility equipment based on the BDR. The CMMS shall include Digested Sludge Dewatering Facility appearance maintenance activities for buildings, structures, and grounds, and will be capable of the following:

- (a) tracking and managing preventive, predictive, and corrective maintenance tasks, including their frequencies and their costs in time and materials;
- (b) recording and creating equipment maintenance histories;
- (c) scheduling and control of preventive, predictive and corrective maintenance tasks;
- (d) issuing notifications and work orders for preventive, predictive, and corrective maintenance tasks;
- (e) tracking inventories and locations of equipment, materials, component parts and spare parts to include an inventory control system capable of tracking specific equipment, budgets and costs using the following information:
 - (1) inventory identification and description;

- (2) location identification and description;
 - (3) manufacturer name and manufacturer part number;
 - (4) quantity on hand;
 - (5) unit and unit cost;
 - (6) main supplier and alternative supplier; and
 - (7) order level and order quantity.
- (f) tracking equipment performance, service history, repair warranties, repair costs, installation dates, replacement values, and all data needed to prepare financial reports in accordance with the Contract Standards;
- (g) issuing reports and information, including:
- (1) equipment status and repair reports;
 - (2) lifecycle asset costs;
 - (3) asset maintenance frequencies and histories;
 - (4) status reports on predictive, preventive, and corrective maintenance activities;
 - (5) work order status and inventory control levels of spare parts and availability for optimization; and
 - (6) job completion reports;
- (h) retaining historical data and information for a minimum of 10 years.

The required information for adherence to the CMMS program will be memorialized in the Dewatering Project Operation and Maintenance Manual which will be developed in coordination with O&M staff. All maintenance tasks and frequencies will be stored and managed in the CMMS in chronological (date-based) order for the Digested Sludge Dewatering Facility. The CMMS input will be fully compatible with the system utilized by the City at the Regional Wastewater Facility.

2.1.13 Kickoff Meeting & Partnering.

Within two weeks after the initial Preliminary Services Task Notice to Proceed, key staff members of the City, the Program Manager, the Owner's Advisor, and Design-Builder will participate in a Project kick-off/partnering workshop (See Section 5.2.2 (Partnering Sessions) of Appendix 5 (General Design-Build Work Requirements) for a discussion of facilitator selection and other aspects of Project partnering sessions). The goal of the workshops is to deepen working relationships, develop common goals and objectives for the Project, and achieve a cooperative partnership environment among Project participants. The workshop attendees, agendas, facilitation, and venue will be coordinated by the City and Design-Builder's Project managers immediately following the Preliminary Services Task Notice to Proceed. The costs relating to the partnership workshop conducted pursuant to this Section during the Preliminary Services Period are included in the Preliminary Service Fee.

Task 2.1.13 Deliverables:

- Kickoff Agenda and Meeting Notes
- Draft and Final Partnering Charter

2.1.14 Constructability Reviews.

2.1.14.1 Basis of Design Stage. During preparation of the BDR, the Design-Builder shall develop a general sequencing plan for constructing the Digested Sludge Dewatering Facility to achieve production milestones. The Design-Builder shall also develop an initial plan for proposed site access, site utilization for storage of equipment and materials, site exit, temporary construction facilities (parking, staging, storage, stormwater controls, and trailers or alternative plans for housing Design-Builder and the City) (the “Mobilization and Site Access Plan”). The Mobilization and Site Access Plan will indicate proposed locations for the City’s operations staff and delivery vehicles, and City employee parking for all months during construction. A schematic will be provided showing areas to be used by the Design-Builder for storage of construction materials and equipment, the location of a temporary construction trailer and for construction of new facilities including required setbacks and traffic flow for the construction vehicles entering and exiting the Digested Sludge Dewatering Facility Site. The Design-Builder shall conduct two workshops with the City to review considerations and recommendations.

Task 2.1.14.1 Deliverables:

- Workshop(s) agenda, presentations and meeting notes
- Initial Sequencing Plan Technical Memorandum (Draft and Final)
- Constructability review report for 30% Design (Draft and Final)
- Constructability review report for 60% Design (Draft and Final)

2.1.14.2 30% and 60% Design Stage. The Design-Builder shall provide for constructability reviews of the design at the 30% and 60% design submittal milestones as follows:

- (a) Identify and establish a team of individuals among the Design-Builder team primarily responsible for Construction who will undertake constructability reviews on behalf of the Design-Builder;
- (b) Submit 30% or 60% design submittal, as applicable, to Design-Builder’s constructability review team and to the City for constructability review;
- (c) Schedule and conduct constructability workshop with Design-Builder’s constructability review team and the City;
- (d) Discuss recommendations with the City and conduct follow-up evaluations including cost, schedule, and risk impact analysis of any preliminary constructability comments that are tentatively agreed-to;
- (e) Prepare written constructability review report;

- (f) Meet and review constructability review report and results of constructability evaluations with City; and
- (g) Proceed with agreed-to changes.

Task 2.1.14.2 Deliverables:

- Written constructability review report
- Workshop agenda

2.1.15 Value Engineering.

Value engineering (VE) shall be conducted at the basis of design, and at the 30%, design milestone by the value engineering team designated by the City. The VE firm is contracted and paid for by the City. The Design-Builder is responsible for providing engineering and construction staff to participate in VE. At each design submittal milestone, the Design-Builder shall submit a draft of the BDR or 30% design submittal, as applicable, to the value engineering team and participate in a value engineering workshop to be conducted by the value engineering team. The value engineering team shall prepare a value engineering report, and the Design-Builder shall review such report and prepare responses to the value engineering recommendations, including a discussion of cost impacts, Design-Build Schedule impacts, and operating and maintenance considerations. The Design-Builder will provide its Project Manager, Design Manager, and any additional discipline engineers necessary for the “First Day” and “Final Day” VE workshops. The Design-Builder shall meet with the City to review responses and submit final recommendations regarding value engineering input to the City for review and approval. Upon approval by the City, the Design-Builder shall proceed with the agreed-to changes.

Task 2.1.15 Deliverables:

- Drafts of the BDR and 30% design submittals, as applicable to the VE team
- Presentation for VE team
- Formal responses to value engineering recommendations

2.1.16 Cost Model

As part of the Preliminary Services, the Design-Builder shall provide updated cost estimates. To provide consistent information, the Design-Builder shall utilize a cost model approach, as follows:

- (a) Build a cost model framework consistent with the requirements of Appendix 8 – Design-Build Price.
- (b) Provide the initial cost model within 60 Business Days of the Preliminary Services Notice to Proceed. After providing the initial cost model, conduct a dynamic cost model workshop to present the cost model framework and demonstrate model functionality with both costs and markups.
- (c) Prior to and during the Options Analysis period, described further in Task 2 below, the Design-Builder shall advance the Cost Model for both at least one of

the indicative designs and the alternative concept. After the option is selected at the end of the Options Analysis period, the Design-Builder will advance a single Cost Model.

- (d) Provide update cost model reports monthly. Review the updated cost model reports, on time per month, at the weekly Project Management meetings.
- (e) Submit all milestone cost estimate updated, as required within Appendix 2, so that all estimates align to the cost model framework.

Task 2.1.16 Deliverables:

- Cost model framework in pdf and MS Excel
- Workshop agenda and meeting notes
- Updated cost model reports in pdf and MS Excel

2.1.17 Equipment and Subcontractor Procurement

As part of the Preliminary Services, the Design-Builder shall provide updated cost estimates. To provide consistent information, the Design-Builder shall utilize an approach as follows:

- (a) Prior to engaging the market, conduct an Equipment and Subcontractor Procurement workshop with the City to discuss a procurement plan that identifies outreach approaches, package strategy, timing, and potential level of commitment communicated to the market, both for Subcontractors and equipment Suppliers. The equipment procurement plan shall include all major equipment, such as centrifuges, conveyors, cake bins, major electrical equipment and sludge storage tanks. The equipment procurement plan shall also include general procedures to be followed for other equipment. The Subcontracting Plan shall include all major Subcontractors, such as electrical, mechanical, etc.
- (b) Administer a budgetary proposal process to obtain preliminary pricing.
- (c) Administer an official procurement process, to obtain firm pricing and to select equipment suppliers or subcontractors. Selections of suppliers and subcontractors shall be approved by the City.

Task 2.1.17 Deliverables:

- Package strategy in pdf and MS Excel
- Workshop agenda and meeting notes
- Necessary documentation needed to recommend and select equipment supplier or subcontractor

2.2 PRELIMINARY SERVICES TASK #2 – PRELIMINARY INVESTIGATIONS

2.2.1 Information Review and Verification.

As part of the Preliminary Services, the Design-Builder shall complete a comprehensive review of the proposed digested sludge dewatering facility site, existing digesters, existing digested sludge transfer pumps, digested sludge storage, and pumping sites and conveyance corridor identified in the indicative design. Investigations shall be carried out in a way that protects the environmentally sensitive areas shown on preliminary plans. All reviews performed under this Preliminary Services Task shall be performed to the maximum extent reasonably possible in the circumstances and in a manner that provides a reasonable basis for the Design-Builder to undertake the risks assumed under Section 6.3 (Differing Site Conditions) and subsections 6.6(B) (Design-Builder Governmental Approval Responsibility), and 6.7(B) (Sole Responsibility and Liability) of this Design-Build Contract.

This task includes a review of reference documents, site analysis, condition assessment of certain existing facilities, site surveying and mapping, subsurface utility investigations and field locating, geotechnical investigations, hazardous material investigations and the preparation of Technical Memoranda summarizing the results of the investigations.

The Design-Builder shall identify any other investigations deemed necessary by the Design-Builder to fully acquaint itself with existing conditions for purposes of performing the Project.

The Design-Builder shall coordinate all field investigations of the Digested Sludge Dewatering Facility Site(s) with the City. Within 45 calendar days after the Contract Award, the Design-Builder will provide a comprehensive plan for all field investigations and condition reviews. The City will provide comments on this plan within 15 calendar days of receiving the plan.

Preliminary Investigations shall include, but not be limited to:

- (a) Site surveying and mapping,
- (b) Subsurface utility investigations
- (c) Field locating existing utilities,
- (d) Geotechnical investigations, and
- (e) Hazardous material investigation.

2.2.2 Review of Reference Documents

The existing mesophilic digesters, existing arrangement for transfer pumps and Digested Sludge Export Pump Station (DSEPS), proposed new digested sludge storage and pumping sites and conveyance corridor, operations, maintenance, permits, requirements, regulations, constraints, and the City's requirements and objectives for the Project.

Existing conditions information at the Digested Sludge Dewatering Facility Sites provided by the City, including all available as-built information, geotechnical reports, engineering studies and reports, environmental studies, data, memos, reports, surveys, and site measurements.

Environmental documents, including the addendum to the EIR, mitigation requirements under the Environmental Mitigation Measures and reporting requirements under the Mitigation Monitoring Reporting Program (MMRP).

Identification of data gaps that require additional investigations. Any additional investigations proposed will be discussed with the City and if determined that they are prudent, such additional investigations, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

Task 2.2.2 Deliverables:

- Work Plan for Review of Reference Documents
- Draft Technical Memorandum on Reference Document Review
- Final Technical Memorandum on Reference Document Review

2.2.3 Site Analysis

The Design-Builder shall analyze Digested Sludge Dewatering Facility Site ingress and egress requirements and restrictions, traffic conditions, time of work restrictions, and requirements of public and private authorities with jurisdiction over roadways to and from the Digested Sludge Dewatering Facility Site, parking, traffic between the dewatering site and the rest of the Regional Wastewater Facility (RWF) and any other restrictions or considerations that may affect the Design-Builder's work. The result of all site analyses will be presented to the City in the form of a Technical Memorandum.

Task 2.2.3 Deliverables:

- Work Plan for Site Analysis
- Draft Technical Memorandum on Site Analysis
- Final Technical Memorandum on Site Analysis

2.2.4 Existing Facilities Condition Assessments

Most facilities developed as part of the Dewatering Project will be new. However, the Project requires connections to certain existing facilities potentially including: (1) existing digesters, including digested sludge and digester gas systems; (2) existing power supplies; (3) the existing distributed control system and other control networks such as the communications and fire alarm networks; (4) existing utilities such as potable water supplies; and (5) the Emergency Basin Overflow Structure (EBOS) or existing sewer interceptors.

Investigation of condition of existing structural, mechanical, electrical, and control systems, including identification of code deficiencies that may require performing upgrades as part of the project (e.g. seismic, NFPA 820, handrails).

Investigation of operability and performance of gates, valves, equipment, and support systems to identify deficiencies that may need repair or replacement and that may be required to provide isolation of facilities during construction. Operation of existing gates, valves, equipment and support systems will be coordinated with O&M staff, as required.

Investigation of O&M staff concerns with existing digester facilities to identify perceived deficiencies that will be modified or replaced as part of the Project.

Task 2.2.4.4 Deliverables:

- Work Plan for Existing Conditions Assessments
- Draft Technical Memorandum on Existing Condition Assessments
- Draft Technical Memorandum Review Meeting Agenda, Meeting Materials, and Notes
- Final Technical Memorandum on Existing Digested Sludge Dewatering Facility Condition Assessments

2.2.5 Subsurface Utilities investigation

The Design-Builder shall conduct underground utility investigations of the “Dewatering Facility Site” as defined in Section 1.1 (Definitions) this Design-Build Contract. The purpose of this activity is to compile enough information to proceed with design activities. The scope of the underground utility investigation shall include, but not limited to, the following activities:

- (a) Review of existing documentation including record drawings, if available, and GIS Maps in consultation with City staff.
- (b) Field locate of all locations to be investigated based on the results of the information review as described above.
- (c) All underground utility investigation shall be performed by a water vacuum truck or other excavation equipment, as necessary. This scope of work assumes the completion of thirty five (35) potholes in different locations and three (3) full-width trenches across G Street to a depth of five (5) feet.
- (d) Provide traffic control or flagging as necessary to complete the work.
- (e) Dispose of truck spoils in a contained onsite location provided by the City.
- (f) Identify and document as a minimum for every located utility the following items: horizontal coordinates, depth to top and bottom, material, apparent condition, diameter for circular utilities, dimensions for encasements or duct banks or other structures.
- (g) Fill all investigation holes with an appropriate, excavatable material (sand, pea gravel, slurry) as conditions require once information is recorded. Larger excavations shall be backfilled with native material and compacted to 90% relative compaction. Trenches shall be backfilled with compacted aggregate base to the elevation of the existing road surface.
- (h) Record “as-built” information resulting from the investigations.
- (i) Coordinate with environmental field investigations and monitoring as required by the Project’s MMRP.

Based on the review of reference documents provided by the City and supplemental subsurface utilities investigations, the Design-Builder will prepare a report describing and identifying the locations of existing subsurface utilities at the Digested Sludge Dewatering Facility Site and the locations of man-made objects or structures.

For circumstances where existing information is either conflicting or not available, the Design-Builder will be responsible of identifying, designating, locating, and mapping existing and abandoned utility infrastructure. Identification techniques may include magnetic, sonic, and acoustic technologies, ground penetrating radar (GPR), and radio frequency detection. The utility descriptions will be considered current as of the date of the Subsurface Utilities Investigation Report.

Additional subsurface investigations required to resolve conflicts or to complete work not identified in the scope set forth above in this Section, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

Task 2.2.5 Deliverables:

- Work Plan for Subsurface Utilities Investigation, including Health and Safety Plan
- Draft Subsurface Utilities Investigation Report
- Draft Report Review Meeting Agenda, Meeting Materials, and Notes
- Final Subsurface Utilities Investigation Report

2.2.6 Geotechnical Investigations.

The Design-Builder's geotechnical engineer shall conduct geotechnical investigations at the Digested Sludge Dewatering Facility Sites, including the triangular area south of Digesters 13 and 14, the pipeline routes for digested sludge, centrate, storm water and other buried utilities to be constructed between the triangular area south of Digesters 13 and 14 and the Digested Sludge Dewatering Facility site east of Zanker Road, and other locations where Project facilities and systems may be located. The results of the geotechnical investigations will be used to develop allowable bearing pressures and other critical design criteria used by the Design-Builder during preparation of the Basis of Design Report, and to fully characterize expected geotechnical and hydrogeological conditions recognizing the City's objective of reducing the risk of unforeseen subsurface geotechnical or hydrogeological conditions.

Prior to field investigations, the geotechnical engineer shall review select information available online or as provided by the City, which is pertinent to the site conditions in the vicinity of the project. This information may include prior geotechnical reports, subsurface information, grading information and previous test data results.

2.2.6.1 Geotechnical Field Exploration. The geotechnical engineer shall explore subsurface conditions at the Digested Sludge Dewatering Facility Sites. The investigations shall be adequate to accurately characterize soil and groundwater conditions within all Construction areas, recognizing the City's objective of reducing the risk of unforeseen subsurface conditions.

The geotechnical engineer's scope of the investigations shall provide the information required by the Design-Builder's structural engineer and the Design-Builder's construction manager as needed to support the design. The geotechnical engineer's initial scope document shall be submitted to the City for its review and approval prior to the performance of the geotechnical investigation. The Design-Builder shall provide an experienced geologist or engineer to continuously observe the borings, log the subsurface conditions, collect representative soil samples, and transport all samples to the Design-Builder's laboratory for further visual examination and testing.

The following activities are included as part of the currently budgeted scope:

- (a) Geotechnical Reconnaissance – The geotechnical engineer will perform a reconnaissance of the site and the nearby site vicinity to evaluate the potential presence of geologic hazards, including fault rupture, slope instability, prior fill, expansive soils, and other features indicative of potential geologic hazards.
- (b) Health and Safety Plan – The Design-Builder shall prepare project-specific Health and Safety Plans (HSP) for the sites pertaining to the specific geotechnical activities to be completed. The HSP shall provide information including the proper personal safety equipment to be worn on-site, directions to the nearest public emergency room, and information for the key contact personnel involved in the project.
- (c) Exploratory Borings – To explore the subsurface conditions, the Design-Builder shall conduct borings as required to support the design and meet the City's objective of minimizing subsurface risk. The number and type of exploratory borings and the geotechnical field program are based on the following assumptions:
 - (1) The Design-Builder shall drill, log and sample a total of thirteen (13) exploratory borings, five (5) at the main dewatering site, two (2) at the storage tank site, two (2) at the potential jack-and-bore pits for the pipeline crossing of Zanker Road, and four (4) along the proposed new pipeline alignment.
 - (2) Borings shall be conducted using conventional, truck-mounted hollow-stem auger, drilling equipment. Conventional borings will extend to depths of approximately 50 to 100 feet (or practical refusal) for the dewatering and storage tank sites, 30 to 45 feet for the jack-and-bore pits, and 15 to 20 feet for the new pipelines. The Design-Builder shall collect soil samples from borings for visual classification, laboratory testing, and for correlation with CPT exploration data. The final depth and location and depth of all explorations may be modified in the field, as mutually agreed upon with the City.
 - (3) Cone Penetration Tests (CPT) – Nine (9) Cone Penetration Tests (CPTs) shall be conducted using truck-mounted CPT equipment. The Design-Builder shall extend CPTs depths of approximately 75 to 100 feet or practical refusal. The final depth and location and depth of all explorations may be modified, as mutually agreed upon with the City.
 - (4) Utility Clearance – The Design-Builder shall mark boring locations at least two working days prior to beginning its explorations as required by Applicable Law and shall notify the regional utility notification center Underground Service Alert (USA) and the City, so that public and private utilities can be identified and marked at ground surface. Where practical, the Design-Builder shall mark locations in white paint, or otherwise designate its exploration locations, as requested by USA. Within the operational area for the Facility, utility location is performed by the City's GIS group. Identification in areas outside the operational area, may require a contract with a private utility locator.

- (d) The Design-Builder shall coordinate with environmental field investigations and monitoring as required by the Project's MMRP.

Upon arrival at the Digested Sludge Dewatering Facility Sites, the Design-Builder and geotechnical engineer's crew will be given ready access to work locations by the City and clear site access will be provided for equipment at the time of drilling. The geotechnical engineer shall obtain a geologic testing permit and an encroachment permit from the City. Additionally, explorations shall be permitted and backfilled with cement grout in accordance with Santa Clara Valley Water District guidelines. During site exploration, drill spoils generated during drilling shall be placed in 55-gallon drums, sampled, tested, and disposed of at an off-site location. The drums will be stored on-site at a location designated by the City and shall remain there for approximately 3 to 4 weeks while the laboratory analyzes the soil samples. A City representative will be on site to sign the manifest paperwork prior to removal of the drums. The Design-Builder's scope of services to be provided under this Section shall include sampling, testing, and off-haul and disposal of up to 28 drums of soils to be hauled off site for proper disposal by the Design-Builder. If analytical testing indicates that the drummed soil is Hazardous Material, the special handling and disposal of such drummed soil, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

The Design-Builder's scope of services under this Section specifically excludes the assessment of environmental characteristics at the site, particularly those involving Hazardous Materials. If obviously impacted materials are encountered during the geotechnical exploration, the Design-Builder shall discontinue work and notify the City of the condition encountered. The Design-Builder shall proceed with the geotechnical scope of work, once mutually agreed upon by the parties. Payment for added costs incurred because of suspected hazardous substances will be negotiated with the City. If suspected Hazardous Materials are encountered, the resulting additional work required to be performed by the Design-Builder shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix

The geotechnical engineer shall exercise due care while working at the Digested Sludge Dewatering Facility Sites. It is anticipated that some surface disturbances will be unavoidable and that safe and adequate restoration will be provided by the Design-Builder. The site restoration requirements imposed upon the Design-Builder are limited to the previously described backfill activities and general clean-up.

2.2.6.2 Geotechnical Laboratory Testing. The Design-Builder shall have a series of geotechnical laboratory tests completed on soil samples obtained from the geotechnical field explorations to evaluate the engineering and index properties of the Digested Sludge Dewatering Facility Sites subsurface materials. To evaluate the index and engineering properties of site soils, the following laboratory tests are anticipated: following laboratory tests are anticipated:

- (a) In-situ Moisture/Density, American Society for Testing and Materials (ASTM) D2216 and D7263 Test Procedures.
- (b) Grain Size Distribution, ASTM D1140.
- (c) Atterberg Limits, ASTM D4318.
- (d) Unconsolidated-Undrained Triaxial Shear, ASTM D2850.

- (e) One-Dimensional Consolidation (to evaluate the compressibility of the underlying soils for detailed settlement analysis), ASTM D2435.
- (f) Resistance (R-value) tests, Caltrans Test Method 301 for pavement design purposes.
- (g) Soil Corrosion, (pH, resistivity, sulfates, and chlorides).

Soil samples will be stored for 30 days after submittal of Design-Builder's report and then discarded unless City requests longer-term storage.

2.2.6.3 Imported Soil Source Identification. The Design-Builder shall identify a source or sources of suitable soil that may be imported to the Digested Sludge Dewatering Facility Sites as required to raise the site for protection against flooding, if ultimately required, and for any other purposes. The Design-Builder shall be responsible for testing and analyzing the proposed imported soil to verify that it is free of hazardous or other deleterious materials and has suitable engineering properties for the intended purposes. The Design-Building shall also obtain agreements and any required permits to import soil. Regarding the use of on-site soils, to the extent the Design-Builder has tested and characterized on-site soils and found them to be free of hazardous materials and to the extent such soils are suitable for the intended purpose, the Design-Builder may reuse soils excavated during construction; however, the Design-Builder may not excavate on-site soils solely for use on site. The scope of work to be performed by the Design-Builder pursuant to this Section will include the evaluation of up to five (5) import sources including two (2) on-site and three (3) potential off-site soil import sources from a geotechnical standpoint for use on the project site during construction of the proposed improvements.

2.2.6.4 Geotechnical Review and Report Preparation. To supplement the field exploration and laboratory testing programs, the geotechnical engineer shall review various sources of geotechnical information concerning the Digested Sludge Dewatering Facility Site. Such sources may include geologic maps, seismologic literature, and other published documents. Any available soil logs and laboratory test results associated with previous subsurface explorations performed on or near the Digested Sludge Dewatering Facility Sites shall also be reviewed. Field exploration data, laboratory testing data, and research findings shall be evaluated to develop conclusions and recommendations concerning the geotechnical aspects of the Digested Sludge Dewatering Facility Sites. After analyzing the Digested Sludge Dewatering Facility Sites conditions, a preliminary geotechnical engineering study will be prepared for the Project.

2.2.6.5 Engineering Analysis. The engineering analysis phase of work will focus on developing site grading recommendations and geotechnical design parameters for foundations, retaining structures and pavement areas. The data obtained from the field investigation and the laboratory testing program will be utilized in the engineering analysis.

The report will include the following specific items:

- (a) Site plan showing exploratory boring and CPT locations on a base map
- (b) Descriptive logs of exploratory borings and CPTs, including depth to groundwater (if encountered)
- (c) Laboratory test results
- (d) Subsurface conditions, including expansion potential

- (e) Conclusions regarding on-site liquefaction potential
- (f) Preliminary soil corrosion screening
- (g) Geologic hazards and seismicity (including liquefaction potential)
- (h) Site preparation and earthwork recommendations including raising the existing site elevations
- (i) Foundation type and design recommendations including deep foundations, as needed
- (j) Recommendations for dewatering
- (k) Lateral earth pressures and drainage for retaining wall design
- (l) Temporary shoring design recommendations (including construction monitoring)
- (m) Interior and exterior slab-on-grade recommendations
- (n) Recommendations concerning trench backfill
- (o) Recommendations for jack-and-bore pits and thrust-block design
- (p) Recommendations concerning temporary and permanent drainage systems
- (q) Flexible asphalt and rigid concrete pavement recommendations
- (r) Recommendations for construction monitoring
- (s) Explanation of report limitations
- (t) Recommendations for further geotechnical study, if necessary, and identification or principal geotechnical and hydrogeological risks and what can be done to reduce or manage them.

The City retains the right to review the draft report in terms of its adequately characterizing the Dewatering Facility Site for the purpose of reducing the risk of encountering unforeseen subsurface condition during construction, and may elect to have the Design-Builder conduct additional field investigations to supplement the report.

Following preparation of the geotechnical report, the Design-Builder will review its BDR, 30% DCD and 60% DCD (all as defined below) documents to ensure the plans and specifications have incorporated the intent of the geotechnical engineer's recommendations. The Design-Builder shall submit a draft geotechnical report for review and approval by the City. Any City comments shall be discussed at the next monthly Project management meeting, and the Design-Builder shall prepare a final geotechnical report based upon the comments received.

Task 2.2.6 Deliverables:

- Work Plan for Geotechnical Investigations
- Draft Geotechnical Report

- Draft Report Review Meeting Agenda, Meeting Materials, and Notes
- Final Geotechnical Report

2.2.7 Sludge characterization

2.2.7.1 City Characterization of Mesophilic Digested Sludge and Establishment of Minimum Acceptance Standards. At the time of the Contract Date, sludge from the City's new Temperature-Phased Anaerobic Digestion Process (TPAD), which is under construction, will not be available for characterization. However, the City has been characterizing sludge from its current mesophilic process in order to help establish the values for Minimum Acceptance Standards for dewatered cake total solids content and for polymer use (see Appendix 9). The Design-Builder shall review the City's characterization testing results and will cooperate with the City in establishing values for these Minimum Acceptance Standard. Mutually acceptable values for these Minimum Acceptance Standards will be incorporated into the Definitive Contract Amendment.

2.2.7.2 Process for Establishing Acceptance Standards. The Design-Builder will conduct additional studies, as needed, to establish expected characteristics for TPAD sludge in order to help establish values for the more stringent Acceptance Standards for dewatered cake total solids content and for polymer use (see Appendix 9). These standards shall be established cooperatively with the City. Mutually acceptable values for these Acceptance Standards will be incorporated into the Definitive Contract Amendment.

The development of dewatering performance standards will be established in a collaborative manner between the Design-Builder, the City, and the Owner's Advisor. In order to establish the performance standards, the Design-Builder will:

- (a) Review of Historical Data – Review current digester performance (volatile solids reduction), volatile solids content of digested sludge as well as specific sludge characteristics that could influence dewaterability (phosphate, iron, pH, cations).
- (b) Review Lab Dewaterability Test Results – Review data available from lab testing provided by the City and provide relative data to centrifuge vendors in advance of pilot testing.
- (c) Review TPAD Design Criteria – Review calculated/estimated volatile solids reduction for TPAD design that will be used to calculate volatile solids content of digested sludge feed to dewatering process.
- (d) Conduct On-Site Centrifuge Testing – Coordinate and perform on-site pilot testing with four manufacturers. On-site performance testing will include limited polymer optimization. Additional detailed scope for the testing is included below.
- (e) Review Available Data from Operational TPAD Facilities – Review historical dewatering performance at similar facilities operating on TPAD.
- (f) Conduct a workshop to discuss and recommend centrifuge performance standards. This workshop will present findings of data review, historical performance, equipment testing, input from vendors and the assessment of the project team.

The centrifuge equipment testing shall be conducted over approximately six (6) weeks with a total of four (4) prequalified manufacturers: Alfa Laval, Andritz, Flottweg and GEA/Westphalia. The manufacturers selected for testing have a proven experience record, with multiple installations around the USA similar in size (capacity and number of units) to the ones that will be required for the RWF. The test location will be adjacent to the Digested Sludge Effluent Pump Station (DSEPS) and currently inactive digesters 1 through 4. The Design-Builder's detailed scope of work associated with the equipment testing will be as follows:

- (a) Preparation of a detailed work plan for the centrifuge testing which will include as a minimum the following information:
 - (1) Centrifuge testing protocol, including the testing methodology, list of parameters to be evaluated, normalized throughput requirements for each unit and sampling procedures (including type, number and frequency of samples to be collected) and health and safety requirements.
 - (2) Details regarding utility connection requirements, trailer dimensions, access to site and support logistics, including roles and responsibilities for City, Design-Builder and Owner's Advisor staff.
 - (3) Detailed schedule for the testing.
 - (4) The work plan will be submitted to the City for review and comments, which will be incorporated into the final plan.
- (b) Prepare the site that will be used for the test, including all utility connections for the digested sludge to feed the centrifuge units, utility water connections, centrate return and electrical connections. Provide all piping and appurtenances to connect the sludge feed pipeline at the DSEPS. Water will be supplied by connecting to the existing utility water spigot on the North side of the DSEPS Building, connection will include a backflow preventer. Centrate resulting from the process will be discharged to the DSEPS overflow box. Electrical service for the testing will be provided by modifying two existing spare buckets on MCC X1X2 with 9200 amps breakers. Upon completion of the centrifuge tests all utilities will be returned to their original condition.
- (c) Provide all services and work required for the centrifuge testing, including all work related to centrifuge set up, disposal of dewatered cake, completion of activities specified in the testing plan, collection and laboratory analysis of samples (digested sludge feed, dewatered cake, centrate), and daily clean up and housekeeping, as required. Samples of centrate, cake, and digested sludge feed will be analyzed by an independent laboratory in conjunction with tests performed by each centrifuge manufacturer.
- (d) Collect all centrifuge testing data for the four manufacturers that will be evaluated. All data collected from the tests, laboratory results, analysis of data and comparison of the equipment performance will be included in a centrifuge testing Technical Memorandum.
- (e) Clean and restore the centrifuge test area to its pre-test condition.

Based on the results of the equipment testing, the Design-Builder will establish a baseline for the development of the centrifuge dewatering performance. The Design-Builder will:

- (a) Provide recommendations to the City on the expected dewatering performance of the different models of centrifuges.
- (b) Conduct a meeting(s) with the City and the Owner's Advisor to discuss the establishment of the expected centrifuge performance.

Task 2.2.7.2 Deliverables:

- Equipment Testing Plan (Draft and Final)
- Technical Memorandum summarizing results of onsite equipment testing
- Technical Memorandum detailing performance investigations and recommended performance requirements
- Meeting minutes from coordination meeting with City and Owner's Advisor

2.2.7.3 Centrifuge Equipment Selection

A "best value" approach will be used for evaluation and selection of the centrifuge equipment to be used as part of this project. The approach will consider a number of factors with weighting criteria to allow for incorporation of non-cost elements in the selection, while still providing competitive value. The development of the selection process and selection criteria, including weighting and contractual mechanisms, will be done in collaboration with the City including the appropriate representative from the procurement department to ensure that the process meets the City procurement rules. Selection of equipment will include parameters such as:

- (a) Experience
- (b) Maintenance and Service Capabilities
- (c) Design Certification
- (d) Corporate and Financial Stability
- (e) Commercial Terms Acceptance
- (f) Conflicts of Interest
- (g) Proprietary Information
- (h) Quality Control and Assurance
- (i) Technical Criteria
- (j) Cost

Selection parameters and weighting criteria may be modified, if necessary, to ensure the selection will be representative of the project goals and objectives, minimizing risk to the project. Design of the facility will be completed based on the selected centrifuge manufacturer. In order to be considered for selection, it is required that a manufacturer participate in the onsite centrifuge testing.

The selection process is anticipated to occur during the development of the 30% design documents. The selection will occur during the Preliminary Services Period and purchase of the selected units will not occur until execution of the Definitive Contract Amendment. The selection process will include costs to be paid to the selected manufacturer for submittals and design support so that the Design-Builder may access critical design information. Any such costs for information required to be provided during the Preliminary Services Period will be required to be documented in the proposal for selection.

Task 2.2.7.3 Deliverables:

- Draft Equipment Selection Plan
- Final Equipment Selection Specification Package
- Technical Memorandum Documenting selection process
- Meeting minutes from selection review meeting with City and Owner's Advisor

2.2.7.4 Testing TPAD Sludge and Revisions to Full Acceptance Standards.

The parties agree that both laboratory testing and testing with the selected centrifuge, either at full or partial scale, will be conducted on TPAD sludge once the TPAD thickening and digestion processes have stabilized and are producing sludge that is representative of long-term operation conditions. If available prior to negotiation and execution of the Definitive Contract Amendment, the results will be considered by the parties in establishing the Full Acceptance Standards within the Definitive Contract Amendment. If not available until after the Definitive Contract Amendment is negotiated and executed, such testing may be used as the basis for good faith negotiations to change the Full Acceptance Standards, provided that:

- (a) The results of laboratory and centrifuge testing of TPAD sludge are in general agreement with one another;
- (b) The results of laboratory and centrifuge testing of TPAD sludge differ by at least 0.5 percentage points from the values derived by extrapolations from mesophilic sludge developed during design development; and
- (c) The parties mutually agree to such a change.

The Design-Builder and the City will work together to identify if additional tests and/or work are required to complete this task and any such tests and work, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

In the event the parties cannot agree to a proposed change to the Full Acceptance Standards, either party may elect to initiate dispute resolution procedures in accordance with **Error! Reference source not found.** (Non-Binding Mediation) of this Design-Build Contract.

Task 2.2.7.4 Deliverables:

- Laboratory and centrifuge testing of TPAD sludge results

2.2.8 Regulated Site Conditions – Hazardous Materials (Asbestos, Lead and PCBs)

2.2.8.1 Review of Existing Information. Design-Builder and the City acknowledge that all or portions of the Site, including existing man-made facilities, structures, and features, may contain contaminated and other materials included in the definition of Regulated Site Conditions. The Design-Builder shall meet with the City to fully understand previous use of these areas and the City’s experiences in encountering contaminated materials and conditions during construction of other previous projects.

2.2.8.2 Hazardous Materials (Asbestos, Lead and PCBs) Site Conditions Investigation Plan. The scope of the Design-Builder’s Hazardous Materials site conditions investigations, shall be developed considering the City’s intent to materially reduce the risk of encountering unforeseen Regulated Site Conditions during Construction. The Design-Builder will organize and facilitate a one-hour kickoff conference call with City staff prior to beginning any field work. At the conclusion of the field work, the Design-Builder will facilitate a one-hour progress and results conference call with the City. The Design-Builder’s Regulated Site Conditions Investigation Plan shall identify areas to be surveyed, sampling methods and frequencies, and laboratory testing and analysis methods, and shall be prepared in accordance with all applicable Contract Standards. The scope of the Design-Builder’s investigations include collecting samples to evaluate potential presence of asbestos, lead, and PCBs at the project site. The initial scope of investigations includes collection of up to forty five (45) bulk asbestos samples, twenty six (26) lead paint samples, and twelve (12) bulk PCB samples. Materials to be sampled in this survey may include concrete, sealants, and paint.

2.2.8.3 Site Conditions Field Investigations and Laboratory Analysis. The Design-Builder shall implement the field investigations and laboratory analysis set forth in its Regulated Site Conditions Investigation Plan. The survey for asbestos shall be performed by a California’s Division of Occupational Safety and Health (“Cal/OSHA”) Certified Asbestos Consultant (CAC) with Hazardous Waste Operations and Emergency Response Standard (HAZWOPER) training, under the direction of a Certified Industrial Hygienist (CIH). The lead survey shall be performed by a California Certified Lead Inspector/Sampling Technician, and Asbestos Consultant/Site Surveillance Technician, and will meet the requirements of the Bay Area Air Quality Management District (BAAQMD). A Project Manager will provide technical oversight on the scope of work, field work, and laboratory analysis. All sample locations will be cleaned up and repaired after sampling. It is estimated that the survey will be completed in 3 working days.

Samples shall be submitted to an accredited laboratory(s) for analysis. Asbestos samples will be analyzed by Polarized Light Microscopy (PLM), lead samples by Atomic Absorption Spectrometry (FlameAA), and PCB samples by EPA Method 8082A. All samples shall be submitted for standard (5-7 days) turnaround.

All work product shall be reviewed by the Project Manager or subject matter expert to ensure that all data is correct and the deliverables meet the City’s objectives, prior to submitting documents to the City for review. Submittals lacking a thorough quality control review will be returned to the Design-Builder without City review, in which case, the submittal will be corrected by the Design-Builder and resubmitted to the City.

All collected data and analysis results shall be included as an appendix to the Regulated Site Conditions and Remediation Report prepared under Task 2.2.8.4.

2.2.8.4 Regulated Site Conditions and Remediation Protocols Report. The Design-Builder shall prepare a draft Regulated Site Conditions and Remediation Protocols Report and provide it to the City for review. The report shall summarize all findings of the field

investigation and laboratory analyses, and will include a purpose statement and brief project description; a summary of existing background information; a description of methods used for the survey; results of the survey including observations, sample locations, laboratory results, and quantity estimate; conclusions and recommendations pertaining to the survey findings. The report will provide general reference of regulations pertaining to the removal of the identified Hazardous Materials.

The Design-Builder shall organize and lead a workshop with the City to review the draft report and to develop final recommendations for mitigation and remediation activities as well as the responsibilities (i.e. City or Design-Builder) and schedule for conducting those activities. If additional testing/work is required as a result of these recommendations, any such additional testing/work, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix.

Task 2.2.8 Deliverables:

- Draft and final agenda and draft and final meeting notes for meeting described in Task 2.2.8.1
- Draft and final Regulated Site Conditions Investigations Plan
- Draft Regulated Site Conditions Investigations and Remediation Protocols Report
- Draft Report Review and Remediations Strategies Workshop Agenda, Meeting Materials, and Notes
- Final Regulated Site Conditions Investigations and Remediation Protocols Report

2.2.9 Regulated Site Conditions – Soils Testing

The objective of the specified soils testing is to evaluate the presence of California Administration Manual (CAM) 17 Metals, Volatile Organic Compounds (VOCs), Total Petroleum Hydrocarbons (TPH), Polychlorinated biphenyls (PCBs), organochlorine pesticides, general minerals, ammonia, total coliform, E. coli (MUG), and asbestos (above relevant laboratory reporting limits), in the onsite soils for off-site disposal in accordance with State and federal regulations under the appropriate manifest.

2.2.9.1 Soils Investigation Plan. Prior to implementing the field work, the Design-Builder shall prepare a work plan that describes how the scope of work will be implemented. The work plan shall include exhibits identifying the proposed sampling locations. The total number of samples included in this scope is forty three (43), including four (4) duplicate samples. The four duplicate samples will be collected for quality control and quality assessment purposes. Additional samples may be required along the pipeline corridor or the main dewatering site if analytical results are positive. The work plan will include sampling protocols, decontamination procedures, a site-specific Health and Safety Plan, and field documentation procedures and shall be prepared under the supervision of Professional Geologist, licensed to practice in the State of California.

2.2.9.2 Soil Investigations and Laboratory Analysis. The following items shall be completed by the Design-Builder as part of the soil investigations scope:

- (a) Soil borings shall be advanced using hand-auger equipment. Samples will be collected in sleeves to minimize volatilization.

- (b) Borings shall be advanced to a depth of approximately five (5) feet below surface grade (bgs) or refusal.
- (c) During sampling activities, the soil shall be field screened for total VOCs using a calibrated photoionization detector. Calibration documentation shall be submitted to the City for review.
- (d) Non-dedicated sampling equipment shall be cleaned using an Alconox detergent wash and potable water rinse prior to commencement of the sampling activities and between the collection of each sample.
- (e) Following completion of sampling activities, the borings shall be backfilled with concrete slurry.

The following aspects shall be considered for the Laboratory analysis:

- (f) Soil samples shall be collected per the method specified in the United States Environmental Protection Agency (EPA) Method 5035 in encores.
- (g) Samples and completed chain-of-custody forms shall be transported to the selected analytical laboratory for seven to ten business day turn-around time for the analysis.
- (h) Soil samples shall be analyzed for Metals (CAM-17) by United States Environmental Protection Agency (EPA) Method 6010B, VOCs by EPA Method 8260B, TPH by EPA Method 8015, PCBs with soxhlet extraction by EPA Method 8082, organochlorine pesticides by EPA Method 8081, general chemistry, total coliform, E.Coli, and asbestos.
- (i) If analytical results reported are above the established levels, additional soil sampling may be conducted, as directed by the City.

2.2.9.3 Soils Condition Report. Upon completion of field activities and receipt of laboratory analytical results, a final report shall be prepared by the Design-Builder, which shall include the following:

- (a) Documentation of field activities;
- (b) A site plan or other exhibits showing pertinent features;
- (c) Analytical laboratory results;
- (d) Data evaluation and presentation of findings;
- (e) Recommendations concerning further actions, if necessary; and
- (f) Draft and final report.

The work shall include a QA/QC program, which is adequate to ensure the delivery of accurate and contextually appropriate technical data and solutions. Practices shall be implemented under the guidance of subject and industry sector practice groups consisting of subject matter experts. Technical oversight, including review of all work products, shall be provided by professionals who have demonstrated proficiency in the pertinent subject matter per the QA/QC program. All work shall be executed under the oversight of a Certified Industrial

Hygienist and a Professional Geologist, licensed to practice in the State of California. During the course of the project, conditions may arise that change the Design-Builder's scope of work hereunder. Any such changes in scope of work, if necessary, shall constitute Additional Preliminary Services, the compensation for which shall be negotiated by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix

Task 2.2.9 Deliverables:

- Meeting/Workshop Facilitation Materials and Documentation
- Draft and final Work Plan, prior to starting field work
- Draft and final site-specific Health and Safety Plan prior to starting field work
- Equipment calibration documentation
- Draft and final report
- Draft and final Regulated Soils Conditions Technical Memorandum

2.2.10 Odor Modeling

The Design-Builder will review previous air modeling results (Brown and Caldwell) conducted for the indicative designs and will conduct additional modeling to confirm that the recommended Project concept does not result in materially more adverse odor impacts. The Design-Builder's model for the Project will be developed using the base model utilized by Brown and Caldwell and will be completed during the development of the 30 percent design documents. The modeling will utilize features of the design developed at the time of the modeling with specific efforts made to include assumptions for the modeling that can be adjusted without significant impact to the model results as the design is advanced in subsequent phases. Initial work associated with model development and review of the existing model will occur during the Preliminary Services Period in order to expedite activities associated with the air permitting activities. The updated model results will be utilized to finalize the permit to construct application to be submitted to the BAAQMD as required. Specific work to be performed by the Design-Builder shall include:

- (a) Air Dispersion Modeling - Air dispersion modeling shall be performed for a single analysis (single model run), consisting of the recommended design concept for the new Digested Sludge Dewatering Building and other odor sources encompassed by the Project. The model run will include different "source groups" to determine impact from the Dewatering Facility.
- (b) Toxic Air Contaminates - Potential air emissions of Toxic Air Contaminants (TACs) shall be calculated using Pooled Emission Estimation Program (PEEP) and Joint Emissions Inventory Program (JEIP) emission factors for the Dewatering Facility sources.
- (c) Green House Gasses - Green House Gas (GHG) emission estimates previously performed by the City shall be reviewed to determine if any changes are required based on the final design of the Dewatering Facility. The GHG estimates will be updated based on the final design of the Dewatering Facility, with those factors requiring modifications being identified in a technical memorandum. It is assumed that up to 30% of the estimates will require modification.

- (d) AERMOD shall be used for the modeling, PEEP shall be used to provide data for input to the model. The odor modeling will be included with the for the BAAQMD permit to construct application. All modeling shall be completed prior to the 30% design submittal.

Task 2.2.10 Deliverables:

- Draft and final Odor Modeling Work Plan
- All electronic modeling files
- Draft and final Technical Memorandum

2.2.11 Options Analysis

Prior to beginning the Basis of Design Report efforts, the Design-Builder shall conduct an Options Analysis in order to evaluate the indicative design(s) against the Design-Builder's alternative concept. The objective of this Options Analysis is to select the best project approach prior to engaging in the larger efforts undertaken in the Basis of Design Report period. Actions to be carried out by the City and Design-Builder include:

- (a) Design-Builder shall conduct additional early workshops. Design-Builder shall prepare agendas, background information, host the workshops, and prepare meeting summaries for the following workshops. Early workshops will be conducted to:
- (1) Flows and Loads and Sizing Criteria. The Design-Builder will work with the City to review flows and loads information included in the PDR with the objective of determining whether or not any changes to the flow and load information, especially with respect to imported materials, shall be made prior to proceeding to the Basis of Design. Considering the accepted or refined flow and load information, the Design-Builder will conduct one workshop with the City to review the sizing and redundancy criteria in the Project Definition Report and to determine if any changes are warranted.
 - (2) Site and Configuration Selection. The Design-Builder will conduct ne workshop to review the indicative design(s) and Design-Builder's alternative concept, as both may be modified based on any revisions to flow and load or sizing criteria, to reach agreement with the City on the concept to carry forward to the Basis of Design phase, and to confirm or select locations for specific project features.
 - (3) Project Scope Definition. The Design-Builder shall conduct one workshop to discuss the project requirements identified in the RFP/PDR and the associated operational, technical and cost consequences of each major requirement.
- (b) As part of these workshops, the Design-Builder shall update the following for both the alternative concept and at least one of the indicative designs:
- (1) Cost Model
 - (2) City Triple Bottom Line (TBL+) Spreadsheets

- (c) At the conclusion of the Options Analysis Period, the City shall select the Project concept to carry forward to the Basis of Design phase and shall provide direction on project scope definition prior to advancing to the Basis of Design phase.

Task 2.2.9 Deliverables:

- Workshop agenda, PowerPoint presentations and meeting minutes
- Accompanying drawings, cost model estimates, and TBL+ spreadsheets

2.3 PRELIMINARY SERVICES TASK #3 – BASIS OF DESIGN REPORT

2.3.1 Basis of Design Development

2.3.1.1 Concept Refinement. The Design-Builder shall be responsible for developing, refining or modifying the indicative design(s) presented in the PDR in coordination with the City. The Design-Builder shall be responsible for reviewing and commenting on ideas presented in the PDR to improve operability and maintainability and to reduce overall construction costs to bring the Design-Build Cost (as defined in Appendix 8) within the City's approved budget for the Design-Build Price. The Design-Builder shall be responsible for developing alternatives and strategies for Design-Build Cost reduction. The Design-Builder shall conduct all evaluations, hydraulic and process modeling, calculations, cost estimating, scheduling, workshops, and other services as needed to develop the Basis of Design. Each workshop shall include a weighted decision process to compare alternatives on the basis of established evaluation criteria. A list of anticipated workshops is included in Attachment 2B to this Appendix and it is understood that additional workshops may be required as the design develops. As a minimum, the following topics shall be covered in these workshops:

- (a) Hydraulic Modeling
- (b) Process Modeling and Mass Balance
- (c) Odor emissions modeling
- (d) Process Equipment Selection, including, but not limited to, proposed Minimum Acceptance Standards, Acceptance Standards and Preliminary Centrifuge Acceptance Testing Plan
- (e) Phasing Plan (Initial Project, Ultimate Project and Intermediate Phasing if recommended). Analysis may include the use of decision-making tools such as Triple Bottom Line (TBL) Plus or any other type of analysis necessary to support conclusions.
- (f) Site and Facilities Planning and Layout
- (g) Primary Project components
- (h) Site civil engineering design, including paving and grading, storm water management, parking, truck and service access, and piping connections to existing utilities
- (i) Landscaping design
- (j) Process mechanical design

- (k) Electrical supply and distribution design
- (l) Instrumentation, controls, and DCS design
- (m) Architectural and structural design
- (n) HVAC, plumbing, and fire protection design
- (o) Corrosion control measures
- (p) Struvite mitigation measures
- (q) Hazardous area classifications
- (r) Commissioning, Acceptance Testing, and Transition Services
- (s) Permitting considerations
- (t) Interface with related and nearby projects

The following information shall be prepared by Design-Builder for each workshop, as applicable, and shall be submitted to the Records Management System a minimum of one week prior to each workshop:

- (u) Recommended Project Concept
- (v) General Operational Strategy
- (w) Design criteria, including a mass balance
- (x) General site and facilities layout drawings
- (y) 3D CAD renderings in accordance with the City drawing requirements set forth in Appendix 5 (General Design-Build Work Requirements) and City's CAD Standards.
- (z) O&M considerations
- (aa) Construction and life cycle cost estimates for indicative design or alternatives
- (bb) Schedule considerations
- (cc) Constructability analysis
- (dd) Commissioning, Acceptance Testing, and Transition Services, including Design-Builder's preliminary Centrifuge Acceptance Test Plan for testing the performance of dewatering trains, including centrifuges (see Section 9.2.2 (Required Submittals and Time Frames) of Appendix 9 (Commissioning and Acceptance))
- (ee) Design-Builder's recommendations for Design-Build Cost reduction alternatives and strategies

2.3.2 Draft Basis of Design Report (BDR).

The Design-Builder shall prepare and submit to the City a draft BDR which will include the Design-Builder's evaluation findings and specific recommended preliminary design (including preliminary drawings) for the Project. The draft BDR will explain how the proposed preliminary design will meet the City's budget, performance, operational, and maintenance requirements for the Project and comply with all legal and regulatory requirements. The draft BDR will include information on any alternatives considered and evaluated and information on the rationale or method by which the recommended design was selected. Information considered in the evaluation of alternatives and selection of a recommended design shall include but not be limited to: estimated capital, operations and maintenance costs; reliability, redundancy, robustness, and flexibility of the recommended processes and equipment; ease of City operation and maintenance; capability to expand the facilities and systems to process the ultimate projected digested flows and loads; flexibility, compliance with existing and future regulatory requirements; public safety; and compatibility with California Environmental Quality Act (CEQA) and City environmental objectives and requirements. It will include a draft Initial Design-Build Schedule that is prepared in accordance with Section 5.3 (Design-Build Schedule) of Appendix 5 (General Design-Build Work Requirements) that shows:

- (a) Preparation and completion of 30% DCD
- (b) Preparation and completion of 60% DCD
- (c) Preparation and submission of proposal to complete design work from 60% to 100% including preparing final plans and specifications
- (d) Submission of a 60% design-based GMP and Performance Guarantees
- (e) Final design integrated with construction, testing and startup and commencement of operations

The draft BDR shall be reviewed by the City and the City's comments shall be addressed by the Design-Builder.

2.3.2.2 Project Basis and Proposed Performance Guarantees. The final BDR will include information on:

- (a) Proposed Full Acceptance Standards (where numeric values are not established as of the Contract Date in Appendix 9 (Commissioning and Acceptance)) and associated Performance Guarantees for the selected design. Design-Builder may propose more stringent values for the Minimum Acceptance Standards included in Appendix 9 (Commissioning and Acceptance) as of the Contract Date. If the Design-Builder proposes a less stringent value for either the Full Acceptance Standard values or Minimum Acceptance Standard values as of the Contract Date, a detailed rationale and cost-benefit analysis shall be provided to justify the reduced standard.
- (b) Digested Sludge Dewatering construction conditions, including existing sites conditions; geotechnical conditions; hazardous materials conditions, flexibility for future installation of other sludge cake processing.
- (c) Digested Sludge Dewatering vehicular and pedestrian access, parking for the Design-Builder's workforce and City personnel and egress and materials and equipment staging area locations, size and security.

2.3.2.3 Proposed Digested Sludge Dewatering Facility Design. The Design-Builder will prepare a BDR representing approximately 15 percent completion of the design. The BDR will include a 3D Digested Sludge Dewatering Facility model (developed using the City's CAD Standards), and a description and preliminary schematics, drawings, and specifications of the following design elements:

- (a) The Digested Sludge Dewatering Facility layouts, site layouts and proposed design criteria – civil, site development, geotechnical, landscaping, structural, architectural, process mechanical, building mechanical, electrical, and instrumentation and control systems
- (b) Proposed equipment and facilities to be constructed; alternatives evaluated, and basis for evaluation and recommended system
- (c) Preliminary list of major equipment, including types, configurations, power requirements and potential suppliers
- (d) Proposed new facilities operations plan and preliminary control descriptions
- (e) Proposed preliminary process flow and process and instrumentation diagrams for the Digested Sludge Dewatering Facility system
- (f) Equipment vendors proposed, evaluated and recommended
- (g) Recommendations for redundancy and reliability
- (h) Sites plan layout and description of new or altered existing facilities
- (i) Process diagrams that show devices for measurements and recording
- (j) Digested Sludge Dewatering Facility control system and DCS interface

Comparisons on equipment and vendors shall include technical and performance characteristics, reliability, warranties, delivery lead time and operational experience at other facilities. The BDR will include supporting documentation.

2.3.2.4 Proposed Construction Organization, Work Plan and Schedule. The BDR shall describe:

- (a) The Design-Builder's proposed construction organization, including key construction managers and field superintendents, Subcontractors, and allocation of work among the proposed Subcontractors.
- (b) The Design-Builder's proposed work sequence to install and construct the proposed BDR design from commencement of construction to Substantial Completion to Acceptance Testing to Final Completion of the Project.
- (c) The Design-Builder's proposed equipment procurement plan and schedule covering longer lead-time items and any items with proprietary configurations/requirements that may impact the design. The procurement plan shall include any recommendations for early procurement of equipment required to achieve schedule milestones and/or to allow the design to be tailored to the selected equipment.

- (d) The Design-Builder's proposed schedule for performing its construction work
- (e) The Design-Builder's plan for coordinating with the City's requirements for other ongoing and normal RWF operations, including calendar dates and durations for anticipated process shutdowns during the construction period.
- (f) A Digested Sludge Dewatering Facility Site-specific Health and Safety Plan.
- (g) The Design-Builder's proposed preliminary Commissioning and Acceptance Test Plan, including dates, durations, test criteria, Project requirements for test conditions, personnel to be provided, and requested City support (see Appendix 9).
- (h) The Design-Builder's preliminary estimate of cash flow requirements by month from commencement of construction work through Final Completion.

2.3.2.5 Regulatory Requirements. The BDR shall include a description of regulatory conditions that apply to the proposed design, including but not limited to:

- (a) Legal restrictions and requirements
- (b) Approvals and limitations or constraints
- (c) All required permits and constraints, including, but not limited to, those required to be issued by City of San José building, public works, and fire departments, and the BAAQMD. Include all fees and assessments associated with permits and approvals.
- (d) The BDR shall include a description of the work to be performed with respect to required permits and approvals and information regarding the Design-Builder's proposed work activities and implementation and compliance with required CEQA mitigations as set forth in the MMRP, if any.

Anticipated permits required, include but are not limited to those listed in Appendix 3

2.3.2.6 Design-Build Cost Estimate Update. The Design-Builder shall include within the BDR an cost estimate update. The Design-Build Cost estimate shall include:

- (a) A Class 3 Opinion of Probable Construction Cost (OPCC) (in U.S. dollars) in accordance with standards established by AACEI with supporting materials including assumptions regarding construction conditions, and the bidding climate and bidding/ procurement strategies
- (b) Final design costs and other Design-Builder engineering and related costs during construction
- (c) Start-up, testing, commissioning and other transition services

2.3.2.7 Projected O&M Costs. The BDR shall include a preliminary estimate of the Digested Sludge Dewatering Facility operations and maintenance costs and staffing requirements. The preliminary estimate shall include:

- (a) Preliminary costs for operations and maintenance (including capital maintenance and major repairs and replacements, power, chemicals, and labor)

of the proposed completed Project and breakdown of costs, both annually and on a life-cycle basis

- (b) Estimated O&M staffing requirements
- (c) Major assumptions underlying Projected O&M Costs
- (d) Major factors that may influence Projected O&M Costs
- (e) The Design-Builder shall develop and describe the conceptual life cycle costs as well as a Design-Build Schedule.

Task 2.3.2 Deliverables:

- Draft Basis of Design Report (BDR)
- Estimated Design-Build cost with detailed breakdown
- Estimate O&M cost with detailed breakdown

2.3.3 Basis of Design Review Workshop.

The Design-Builder shall meet with the City staff and City consultants (Program Manager and Owner's Advisor) to present the preliminary design concepts and discuss comments on the draft BDR and obtain City approval on the recommended alternatives prior to proceeding with 30 percent design. The review workshop shall be held during the 20-Business Day City review and comment period on the draft Basis of Design Report. The Design-Builder shall schedule this review workshop on a date approved by the City, near the mid-point of the City review and comment period.

Task 2.3.3 Deliverables:

- Meeting agenda, materials, and notes including an update of the design progression log

2.3.4 Final Basis of Design Report.

The Design-Builder shall prepare a final BDR incorporating City comments on the draft BDR. The report will include updated TMs, as well as table of contents, executive summary, facilities descriptions, preliminary drawings and renderings, design criteria, a mass balance and recommended Project chapters.

Task 2.3.4 Deliverables:

- Final Basis of Design Report (BDR)

2.4 PRELIMINARY SERVICES TASK #4 – 30 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)

2.4.1 Period of Performance.

After the Design-Builder receives the City's written notice that the City's comments, if any, have been satisfactorily addressed in the final BDR, the Design-Builder shall proceed with the performance of services required to achieve 30% Design Completion. The Design-Builder shall

submit the Deliverable Material required by the 30% Design Completion Documents (30% DCD) to the City for review.

2.4.2 Minimum Requirements.

The 30% DCD shall follow the City's CAD Standards and shall include at least the following (where applicable):

- (a) Cover Sheet, Location Map and Vicinity Map;
- (b) Index of Drawings, general legend, abbreviations;
- (c) Design drawings as specified below in Section 2.4.4;
- (d) 3D renderings of facilities
- (e) A Project specifications document including general requirements, site work, materials (concrete, masonry, metals, wood, plastics), thermal and moisture protection, architectural (doors and windows, finishes, interior features), equipment, special construction, mechanical, electrical, and instrumentation and control systems proposed;
- (f) Project specific analyses of codes, ordinances and regulations;
- (g) Preliminary process control narratives
- (h) Design criteria and mass balances
- (i) Detailed lists of equipment, instruments and valves, including types, configuration, power requirements, redundancy requirements and potential suppliers
- (j) Preliminary Project Hazard Analysis
- (k) Initial construction sequencing plan
- (l) Initial construction phasing recommendations (i.e. identification of any Early Works Packages)

2.4.3 Criteria.

The 30% DCD shall incorporate City's BDR requirements and shall include, in addition to drawings and specifications set forth in this section, such additional information as needed to describe the Project. The 30% DCD shall indicate the basis for design choices, including but not limited to initial costs, lifecycle costs, life expectancy, maintenance considerations, reliability, durability, and applicable requirements of Governmental Bodies having jurisdiction or private licensing, patent, easements, or other legal restrictions, as well as an explanation of how the design incorporates the City's BDR objectives. The 30% DCD shall indicate any alternative designs, approaches, technologies, equipment or processes that the Design-Builder recommends be considered by the City if not included in the final BDR.

The 30% DCD will take the concepts developed in the BDR and advance them to preliminary engineering drawings and specifications.

2.4.4 30 Percent Design

The 30% DCD will incorporate the recommended systems and layout identified in the BDR into the 30% drawings and specifications. The 30% drawing set will generally include drawings, specifications and technical information described below.

- (a) **General Drawings:** Cover sheet, abbreviations and symbols, process schematics, key plan, list of drawings, Digested Sludge Dewatering Facility key plan, drawing symbology, numbering & tagging conventions, symbols, and abbreviations, hydraulic profiles, design criteria and mass balances (90% complete), process flow diagrams, pipe material schedule, equipment schedule, valve and gate schedules, and boundary survey.
- (b) **Civil Drawings:** Digested Sludge Dewatering Facility Site preliminary grading and paving plan, and yard piping plans, including site access/egress and perimeter security measures.
- (c) **Architectural Drawings:** building code plan, floor plan, exterior elevations. Preliminary architectural plans and sections for each new building. 3D renderings of facilities shall also be included.
- (d) **Structural Drawings:** General notes, standard concrete details, standard reinforcing details, stair and guardrail details. Preliminary structural plans and sections for each structure.
- (e) **Mechanical Drawings:** Mechanical symbols and legends, and energy compliance forms. Preliminary piping and mechanical plans and sections for each process area and structure. 3D renderings of interior and exterior equipment and systems shall also be included.
- (f) **Electrical Drawings:** Electrical symbols and legends, one-line diagrams, Digested Sludge Dewatering Facility Site electrical plan, lighting and power plan, and load schedules.
- (g) **P&IDs:** Preliminary Process and Instrumentation Diagrams (P&IDs) for all processes. Process and mechanical elements of the P&IDs shall be 75% complete; control aspects shall be 25% complete.
- (h) **Instrumentation:** Legends and symbols, control system block diagrams/network architecture, and preliminary control descriptions.
- (i) **Hazardous Area Classification Drawings:** A schedule of hazardous area classifications and design requirements and drawings depicting the extents of the hazardous areas.
- (j) **Specifications:** Preliminary specifications shall be prepared by the Design-Builder to include a table of contents listing all anticipated specification sections and preliminary specification sections for major equipment items. Major equipment items include items listed below, DCS system, pumps, centrifuges, polymer storage, blending and metering systems, grinders, mixers, fans, truck scales, dewatered cake storage and loadout systems, dewatering cake conveying systems, elevators, cranes, air handling/conditioning units, electrical switchgear, transformers, motor control centers, variable frequency drives, soft-start drives, piping, valves.

- (i) Preliminary control narratives
- (ii) Preliminary major equipment schedule
- (iii) Preliminary major process equipment specifications
- (iv) Preliminary piping schedule
- (v) Preliminary valve schedule
- (vi) Preliminary valve specifications
- (vii) Preliminary instrument schedule
- (viii) Preliminary instrument specifications
- (ix) Preliminary power distribution equipment specifications
- (k) **Preliminary Project Process Hazard Analysis**

The 30 percent submittal shall include a preliminary Project Process Hazard Analysis (PHA), conducted by a subconsultant specialist, for new processes included in the Project and for any existing processes at the RWF affected by the Project. Preparation of the PHS shall include review of Project documentation, preparation for the preliminary PHA study, facilitation, and preparation of draft and final preliminary PHA study report. The PHA shall be conducted using the City's Hazard and Operability (HAZOP) methodology. The Design Builder shall conduct a HAZOP workshop with plant staff and process designers to facilitate inclusion of appropriate findings in the PHA and appropriate mitigations into the Project design and operations practices.

A 30 percent design Technical Memorandum shall be prepared by the Design-Builder that includes design criteria for each process, information from the fire marshal and code reviewers, process calculations, preliminary structural, mechanical and electrical calculations. The Technical Memorandum shall also describe connections to the existing Regional Wastewater Facility and public utilities, including power, control and utility connections.

The Design-Builder shall also provide an update of the Class 3 Estimated Design-Build Cost at the completion of the 30% Design.

Task 2.4.4 Deliverables:

- Draft and Final 30% DCD (including design drawings, specifications, preliminary PHA, and Technical Memorandum)

2.4.5 Corrosion Engineering.

The Design-Builder's corrosion experts shall review the findings of the geotechnical investigation, conduct additional sampling and testing as needed, and develop details and specifications for corrosion protection systems for the pipelines, equipment, and other items potentially subject to corrosion such as grating and guardrails. This assessment shall include potential corrosivity of soil and groundwater as well as corrosion that may result from corrosive atmospheric conditions or exposure to corrosive fluids. The following items are included in this Preliminary Services Task:

2.4.5.1 Digested Sludge Dewatering Facility Sites Corrosivity Assessment. The Design-Builder's corrosion engineers shall review the soil sample chemical analysis from the geotechnical consultant. The soil samples shall have been analyzed for pH, chlorides, sulfates, resistivity, and Redox potential. Additional analysis shall include the following at a minimum:

- (a) Conduct in-situ soil resistivities at selected locations throughout the Digested Sludge Dewatering Facility Sites using the Wenner 4-pin technique. In-situ resistivities will be measured at 2.5-, 5-, 7.5-, 10-, and 15-foot depths using a suitable Resistivity Meter. Barnes layer calculations will be performed to determine the corrosivity of the different soil layers to the proposed pipeline materials.
- (b) Review the plans and specifications for the Project prepared by the Design-Builder for construction details and proposed materials and determine the suitability of the proposed materials based on the collected field and laboratory data and expected atmospheric conditions.
- (c) Prepare a TM, that provides a summary of the field data collected along with the chemical analysis of the soil samples and an analysis of this data and recommendations for protection of project elements expected to be exposed to corrosive atmospheric conditions and fluids. The potential for corrosion on the new process pipelines, equipment, structures and other project elements shall be determined based on the analysis and recommendations for the long-term prevention of corrosion. All fieldwork and recommendations shall be in compliance with applicable National Association of Corrosion Engineers (NACE) and City standards. The TM shall also contain the design criteria for the proposed corrosion prevention systems for other metal systems and other systems and facilities that could incur corrosion.
- (d) Prepare drawings and specifications for the recommended corrosion protection systems developed as part of the TM.

Task 2.4.5 Deliverables:

- Draft and final Corrosion Control Technical Memorandum

2.4.6 30 Percent Design Workshop.

A one-day workshop shall be conducted by the Design-Builder after the City reviews the 30% Design Documents. A log of review comments shall be maintained to ensure all design comments are addressed and incorporated into the 60 percent design, as appropriate. The review workshop shall be held during the 20-Business Day City review and comment period on the draft Basis of Design Report. The Design-Builder shall schedule this review workshop on a date approved by the City, near the mid-point of the City review and comment period.

Task 2.4.6 Deliverables:

- Meeting agenda, materials, notes, action items and review comments log

2.4.7 Updated Estimated Design-Build Cost.

The Design-Builder shall update its preliminary cost model presented in the BDR for the Project. The updated Project 30% DCD cost model shall be Class 3 in accordance with AACEI standards and shall include estimated costs for all services, equipment and materials and

other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The updated cost model shall be broken down into logical cost categories such as remaining design services, engineering services during construction, start up and testing, construction work, major equipment purchases, major material purchases and other categories with appropriate supporting documentation that will assist the City in its evaluation of the Design-Build Cost estimate.

Task 2.4.7 Deliverables:

- Updated Estimated Design-Build Cost

2.4.8 Updated Initial Design-Build Schedule.

The Design-Builder shall update its Initial Design-Build Schedule for the Design-Build Work presented in the BDR. The updated Initial Design-Build Schedule shall indicate key milestone dates for work completion from the final 30% DCD through start up, testing and Final Completion. The schedule shall provide for adequate periods for City design and Definitive Project Submittal reviews and for the Design-Builder to make revisions and obtain written notice to proceed from the City before proceeding with the next work phase. The updated Initial Design-Build Schedule shall be accompanied by a memo or report that explains significant changes from the BDR for key activities and Project milestones.

Task 2.4.8 Deliverables:

- Updated Initial Design-Build Schedule

2.4.9 City Review.

The City shall review the 30% DCD and provide the Design-Builder with written review comments. The Design-Builder shall make such revisions as required in order to address the City's comments. The City shall notify the Design-Builder in writing after the City has determined that revisions made by the Design-Builder are acceptable.

2.5 PRELIMINARY SERVICES TASK #5 – 60 PERCENT DESIGN COMPLETION DOCUMENTS (DCD)

2.5.1 Inclusion of the Technical Specifications.

After acceptance by City of Design-Builder's 30% Design Completion Documents (DCD), the Design-Builder shall proceed with the performance of the Base Preliminary Services required to achieve 60% Design Completion. Upon the City's written notification that all the City's comments, if any, have been satisfactorily addressed by the Design-Builder, the completed 60% DCD shall be included as the Technical Specifications in Appendix 4 (Technical Specifications).

2.5.2 60% DCD Deliverables.

The 60% DCD shall consist of CAD generated drawings, 3D renderings and specifications covering general civil and site work improvements, paving and grading, yard piping and electrical work, landscaping, design criteria and mass balances, and process flow diagrams, , process and instrumentation diagrams (P&IDs) and designs of foundations, architecture, structures, process mechanical systems, HVAC, plumbing, electrical systems, and instrumentation and controls systems. The 60% DCD shall include layouts and schematics drawn to scale, design criteria and notes showing the proposed design of all new and modified

existing facilities, in sufficient detail to cover the complete Project. The 60% DCD shall include all major elements of the Project design proposed for construction which complies with the final 30% DCD. The 60% CAD drawings shall follow the City's CAD Standards.

2.5.3 Minimum Requirements.

The deliverables will be nominally 60% complete at this stage, but certain elements of the design shall be more than 60% complete for the 60% DCD deliverable. The 60% DCD deliverable shall include drawings, renderings, specifications and other technical information with levels of completeness as follows:

- (a) **General Drawings:**
 - (i) cover sheet, abbreviations and symbols, process schematics, key plan, list of drawings (90% complete)
 - (ii) digested Sludge Dewatering Facility key plan (90% complete)
 - (iii) drawing symbology, numbering & tagging conventions, symbols, and abbreviations (90% complete)
 - (iv) hydraulic profiles, design criteria and mass balances (100% complete)
 - (v) process flow diagrams, pipe material schedule, equipment schedule, valve and gate schedules, and boundary survey (100% complete)
- (b) **Civil Drawings:** Digested Sludge Dewatering Facility Site preliminary grading and paving plan, and yard piping plans, including site access/egress and perimeter security measures. (60% complete)
- (c) **Architectural Drawings:** building code plan, floor plan, exterior elevations. Preliminary architectural plans and sections for each new building. 3D renderings of facilities shall also be included. (60% complete)
- (d) **Structural Drawings:** General notes, standard concrete details, standard reinforcing details, stair and guardrail details. Preliminary structural plans and sections for each structure. (60% complete)
- (e) **Mechanical Drawings:** Mechanical symbols and legends, and energy compliance forms. Preliminary piping and mechanical plans and sections for each process area and structure. 3D renderings of interior and exterior equipment and systems shall also be included. (60% complete)
- (f) **Electrical Drawings:**
 - (i) Electrical symbols and legends, one-line diagrams (100% complete)
 - (ii) site electrical plan, lighting and power plan, and load schedules (40% complete)
- (g) **P&IDs:** Preliminary Process and Instrumentation Diagrams (P&IDs) for all processes (100% complete)

- (h) **Instrumentation:**
- (i) Legends and symbols (100% complete)
 - (ii) control system block diagrams/network and architecture (100% complete)
 - (iii) locations of input/output panels, controllers, terminals, DCUs, and monitors, (100% complete)
 - (iv) fiber optic routing & patch panel locations for DCS, CCTV/security, fire alarm, telephones, radio, City internet (number of work stations, nodes and licenses needed) & number of spares for future growth. Fiber optic cable redundancy plan for Zanker Road crossings (100% complete)
- (i) **Hazardous Area Classification Drawings:** A schedule of hazardous area classifications and design requirements and drawings depicting the extents of the hazardous areas (60% complete)
- (j) **Specifications:** Specifications shall be in accordance with the most recent edition of the Construction Specification Institute conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of materials; equipment selections; and types of structural, mechanical and electrical systems. Specifications shall include:
- (i) Control narratives (100% complete)
 - (ii) Major equipment schedule (100% complete)
 - (iii) Major process equipment specifications (100% complete)
 - (iv) Piping schedule (90% complete)
 - (v) Valve schedule (90% complete)
 - (vi) Valve specifications (100% complete)
 - (vii) Instrument schedule (100% complete)
 - (viii) Instrument specifications (100% complete)
 - (ix) Power distribution equipment specifications (100% complete)
 - (x) Distributed control system equipment and devices (100% complete)
 - (xi) Other specifications, including general requirements, site work, materials (concrete, masonry, metals, wood, plastics), thermal and moisture protection, architectural (doors and windows, finishes, interior features), equipment, special construction, mechanical, electrical, and instrumentation and control systems proposed, the most recent edition of the Construction Specification Institute conventions, with Part 2 Products of each section completed, describing the size, character and quality of the entire Project in its essentials as to kinds and locations of

materials; equipment selections; and types of structural, mechanical and electrical systems (50% complete)

The 60% DCD deliverable also shall include the following:

- (k) Engineering calculations for certain disciplines, as agreed with City;
- (l) Project specific analyses of codes, ordinances and regulations;
- (m) List of Project Interfaces, both receiving and providing, and timelines;
- (n) Two dimensional drawings and three dimensional drawing of major structures, and equipment installations;
- (o) List of Process Shutdown Requests and timelines; and
- (p) Updated construction phasing (i.e. Early Works Packages) recommendations.

Task 2.4.4 Deliverables:

- Draft and final 60% DCD drawings, renderings and specifications
- Calculations and other analyses supporting the 60% DCD

2.5.4 Criteria.

The 60% DCD shall incorporate the final 30% DCD and shall include in addition to drawings and specifications set forth in this section such additional information as needed to describe the Project. The 60% DCD shall indicate the basis for design choices, including but not limited to updated initial costs, lifecycle costs, life expectancy, maintenance considerations, reliability, redundancy, durability, and applicable requirements of Governmental Bodies having jurisdiction or private licensing, patent, easements, or other legal restrictions, as well as an explanation of how the design incorporates the City's BDR objectives. The 60% DCD shall indicate any new alternative designs, approaches, technologies, equipment or processes that the Design-Builder recommends be considered by the City if not included in the final 30% DCD.

Task 2.5.4 Deliverables:

- Updated design criteria document

2.5.5 Updated Design-Build Cost Model.

The Design-Builder shall update its Design-Build Cost Model presented in the BDR and updated at the 30% design completion for the Project. The updated Project 60% DCD Design-Build Cost Model shall be Class 2 in accordance with AACEI standards and shall include estimated costs for all services, equipment and materials and other fees that may be incurred by the Project including appropriate contingencies due to uncertainties regarding cost estimates, site conditions and other factors. The updated cost model shall be broken down into logical cost categories such as remaining design services, engineering services during construction, start up and testing, self-performed contractor work, procured Subcontractor work, major equipment purchases (engine generators, piping, etc.), major material purchases and other categories with appropriate supporting documentation that will assist the City in its evaluation of the Project cost model.

Task 2.5.5 Deliverables:

- Updated Design-Build Cost Model

2.5.6 Updated Design-Build Schedule.

The Design-Builder shall update its Design-Build Schedule presented in the 30% DCD. The updated Initial Design-Build Schedule shall indicate key milestone dates for work completion from the final 60% DCD through Commissioning, Acceptance Testing and Final Completion. The updated Initial Design-Build Schedule shall provide for adequate periods for City design reviews through 100% completion and for the Design-Builder to make revisions and obtain written notification to proceed from the City before proceeding with the next work phase. The updated Initial Design-Build Schedule shall be accompanied by a memo or report that explains significant changes from the 30% DCD for key activities and Project milestones. Upon the City's written approval, the updated Design-Build Schedule shall be the schedule intended to be included as the "Initial Design-Build Schedule" to be set forth as Attachment 5A to Appendix 5 (General Design-Build Work Requirements) of this Design-Build Contract. In addition, the Scheduled Acceptance Date specified in the Design-Build Schedule shall be the date intended to be included in Section 1.1 (Definitions) of this Design-Build Contract.

Task 2.5.6 Deliverables:

- Updated Design-Build Schedule

2.5.7 Required Permits and Approvals.

In accordance with Section 2.1.7 (Permits and Approvals Plan) of this Appendix, the Design-Builder shall produce a Permits and Approvals Plan that identifies all necessary information, applications, permits, documents and forms, as may be required by State, City, County, utilities, private authorities with jurisdiction, and other regulatory and permitting agencies, required to secure the Governmental Approvals necessary to perform the work shown in the 60% DCD. This Preliminary Services Task shall apply to City, County and State requirements, as well as other federal, State, local, and special City or other regulatory requirements. Upon the City's written approval, Governmental Approvals identified by the Design-Builder (including Governmental Approval Application Dates and Assumed Approval Issuance Dates) shall be the Governmental Approvals intended to be included in Table 3-1 (Governmental Approvals Responsibility) and Table 3-2 (Governmental Approvals Schedule) of Appendix 3 (Governmental Approvals).

Task 2.5.7 Deliverables:

- Updated Permits and Approvals Plan

2.5.8 Performance Guarantees.

The Design-Builder shall specify the City-approved quality characteristics to which the Dewatering Facility will operate (the "Quality Standards") in comparison to standard industry practice. The Quality Standards shall include, but not be limited to, the Minimum Acceptance Standards and Acceptance Standards identified in Appendix 9. Values for those standards shall be approved by the City. City operation and maintenance requirements shall also be identified by the Design-Builder. Upon the City's written approval, the Minimum Acceptance Standards, Acceptance Standards, and associated Performance Guarantees in Appendix 9 shall be established, modified, or accepted by the Design-Builder

and the Design-Builder shall prepare a modified Appendix 9 for inclusion in the Definitive Contract Amendment.

2.5.9 Training Plan Requirements.

The Design-Builder shall develop a Training Plan in accordance with the Contract Standards. The City's approval of the Training Plan shall be a condition precedent to the achievement of Substantial Completion. The Training Plan shall:

- (a) include a combination of classroom and field/maintenance shop training;
- (b) be designed to completely train City staff to competently operate and maintain the Digated Sludge Dewatering Facility with the systems theory, sequence of operations, component and functional descriptions, standard operating procedures, hazard analysis of equipment, safety features, emergency procedures, assembly, disassembly, preventive, corrective and predictive maintenance, internal and external wiring, control loop, schematics and diagrams of all components;
- (c) list all equipment and systems in the Digated Sludge Dewatering Facility, including the following information for each equipment package or system:
 - (1) a description of each equipment package or system with reference to technical specifications or drawings if applicable;
 - (2) identification of target audiences (i.e. operators, mechanical maintenance, electrical maintenance, instrumentation maintenance);
 - (3) duration of classroom training for each session and each audience; and
 - (4) duration of hands-on training for each session and each audience;
- (d) include the number, qualifications and certification levels of City staff; and
- (e) establish the hours of training that will be provided prior to the Acceptance Date and, if necessary, any further training that will be provided during the Transition Period.

The total hours of training to be provided over the course of the Design-Builder's performance of the Transition Services shall be the following: (list training type; to be negotiated by the City and Design-Builder in cooperation with equipment manufacturers).

Task 2.5.9 Deliverables:

- Draft and final Training Plan

2.5.10 Draft Maintenance of Operations During Construction Plan.

Pursuant to Section 6.12(A) (Maintenance of Operations During Construction) of this Design-Build Contract, the Design-Builder shall prepare a draft Maintenance of Operations During Construction Plan which identifies the plan and procedures for coordinating with the City's requirements for ongoing operations of the Regional Wastewater Facility.

Task 2.5.10 Deliverables:

- Draft Maintenance of Operations During Construction Plan

2.5.11 City Review.

The City shall review the 60% DCD and provide the Design-Builder with written review comments. The Design-Builder shall make such revisions as required in order to address the City's comments. The City shall indicate to the Design-Builder in writing after the City has determined that revisions made by the Design-Builder are acceptable.

2.5.12 60 Percent Design Workshop.

A 60 percent design workshop will be conducted after the City reviews the 60% DCD. This workshop will be used to finalize the design comments. A log of review comments will be maintained to assure all design comments are addressed and incorporated, if appropriate. The review workshop shall be held during the 20-Business Day City review and comment period on the draft Basis of Design Report. The Design-Builder shall schedule this review workshop on a date approved by the City, near the mid-point of the City review and comment period.

Task 2.5.12 Deliverables:

- Meeting agenda, materials, notes, action items and review comments log

2.6 PRELIMINARY SERVICES TASK #6 – DEFINITIVE PROJECT SUBMITTAL AND SUPPORTING COST ESTIMATES

2.6.1 Definitive Project Submittal.

After the Design-Builder has received the City's written notification that its comments have been satisfactorily addressed in the revised 60% DCD, Design-Builder shall provide the City with a Definitive Project Submittal, which shall be prepared in accordance with the Contract Standards and meet the requirements set forth in Section 5.9 (Definitive Project Submittal) of this Design-Build Contract.

The Definitive Project Submittal shall incorporate all of the work performed as part of Preliminary Services Task 5, set forth the proposed Base Guaranteed Maximum Price for the Design-Build Work (including all services required for construction of the Project through Commissioning, Acceptance Testing and Final Completion), and provide information on all engineering, procurement, materials, construction labor and equipment and other services necessary to perform the Design-Build Work as required under the Design-Build Contract. As part of its Definitive Project Submittal, the Design-Builder shall submit a final Subcontracting Plan and a final Design-Build Schedule that meets the requirements set forth in Section 5.3 (Design-Build Schedule) of Appendix 5 (General Design-Build Work Requirements).

2.6.2 Basis of the Proposed Base Guaranteed Maximum Price.

The Design-Builder will prepare and include in the Definitive Project Submittal documentation supporting the proposed Base Guaranteed Maximum Price, including Subcontractor and equipment vendor bids and quotations, detailed cost estimating data, allowances (where appropriate), breakdown of general conditions, and definition of the Design-Builder's contingency included in the Base Guaranteed Maximum Price. Such documentation will include the following information:

- (a) Engineering services, including:
 - (1) Engineering design from 60% to 100% to be based on firm proposal.
 - (2) Engineering design – value engineering services
 - (3) Engineering construction support
 - (4) Engineering start up, testing and Digested Sludge Dewatering Facility commissioning
 - (5) Engineering services in support of procurement of major equipment
 - (6) Training and documentation
- (b) Construction services and costs for:
 - (1) Services during engineering design from 60% to 100%
 - (2) Construction support for value engineering
 - (3) General conditions
 - (4) Site work, road improvements and traffic control
 - (5) Yard piping and electrical
 - (6) Landscaping
 - (7) Structural and architectural
 - (8) Electrical and instrumentation
 - (9) Control system programming
 - (10) Piping and mechanical
 - (11) Other construction work not listed above
 - (12) Waste disposal systems for sanitary wastes and spent chemicals
 - (13) Commissioning and Acceptance Testing
 - (14) Performance and payment bonds
 - (15) Contingency
- (c) Labor, expenses, rental, overhead and mark-up costs, including:
 - (1) Billing rates for all proposed classifications of engineering and construction services labor and related expense rates such as mileage charges, per diem for meals and lodging, office charges and personnel vehicle rentals;

- (2) Unburdened rental rates on construction equipment, trailers, storage containers or space and major tools;
 - (3) Direct overhead on labor (benefits), indirect overhead on labor (general and administration or G&A), and profit rate on fully cost burdened labor rates;
 - (4) Proposed overhead markup rates and profit rates on expenses, materials, equipment rentals, Subcontractors, equipment supplied by vendors and consumables (supplies);
 - (5) The same cost and pricing information as requested in paragraphs 3 (a), (b) and (c) above for major Subcontractors; and
 - (6) Demonstrate that there are no significant tiered pricing markups so that major Subcontractors' overhead and profit markups are not duplicated to similar Design-Builder markups.
- (d) Design-Builder shall also provide the following information:
- (1) For engineering field services during construction, labor costs and expenses for a construction manager or resident engineer for overseeing construction work and related services;
 - (2) For engineering support during construction for review of construction Requests for Information ("RFIs"), submittals and proposed design or construction changes and costs, labor costs and expenses;
 - (3) All Base Guaranteed Maximum Price pricing assumptions and clarifications on terms and conditions used;
 - (4) All self-performed construction services;
 - (5) A breakdown of the Design-Builder Contingency, how it was determined and expected adequacy to cover costs not able to be determined accurately at the time of preparation of the Definitive Project Submittal.
 - (6) A list of work activities, expenses and fees not included in the GMP which the City may be expected to pay for;
 - (7) Key assumptions in the 60% DCD Work Schedule upon which the Base Guaranteed Maximum Price is based including dates for Substantial Completion and Final Completion; and
 - (8) Any other key assumptions or conditions upon which the Base Guaranteed Maximum Price is based not covered in the preceding items in this section.

2.6.3 Preparation of the Definitive Project Submittal.

The Design-Builder shall start the development of the Definitive Project Submittal at the onset of the Project during the kick-off partnering meeting to establish dialogue from early concept development through the 60% design. During the design phase, the Design-Builder will

maintain ongoing communication with the City to assess and analyze concept and design changes as they relate to the overall Project cost and schedule.

The Design-Builder shall use an “open book” approach to develop the Definitive Project Submittal, providing the City with full access to all the details and sources of information that make up the final Definitive Project Submittal.

Meetings will be held throughout the design and development of the Definitive Project Submittal with the City to assure the design and preconstruction phase work is completed in a transparent manner.

The Project will not have 100% complete plans and specifications at the time the final Base Guaranteed Maximum Price is agreed upon. Therefore, in order to get a more complete estimate of the scope, the Design-Builder will prepare “design gap analysis narratives” for all work items to provide the Design-Builder’s estimators and the City a clearer picture of what is included in the final Definitive Project Submittal package.

During development of the Definitive Project Submittal, the Design-Builder will perform value analysis and constructability reviews with design and construction team members as the plans are being prepared. The Design-Builder will also conduct “operability reviews” with the Digested Sludge Dewatering plant operations staff, and “bid-ability” reviews with the Design-Builder’s estimators.

All of these efforts are designed to prepare the documents and estimates as accurately as possible and to keep the City fully informed and involved with the design and cost throughout the development of the Definitive Project Submittal.

At a minimum, the Definitive Project Submittal shall include all items included in the 60% DCD deliverables.

Task 2.6.3 Deliverables:

- Draft and final Definitive Project Submittal
- Meeting agendas and notes

2.6.4 Definitive Project Submittal Workshop.

After delivery of the draft Definitive Project Submittal, the Design-Builder shall meet with the City and its consultants during a 4-hour workshop to present, review, and answer questions about the content of the Definitive Project Submittal. The Design-Builder shall finalize the Definitive Project Submittal after the workshop and re-submit it to the City for final review and approval.

Task 2.6.4 Deliverables:

- Definitive Project Submittal Workshop Agenda, materials, meeting notes and action items

2.7 PRELIMINARY SERVICES TASK #7 – POTENTIAL ADDITIONAL PRELIMINARY SERVICES

As provided in Section 5.2(B) (Additional Preliminary Services) of this Design-Build Contract, the City may request that the Design-Builder perform Additional Preliminary Services. The

City has included a City-controlled allowance of \$749,256 for as-needed optional Additional Preliminary Services. The Design-Builder shall not be entitled to payment of any portion of such City-controlled allowance prior to the completion of negotiations of the compensation for any Additional Preliminary Services by the parties as set forth in Section 2.8.3 (Compensation for Additional Preliminary Services) of this Appendix. Any remaining amount in the City-controlled allowance at the completion of the Preliminary Services Period shall be for the account of the City.

Additional Preliminary Services may include, but shall not be limited to, the following:

- (a) Utility relocations
- (b) Remediation of identified Regulated Site Conditions
- (c) PG&E coordination
- (d) AT&T coordination

2.8 PRELIMINARY SERVICES FEE

2.8.1 Compensation for Base Preliminary Services.

The City shall pay the Design-Builder a Preliminary Services Fee in the amount of \$7,492,564. The Preliminary Services Fee shall serve as the Design-Builder's entire compensation for all Base Preliminary Services performed as required under this Design-Build Contract, and shall include costs for any and all out-of-pocket disbursements for travel, lodging and other expenses incidental to the performance of the Base Preliminary Services and any payments to third parties such as Subcontractors.

The Design-Builder shall earn its Preliminary Services Fee progressively based upon the Design-Builder's percentage completion of the Base Preliminary Services as reasonably determined by the City, based on the following values:

<u>Preliminary Services Task</u>	<u>Value</u>
Task #1: Project Management	\$678,120
Task #2: Preliminary Investigations	\$1,971,734
Task #3: Basis of Design Report	\$973,430
Task #4: 30% Design Completion Documents	\$1,477,720
Task #5: 60% Design Completion Documents	\$1,647,620
Task #6: Definitive Project Submittal and Supporting Cost Estimates and Preparation of Formal Proposal to Complete Designs to 100%	\$743,940
<i><u>Total Preliminary Services Payment</u></i>	<i><u>\$7,492,564</u></i>
Task #7: City-Controlled Allowance for As-Needed Optional Additional Preliminary Services	\$749,256

2.8.2 Payment Requests

The Design-Builder shall request monthly progress payments of the portion of the Preliminary Services Fee payable with respect to each Preliminary Services Task. All billings and requests for progress payments shall require a written invoice from the Design-Builder in a form acceptable to the City. The Design-Builder shall submit all billings with any necessary invoices, time records, Preliminary Services Deliverable Material, and other appropriate evidence of performance, after which the City shall make payment at the earliest practicable time, but not later than 30 days following receipt of a proper payment request.

If requested by the City to facilitate the payment process and track progress of the Preliminary Services Tasks, the Design-Builder shall provide the City with an itemization of its compensation according to a Work Breakdown Structure (“WBS”) in a form the City supplies or approves (at the City’s option), that defines all Preliminary Services Tasks (Design-Builder’s and Subcontractors’), along with a Preliminary Services Schedule providing the timeline for each Preliminary Services Task, a Project budget defining the planned man-hours and costs for each Preliminary Services Task, and a schedule of deliverables providing the timeline for all Preliminary Services Deliverable Material to be provided to the City. The WBS shall further define which tasks are to be performed by Subcontractors. The WBS shall not relieve the Design-Builder of its performance, schedule or other obligations under this Design-Build Contract.

2.8.3 Compensation for Additional Preliminary Services.

In the event the City elects to request any Additional Preliminary Services, compensation for the Additional Preliminary Services shall be negotiated by the City and the Design-Builder in accordance with Section 5.3(B) (Compensation for Additional Preliminary Services) of this Design-Build Contract. The negotiation of the wages or salaries of Design-Builder or Subcontractor personnel performing any such Additional Preliminary Services shall be based on those rates set forth in Attachment 8B (Design-Builder's Personnel Cost Schedule) to Appendix 8 (Design-Build Price).

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ATTACHMENT 2A
INITIAL PRELIMINARY SERVICES SCHEDULE

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ATTACHMENT 2A

INITIAL PRELIMINARY SERVICES SCHEDULE

All activities of the Preliminary Services shall be scheduled and monitored by use of a Gantt or Bar Chart which presents all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to use in advancing the Project to the 60% Design stage. The initial Preliminary Services Schedule is to be approved by the City prior to execution of the Design-Build Contract.

City of San Jose
 Dewatering Facility at the San Jose-
 Santa Clara Regional Wastewater Facility

Appendix 2
 Attachment 2A
 Initial Preliminary Services Schedule

San Jose Digested Sludge Dewatering Facility Project			26-Jul-19 16:22															
Activity ID	Activity Name	Calendar	Original Duration	Total Float	Early Start	Early Finish	Late Start	Late Finish	2020	2021	2022	2023	2024	2025		2026		
									Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
San Jose Digested Sludge Dewatering Facility Project																		
General Conditions																		
A1500	Notice to Proceed	Calendar	0	0	15-Oct-19	15-Oct-19	15-Oct-19	15-Oct-19										
A1510	Final Completion	Calendar	0	1	27-Nov-23	28-Nov-23	28-Nov-23	28-Nov-23										
Preliminary Service																		
A2200	Preliminary Services Completion	Calendar	1200	78	15-Oct-19	26-Jan-23	02-Dec-18	14-Apr-23										
A2300	Contract/CMF Negotiations - 90 Days	Calendar	0	2	10-Jan-21	10-Jan-21	11-Jan-21	11-Jan-21										
Permits and Approvals																		
A2350	Air Quality Permit to Operate - City - Contract Date +1200+1300 Days	Calendar	1200	78	15-Oct-19	26-Jan-23	02-Dec-18	14-Apr-23										
A2360	Hazard Plan Development Fee - City - Contract Date +500+850 Days - Restrictions?	Calendar	450	56	15-Oct-19	06-Jan-23	15-Dec-19	03-Mar-21										
A2370	Explosive Boring Permit - Design-Build	Calendar	40	48	15-Oct-19	08-Jan-21	10-Feb-19	10-Jan-20										
A2340	Air Quality Permit to Construct - City - Contract Date +250+450 Days	Calendar	250	16	20-Jul-20	26-Mar-21	05-Aug-20	11-Apr-21										
Design/Build Work																		
A2200	Construction Commencement Date	Calendar	0	2	10-Apr-21	10-Apr-21	11-Apr-21	11-Apr-21										
A2230	Substantial Completion	Calendar	0	1	14-Apr-23	14-Apr-23	14-Apr-23	14-Apr-23										
A2400	Acceptance Date	Calendar	0	1	28-Jun-23	28-Jun-23	28-Jun-23	28-Jun-23										
Permits and Approvals																		
A2250	Stormwater Pollution Control - Construction General Permit - City	Calendar	723	476	15-Oct-19	06-Oct-21	05-Sep-20	25-Jan-23										
A2260	Construction Safety Permits - Design-Build	Calendar	30	476	15-Oct-19	13-Nov-19	02-Feb-21	03-Mar-21										
A2270	Building Permits - City/Design-Build (Might Require Multiple Permits)	Calendar	180	326	15-Oct-19	11-Apr-20	05-Sep-20	03-Mar-21										
A2290	Variance from Building Code - City/Design-Build (Might Require Multiple Permits)	Calendar	180	326	15-Oct-19	11-Apr-20	05-Sep-20	03-Mar-21										
A2280	Permit for Construction Work in Public Right-of-Way - City/Design-Build	Calendar	180	161	10-Apr-21	06-Oct-21	18-Sep-21	16-Mar-22										
A2300	Water Service Connection - City/Design-Build	Calendar	90	251	10-Apr-21	08-Jul-21	17-Oct-21	16-Mar-22										
A2310	Encroachment Permit - City/Design-Build	Calendar	90	251	10-Apr-21	08-Jul-21	17-Dec-21	16-Mar-22										
A2320	PG&E Approval for Utilities Work - City/Design-Build	Calendar	180	66	10-Apr-21	10-Oct-21	14-Jun-21	10-Dec-21										
A2330	PG&E Service Connection - City/Design-Build	Calendar	180	161	10-Apr-21	06-Oct-21	15-Sep-21	16-Mar-22										
A2340	Overhead/Overweight Truck Permit - Design-Build	Calendar	180	476	10-Apr-21	06-Oct-21	05-Sep-21	16-Mar-22										
Weather Days																		
A2220	Weather Day Allowance	SU Work	20	1	25-Oct-23	27-Nov-23	26-Oct-23	28-Nov-23										
Acceptance Testing																		
A2410	Acceptance Test Plan - 45 Days	Calendar	45	550	08-Aug-21	21-Sep-21	09-Feb-23	25-Mar-23										
A2420	Notice of Acceptance Test - 20 Days Pro.	Calendar	20	550	22-Sep-21	11-Oct-21	28-Mar-23	14-Apr-23										
A2430	Acceptance Testing - 30 Days	Calendar	30	1	14-Apr-23	13-May-23	15-Apr-23	14-May-23										
A2430	Develop the Acceptance Test Report - Within 45 Days of Completion	Calendar	45	1	14-May-23	27-Jun-23	28-Jun-23	28-Jun-23										
Acceptance Date Conditions																		
A2460	Submit All Equipment Warranties and Operating Manuals	Calendar	689	1	08-Aug-21	28-Jun-23	31-Dec-22	28-Jun-23										
A2470	Submit Updated O & M Manuals	Calendar	30	660	08-Aug-21	06-Sep-21	30-May-23	28-Jun-23										
A2480	City Training Complete	Calendar	180	510	08-Aug-21	03-Feb-22	31-Dec-22	28-Jun-23										
A2450	All Permits and Approvals Delivered to City	Calendar	30	123	27-Jan-23	25-Feb-23	30-May-23	28-Jun-23										
A2440	Submit Acceptance Test Report	Calendar	0	1	28-Jun-23	28-Jun-23	28-Jun-23	28-Jun-23										
Final Completion Conditions																		
A2500	Punch-List	Calendar	195	36	14-Apr-23	25-Oct-23	29-Jun-23	28-Nov-23										
A2520	Design-Build Work Deliverable Material	Calendar	30	200	14-Apr-23	03-May-23	09-Nov-23	28-Nov-23										
A2530	Submit Final O & M Manuals	Calendar	120	1	28-Jun-23	25-Oct-23	29-Jun-23	26-Oct-23										
A2540	Submit Final Record Drawings and Specifications	Calendar	120	1	28-Jun-23	25-Oct-23	29-Jun-23	26-Oct-23										
A2550	Submit Final Spare Parts	Calendar	120	1	28-Jun-23	25-Oct-23	29-Jun-23	26-Oct-23										
A2560	Input into Asset Management Database	Calendar	120	1	28-Jun-23	25-Oct-23	29-Jun-23	26-Oct-23										
A2570	Final Documentation (Consent of Surety, Payment of Claims, Certification)	Calendar	120	1	28-Jun-23	25-Oct-23	29-Jun-23	26-Oct-23										
Preliminary Services																		
Task #1 - Project Management																		
2.1.1 - General Project Management																		
A2820	Submit & Approval - Health and Safety Plan	Calendar	15	28	15-Oct-19	29-Oct-19	12-Nov-19	26-Nov-19										
2.1.2 - Technical Workshops and Meetings																		
A1090	Technical Workshop - Preliminary Investigation Planning	Calendar/ Holiday Break	36	127	25-Oct-19	28-Nov-19	23-Nov-19	19-Apr-20										
A1100	Technical Workshop - Equipment Selection, Site Planning & Indicative Design Refinement	Calendar/ Holiday Break	7	23	25-Oct-19	31-Oct-19	13-Nov-19	29-Nov-19										
A1140	Technical Workshop - Cost Modeling, Schedule (Cont. Ser.) and Equip./Sub Procurement	Calendar/ Holiday Break	7	156	25-Oct-19	31-Oct-19	13-Apr-20	19-Apr-20										
A1120	Technical Workshop - CSDA Planning, Cost Control Modeling & Hydraulic Modeling	Calendar/ Holiday Break	7	46	21-Nov-19	07-Nov-19	17-Dec-19	08-Jan-20										
A1100	Technical Workshop - Electrical Instrumentation & Control Design Criteria Review	Calendar/ Holiday Break	7	53	28-Nov-19	14-Nov-19	16-Jan-20	22-Jan-20										
A1110	Technical Workshop - Commissioning, Acceptance Testing & T/PAD Sludge Characterization	Calendar/ Holiday Break	7	60	15-Nov-19	21-Nov-19	30-Jan-20	05-Feb-20										
A1160	Technical Workshop - Recommended Project Concept (Inc. Architectural Bldg Concepts)	Calendar/ Holiday Break	7	60	22-Nov-19	28-Nov-19	06-Feb-20	12-Feb-20										
2.1.3 - Risk Management Requirements																		
A1250	Develop Initial Risk Register Submittal	Calendar	30	30	15-Oct-19	13-Nov-19	14-Nov-19	13-Dec-19										
A1990	Initial Risk Management Workshop & Risk Register Submittal (Within 60 days of Kickoff)	Calendar	0	30	13-Nov-19	13-Nov-19	13-Dec-19	13-Dec-19										
A1260	BDR (During Development) Risk Management Workshop & Risk Register Submittal	Calendar	30	126	14-Nov-19	13-Dec-19	21-Mar-20	19-Apr-20										
A1270	30% (Upon Submission) DCD Risk Management Workshop & Risk Register Submittal	Calendar	30	102	06-Jan-20	04-Apr-20	08-Oct-20	14-Nov-20										
A1280	60% (Upon Submission) DCD Risk Management Workshop & Risk Register Submittal	Calendar	30	30	18-Oct-20	14-Nov-20	15-Nov-20	14-Dec-20										
2.1.4 - Change Management Requirements																		
A1290	Develop & Submit - Change Management Log	Calendar	30	156	15-Oct-19	13-Nov-19	21-Mar-20	19-Apr-20										
2.1.5 - Project Execution Plan																		
A1020	Develop & Submit - Draft Project Execution Plan	Calendar	30	86	25-Oct-19	23-Nov-19	21-Jan-20	19-Feb-20										
A1030	City Review - Draft Project Execution Plan	Calendar/ Holiday Break	30	72	24-Nov-19	08-Jan-20	20-Feb-20	20-Mar-20										
A1050	Develop & Submit - Final Project Execution Plan	Calendar	30	72	20-Jan-20	07-Feb-20	21-Mar-20	19-Apr-20										
2.1.6 - Communication Plan																		
A1300	Develop & Submit - Draft Communication Plan (Within 45 days of Contract Date)	Calendar	47	74	15-Oct-19	28-Dec-19	05-Feb-20	19-Apr-20										
A1310	City Review - Draft Communication Plan	Calendar	45	113	15-Oct-19	28-Nov-19	05-Feb-20	20-Mar-20										
A1310	City Review - Draft Communication Plan	Calendar/ Holiday Break	15	97	29-Nov-19	13-Dec-19	21-Mar-20	04-Apr-20										
A1320	Develop & Submit - Final Communication Plan	Calendar	15	113	14-Dec-19	28-Dec-19	05-Apr-20	19-Apr-20										
2.1.7 - Permits and Approvals Plan																		
A1330	Develop & Submit - Draft Permits and Approvals Plan	Calendar	76	45	15-Oct-19	12-Feb-20	06-Jan-20	19-Apr-20										
A1330	Develop & Submit - Draft Permits and Approvals Plan	Calendar	45	83	15-Oct-19	28-Nov-19	06-Jan-20	19-Feb-20										

San Jose Digested Sludge Dewatering Facility Project											26-Jul-19 16:22															
Activity ID	Activity Name	Calendar	Original Duration	Total Duration	Early Start	Early Finish	Late Start	Late Finish	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
A1340	City Review - Draft Permits and Approvals Plan	Calendar	30	67	20-Nov-19	13-Jan-20	20-Feb-20	20-Mar-20																		
A1350	Develop & Submit - Final Permits and Approvals Plan	Calendar	30	67	14-Jan-20	12-Feb-20	21-Mar-20	19-Apr-20																		
2.1.8 - Preliminary Services Schedule and Design-Build Schedule																										
A1350	Submit - Draft Preliminary Services Schedule (Due at NTP)	Calendar	0	80	15-Oct-19	15-Oct-19	20-Jan-20	20-Jan-20																		
A1370	City Review - Draft Preliminary Services Schedule	Calendar	15	62	15-Oct-19	29-Oct-19	31-Jan-20	04-Feb-20																		
A1390	Develop - Draft Design-Build Schedule (Submit at Kickoff Meeting)	Calendar	5	5	15-Oct-19	19-Oct-19	20-Oct-19	24-Oct-19																		
A1400	City Review - Draft Design-Build Schedule	Calendar	15	190	20-Oct-19	03-Nov-19	22-May-20	06-Jun-20																		
A1380	Develop & Submit - Final Preliminary Services Schedule	Calendar	15	98	30-Oct-19	13-Nov-19	05-Feb-20	19-Feb-20																		
A1410	Update & Submit - Design-Build Schedule	Calendar	15	235	04-Nov-19	18-Nov-19	16-Jun-20	20-Jun-20																		
2.1.9 - Document Submittal Procedures																										
A1420	Develop - Document Submittal Procedures	Calendar	5	5	15-Oct-19	19-Oct-19	20-Oct-19	24-Oct-19																		
A2000	Submit - Document Submittal Procedures (Within 10 days of NTP)	Calendar	0	0	20-Oct-19	20-Oct-19	24-Oct-19	24-Oct-19																		
2.1.10 - Monthly Project Report Requirements																										
A2050	Develop & Submit - Monthly Project Report - November 2019	Calendar	0	0	29-Nov-19	29-Nov-19	29-Nov-19	29-Nov-19																		
A2060	Develop & Submit - Monthly Project Report - December 2019	Calendar	0	0	31-Dec-19	31-Dec-19	31-Dec-19	31-Dec-19																		
A2070	Develop & Submit - Monthly Project Report - January 2020	Calendar	0	0	31-Jan-20	31-Jan-20	31-Jan-20	31-Jan-20																		
A2080	Develop & Submit - Monthly Project Report - February 2020	Calendar	0	0	29-Feb-20	29-Feb-20	29-Feb-20	29-Feb-20																		
A2090	Develop & Submit - Monthly Project Report - March 2020	Calendar	0	0	31-Mar-20	31-Mar-20	31-Mar-20	31-Mar-20																		
A2700	Develop & Submit - Monthly Project Report - April 2020	Calendar	0	0	30-Apr-20	30-Apr-20	30-Apr-20	30-Apr-20																		
A2710	Develop & Submit - Monthly Project Report - May 2020	Calendar	0	0	31-May-20	31-May-20	29-May-20	29-May-20																		
A2720	Develop & Submit - Monthly Project Report - June 2020	Calendar	0	0	30-Jun-20	30-Jun-20	30-Jun-20	30-Jun-20																		
A2730	Develop & Submit - Monthly Project Report - July 2020	Calendar	0	0	31-Jul-20	31-Jul-20	31-Jul-20	31-Jul-20																		
A2740	Develop & Submit - Monthly Project Report - August 2020	Calendar	0	0	31-Aug-20	31-Aug-20	30-Sep-20	30-Sep-20																		
A2750	Develop & Submit - Monthly Project Report - September 2020	Calendar	0	0	30-Sep-20	30-Sep-20	30-Oct-20	30-Oct-20																		
A3130	Develop & Submit - Monthly Project Report - October 2020	Calendar	0	0	30-Oct-20	30-Oct-20	30-Nov-20	30-Nov-20																		
A3230	Develop & Submit - Monthly Project Report - November 2020	Calendar	0	0	30-Nov-20	30-Nov-20	31-Dec-20	31-Dec-20																		
A3240	Develop & Submit - Monthly Project Report - December 2020	Calendar	0	0	31-Dec-20	31-Dec-20	31-Dec-20	31-Dec-20																		
2.1.11 - Records Management System																										
A2700	City to Set up City Web Portal and EADOC	Calendar	10	26	25-Oct-19	03-Nov-19	20-Nov-19	26-Nov-19																		
A2710	City to Set up City Web Portal and EADOC	Calendar	10	26	25-Oct-19	03-Nov-19	20-Nov-19	26-Nov-19																		
2.1.12 - Computerized Maintenance Management System																										
A1430	Develop - City's Computerized Maintenance Management System (CMMS) Plan	Calendar	366	0	15-Oct-19	14-Oct-20	17-Jul-20	14-Oct-20																		
A2010	Submit - City's Computerized Maintenance Management System (CMMS) Plan (Within 365 days of NTP)	Calendar	0	0	15-Oct-19	12-Jan-20	17-Jul-20	14-Oct-20																		
A2020	Submit - City's Computerized Maintenance Management System (CMMS) Plan (Within 365 days of NTP)	Calendar	0	0	14-Oct-20	14-Oct-20	14-Oct-20	14-Oct-20																		
2.1.13 - Kickoff Meeting & Partnering																										
A1070	Prepare for Kickoff & Partnering	Calendar	5	44	15-Oct-19	08-Dec-19	20-Oct-19	19-Feb-20																		
A1440	Draft Partnering Charter	Calendar	5	15	15-Oct-19	19-Oct-19	20-Oct-19	24-Oct-19																		
A1430	Technical Workshop - Kickoff & Partnering (Within 10 days of NTP)	Calendar	15	73	25-Oct-19	08-Nov-19	06-Nov-20	20-Jan-20																		
A1450	Draft Partnering Charter - City Review	Calendar	15	57	09-Nov-19	23-Nov-19	21-Jan-20	04-Feb-20																		
A1460	Final Partnering Charter	Calendar	15	73	24-Nov-19	08-Dec-19	05-Feb-20	19-Feb-20																		
2.1.14 - Constructability Reviews																										
A1470	Constructability Review with City - Basis of Design #1	Calendar	366	40	15-Oct-19	30-Oct-20	21-Mar-20	12-Dec-20																		
A1480	Constructability Review with City - Basis of Design #2	Calendar	15	142	10-Oct-19	29-Oct-19	21-Mar-20	04-Apr-20																		
A1490	Constructability Review with City - 30% Design Stage	Calendar	15	40	06-Jul-20	20-Jul-20	15-Aug-20	29-Aug-20																		
A1500	Constructability Review with City - 60% Design Stage	Calendar	15	43	10-Oct-20	30-Oct-20	28-Nov-20	12-Dec-20																		
2.1.15 - Value Engineering																										
A1510	Value Engineering Review with City - Draft Basis of Design	Calendar	15	30	07-May-20	21-May-20	06-Jun-20	20-Jun-20																		
A1520	Value Engineering Review with City - 30% Design Submittal	Calendar	15	40	06-Jul-20	20-Jul-20	15-Aug-20	29-Aug-20																		
A1530	Value Engineering Review with City - 60% Design Submittal	Calendar	15	43	10-Oct-20	30-Oct-20	28-Nov-20	12-Dec-20																		
2.1.16 - Cost Model																										
A1540	Develop - Initial Cost Modeling Framework	Calendar	30	30	15-Oct-19	13-Nov-19	14-Nov-19	13-Dec-19																		
A2020	Submit - Cost Modeling Framework (Within 60 days of NTP)	Calendar	0	0	13-Dec-19	13-Dec-19	13-Dec-19	13-Dec-19																		
A1550	Workshop - Initial Cost Modeling Framework	Calendar	7	121	14-Dec-19	20-Dec-19	13-Apr-20	19-Apr-20																		
2.1.17 - Equipment and Subcontractor Procurement																										
A1560	Procurement Package Strategy	Calendar	59	62	15-Oct-19	19-Jan-20	14-Jan-20	12-Apr-20																		
A1570	Workshop - Procurement Package Strategy	Calendar	17	91	13-Jan-20	19-Jan-20	13-Apr-20	19-Apr-20																		
Task 2.2 - Preliminary Assessments																										
2.2.1 - Review and Verification, Generally																										
A2320	Develop - Draft Field Investigations and Condition Reviews Plan	Calendar	30	16	15-Oct-19	13-Nov-19	31-Oct-19	29-Nov-19																		
A1580	Submit - Field Investigations and Condition Reviews Plan (Within 45 days of NTP)	Calendar	0	0	29-Nov-19	29-Nov-19	29-Nov-19	29-Nov-19																		
A1590	City Review - Field Investigations and Condition Reviews Plan	Calendar	15	1397	30-Nov-19	14-Dec-19	14-Nov-23	29-Nov-23																		
2.2.2 - Review of Reference Documents																										
A1600	Develop - Reviewing Reference Documents Work Plan	Calendar	30	58	15-Oct-19	13-Nov-19	12-Dec-19	10-Jan-20																		
A2790	City Review - Reviewing Reference Documents Work Plan	Calendar	15	43	14-Nov-19	28-Nov-19	11-Jan-20	25-Jan-20																		
A1610	Review Reference Documents	Calendar	15	58	29-Nov-19	13-Dec-19	26-Jan-20	09-Feb-20																		
A1620	Draft Technical Memorandum on Reference Document Review	Calendar	28	58	14-Dec-19	10-Jan-20	10-Feb-20	08-Mar-20																		
A2770	City Review & Workshop - Draft Technical Memorandum on Reference Document	Calendar	14	58	11-Jan-20	24-Jan-20	09-Mar-20	22-Mar-20																		
A1630	Final Technical Memorandum on Reference Document Review	Calendar	28	58	25-Jan-20	21-Feb-20	23-Mar-20	16-Apr-20																		
2.2.3 - Site Analysis																										
A1640	Develop - Site Analysis Work Plan	Calendar	30	27	15-Oct-19	13-Nov-19	11-Nov-19	10-Dec-19																		
A2000	City Review - Site Analysis Work Plan	Calendar	15	27	14-Nov-19	29-Nov-19	11-Dec-19	10-Jan-20																		
A1650	Site Analysis	Calendar	30	43	29-Nov-19	29-Dec-19	11-Jan-20	09-Feb-20																		
A1660	Draft Technical Memorandum on Site Analysis	Calendar	28	43	29-Dec-19	25-Jan-20	10-Feb-20	08-Mar-20																		
A2780	City Review & Workshop - Draft Technical Memorandum on Site Analysis	Calendar	14	43	26-Jan-20	08-Feb-20	09-Mar-20	22-Mar-20																		
A1670	Final Technical Memorandum on Site Analysis	Calendar	28	43	09-Feb-20	07-Mar-20	23-Mar-20	19-Apr-20																		

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ATTACHMENT 2B
LIST OF MEETINGS

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ATTACHMENT 2B

LIST OF MEETINGS

Workshop Number	Description	Proposed Dates	Phase	Attendees	DB Team Lead	Decision Making	Predecessor	Successor	Notes (combined, etc)
1	Kickoff and Partnering	10/24/2019	BDR	All	Diaz				
2	Subsurface Utilities/Hazardous Investigation Plan	10/31/2019	BDR	1. Engineering	Singer/Lopez	Confirmation of sampling plan and accessibility			2 combined based on similar scope and staff
3	Project Definition Workshop	11/7/2019	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson/Keaney				
4	Risk Management	11/14/2019	BDR	1. Program Management 2. Engineering 3. O&M Management	Lowney				
5	Process Modeling Workshop	11/21/2019	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson/Keaney				
6	Options Analysis (Flow and Loads)	12/4/2019	BDR	All	Wilson	1. Centrifuge number and sizing 2. Cake Bin number and sizing			
7	Cost Model/Procurement/Subcontracting Overview	12/11/2019	BDR	1. Program Management 2. Engineering	Infantino/Keaney				
8	Primary Project Components/Process Equipment Selection	12/18/2019	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson				
9	Facility Concept Workshop	1/8/2020	BDR	All	Wilson/Keaney				
10	Permitting/Project Interface Workshop	1/22/2020	BDR	1. Program Management 2. Engineering	Lopez				Combined
11	Site Civil Workshop	1/29/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson/Keaney				
12	Sludge Charecterization	2/19/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Carr/Wilson				Dependant on pilot testing schedule. Could be flipped with Architectural
13	Options Analysis (Site and Configuration Selection)	3/4/2020	BDR	All	Lopez/Keaney				
14	Architectural, Structural, Hazard Classification	3/18/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson/Robley				
15	Concept Refinement/Phasing	3/25/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Wilson/Keaney				KEY MILESTONE (Internal)
15	Commissioning and Testing	4/8/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Keaney/Long				Overview related specifically to centrifuge performance testing procedures
16	BDR Preliminary Review	4/22/2020	BDR	All	Wilson/Diaz				KEY MILESTONE
17	BDR Final Review	5/13/2020	BDR	All	Wilson/Diaz				Contract calls for single workshop for BDR
18	Constructability Review	5/20/2020	BDR	1. Program Management 2. Engineering 3. O&M Management	Singer/Keaney				
19	Process Hazard Analysis	5/27/2020	BDR		City				
20	Process Mechanical Design Criteria	6/11/2020	30%		Wilson				
21	Electrical Design Criteria	6/18/2020	30%		Wilson				
22	Value Engineering	6/25/2020	30%		City				
23	Buidling Mechanical Design Criteria	7/8/2020	30%		Wilson				
24	Instrumentation and Control Design Criteria	7/15/2020	30%		Wilson				
25	30 Design Review	8/17/2020	30%		Wilson/Diaz				includes constructability and risk review
26	30% Cost Model Review	8/24/2020	30%		Diaz/Keaney				KEY MILESTONE
27	60% Design Review	12/9/2020	60%		Wilson/Diaz				includes constructability and risk review
28	60% Cost Model Review	1/6/2020	60%		Diaz/Keaney				KEY MILESTONE

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APPENDIX 3
GOVERNMENTAL APPROVALS

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APPENDIX 3

GOVERNMENTAL APPROVALS

3.1 PURPOSE

[Note: This Appendix and related tables will be revised as more is known about which permit(s) are necessary for the Project.]

The purpose of this Appendix is to provide a list of the Governmental Approvals that are expected to be required with respect to the Contract Services. Table 3-1 identifies permits and approvals that are the City's responsibility. The Design-Builder will be responsible for obtaining all permits and approvals not expressly identified as City responsibility as defined in Table 3-1, as well as all other Governmental Approvals required with respect to the Contract Services irrespective of whether any such Governmental Approval is identified in this Appendix.

Design-Builder shall meet all environmental and permit mitigation requirements set forth in these Contract Documents.

3.2 GOVERNMENTAL APPROVALS

The purpose of Table 3-1 is to indicate the responsibility of the Design-Builder and the City with respect to Governmental Approval application management and fee payment. The purpose of Table 3-2 is to indicate assumed approval and issuance dates of the Governmental Approvals in order to determine schedule relief under subsections 6.5(E) (Adjustment to Scheduled Acceptance Date Based on Delays Affecting Design-Builder Managed Governmental Approvals) and 6.5(G) (Adjustment to Scheduled Acceptance Date Based on Delays Affecting City Managed Governmental Approvals) of this Design-Build Contract. **[Note: The tables will be finalized based on the Definitive Project Submittal.]**

Table 3-1
 Governmental Approvals Responsibility

Item No.	Name of Governmental Approval	Issuing Agency	Permittee/ Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility
1.	Stormwater Pollution Control: Construction General Permit (CGP)	State Water Resources Control Board (SWRCB)	City	City	Design-Builder: The Design-Builder shall prepare a Stormwater Pollution Prevention Plan (SWPPP) and the necessary Project Registration Documents (PRD) to be digitally filed with the SWRCB through the Storm water Multi-Application and Report Tracking System (SMARTS database). The Design-Builder shall perform the role of "Qualified SWPPP Developer" (QSD) and "Qualified SWPPP Practitioner" (QSP).	Design-Builder
2.	Construction Safety Permits	Cal/OSHA	Design-Builder	Design-Builder	Design-Builder: The Design-Builder is also responsible for permits related to trench safety and underground safety, whether or not the permits are identified in this table.	Design-Builder
3.	Building Permits and Inspections	City of San José - Public Works and Fire Departments	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for plan check review (including City Fire Marshal Review). Fire Marshal Review includes Hazmat, Fire Suppression, Architectural, Fire Alarm and Underground. Design-Builder information supply responsibilities also extend to information required for: <ul style="list-style-type: none"> - Approval of fire access - Approval of fire water system design - Approval of fire alarm and suppression system design - Variance for clean agent (waterless) fire suppression - Hazardous Materials construction permit 	Design-Builder

Table 3-1
Governmental Approvals Responsibility

Item No.	Name of Governmental Approval	Issuing Agency	Permittee/ Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility
4.	Building Permits and Inspections	Structural Engineering and Code Inspection Architectural Review City of San Jose, City Council/Planning Building and Code Enforcement Department	City	City	Design-Builder: The Design-Builder will be responsible for plan check review. Design-Builder information supply responsibilities also extend to information required for: <ul style="list-style-type: none"> - Building permit - Approval of any return pipeline connections to RWF influent interceptors upstream of headworks - Approval of any architectural design elements - Approval of subsequent CEQA documentation 	City
5.	CEQA	City Planning Department as lead agency	City	City	City	City
6.	Permit for Construction Work in Public Right-of-Way	City of San José – Department of Transportation	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for plan check review and providing data and information required for the permits related to work in the public right-of-way. Design-Builder information supply responsibilities also extend to information required for approval of construction work in public right-of-way along Zanker Road.	Design-Builder

Table 3-1
Governmental Approvals Responsibility

Item No.	Name of Governmental Approval	Issuing Agency	Permittee/ Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility
7.	Water Service Connections: Application for Approval/Supply Design/Coordination	City of San José – Municipal Water System and South Bay Water Recycling	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for plan check review, completing the application process and design coordination, and providing data and information required for the permits related to potable water system, municipal fire water, and recycled water connections, including third party backflow testing.	Design-Builder
8.	Encroachment Permit	City of Milpitas	City	Design-Builder	Design-Builder: The Design-Builder shall prepare the encroachment permit application and provide data and information required. Design-Builder information supply responsibilities also extend to information required for the Encroachment Permit for approval of work within City Milpitas interceptor easements.	Design-Builder
9.	Approval for Utilities Work	Pacific Gas and Electric Company (PG&E)	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for plan check review and providing data and information required to conduct utilities work.	Design-Builder
10.	PG&E Service Connection: Application for Approval/ Power Supply Design/Coordination	PG&E	City	Design-Builder	City: The City will submit a preliminary application for service based on preliminary information. Design-Builder: The Design-Builder will assume responsibility for completing the application process and design coordination with PG&E.	City

Table 3-1
Governmental Approvals Responsibility

Item No.	Name of Governmental Approval	Issuing Agency	Permittee/ Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility
11.	Air Quality Permit to Construct	Bay Area Air Quality Management District (BAAQMD)	City	City	<p>City: The City will provide the Design-Builder with information relating to current Title V permitted facility equipment and air permit requirements, including monitoring, recordkeeping and reporting.</p> <p>Design-Builder: The Design-Builder will be responsible for providing data and information required for the permits related to on-site air monitoring and Dewatering Facility odor-scrubbing equipment.</p>	City
12.	Air Quality Permit to Operate	BAAQMD	City	City	<p>City: The City will provide BAAQMD with information relating to source test results of newly installed generators to obtain Permit to Operate.</p> <p>Design-Builder: The Design-Builder will be responsible for providing data and information required for the permits related to on-site air monitoring and Dewatering Facility odor-scrubbing equipment.</p>	City
13.	Air Quality - Off-Road Construction Equipment Certification	BAAQMD	Design-Builder	Design-Builder	Design-Builder	Design-Builder

Table 3-1
Governmental Approvals Responsibility

Item No.	Name of Governmental Approval	Issuing Agency	Permittee/ Approval Holder	Application Manager	Information Supply Responsibility	Fee Payment Responsibility
14.	Habitat Plan Development Fee	Santa Clara Valley Habitat Agency (SCVHA)	City	City	City: The City will submit an application to address permanent and/or temporary impacts to lands within the Santa Clara Valley Habitat Plan Burrowing Owl Fee Zone. Design-Builder: The Design-Builder will be responsible for providing engineering support related to determination of impact fees.	City
15.	Exploratory Boring Permit	Santa Clara Valley Water District	Design-Builder	Design-Builder	Design-Builder	Design-Builder
16.	Oversize/ Overweight Truck Permit	California Department of Transportation (Caltrans)	Design-Builder	Design-Builder	Design-Builder	Design-Builder
17.	Variance from Building Code	California Energy Commission	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for plan check review and providing data and information required to obtain variances from Building Code, if needed.	Design-Builder
18.	Environmental Clearance for Preliminary Site Investigation Activities and Tree Removal	City of San Jose, CIP Environmental Team	City	Design-Builder	Design-Builder: The Design-Builder will be responsible for providing data and information required to obtain environmental clearances.	Design-Builder
19.	Spill Prevention, Control, and Countermeasure Plan	California Environmental Protection Agency	City	Design-Builder	Design-Builder	Design-Builder

Notes:

1. Subject to the terms and conditions of this Design-Build Contract, the Application Manager is responsible for obtaining the applicable permit on or before the agreed-upon date in the Design-Build Schedule attached to the Definitive Contract Amendment (which dates will be the basis for the Assumed Approval Issuance Dates in Table 3-2).

Table 3-2 Governmental Approvals Schedule			
Name of Governmental Approval	Issuing Agency	Governmental Approval Application Date (Number of days from Contract Date)	Assumed Approval Issuance Date (Number of days from Governmental Approval Application Date)
Stormwater Pollution Control: CGP	SWRCB	Contract Date +	Contract Date +
Construction Safety Permits	Cal/OSHA		
Building Permits and Inspections	City of San José - Public Works and Fire Departments		
Building Permits and Inspections	Structural Engineering and Code Inspection Architectural Review City of San Jose, City Council/Planning Building and Code Enforcement Department		
CEQA	City Planning Department as lead agency		
Permit for Construction Work in Public Right-of-Way	City of San José – Department of Transportation		
Water Service Connections: Application for Approval/Supply Design/Coordination	City of San José – Municipal Water System and South Bay Water Recycling		
Encroachment Permit	City of Milpitas		
Approval for Utilities Work	PG&E		

Table 3-2 Governmental Approvals Schedule			
PG&E Service Connection: Application for Approval/ Power Supply Design/ Coordination	PG&E		
Air Quality Permit to Construct	BAAQMD	Contract Date + 250 calendar days	Contract Date + 450 calendar days
Air Quality Permit to Operate	BAAQMD	Contract Date + 1200 calendar days	Contract Date + 1300 calendar days
Air Quality - Off-Road Construction Equipment Certification	BAAQMD		
Habitat Plan Development Fee	SCVHA	Contract Date + 550 calendar days	Contract Date + 650 calendar days
Exploratory Boring Permit	Santa Clara Valley Water District		
Oversize/ Overweight Truck Permit	Caltrans		
Variance from Building Code	California Energy Commission		
Environmental Clearance for Preliminary Site Investigation Activities and Tree Removal	City of San Jose, CIP Environmental Team		
Spill Prevention, Control, and Countermeasure Plan	California Environmental Protection Agency		

APPENDIX 4
TECHNICAL SPECIFICATIONS

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APPENDIX 4

TECHNICAL SPECIFICATIONS

[Note: This Appendix will contain the technical specifications for the Project as developed to the 60% level, and will be amended and completed based on the Preliminary Services performed by the Design-Builder and incorporated on the Definitive Contract Amendment Date. Requirements currently listed in this Appendix 4 set forth the City's minimum technical requirements for the Project. Project Technical Specifications developed by the Design-Builder and incorporated into this appendix via the Definitive Contract Submittal / Definitive Contract Amendment Process shall conform to these minimum technical requirements unless a change is made or approved by the City, which the City may elect to do at its sole discretion.]

4.1 PURPOSE

These Technical Specifications set forth the technical requirements for the Project. Nothing in these Technical Specifications shall relieve the Design-Builder of its obligation to meet the Performance Guarantees set forth in Appendix 9 (Commissioning and Acceptance). The Design-Builder may request that the City waive certain non-conformities. Such requests shall be in writing and describe the non-conformity with specificity. The City may elect to grant such request(s) at its sole discretion.

4.2 DESIGN GUIDANCE DOCUMENTS AND STANDARD SPECIFICATIONS

All Construction and Deliverable Material, including the Final Design Documents, shall conform to the following design guidance documents and standard specifications. Dates of current versions are listed below, but the version in effect during Definitive Contract Amendment negotiations will be incorporated into the amendment and shall govern.

- Architectural Design Guidelines (CIP, October 20, 2015)
- Architectural Program Guidelines (CIP, October 20, 2015)
- Asset Tagging Convention (ESD, April 4, 2019)
- Automation Guidelines (CIP, October 16, 2015)
- Automation Hardware and Software Programming for CIP Projects - Interim Guidance #1 (CIP, January 20, 2015)
- Automation Requirements (CIP, January 23, 2019)

- Biosolids Transition Strategy Report (CIP, December 2014)
- CAD Standards (CIP, November 2015)
- Cost Estimating Manual (CIP, September 5, 2018)
- Design Flood Elevation - Interim Guidance (CIP, December 1, 2014)
- Design Flood Elevation - Guidance Update (CIP, December 18, 2017)
- Design Guideline - Electrical (CIP, February 5, 2016)
- Design Guideline – Engineering Seals (March 28, 2016)
- Design Guideline – Conformed Documents (July 14, 2016)
- Design Guideline – Consulting Firm Briefings (March 28, 2016)
- Design Guideline - Piping Systems (CIP, February 5, 2016)
- Design Guideline - Structural (CIP, April 13, 2017)
- Envision San José 2040 General Plan (City of San José, amended February 2018)
- Guidance on Influent Flow and Loading Projections (CIP, October 18, 2014)
- Odor and Corrosion Control Study (CIP, August 19, 2015)
- Odor and Hydrogen Sulfide Impact Assessment for the Digested Sludge Dewatering Facility (CIP, September 12, 2018)
- Permitting Process Guidelines (CIP, November 16, 2017)
- Plant Master Plan (November 2013)
- Procedures for Obtaining GIS Files (CIP, August 23, 2017)
- Process for Qualifying a Design-Builder for a Projects System Integrator Services (CIP, June 1, 2016)
- Project Guidance for CIP Executive Summaries (CIP, November 28, 2018)

- Project Guidance for Welding Specifications (CIP, January 3, 2019)
- Recommendation for adopting Vertical Datum (CIP, August 28, 2014)
- Riparian Corridor Policy Study (rev. City of San José, March 1999)
- RWF Construction Traffic Management Plan (Fehr and Peers, December 10, 2015)
- Technical requirements in Standard Specifications – Division 00 – Procurement and Contracting Requirements (CIP, October 2017)
- Standard Specifications – Division 01 – General Requirements (CIP, October 2017)
- Standard Specifications – Division 40 – Process Integration (CIP, October 2017)
- Triple Bottom Line + Matrix Life Cycle Cost Calculator Template

[Note: Design-Builder and City to expand and update list as applicable during Definitive Contract Submittal / Definitive Contract Amendment Process]

4.3 CODES AND REGULATIONS

All Construction and Deliverable Material, including the Final Design Documents, shall conform to all applicable codes and regulations, including but not limited to the following:

- National Fire Protection Association (NFPA) 820: Standard for Fire Protection in Wastewater Treatment and Collection Facilities, 2016 or latest edition
- San José Municipal Code, Chapter 17.12 – City of San José Fire Code
- San José Municipal Code, Chapter 17.68 – Hazardous Materials Storage Permit
- San José Municipal Code, Chapter 17.12 – Toxic Gas Ordinance
- San José Municipal Code, Chapter 17.12 – Fire Safety During Construction

[Note: Design-Builder and City to expand and update list as applicable during Definitive Contract Submittal / Definitive Contract Amendment Process]

4.4 PROJECT ELEMENTS

The Project shall include but is not limited to the following major elements:

- A new dewatering building or buildings housing digested sludge dewatering systems, dewatered cake conveyance and storage facilities, truck loading facilities, and various support facilities and systems
- New digested sludge transfer pumping systems to convey digested from the City's temperature-phased anaerobic digestion process (currently under construction) to new digested sludge storage facilities
- New digested sludge storage facilities
- New digested sludge pump station and pipelines to convey digested sludge from digested sludge storage to the new dewatering building
- New centrate pumping systems and pipelines to convey centrate from the dewatering process to the Regional Wastewater Facility
- Various new and modified ancillary facilities and systems

Further descriptions of these facilities, including assumptions and criteria used to date can be found in the *Digested Sludge Dewatering Facility Project Definition Report*.

4.5 PRELIMINARY MINIMUM TECHNICAL REQUIREMENTS

This section describes preliminary minimum technical requirements for the Project. The Design-Builder shall work with the City to confirm, modify, and expand on these requirements in order to refine the Project and meet the City's budget objectives. **[NOTE: FINAL MINIMUM TECHNICAL REQUIREMENTS WILL BE INCORPORATED VIA THE DEFINITIVE CONTRACT SUBMITTAL / DEFINITIVE CONTRACT AMENDMENT PROCESS].**

4.5.1 Operating Strategy

The Project as currently conceived has been assumed to operate continuously (i.e., 24 hours per day, 7 days per week, and 365 days per year). The City intends to staff the facility with operators at all times. Maintenance and management staff are expected to work day shifts only.

The operating strategy does not assume use of digested sludge storage or dewatered cake storage as part of routine operations. Instead storage is to be used to allow for planned and unplanned suspension of dewatering operations.

4.5.2 Digested Sludge Flows, Loads, and Design Years

The *Digested Sludge Dewatering Facility Project Definition Report* sets forth digested sludge flow and loading values for sizing the Project. The listed values are projections for digested sludge leaving the anaerobic digesters following commissioning of the Digester and Thickener Facilities Upgrade project (DTFU), which is currently under construction.

The DTFU has been designed to normally produce co-thickened sludge with a thickened sludge concentration of 5.5 percent prior to digestion. However, the Project shall be designed to accommodate co-thickened sludge that ranges from 4.5 to 5.5 percent total solids.

In addition, the listed values include projections of digested sludge flows and loading rates with and without imported materials. (Imported materials may include fats, oils and grease brought to the RWF in trucks and scum and grease collected from in-plant treatment processes). Engineering analyses to date have assumed that the Project would be designed to convey and process the full range of digested sludge flows and loading rates, considering both with and without imported materials (i.e. whichever results in the most stringent design condition). Because the City's plans for receiving imported materials may be changing, the Design-Builder shall confirm whether or not imported materials should be incorporated into sizing and design of the Project. Required Capacity and Redundancy

The *Digested Sludge Dewatering Facility Project Definition Report* sets forth preliminary capacity and redundancy requirements for the Project. The Design-Builder shall work with the City to determine if revisions to these preliminary requirements are advisable, considering the City's budget constraints.

4.5.3 Phased Design and Construction

The *Digested Sludge Dewatering Facility Project Definition Report* describes preliminary phasing concepts for the Project, including a future phase to provide sufficient capacity and redundancy for continuous operation under ultimate flow and load conditions. In addition, the *Digested Sludge Dewatering Facility Project Definition Report* identifies an intermediate phase to allow for the installation of additional equipment as needed to meet capacity and redundancy requirements within budget constraints for the initial construction. In addition to Project phasing, the City may elect to add other treatment facilities at the main Dewatering Facility Site. The Design-Builder shall work with the City to revise and optimize preliminary plans for Project phasing to meet Project budget constraints.

In addition, design drawings shall show space and interface points for future facilities and systems, including but not limited to:

- **Space for future dewatering equipment:** Space shall be provided for future addition of pumps, fans, dewatering trains, digested storage tanks, dewatered cake storage bins, truck loading bays, and associated piping, ducts, and appurtenances.
- **Space for new processes and facilities:** Include space for processes and facilities that may be added in the future, including a foul air treatment system, centrate storage tanks, and a centrate sidestream treatment process.
- **Future connection points:** Provide features that allow for easy interconnection and expansion of new mechanical equipment, process trains, and piping.
- **Electrical and control spares and spaces:** Providing electrical panels and conduits with spares and spaces to accommodate future expansion and provide space for addition of new panels and equipment. Provide control systems with sufficient spare capacity and conduits and space for future control panels.

4.5.4 Allowable Alternatives

The City previously conducted alternatives evaluations for a number of alternatives for major components of the Project (See *Digested Sludge Dewatering Facility Project Definition Report*), and has classified alternatives as either “required”, “acceptable”, “not preferred”, or “disallowed.” Unless otherwise approved by the City, the Design-Builder’s design shall incorporate all “required” alternatives and shall avoid incorporating alternatives categorized as “disallowed.” To the maximum extent practicable, the design shall attempt to incorporate alternatives classified as “acceptable” and to avoid alternatives classified as “not preferred.” The above requirements are not intended to limit alternatives to those previously studied by the City.

4.5.5 City Specifications and Standards

The Design-Builder shall incorporate the latest version of City specifications and standards into its design and construction specifications. If there are questions as to the applicability of a particular City specification or standard to the Project or the delivery method, the Design-Builder shall consult with the City on how such specification or standard will be included.

4.5.6 Environmental Mitigation Measures

The Environmental Mitigation Measures constitute part of the Technical Specifications, which the Design-Builder is obligated to perform hereunder in accordance with Section 4.3 (Environmental Review) of this Design-Build Contract.

4.5.7 Other Minimum Technical Requirements

[Note: The *Digested Sludge Dewatering Facility Project Definition Report* includes a number of additional recommendations, stated requirements and assumptions for the Project. The Design-Builder shall review these recommendations, stated requirements, and assumptions, and, based on its design concept and in consideration of the City's budget objectives, shall modify them as appropriate for incorporation into its Minimum Technical Requirements. Where Design-Builder wishes to materially change a stated requirement in the Project Definition Report, it shall inform the City. Other minimum technical requirements may be added during Definitive Contract Submittal / Definitive Contract Amendment Process.]

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APPENDIX 5
GENERAL DESIGN-BUILD WORK REQUIREMENTS

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APPENDIX 5

GENERAL DESIGN-BUILD WORK REQUIREMENTS

5.1 PURPOSE

The purpose of this Appendix is to set forth certain requirements for the performance of the Design-Build Work. The Design-Builder shall perform the Design-Build Work in accordance with the Contract Standards, including the requirements set forth in this Appendix.

5.2 MANAGEMENT AND COORDINATION

5.2.1 Coordination.

The Design-Builder shall hold meetings that are separate from and in addition to construction progress meetings described in Section 5.4.2 (Construction Progress Meetings - Scheduling and Attendance) of this Appendix, and shall prepare correspondence and make any other arrangements as necessary to coordinate the Design-Build Work. The Design-Builder shall coordinate its activities with other contractors performing work at or near the Dewatering Facility Site. The City shall identify other construction contracts that may be in progress in close proximity to or bordering on the Project. The Design-Builder will coordinate with those identified construction contractors. The Design-Builder shall coordinate all construction activities that could impact existing utility services and installations (e.g., conduits, pipelines, transmission mains and other Utility equipment and appurtenances) with the utilities. Coordination meetings may include review of the Design-Build Schedule and installation procedures of other contractors to identify potential conflicts, allocation of space on the Dewatering Facility Site, drawing/design interchange among contractors, establishment and modification of schedules and sequences of construction operations, and planning of future meetings.

5.2.2 Partnering Sessions.

The City and the Design-Builder shall use good faith efforts to promote the formation of a successful formal partnering relationship in order to effectively perform this Design-Build Contract to the benefit of both parties. The purpose of this relationship is to establish and maintain cooperative communication and to mutually resolve conflicts at the lowest responsible management level. The establishment of a formal partnering relationship will not change or modify the terms and conditions of this Design-Build Contract and will not relieve any party of the legal requirements of this Design-Build Contract.

The City and the Design-Builder shall implement the partnering relationship through at least one partnering workshop during the Preliminary Services (see Section 2.1.13 (Kickoff Meeting

and Partnering) of Appendix 2 (Preliminary Services)) and one pre-construction partnering workshop (“Partnering Sessions”). The purpose of the Partnering Sessions is to deepen working relationships, develop common goals and objectives for the Project, achieve a cooperative partnership environment among Project participants, and mutually develop a strategy for forming a successful partnering relationship. The City and the Design-Builder may participate in additional facilitated workshops during the Term as they mutually agree is necessary and appropriate.

The scheduling of a Partnering Session, selection of the facilitator and workshop site, and other administrative details will be coordinated by the City and the Design-Builder’s project managers. The parties shall use good faith efforts to schedule the initial, pre-construction Partnering Session and to select the facilitator for the workshop as soon as reasonably possible following the Contract Date.

The Design-Builder shall bear the costs of formal partnering (including costs involved in providing the pre-construction Partnering Session, any subsequent, additional Partnering Sessions, and the facilitator for the Partnering Sessions), and such costs relating to the Partnering Sessions shall be deemed to constitute Design-Build Costs, except to the extent such costs are Unallowable Costs.

5.3 DESIGN-BUILD SCHEDULE

5.3.1 Design-Build Schedule.

All activities comprising the Design-Build Work shall be scheduled and monitored by use of a Gantt or Bar Chart which sets forth all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to utilize in taking the Project from the Technical Specifications to Final Completion and City operation. The “Design-Build Schedule,” prepared in accordance with these requirements and included as part of the Design-Builder’s Definitive Project Submittal, is set forth as Attachment 5A to this Appendix. The Design-Builder shall undertake and complete the Design-Build Work in accordance with the Design-Build Schedule.

5.3.2 Design-Build Schedule Updates.

The Design-Builder shall, as required from time to time during the Design-Build Period, but no less than once per calendar month, in consultation with the City update the Design-Build Schedule so that it is at all times an accurate, reasonable and realistic representation of the Design-Builder's plans for the completion of the Design-Build Work in accordance with the requirements of this Design-Build Contract. The updates shall include:

- (a) adjustments resulting from Uncontrollable Circumstances and Technical Specifications Changes, if any, as permitted by this Design-Build Contract and as provided in Section 5.3.4 (Events Affecting the Design-Build Schedule) of this Appendix;
- (b) as the design progresses, proposed changes in the:
 - (i) start and completion dates for design work described in this Appendix; and
 - (ii) commencement of construction;
- (c) start and completion dates of the major activities of construction; and
- (d) the date on which the Acceptance Date is expected to occur.

The Design-Builder shall deliver to the City and the Owner's Advisor on a monthly basis the updated Design-Build Schedule. The monthly updated Design-Build Schedule shall be accompanied by a report that (1) shows current work progress and the status of work completed for each task and subtask included in the Design-Build Schedule; (2) contains information on the resources to be employed and work to be completed in the upcoming month, including a 60-day look-ahead that reflects all agreements made by the parties as to Design-Build Schedule revisions in sufficient detail for the City to be able to verify agreed-upon work schedule and milestone date changes; and (3) describes conditions that have affected or may accelerate or decelerate the Design-Build Schedule then in effect, together with proposed Design-Build Schedule adjustments and mitigation measures.

5.3.3 City Review.

The City shall review the updated Design-Build Schedule and advise the Design-Builder as to any of its concerns, along with proposed changes. Every three months, or more frequently if requested by the City, in addition to the weekly construction progress meetings, the Design-Builder shall meet with the City to discuss Project progress and the updated Design-Build Schedule. The Design-Builder shall respond to City concerns and indicate how the proposed changes or revisions thereto can be made to satisfactorily address City concerns. Upon City approval, the changes shall be incorporated in the updated Design-Build Schedule and replace any previously issued Design-Build Schedule. Design-Build Schedule updates are for the purpose of providing the Design-Builder with flexibility in its work activity durations and sequences, but in no event shall such updates result in a change in the Scheduled Acceptance

Date. The Scheduled Acceptance Date shall be adjusted solely as provided in Section 8.5 (Effect of Unexcused Delay; Extension Period) of this Design-Build Contract.

5.3.4 Events Affecting the Design-Build Schedule.

No later than 15 days following the occurrence of an Uncontrollable Circumstance or a City-directed Change Order, the Design-Builder shall submit a report containing an analysis of the effects of such events on the Design-Build Schedule, including any new dates for work task and major subtasks, milestones, Substantial Completion and the Scheduled Acceptance Date. The Design-Builder shall present mitigation measures that were considered to offset potential work delays; those proposed for City review and acceptance; and a revised Design-Build Schedule incorporating the Design-Builder's proposed changes.

5.4 CONSTRUCTION MEETINGS AND REPORTS

5.4.1 Preconstruction Conference.

The Design-Builder shall hold a preconstruction conference prior to commencement of construction. The Design-Builder shall prepare an agenda which shall be reviewed with the City prior to the conference, and shall preside at the conference, contribute appropriate items for discussion, provide any data requested, record minutes to summarize significant proceedings and decisions, and distribute the minutes to all parties in attendance. The agenda shall include, but shall not necessarily be limited to, the status of the following items:

- (a) Designation of responsible personnel during the Design-Build Period.
- (b) Subcontractors, and their roles on the Design-Build Work.
- (c) Coordination with other contractors and projects.
- (d) Design-Build Schedule.
- (e) Design-Builder submittals and City review.
- (f) Schedule of Design-Builder submittals.
- (g) Requests for Information and Clarification.
- (h) Required Insurance.
- (i) Design-Builder's site-specific Health and Safety Plan.

- (j) Security.
- (k) Housekeeping.
- (l) Record drawings.
- (m) Proposed Construction Commencement Date.
- (n) Governmental Approvals.
- (o) Emergency telephone numbers.
- (p) Temporary Utilities/Utilities coordination.
- (q) Any other Design-Build Work-related items.

The preconstruction conference shall be scheduled by the Design-Builder at a time reasonably acceptable to the City and shall be attended by the Design-Build Manager, the Design-Builder's Construction Manager, the Design-Builder's Construction Superintendent, and the Design-Builder's principal Subcontractors' project managers or superintendents and representatives of major suppliers as the Design-Builder deems appropriate. Other attendees may include a representative from the Design-Builder's executive team, the QA/QC Manager, the Design-Builder's Safety Manager, the Design Manager, and other Governmental Bodies with jurisdiction over the Design-Build Work, any other contractors whose work affects or is affected by construction of the Dewatering Facility, and others as deemed appropriate by these parties. The Design-Builder shall conduct the conference at the Dewatering Facility Site or other location directed by the City and make all arrangements for space, facilities and food services and shall notify all participants of the arrangements.

5.4.2 Construction Progress Meetings - Scheduling and Attendance.

The Design-Builder shall schedule, hold, and facilitate regular weekly construction progress meetings from the time mobilization for construction commences through Final Completion, and at other times if requested by the City or as the Design-Builder deems necessary. The construction progress meetings shall be attended by the Design-Builder Construction Manager, the Design-Builder Superintendent, and the Design-Builder's principal Subcontractors' project managers or superintendents and representatives of major suppliers, as the Design-Builder deems appropriate. The Design-Builder, Design-Build Manager and representatives from the Design-Builder's executive team shall attend construction progress meetings periodically as requested by the City. Other attendees may include the QA/QC Manager, any other

contractors whose work affects or is affected by construction of the Dewatering Facility, and others deemed appropriate by these parties. The City shall attend the weekly construction progress meetings. Construction progress meetings shall be held at the Dewatering Facility Site or other location directed by the City.

5.4.3 Construction Progress Meetings - Agenda.

At such meetings, discussions shall be held concerning all aspects of the Design-Build Work including, but not limited to, the Design-Build Schedule, coordination of work with others, Technical Specifications Changes, Governmental Approvals and Design-Build Work submittals, and any test results. The Design-Builder shall prepare an agenda, preside at meetings, record minutes to include significant proceedings and decisions, and distribute the minutes to all parties in attendance within 10 Business Days of the meeting. The agenda shall include, but shall not necessarily be limited to, the status of the following matters:

- (a) Summary of previous meeting issues, actions and assignments.
- (b) Progress since last meeting (Design-Builder and Subcontractors).
- (c) Schedules, including updates on planned progress for next four to six weeks, off-site fabrication and delivery schedules; corrective action measures, if required and when to be implemented.
- (d) Problems, issues and considerations.
- (e) Change Orders, Contract Administration Memoranda and Design-Build Contract Amendments.
- (f) Status of submittals, including to be submitted, submitted, responses requiring corrective actions and resubmittal and approved.
- (g) Requests for Information, including those to be submitted, submitted, responses and whether adequate or more information is required.
- (h) Quality standards and control.
- (i) QA/QC reviews, findings, issues and actions.
- (j) Coordination among parties.
- (k) Safety program update, concerns, accidents, and injuries, if any.

- (l) Visits by regulatory agencies.
- (m) Public affairs and issues or concerns of nearby residents.
- (n) Dewatering Facility Site visits by City, City's representatives, representatives of Governmental Bodies and Design-Builder's representatives.
- (o) Compliance with CEQA mitigations and any environmental issues.
- (p) Status of record drawings and specifications.
- (q) Other business.
- (r) Next meeting date.

5.4.4 Monthly Progress Reports.

Monthly progress reports required to be submitted by the Design-Builder shall include:

- (a) a summary of Design-Build Work activities during the reporting month.
- (b) a schedule of upcoming Design-Build Work activities.
- (c) a listing of submittals delivered during the reporting month and their status;
- (d) a listing of submittals scheduled for delivery the following month.
- (e) the Design-Builder's verification that the record documents have been updated as appropriate.
- (f) a summary of activities involved with obtaining Governmental Approvals.
- (g) a listing of any violations of Governmental Approvals or Applicable Law and actions taken or to be taken to eliminate any subsequent violations.
- (h) a listing of issues needing resolution.
- (i) a listing of all telephone calls received during the reporting month involving material inquiries or complaints.
- (j) Design-Build Schedule updates.

- (k) the Design-Builder's plan for accelerating the Design-Build Schedule to meet the Scheduled Acceptance Date should the Design-Builder's progress-to-date indicate that the Design-Builder's Design-Build Work is behind schedule and at risk of not being completed by the Scheduled Acceptance Date (as adjusted for extensions of time permitted under this Design-Build Contract and subsequent approved change orders).
- (l) Expenditures for the most recently completed month and for the Project to date, and a comparison to the Schedule of Values; explanations for significant deviations from the Schedule of Values for both overexpenditures and underexpenditures; corrective actions proposed by the Design-Builder to bring spending in-line with Schedule of Values or proposals to City for an adjustment in the Schedule of Values or acceptance of the deviations.
- (m) Progress payment requests as described in Article 9 (Compensation for Design-Build Work) of this Design-Build Contract. The format of the payment request shall be matched with the description of work activities completed for the reporting month so that the City can easily relate the breakdown of the payment request to work progress on specific tasks and subtasks. Supporting documentation shall be provided so that the City can readily determine the basis for the requested payment amounts for Design-Build Work performed during the month by task or subtasks in terms of labor hours, construction equipment costs, Capital Improvements equipment and materials expenditures, specialty Subcontractors including similar breakdowns for Subcontracts in excess of \$500,000 and other Project costs incurred during the month. Current retainage and total retainage to date shall be included in the monthly report. Payment request information shall include similar information for changes made pursuant to Sections 6.8 (Changes to the Technical Specifications at Design-Builder Request) and 6.9 (Other Changes to the Technical Specifications) of this Design-Build Contract.
- (n) Updated as-built drawings. Hard copy set available for review.

The monthly progress report shall also provide a description of (1) any concerns or issues raised by the City or other parties regarding the Design-Build Work, and the Design-Builder's approach to promptly addressing and resolving such concerns or issues, and (2) a section containing health and safety statistics and a description of any accidents or injuries that

occurred and the follow up investigations as to cause and subsequent corrective actions to be taken or already implemented by the Design-Builder. The format of the monthly report shall be developed by the Design-Builder and approved by the City prior to the commencement of any construction on the Dewatering Facility Site.

5.4.5 Project Records.

The Design-Builder, in connection with the Design-Build Work generally, shall maintain and provide the following records:

- (a) Record Drawings and Specifications: The Design-Builder shall:
 - (1) throughout the construction, update the Design Documents (with respect to the drawings, such update shall be in hard copy and “CAD” or other electronic format reasonably acceptable to the City), including approved shop drawings that are available from Subcontractors in CAD format, so as to produce accurate and complete record documents for the Project. CAD drawings will follow the City’s approved CAD Standards.
 - (2) as requested from time to time during the construction, make available such record drawings and specifications to the City for review to permit the City to monitor the Design-Builder's compliance with the requirements of this Section.
 - (3) provide two hard copies and electronically in PDF format and CAD file (per City CAD Standards) of the completed record drawings and specifications to the City as a condition to Final Completion. The record drawings shall not be deemed to have satisfied the condition to Final Completion unless reviewed and deemed final by the City.
 - (4) use Bentley MicroStation for CAD work. For Record Drawings, the Design-Builder will convert drawings to meet the City’s Approved CAD Standards.
- (b) Equipment and Systems Manuals: The Design-Builder shall:
 - (1) as a condition to Final Completion, and in accordance with Sections 5.8.2 (Content of the Operations and Maintenance Manual) and 5.9 (Service Manuals) of this Appendix, make available all operation and

maintenance manuals, specifications, warranties and related information, in both written and electronic form, for all the equipment and systems that have been included in the Design-Build Work for review by the City; and

- (2) organize and store such information in accordance with subsection 6.6(D) (Documents at the Dewatering Facility Site) of this Design-Build Contract;
- (c) Design Records: The Design-Builder shall retain records of the design development.
- (d) Minutes of Meetings: The Design-Builder shall retain minutes of meetings between the City and the Design-Builder relating to the Design-Build Work, and shall circulate such minutes to the City and the City Technical Representative for review and comment.
- (e) Inspection Reports and Tests Results: The Design-Builder shall retain official reports and certified test records of all inspections and tests which were undertaken as part of the construction.
- (f) Utility Plans: The Design-Builder shall retain utility plans for the Project.
- (g) Landscape and Irrigation Plans: The Design-Builder shall retain landscape and irrigation plans for the Project.
- (h) Copies of all Governmental Approvals: The Design-Builder shall retain copies of all Governmental Approvals for the construction and occupation of the Project.
- (i) Signed Design-Build Quality Management Plan: The Design-Builder shall retain a signed copy of the Design-Build Quality Management Plan for the design and construction and all records of the quality assurance program implemented as required by this Design-Build Contract.

The records referred to in this Section shall be retained for at least five years following the Acceptance Date.

5.5 CONSTRUCTION WORK GENERALLY

5.5.1 Deliverable Material.

The Design-Builder shall deliver to the City all Deliverable Material required to be delivered under this Appendix, Appendix 6 (Design-Build Quality Assurance and Quality Control Requirements), Appendix 7 (Design-Build Work Review Procedures) and Appendix 9 (Commissioning and Acceptance).

5.5.2 Signs.

The Design-Builder shall provide and maintain temporary identification and information signs during the Design-Build Period. No signs shall be erected until their appearance, content, and location have been fully reviewed and approved by the City, which approval shall not unreasonably be withheld, conditioned or delayed. The Design-Builder shall remove temporary signs from the Dewatering Facility Site when they are no longer necessary.

5.5.3 Laydown Areas and City Construction Office Space.

Laydown and staging areas for construction materials shall be located at the Construction Enabling Site, or with the City's pre-approval, at the Dewatering Facility Site or other areas at the Regional Wastewater Facility designated by the City or at other locations arranged and paid for by the Design-Builder. The Design-Builder shall also provide two construction office spaces for City during the Design-Build Period of approximately 200 square feet total (similar in character to that provided for the Design-Builder's staff), two telephone lines, and broadband internet connection to support two users. The cost of the City's construction office furniture, fixtures, equipment, supplies, consumables, or telephone/internet service provider fees shall be borne by the Design-Builder.

5.5.4 Maintenance of the Dewatering Facility Site.

During performance of the Design-Build Work, the Design-Builder shall be responsible for the overall maintenance of the Dewatering Facility Site and the areas of the Construction Enabling Site assigned to it. The Design-Builder shall keep the Dewatering Facility Site and the areas of the Construction Enabling Site assigned to it neat and orderly at all times, and shall clean up and remove all rubbish and construction debris from the Dewatering Facility Site and the areas of the Construction Enabling Site assigned to it as they accumulate in accordance with the Contract Standards.

5.5.5 Temporary Utilities.

The Design-Builder shall supply all necessary temporary Utilities, including electricity, telecommunications services, potable water (at no unit charge from City), fire protection, lighting, and sanitary facilities, during construction, testing and start up of the Dewatering Facility. Prior to the Acceptance Date, the Design-Builder shall disconnect and arrange for the disconnection and removal of all temporary Utility connections and services. The Design-Builder shall coordinate with the City on all temporary Utilities.

5.5.6 Relocation of Existing Utilities.

The Design-Builder shall be responsible for all construction activities required with regard to existing utility services and installations (e.g., conduits, pipelines, transmission mains and other utility equipment and appurtenances), including after City review and approval any relocation of Utilities.

5.5.7 Noise Control.

The Design-Builder shall comply with all noise regulations required pursuant to Applicable Law. Construction work will be allowed from 7:00 a.m. to 6:00 p.m., seven days per week, subject to local permit restrictions. Construction will also be allowed at night and on weekends with notification to and approval by the City, provided that appropriate safety and security measures are employed by the Design-Builder.

5.5.8 Notice of Default.

The Design-Builder shall provide to the City, promptly following the receipt thereof, copies of any notice of default, breach or non-compliance received under or in connection with any Governmental Approval or Subcontract that may have a material and adverse effect on performance by the Design-Builder of its obligations under this Design-Build Contract.

5.6 COORDINATION OF CONSTRUCTION WORK AND OPERATIONS

5.6.1 Regional Wastewater Facilities Shutdowns during Construction.

The Design-Builder shall plan and coordinate in advance with the City in order to obtain City approval and schedule its construction work which requires partial or complete shutdowns of the Regional Wastewater Facilities. The Design-Builder shall make every effort to minimize the number and duration of partial or complete shutdowns.

5.6.2 Maintenance of Regional Wastewater Facilities Performance during Construction.

The Design-Builder shall take no actions during construction that adversely affect performance or operation of the Regional Wastewater Facility. The Design-Builder shall comply with the Maintenance of Operations During Construction Plan, which is included as Attachment 5B (Maintenance of Operations During Construction Plan) to this Appendix.

5.6.3 Operations and Maintenance Records

In accordance with Appendix 11 (Transition Services), the Design-Builder shall develop all report templates for routine compliance and process monitoring. The Design-Builder shall use such templates to report to the City on the operations and maintenance of the Dewatering Facility during the Transition Period.

5.7 CONSTRUCTION SAFETY AND SECURITY.

5.7.1 Safety and Security.

The Design-Builder shall maintain safety and security at the Dewatering Facility Site at all times at a level consistent with the Contract Standards. Without limiting the foregoing, the Design-Builder shall:

- (a) Take appropriate precautions for the safety and security of the Design-Build Work and provide appropriate protection to prevent damage, injury or loss related to the performance of the Design-Build Work over the Design-Build Period for:
 - (1) Workers at the Dewatering Facility Site and all other persons who may be involved with deliveries or inspections;
 - (2) Visitors to the Dewatering Facility Site;
 - (3) Passersby, neighbors and adjacent properties with respect to the Design-Build Work activities;
 - (4) Materials and equipment under the care, custody or control of the Design-Builder or Subcontractors on the Dewatering Facility Site;
 - (5) Other property constituting part of the premises or the Project under construction; and

- (6) City Property;
- (b) Establish and enforce appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards;
- (c) Provide temporary fencing of all open or partially open trenches and excavations, all open or partially completed structures, and all work and storage areas at all times while unattended by workers;
- (d) Implement a comprehensive safety program in accordance with Applicable Law;
- (e) Give all notices and comply with all Applicable Law relating to the safety of persons or property or their protection from damage, injury or loss;
- (f) Operate and maintain all equipment in a manner consistent with the manufacturer's safety requirements;
- (g) Provide for safe and orderly vehicular movements;
- (h) Develop and implement a written Dewatering Facility Site-specific Health and Safety Plan that includes management commitment, maintaining a safe workplace, employee participation, hazard evaluation and controls, employee training and periodic inspections ("Health and Safety Plan");
- (i) Designate an appropriately certified and experienced safety professional to develop and sign the Dewatering Facility Site-specific Health and Safety Plan, including all safety rules.;
- (j) Designate a qualified safety professional at the Dewatering Facility Site during on-site construction activities who shall be responsible for the implementation of safety rules, the prevention of fires and accidents, monitoring compliance with the Design-Builder's Dewatering Facility Site-specific Health and Safety Plan, and the coordination of such activities as shall be necessary with the City and all Governmental Bodies related to health and safety; and
- (k) Require all Subcontractors to work in accordance with and implement the Health and Safety Plan, comply with the Design-Builder's on-site safety requirements, and designate a qualified safety professional whose duty shall be the implementation of safety rules at the Dewatering Facility Site and monitoring

compliance of Subcontractor employees with the Subcontractor's Dewatering Facility Site-specific Health and Safety Plan.

5.7.2 Perimeter Security

The Design-Builder shall develop, maintain and comply with a Dewatering Facility Site perimeter security plan that is approved by the City and constitutes part of the Health and Safety Plan. The perimeter security plan shall assure the security of the Dewatering Facility Site when perimeter fencing cannot be continuously maintained.

5.8 OPERATIONS AND MAINTENANCE MANUAL

5.8.1 Development by the Design-Builder

The Operations and Maintenance Manual shall be a secured online, electronic manual with hard copy reproduction capability. During the Design-Build Period, the Design-Builder shall develop the Operations and Maintenance Manual in accordance with the Contract Standards. The Design-Builder shall provide the City with preliminary, interim, pre-final and final versions of the Operations and Maintenance Manual for the City's review, comment and approval.

A pre-final Operations and Maintenance Manual shall be submitted to and approved by the City as a condition precedent to the achievement of Substantial Completion. A final Operations and Maintenance Manual shall be submitted to and approved by the City as a condition precedent to the achievement of Final Completion.

5.8.2 Content of the Operations and Maintenance Manual

The Operations and Maintenance Manual shall (i) include the practices and procedures necessary for Dewatering Facility operation and control, auxiliary facility equipment and systems, system maintenance, repair and replacement, and grounds and buildings maintenance; and (ii) integrate all equipment and systems manuals and Service Manuals. The Operations and Maintenance Manual will be comprehensive, suitable as a resource for training operational staff, and will include the following information:

- (a) process design criteria;
- (b) Dewatering Facility layout drawings and process flow diagrams;
- (c) detailed operation and control procedures;
- (d) standard operating procedures;

- (e) emergency response procedures;
- (f) maintenance instructions, including:
 - (1) information necessary to properly assemble and install the equipment, including alignment, clearances, tolerances and interfacing equipment requirements; the trade and skill level required to install the equipment; any special rigging required to place the equipment; and any special test equipment required to place the equipment in service;
 - (2) manufacturer's schedule for routine preventive maintenance, calibration, lubrication, inspections, tests, and adjustments required to ensure proper and economical operation and to minimize corrective maintenance and repair;
 - (3) manufacturer's projection of preventive maintenance labor-hours on a daily, weekly, monthly, and annual basis, including required trades and skill levels required for performance of maintenance and the total time required to perform the work;
 - (4) manufacturer's troubleshooting guide and recommendations on procedures and instructions for correcting problems and making repairs;
 - (5) step-by-step procedures to isolate the cause of typical malfunctions, describing clearly why the checkout is performed and what conditions are to be sought;
 - (6) a description of maintenance and operating tools, replacement parts and materials, including specified quantity of spare parts;
 - (7) information available from the manufacturers to use in training personnel to maintain the equipment and systems properly;
 - (8) information on test equipment required to perform specified tests and/or special tools needed for the maintenance and repair of components;
 - (9) instructions related to when equipment is in operation, including lubrication requirements;
 - (10) all warranty information, including effective warranty dates;

- (11) Governmental Approvals indicating approval of all installations requiring permits; and
- (12) the development of asset records and the means to assess equipment condition in coordination with the CMMS;
- (g) a long-term schedule of major repairs and replacements, including a long-term budgeting plan to maintain the operability, durability and reliability of the Dewatering Facility through its projected operational life;
- (h) the practices and procedures necessary to maintain the appearance of the buildings, grounds and landscaping of the Dewatering Facility; and
- (i) procurement procedures for all additional tools, equipment, maintenance supplies and component parts necessary for the operations and maintenance of the Dewatering Facility, including specifications and quantity of the items to be procured and procedures for planning and scheduling delivery of such items.

5.9 SERVICE MANUALS

The Service Manuals shall include the practices and procedures necessary for the operation and control, maintenance, and repair and replacement of each equipment system, package, or unit incorporated into the Dewatering Facility. The Service Manuals shall be suitable as a resource for operating and maintaining the components of the Dewatering Facility, and shall include the following information:

- (a) safety information for each equipment system, package or unit incorporated into the Dewatering Facility, including mechanical and electrical lockout procedures for all Dewatering Facility components; and
- (b) descriptions of units or systems and component parts, their functions, operating characteristics and limiting conditions, including:
 - (1) equipment summary, which will include nameplate data, supplier, manufacturer and local representative;
 - (2) start-up sequences, including inspections required before initiation of sequence;

- (3) performance monitoring requirements to confirm proper operation and guide component control adjustments;
 - (4) adjustment of variable functions and settings;
 - (5) interface among the components and systems of the Dewatering Facility;
 - (6) troubleshooting guidelines to identify non-performing components and identify probable cause;
 - (7) shut-down sequences and lock-out requirements to safely remove components from service without adverse impact on system performance;
 - (8) preparation to isolate off-line equipment piping, power, and controls for safe execution of maintenance activities; and
- (c) description of instrumentation and control system, including alarm summary.

Pre-final Service Manuals shall be submitted to and approved by the City as a condition precedent to the achievement of Substantial Completion. Final Service Manuals shall be submitted to and approved by the City as a condition precedent to the achievement of Final Completion.

5.9.2 DCS Information and Electronic Requirements

A separate binder will be included in the Operations and Maintenance Manual for the DCS system operations. The binder will include hard and soft copies of all DCS programs incorporated in the Dewatering Facility. The Operations and Maintenance Manual will cover all process, electrical, instrumentation, and control equipment in the Dewatering Facility as secure digital electronic files that are designed for both web-based and local network access with capability to be linked and coordinated with other City systems at the Regional Wastewater Facility, including the Related Projects. The Design-Builder shall:

- (a) provide links within the final Operations and Maintenance Manual to digital files of all Final Design Documents, individual equipment service manuals, and the CMMS data base entries relevant to the equipment and functions described;
- (b) provide special secure applications and links required to permit access to the final Operations and Maintenance Manual files from hand-held electronic devices and other portable or fixed electronic devices designated by the City; and

- (c) coordinate digital Operations and Maintenance Manual development with the City's information technology group to determine compatibility with currently available hardware and software in the City network.

5.10 ENVIRONMENTAL REVIEW AND PROTECTION.

5.10.1 Existing Regulated Substances

The Design-Builder, according to the requirements of Appendix 2, shall survey and document Regulated Substances existing on the Dewatering Facility Site as of the survey date that, under good Design-Build Practice and Applicable Law, requires removal in connection with the Design-Build Work. The Design-Builder shall work cooperatively with the City to determine if removal and disposal of any such identified regulated substance or some other method of remediation should be implemented as part of the Design-Build Work. The City shall cooperate with the Design-Builder in connection with the survey and document preparation. Prior to the Construction Date, Design-Builder's surveys and reports related to Regulated Substances on the Design-Build site shall be updated as needed to account for any changed conditions since the Design-Builder conducted the surveys as part of the Preliminary Services. The City, or the Design-Builder, as determined in accordance with the Contract Standards, shall remove and dispose of any such Regulated Substances, mitigate to regulatory approval as and when required in order to enable the Design-Builder to perform the Design-Build Work on the Design-Build Schedule.

5.10.2 Wildlife and Protected Species Protection.

In accordance with the Environmental Mitigation Measures, the Design-Builder shall develop and implement a plan that is consistent with required mitigation measures for wildlife and protected species that may be affected by construction activities of the Design-Builder. Prior to implementing the plan, the Design-Builder shall obtain City approval.

5.10.3 Design-Builder Construction Environmental Monitor.

If required by the Environmental Mitigation Measures, the Design-Builder shall assign a Design-Builder Construction Environmental Monitor ("CEM") to ensure that its mitigations plan is properly and fully implemented. The CEM shall be the single, identified entity or person responsible for, at a minimum, the following duties:

- (a) Planning of environmentally compliant construction methods.

- (b) Oversight of construction activities to determine compliance with mitigation measures.
- (c) Ensuring that all training has been conducted, and signage, marking and barriers to protected areas have been installed.
- (d) Ensuring compliance with the Stormwater Pollution Prevention Program (SWPPP).
- (e) Coordination with the City on implementation of environmental mitigation measures.
- (f) Coordination with Governmental Bodies that have administrative oversight of the environmental sites to be protected, if required.
- (g) Compliance with environmental Governmental Approvals.
- (h) Meeting or interacting with representatives of Governmental Bodies with environmental oversight authority, if required.

All environmental monitoring duties conducted by the CEM shall be recorded in the form of a standard report and photographic log (as required). The photographic log shall be kept in both electronic and hardcopy form. All reports shall be submitted to the City in summary form on a monthly basis or more frequently if required by City. Copies of all daily monitoring records shall be maintained in the City's EADOC.

5.10.4 Regulated Substances Management Program.

The Design-Builder shall develop, maintain and implement a Regulated Substances management plan that includes as a minimum, but is not limited to, the requirements specified in this Section ("Regulated Substances Management Program"). A copy of the Regulated Substances Management Plan shall be submitted to the City for review and approval. The intent of the plan is to prevent accidental spills, site contamination, and injury or illness of all personnel on the site due to contact or exposure to Regulated Substances. The City shall notify the Design-Builder of any observed conditions that may be in violation of the plan. If the Design-Builder fails to address City-reported concerns about observed conditions that may be in violation of the plan in a timely and appropriate manner, the City may notify all appropriate Governmental Bodies, and report the observed conditions to them, and request that they inspect the sites involved that are under the Design-Builder's control. All documents

required by the Regulated Substances Management Plan shall be made available to the City immediately upon request.

5.10.5 Design-Builder Regulated Substances.

Any Regulated Substances generated by the Design-Builder shall be the responsibility of the Design-Builder. The Design-Builder shall obtain an EPA identification number for all Design-Builder Regulated Substances, listing the Design-Builder's name and construction site address as the generator of the Design-Builder Regulated Substances. The Design-Builder shall be responsible for the identification, analysis, profiling, documentation, reporting, transport and disposal of Design-Builder Regulated Substances. Any fines that are levied against the City for violations of Applicable Law as determined by any Governmental Body relating to Design-Builder Regulated Substances shall be reimbursed immediately by the Design-Builder after payment by City.

5.10.6 Emergency/Spill Response Plan.

The Design-Builder shall develop an Emergency/Spill Response Plan ("Emergency Response Plan"), for each Regulated Substance or class/group of Regulated Substances either known to be on the Dewatering Facility Site or intended to be brought to the Dewatering Facility Site by the Design-Builder. At a minimum, the Response Plan must include the following:

- (a) A description of on-site equipment available to contain and respond to an emergency/spill of the Regulated Substance.
- (b) Notification procedures, including notification to potentially impacted residents adjacent to the Dewatering Facility.
- (c) Response coordination procedures between the Design-Builder and the City.
- (d) A Regulated Substance Site Map showing the location of stored Regulated Substances and location spill containment/response equipment.
- (e) A description of the Regulated Substances handling and spill response training provided to the Design-Builder's employees and Subcontractors.

5.10.7 Dust Control.

The Design-Builder shall be responsible for dust control during the performance of the Design-Build Work and shall comply with all applicable air pollution control regulations and the

Environmental Mitigation Measures. The Design-Builder shall furnish all necessary labor, materials and equipment for dust control.

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ATTACHMENT 5A
DESIGN-BUILD SCHEDULE

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ATTACHMENT 5A

INITIAL DESIGN-BUILD SCHEDULE

[Note: The Design-Build Schedule will be inserted here prior to execution of the Definitive Contract Amendment, based on the design-build schedule in the City-accepted Definitive Project Submittal.] All activities of the Design-Build Work shall be scheduled and monitored by use of a Gantt or Bar Chart which presents all tasks and key subtasks in a logical and efficient work sequence that the Design-Builder intends to use in advancing the Project from 60% Design to Acceptance. The Design-Builder shall be responsible for completing all Design-Build Work by the Scheduled Acceptance Date.

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ATTACHMENT 5B
MAINTENANCE OF OPERATIONS DURING CONSTRUCTION PLAN

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ATTACHMENT 5B

MAINTENANCE OF OPERATIONS DURING CONSTRUCTION PLAN

[Note: The negotiated Maintenance of Operations During Construction Plan will be inserted here prior to execution of the Definitive Contract Amendment, based on the draft Maintenance of Operations During Construction Plan in the City-accepted Definitive Project Submittal].

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APPENDIX 6

DESIGN-BUILD QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS

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APPENDIX 6

DESIGN-BUILD QUALITY ASSURANCE AND QUALITY CONTROL REQUIREMENTS

6.1 PURPOSE

The purpose of this Appendix is to describe the minimum requirements for the Design-Build Quality Management Plan (“QMP”), including quality assurance (“QA”) and quality control (“QC”) procedures that shall be implemented during the Preliminary Services and the Design-Build Period.

- (a) Quality assurance refers to the overall efforts to assuring project quality. Quality assurance shall include the planning and activities necessary to verify that the required QC activities have been satisfactorily conducted and that the quality requirements were met.
- (b) Quality control shall include the monitoring, inspection, sampling and testing as applicable, and evaluation of the Design-Build Work through the project to verify that quality requirements as specified in this Design-Build Contract are met. Quality control also includes the identification of any defective work and documentation of completed corrective measures.

6.2 CITY’S QUALITY OBJECTIVES

The QMP is a critical component of the design and construction of the Project. It partly represents assurance to the City that the Design-Builder is executing the Design-Build Work in accordance with this Design-Build Contract. As a result, the QMP, including quality assurance and quality control (“QA/QC”), shall be consistent with and support the following quality objectives for the Design-Build Work:

- (a) Ensure that permitting, design, construction and testing are consistent with the Contract Standards;
- (b) Ensure that Governmental Approval requirements are effectively incorporated into Design-Build Work;
- (c) Develop and implement procedures to ensure that problems are discovered early, resolved in a timely manner, and do not recur;
- (d) Ensure that adequate QA/QC procedures and resources are provided by the Design-Builder to effectively assess and ensure high quality in all work products

and services and compliance with the Acceptance Standards, warranty requirements, safety, security and environmental compliance requirements;

- (e) Provide timely reporting and documentation of QA/QC inspections, technical reviews, testing, analysis and determinations of compliance with the Contract Standards;
- (f) Provide follow up inspections, analysis and testing if conditions are found to be non-compliant with the Contract Standards and verify through special reports and direct communications with the City that all corrective actions have been effectively implemented and that the resultant product or service is of acceptable quality.

6.3 ROLES AND RESPONSIBILITIES

6.3.1 Design-Builder's Role and Responsibilities for QA/QC.

The Design-Builder is fully responsible for the design and construction of the Project Core QA/QC functions as defined in this Appendix 6 are the responsibility of the Design-Builder.

6.3.2 City's Role and Responsibilities for QA/QC.

The City ultimately retains its rights with respect to the Acceptance of the Project. The City may perform design reviews, witness factory testing of equipment to be installed at the Dewatering Facility ("Factory Acceptance Testing") and testing of such equipment after installation at the Dewatering Facility, verification sampling and testing, independent assurance sampling and testing, review of the Design-Builder's construction management scheduling, and other actions to verify payment of progress payments under the terms of this Design-Build Contract. However, by doing these actions, the City does not assume responsibility for any design or construction issue except as otherwise indicated in this Design-Build Contract.

6.4 DESIGN-BUILD QUALITY MANAGEMENT PLAN DEVELOPMENT AND IMPLEMENTATION

6.4.1 General Requirements.

The development and implementation of the QMP shall be the responsibility of the Design-Builder. The QMP shall integrate the permitting, design, Factory Acceptance Testing, construction, commissioning and testing phases of the Dewatering Facility during Preliminary Services and the Design-Build Period and shall include detailed QA and QC programs as

attachments. Other QMP requirements are defined in Section 6.5 (Design Quality Control and Quality Assurance Requirements) and Section 6.6 (Construction Quality Control Requirements) of this Appendix.

6.4.2 Design-Build Quality Management Plan Requirements.

The QMP shall include a description of how the Design-Builder will provide the following:

- (a) Adequate resources for effective plan implementation throughout all phases of Preliminary Services and the Design-Build Work.
- (b) Information on QA/QC staff to be assigned to the Project and their qualifications for performing required QA/QC functions;
- (c) Programs, procedures, methods, tests, analyses and communications procedures, reports, photographs and comments on drawings and specifications and other documents used by the Design-Builder to assess Preliminary Services and Design-Build Work quality and compliance with the Contract Standards;
- (d) How the QA/QC program shall function independently of Design-Builder's production staff and be empowered to enforce plan objectives, define quality requirements, independently verify quality of Preliminary Services and Design-Build Work products and services, identify potential causes of unacceptable quality of work and provide safeguards to prevent unacceptable work quality, and require prompt corrective action for identified deficiencies;
- (e) A communications plan for demonstrating that quality requirements have been established and communicated to all Subcontractors prior to their commencement of providing products or services on the Project. This shall include information on the roles, responsibilities and authorities of identified QA/QC staff; and
- (f) The Design-Builder shall submit its QMP for design services to the City for review within 30 days following the Contract Date. The City will provide comments on the QMP and the Design-Builder shall make required changes.
- (g) The Design-Builder shall submit its Design-Build Quality Management Plan for Construction to the City in draft form as part of Preliminary Services Task 4 (30% DCD), and in final form as part of Preliminary Services Task 6 (Definitive

Project Submittal). The City will provide comments on both the draft and final Design-Build Quality Management Plans for Construction, and the Design-Builder shall make required changes.

6.4.3 Changes to the Design-Build Quality Management Plan.

Revisions and updates to the QMP may be proposed by the Design-Builder as Preliminary Services and the Design-Build Work progress. Changes to the approved QMP require written approval of the City. Proposed revisions or updates shall be provided to the City at least 30 days prior to the start of the Design-Build Work to which the revision applies. The City will review and respond in a timely manner to Design-Build Quality Management Plan proposed changes. The Design-Builder shall not initiate any of the Design-Build Work that is impacted by such proposed revision or change until the City has reviewed and accepted the change.

6.5 DESIGN QUALITY CONTROL AND QUALITY ASSURANCE REQUIREMENTS

6.5.1 Design QA/QC Program.

The Design-Builder has primary responsibility for design quality to ensure design documents are professionally reviewed and checked to ensure a quality project. The QMP shall include the details of the Design-Builder's Design QA/QC Program and include a description of how the Design-Builder will provide the following:

- (a) Design management functions and design review processes, which are the responsibility of the Design-Builder, will be described;
- (b) Typical design QC tasks to be accomplished by the Design-Builder will be described and may include technical review of design deliverables, checking of calculations, checking of quantities, and the review of specifications;
- (c) Describe the process to approve and release design packages for construction in alignment with the Design QA/QC Program;
- (d) Describe the process for conducting required Factory Acceptance Testing of equipment;
- (e) Demonstrate that the City retains oversight in the form of review and verification of the design's ability to meet the stated contract requirements. The City and its designated consultants will participate in the design review process while not

relieving the Design-Builder from its obligation to comply with this Design-Build Contract;

- (f) Describe the application of the Design QA/QC Program through design review techniques to be used by the Design-Builder, such as over-the shoulder design reviews to supplement formal reviews, formal milestone reviews, and submittal reviews during the Design-Build Period.

6.5.2 Design Quality Assurance Manager.

The Design-Builder shall designate a Design Quality Assurance Manager to determine whether the Technical Specifications and other Contract Standards are being met and that design QA/QC activities are following the approved QMP. The Design Quality Assurance Manager shall compile and maintain documentation of the review.

6.6 CONSTRUCTION QUALITY CONTROL REQUIREMENTS

6.6.1 Construction QA/QC Program.

The QMP shall include the details of the Design-Builder's Construction QA/QC Program, including the following:

- (a) The Construction QA/QC Program shall require inspection during construction by inspectors who are not responsible, in whole or in part, for the scheduling or construction of the Design-Build Work being inspected.
- (b) Instructions for performing inspections must be clearly defined, including the work attributes to be inspected, acceptability criteria, frequency of inspections, and the requirements for documenting the inspection results.
- (c) Inspection records must be kept current, have sufficient detail to enable the Engineer-of-Record to identify inspections which have been performed, and the results of these inspections. Inspections must be made throughout the period of construction, including the initial construction, in-process inspections, final inspections, and testing during construction.
- (d) Documentation requirements shall include contractor production reports, contractor quality control reports, field test reports, testing plan and log, inspection reports, rework items list and quality control meeting minutes.

- (e) Procedures and controls shall be provided to ensure that inspections are being performed using the latest Design Documents and approved shop drawings. Procedures shall ensure that an adequate number of inspection personnel are available as needed, and that all inspectors are qualified, trained, and proficient in performing inspections for the Design-Build Work to which they are assigned.

6.6.2 Non-Conforming Work.

The Construction QA/QC Program shall establish and maintain a non-conformance system and procedures for uniform reporting, controlling, and disposition of nonconformance, including the following:

- (a) The non-conformance system shall describe methods to be implemented, including a daily non-conformance report (NCR), to identify and track all unsatisfactory, deviating, and nonconforming work until the required repair, rework, or replacement is performed, and the work has been re-inspected and accepted. In addition, the non-conformance system shall detail the methods and measures to be used to develop corrective action procedures and prevent the recurrence of non-conforming work.
- (b) The Construction QA/QC Program shall detail the means and methods for identifying and correcting all construction deficiencies such that construction quality meets the Contract Standards and the Design-Builder's Design Documents.
- (c) The Construction Quality Assurance Manager shall be informed of all unsatisfactory conditions within 24 hours of identification, and a copy of the condition report sent to the design-engineer. The Design-Builder will correct any nonconforming conditions in accordance with Section 6.17 (Correction of Work) of this Design-Build Contract.
- (d) The Design-Builder is encouraged to make corrections for non-conforming work as soon as practical rather than waiting until Acceptance. The City may use the NCR as a basis for conducting its own final acceptance activities.

6.6.3 Construction Quality Assurance Manager.

The Design-Builder shall designate a Construction Quality Assurance Manager to determine whether the Technical Specifications and other Contract Standards are being met and that Construction QA/QC activities are following the approved QMP.

6.6.4 Materials and Equipment.

The Construction QA/QC Program shall ensure the quality of all material and equipment. Procedures and controls shall be provided to ensure that inspections are being performed using the latest Design Documents and approved shop drawings. Procedures shall ensure that an adequate number of inspection personnel are available at all times, and that all inspectors are qualified, trained, and proficient in performing inspections for the Design-Build Work to which they are assigned. Procedures also shall be used to verify that the procurement documents meet all Contract Standards and the Design-Builder's Design Documents, and shall include the following:

- (a) Define how quality will be controlled during the manufacture and testing of all equipment which is being fabricated for the Dewatering Facility.
- (b) Written documentation of inspection of all material and equipment to ensure that it meets all Contract Standards and the Design-Builder's Design Documents. Documentation such as material test reports, certifications, and equipment tests results must be delivered to the City and City-designated representatives to demonstrate compliance with all Contract Standards and the Design-Builder's Design Documents.
- (c) Monitoring procedures to ensure that material and equipment is delivered to the Dewatering Facility Site are undamaged, in the proper quantities and in accordance with the specification requirements, and that all materials and equipment are stored and maintained on the Dewatering Facility Site according to the Contract Standards, including the requirements of the designer and the manufacturer.
- (d) Procedures for conducting Factory Acceptance Testing of each centrifuge at the centrifuge manufacturer's facility prior to shipping to demonstrate the absence of mechanical or electrical defects and that each centrifuge operates within the specified vibration, noise, and capacity limits.

- (i) Equipment components to be tested shall include the centrifuge bowl and scroll assembly, blow drive motor, scroll drive motor, control panels, and variable frequency drives (VFDs). Factory testing of the control panels and VFDs shall be completed, but this testing may be performed independently at the respective locations of manufacture.
- (ii) Testing of each fully assembled centrifuge shall consist of a minimum 4-hour dry run followed by a minimum 2-hour wet run. During the test, each machine shall be run at maximum, minimum, and 3-revolutions per minute (rpm) differential speeds. Factory testing shall demonstrate operation at 2,700 x g, or the g-force required to achieve the specified dewatering performance, whichever is greater, while complying with specified noise and vibration limits. At a minimum, the following tests shall be completed to demonstrate compliance: (1) vibration and noise measurement with bowl empty at maximum and minimum speed; (2) vibration and noise measurement with bowl filled with water a maximum and minimum speed; (3) operation of machine for 2 hours with water; (4) measurement of peak motor starting amperage.

6.6.5 Construction Management and Testing.

The Design-Builder shall provide full-time construction management and full and comprehensive construction administration for the Design-Build Work. Construction inspectors, who shall be provided with the latest Design Documents released to construction, shall perform initial verification of procurement and construction activities, so that any conflicts will be identified at an early stage. The Construction QA/QC shall clearly identify the circumstances under which the Design-Builder's registered soils or geotechnical engineer and the Engineer-of-Record will be involved in construction quality oversight. The Design-Builder shall perform all testing and inspections as required by the Contract Standards, approved design documents, applicable codes, regulations, and standards (such as ACI and ASTM) which may be referenced in Appendix 4 (Technical Specifications). Section 1.2(V) (Applicability, Stringency and Consistency of Contract Standards) of this Design-Build Contract shall govern any conflicts or inconsistency in the stringency of test requirements.

6.6.6 Laboratories.

All construction testing shall be performed by individuals who are qualified and experienced in providing these testing services. Equipment used to perform tests shall be calibrated according

to requirements in the testing procedure. The Design-Builder shall hire a certified independent testing laboratory to perform all laboratory testing. The laboratory selected shall be authorized to operate in the State, certified under the State's National Environmental Laboratory Accreditation Program, as applicable, and shall be subject to the approval of the City. Design-Builder requests for laboratory approval shall be made by the Design-Builder in a timely manner, in writing, to the City. Laboratory tests shall include the proposed concrete mix design, concrete aggregate tests, strength of concrete field test cylinders, gradation, and moisture density relationship of soils. The certified testing laboratories must also perform on-site tests that the Design-Builder is not experienced, qualified, or certified to perform or that require independent testing under the Contract Standards. On-site tests shall include tests for: concrete slump, concrete air entrainment, concrete temperature, casting of concrete test cylinder specimens, in-place testing of concrete strength, compaction density testing of soils, coating thickness measurements and structural bolting torque.

6.7 INSPECTION OF DESIGN-BUILD WORK

6.7.1 Inspection and Correction.

All Design-Build Work performed by the Design-Builder or its Subcontractors shall be inspected by the Design-Builder. All nonconforming Design-Build Work and any safety hazards in the work area shall be noted and promptly corrected. The Design-Builder is responsible for the performance of the Design-Build Work safely and in conformance with Section 5.7 (Construction Safety and Security) of Appendix 5 (General Design-Build Work Requirements).

6.7.2 City Access.

The City, its employees, agents, representatives and contractors shall be permitted access to all parts of the Design-Build Work, including plants where materials or equipment are manufactured or fabricated. The presence of the City, its employees, agents, representatives and contractors shall not relieve the Design-Builder of the responsibility for the proper execution of the Design-Build Work in accordance with all requirements of this Design-Build Contract. No act or omission on the part of the City, its employees, agents, representative and contractors (other than City Fault) shall be construed as relieving the Design-Builder of this responsibility.

6.7.3 Materials Inspection.

All materials and articles furnished by the Design-Builder shall be subject to documented inspection, by qualified personnel, and no materials or articles shall be used in the Design-

Build Work until they have been inspected and accepted by the QA/QC Manager or other designated representative. Any Design-Build Work covered in the absence of inspection shall be subject to uncovering as set forth in Section 6.16 (Construction Monitoring, Observations, Testing and Uncovering of Work) of this Design-Build Contract.

6.8 TIME OF INSPECTION AND TESTS

Whenever the Design-Builder is ready to backfill, bury, cast in concrete or otherwise cover any Design-Build Work, the City shall be notified before such covering and completion, and the City shall notify the Design-Builder of a requested inspection of any such Design-Build Work as set forth in subsection 6.16(F) (Notice of Covering Design-Build Work) of this Design-Build Contract. Failure of the Design-Builder to properly notify the City, as required by subsection 6.16(F) (Notice of Covering Design-Build Work) of this Design-Build Contract, in advance of any such covering or completion shall be reasonable cause for the City to request the Design-Builder take apart or uncover for inspection or testing any previously covered or completed Design-Build Work in accordance with subsection 6.16(F) (Notice of Covering Design-Build Work) of this Design-Build Contract. The costs of any uncovering, taking apart, remedial or corrective work required and all costs of such delays, including the impact on other portions of the Design-Build Work, shall be borne as set forth in 6.16(F) (Notice of Covering Design-Build Work) of this Design-Build Contract.

6.9 MATERIALS SAMPLING AND TESTING

6.9.1 Materials Testing and Removal.

All sampling and testing of materials shall be conducted in accordance with the methods prescribed in the current standards of the ASTM or otherwise required by the Contract Standards, as applicable to the class and nature of the article or materials considered. The City reserves the right to require the Design-Builder to use any generally accepted system of inspection that, in the opinion of the City, will ensure the City that the quality of the materials workmanship is in full accord with this Design-Build Contract. Results of such tests and analyses shall be considered along with the tests or analyses made by the Design-Builder to determine compliance with the applicable specifications for the materials so tested or analyzed. Wherever any material, as a result of such independent testing or investigation by the City, fails to meet the requirements of this Design-Build Contract, all costs of such independent inspection and investigation and all costs of removal, correction, reconstruction, or repair of any such material shall be borne by the Design-Builder in accordance with subsection 6.16(F) (Notice of Covering Design-Build Work) and Section 6.17 (Correction of Work) of this Design-Build Contract.

6.9.2 Materials Rejection.

The City shall have the right at all times and places to reject any articles or materials to be furnished hereunder which, in any respect, fail to meet the requirements of this Design-Build Contract, regardless of whether the defects in such articles or materials are detected at the point of manufacture or after completion of the Design-Build Work at the Dewatering Facility Site. If the City, through an oversight or otherwise, has accepted materials or work which are defective or in any way contrary to this Design-Build Contract, such materials, no matter in what stage or condition of manufacture, delivery, or erection, may be rejected. The Design-Builder, at its cost and expense and without any adjustment to the Scheduled Acceptance Date, shall promptly remove and replace rejected articles or materials from the Dewatering Facility Site after notification of rejection.

6.10 MATERIALS TESTING SERVICES

6.10.1 Design-Builder's Laboratories.

The Design-Builder shall perform all tests requiring the services of a laboratory, to determine compliance with this Design-Build Contract, using independent commercial materials testing firms acceptable to the City. The materials testing firm's laboratory shall be staffed with experienced technicians, properly equipped, and fully qualified to perform the tests in accordance with the specified standards. The Design-Builder shall obtain the City's acceptance of the testing firm before having testing services performed, and pay all costs for these testing services.

6.10.2 Interruptions For Testing and Sampling.

The Design-Builder shall furnish all sample materials and cooperate in the testing activities, including sampling, and shall interrupt the Design-Build Work when necessary to allow testing, including sampling, to be performed. The Design-Builder shall have no claim for an increase in the Design-Build Price or extension of the Scheduled Acceptance Date due to such interruption. When testing activities, including sampling, are performed in the field by the testing firm's laboratory personnel, the Design-Builder shall furnish personnel and facilities to assist in the activities.

6.10.3 Test Reports.

Written reports of tests and engineering data regarding materials and equipment proposed to be used in the Design-Build Work shall be submitted by the Design-Builder for the City's review. The testing firm's laboratory shall perform all laboratory tests within a reasonable

time, consistent with the specified standards, and shall furnish a written report of each test. The City shall furnish one copy of each field and laboratory QA/QC test conducted by the City to the Design-Builder. The testing firm retained by the Design-Builder for material testing shall furnish five copies of a written report for each test. Three copies of each test report shall be transmitted directly to the City in a sealed envelope, within three Business Days after each test is completed. Two copies of each test report shall be transmitted to the Design-Builder. The Design-Builder shall consecutively number each report for each type of test.

6.10.4 City's Laboratories.

The City shall have the right to inspect work performed by the City-approved independent testing laboratory utilized by the Design-Builder, both at the Dewatering Facility Site and at the laboratory. This may include inspection of the independent testing laboratory's internal quality assurance records (quality assurance manual, equipment calibrations, proficiency sample performance, etc.). Testing services provided by the City, if any, are for the sole benefit of the City; however, test results shall be available to the Design-Builder. Testing necessary to satisfy the Design-Builder's internal QA/QC procedures shall be the sole responsibility of the Design-Builder.

6.10.5 Materials to be Tested.

The Design-Builder shall provide all testing services in connection with the following materials as required under Good Design-Build Practice, and deliver the test reports for review by the City:

- (1) Concrete materials and mix designs.
- (2) Masonry units, masonry grout, mortar materials, and design mixtures.
- (3) Asphaltic concrete materials and design mixtures.
- (4) Embankment, fill, and backfill materials.
- (5) QC testing of all precast concrete.
- (6) Holiday testing of pipeline coatings.
- (7) Air testing of field-welded joints for steel pipe and fabricated specials.
- (8) Concrete strength tests.

- (9) Test of masonry prisms.
- (10) Field control test of masonry.
- (11) Asphaltic concrete.
- (12) Magnetic particle or dye penetrant testing of field welds for steel pipe and fabricated specials.
- (13) Moisture-density and relative-density tests on embankment, fill, and backfill materials.
- (14) In-place field density test on embankments, fills, and backfill.
- (15) Other materials and equipment as specified herein.
- (16) All other tests and engineering data required for the City's review of materials and equipment proposed to be used in the Design-Build Work.

6.11 INSTALLATION

6.11.1 Inspection and Measurement.

The Design-Builder shall inspect materials or equipment upon the arrival at the jobsite and immediately prior to installation, and remove damaged and defective items from the jobsite. The City shall be provided the opportunity to observe any such Design-Builder inspections in accordance with Section 6.16 (Construction Monitoring, Observations, Testing and Uncovering of Work) of this Design-Build Contract. The Design-Builder shall verify measurements and dimensions of the work as an integral step of starting each installation.

6.11.2 Manufacturer's Instructions.

Where installations include manufactured products, the Design-Builder shall comply with manufacturer's applicable instructions and recommendations for installation, to whatever extent these are more explicit or more stringent than the Contract Standards, so as not to violate manufacturers' warranty conditions.

6.12 PERSONNEL QUALIFICATIONS

The QMP shall include a QA/QC organization chart with named individuals performing QA/QC including their experience and qualifications. The QMP shall describe staffing levels required

for QA/QC and qualifications and experiences requirements for persons performing QA/QC functions, including the following:

- (a) Description of minimum qualifications and experiences that demonstrate quality management personnel have related experience and certifications. Typically, this indicates professional engineers and professional certified quality personnel who have a certain level of similar project experience, which may include:
 - (i) QA/QC Management/Supervisors should possess experience managing professional personnel in similar circumstances or on similar projects; demonstrate excellent communication skills; possess a working knowledge of QA/QC and quality management; possess certification as quality professionals by appropriate certifying bodies or have completed training courses in the quality discipline.
 - (ii) The Design Quality Assurance Manager must be a registered professional engineer in the State of California; may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years experience in projects similar in scale or scope to the Dewatering Facility project.
 - (iii) The Construction Quality Assurance Manager may work directly for the Design-Builder or may be contracted from an independent firm or organization; must have at least five years of recent experience (within the past ten years) overseeing the inspection and materials testing of projects similar in scale or scope to the Dewatering Facility project.
 - (iv) QA and QC reviewers, inspectors, and testing technicians for design and construction must be qualified for the duties they must perform; must possess the appropriate education or experience commensurate with the job responsibilities; and must possess the necessary certifications required for assignments.
- (b) Persons performing Quality Control and/or Quality Assurance functions shall be at an organizational level that reports directly to upper level management of the Design-Build firm to assure independence from the influences of the Project production staff.

- (c) All key personnel performing Quality Control and/or Quality Assurance functions shall be designated as such and shall not be assigned to perform any conflicting duties.

APPENDIX 7

DESIGN-BUILD WORK REVIEW PROCEDURES

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APPENDIX 7

DESIGN-BUILD WORK REVIEW PROCEDURES

7.1 OVERVIEW

7.1.1 Purpose.

The purpose of this Appendix is to set forth the procedures for the City's review of each aspect of the Design-Build Work to verify that the Dewatering Facility has been designed and constructed in accordance with the Technical Specifications and the terms and conditions of this Design-Build Contract.

7.2 DOCUMENTS TO BE SUBMITTED.

At a minimum, the documents to be submitted during the Design-Build Period shall include the following:

- (a) Monthly Progress Schedule Updates
- (b) Intermediate submittals for review sessions and workshops on various materials, facilities, systems, equipment, and disciplines
- (c) Final Design Documents (issued for construction)
- (d) Commissioning and Acceptance Test Plan
- (e) Acceptance Test Report
- (f) Performance Test Results
- (g) Operation and Maintenance Manual
- (h) Applications and supporting documents required for Governmental Approvals
- (i) Record drawings and record specifications

Such documents shall be submitted in accordance with the Document Submittal Procedures.

7.2.2 Design-Construction Work Package Information.

The Design-Builder shall have flexibility with how it organizes and performs design-construction work packages so that it can proceed with ordering any necessary equipment or commence with any necessary construction activities such as civil-site work prior to the 100%

design; provided, however, such construction or ordering of equipment prior to the 100% design shall not negatively affect the remaining Design-Build Work, the Design-Build Price or the Design-Build Schedule. The Design-Builder shall provide the following information in the appropriate design-construction work package in accordance with the Document Submittal Procedures:

- (a) Specifications, Design Narratives and Lists:
 - (1) Project design criteria
 - (2) Specifications list
 - (3) Process systems piping line list
 - (4) Process system valve list
 - (5) Electrical loads list
 - (6) Major equipment list (process, mechanical, electrical, instrumentation and control, support systems, other)
 - (7) Proprietary technology/equipment list
 - (8) Specifications for major equipment
 - (9) Narrative description of the following systems: controls, remote monitoring and operating capability, voice and data communications and security
 - (10) Specifications (general requirements, civil, structural, architectural, equipment, specialties, mechanical, and electrical and instrumentation and controls sections)
- (b) Drawings, in both three-dimensional electronic and standard design formats:
 - (1) Cover sheet
 - (2) Drawing index
 - (3) Process flow diagram for all primary and secondary processes

- (4) Layout of the Dewatering Facility Site
- (5) Major outside piping layout
- (6) Layout of operations building
- (7) Dewatering Facility Site master planning layouts
- (8) Landscape inventory plan
- (9) Landscape and irrigation plans
- (10) Dewatering Facility Site grading and utility plans, with sections as needed for construction clarity or dimensioning
- (11) Surface drainage system and features plans and details
- (12) Fire protection and security system plans
- (13) Dewatering Facility Site sections and details
- (14) Process and support facilities general arrangement plans, with sections as needed for construction clarity or dimensioning
- (15) Transfer pumping and export pumping system plans, sections and details
- (16) DS Storage Tanks; polymer storage, blending and dosing equipment; centrifuge system; dewatered cake storage, conveyance and loadout system
- (17) Piping system plans, sections and details
- (18) Major building structure foundation plans and sections
- (19) Major building and structure floor plans
- (20) Major building and structure exterior elevations and sections
- (21) Typical sections through all major wall, roof and floor sections of major buildings and structures

- (22) Architectural door, window, finish and hardware schedules and details
- (23) Architectural renderings
- (24) Non-process mechanical systems plans, details and schedules
- (25) Electrical site plan & building electrical system plan
- (26) Electrical one line drawing
- (27) Process and Instrumentation diagrams for all primary and secondary processes
- (28) SCADA system network drawings
- (29) Instrumentation and control system drawings, including loop drawings illustrating the functional elements in the path of the sensor to each control system input/output (ISA S5.4)

7.3 CITY REVIEW DURING GOVERNMENTAL APPROVAL PROCESS

The Design-Builder's responsibilities for obtaining and maintaining the Governmental Approvals required for construction of the Dewatering Facility are described in Section 6.6 (Permitting Responsibilities and Schedule) of this Design-Build Contract and Appendix 3 (Governmental Approvals). The City shall have the right to review and comment on Design-Builder submittals as provided by Section 6.6 (Permitting Responsibilities and Schedule) of this Design-Build Contract and this Appendix. Unless otherwise approved by the City in writing, Governmental Approval applications shall not include design specifications or drawings that the City has not previously reviewed. For all Governmental Approval applications, the Design-Builder shall provide draft copies of the applications and supporting documents for City review and comment. The City's review will not diminish the Design-Builder's responsibility for timely submittals of complete applications for Governmental Approvals. The City may attend Design-Builder meetings with permitting agencies and help arrange for agency reviews and meetings.

7.4 CITY DOCUMENT REVIEW

7.4.1 City Review Responsibilities.

On or before the Construction Commencement Date, the Design-Builder shall submit updated Document Submittal Procedures that address the submittal of the Final Design Documents (the "Final Design Submittal Protocol"). In accordance with the Final Design Submittal

Protocol, the City shall review the Design-Builder's Final Design Documents for compliance and consistency with the final 60% Design, design-construction work package documents for compliance and consistency with the Final Design Documents and both for overall compliance with the requirements of this Design-Build Contract. The City's input during finalization of the design documents and preparation and finalization of design-construction work packages shall be solicited by the Design-Builder on a timely basis so as to provide adequate periods for review by the City, revisions by the Design-Builder and final review by the City without negatively impacting the Design-Build Schedule. The City shall make reasonable efforts to bring staff or representatives with review and decision-making authority to the work sessions as requested and scheduled by the Design-Builder. The Design-Builder shall provide the City with advance notice of the work sessions and agenda topics to facilitate the City's scheduling of the appropriate participants for the work sessions. The Design-Builder shall provide the City with Final Design Documents before commencing any construction activity, except as provided in Section 7.2.1 (Design-Construction Work Package Information) of this Appendix. Construction activities shall not vary from the Final Design Documents submitted to the City except where such variations are allowed, subject to the City's and applicable Governmental Body's review and approval. Adherence to the Final Design Documents as well as to the Technical Specifications during work completion shall be a factor used by the City in its review and approval of the Design-Builder's Payment Requests during construction.

7.4.2 Changes to Technical Specifications.

Any change requested by the Design-Builder to the Technical Specifications (regardless of prior oral discussion) must be clearly identified by the Design-Builder in its cover letter that transmits the submittal and must be fully documented with compelling justification of the Design-Builder's request for a change to the Technical Specifications and the benefits to the City for consenting to such a change. Any such change shall comply with the requirements set forth in Article 6 (Design-Build Work) of this Design-Build Contract, as applicable. No change to the Technical Specifications shall be made except with the City's approval pursuant to Section 6.8 (Changes to the Technical Specifications at Design-Builder Request) of this Design-Build Contract. The Design-Builder shall assume all risks associated with obtaining City approval of any change to the Technical Specifications.

7.4.3 Time for City Review.

The Design-Builder and the City shall periodically review the Document Submittal Procedures, which define key submittals and the target submittal dates, and develop a submittal review schedule for each submittal based on the content and criticality of each submittal. The City

shall complete its review of each submittal in a timely manner based on such target submittal dates in order to determine that the Design-Build Work conforms to the Technical Specifications and other Contract Standards.

7.4.4 Time for Design-Builder Response.

For each submittal, the City shall provide written comments in a tabular summation describing any concerns, problems, or assertions of non-compliance with the applicable Contract Standards. The tabular summation shall be on a form created mutually by the Design-Builder and the City, with provisions on the form for the Design-Builder's responses. The Design-Builder shall provide a written response to the City's comments within 15 Business Days of receipt of the City's comments, primarily through use of the tabular summary form, including documentation of responses and agreed-upon action items.

7.4.5 Design-Build Progress Meetings.

For the purpose of facilitating a timely review process, the Design-Builder shall schedule design-build progress meetings with the City on a routine basis and at least monthly (unless both parties agree that more frequent meetings are required) throughout the design finalization and design-construction work package development period. Any outstanding review comments not satisfactorily resolved shall be transferred to an issues tracking form by the Design-Builder for subsequent follow-up. The primary purpose of these meetings shall be to discuss overall Design-Builder work progress, the conformance of the design and design-construction work packages to the Technical Specifications, and to address outstanding issues arising from the review and response process. The status and issues of related permitting and early construction activities may also be included as agenda items for each design-build progress meeting. These meetings shall be held in the City's offices, or another location agreed to by the City. Design-Builder representatives with responsibility for design and construction shall participate in the meeting. Similarly, the City shall be appropriately represented by individuals with knowledge and authority for decision making at the meeting.

7.4.6 Design Submittals During Construction.

It is anticipated that there could be some redesign or design clarifications needed during construction. Additional design work by the Design-Builder shall be subject to the City's review for compliance and consistency with applicable Technical Specifications. Design changes to a particular Design Document performed following the issuance of the Design Document for construction shall be issued under a Design Change Notice (DCN) process that accurately tracks and documents changes to the design. No later than 30 days prior to

initiation of construction, the Design-Builder shall submit to the City additions to the Document Submittal Procedures to include the DCN. The City shall be provided with copies of all DCNs in a timely manner to allow review, comment, and, where appropriate, approval in the same manner as set forth with respect to the initial design. Design clarifications shall be issued in a timely manner using a similar procedure. If a DCN requires a material change from what was reflected in the applications for Governmental Approvals, the DCN must be approved by the appropriate Governmental Body if required by Applicable Law.

7.4.7 Design Change Authority.

The Design-Builder shall be responsible for providing design changes to the Design Documents necessary to complete the Project in accordance with this Design-Build Contract. All such changes shall be implemented in accordance with the DCN process described above, and in accordance with this Appendix. No DCN shall operate to change the Technical Specifications unless approved by the City in writing. Any DCN which requests a change to the Technical Specifications shall be subject to the City's rights under subsection 7.4.2 (Changes to Technical Specifications) of this Appendix.

7.5 CITY CONSTRUCTION INSPECTION

7.5.1 Construction Review Intent.

The City and its designated representatives, including the Owner's Advisor, shall have the right, as provided in this Appendix, periodically to review and inspect construction activities and participate in construction progress meetings as needed to verify compliance with the Contract Standards. In addition, the City shall have the right to monitor the progress of construction work and verify all applications for payment covering all construction work performed during the preceding calendar month in accordance with the procedures set forth in Article 9 (Compensation for Design-Build Work) and Appendix 8 (Design-Build Price). Notwithstanding the City's review of construction activities, the Design-Builder shall be fully responsible for means, methods, techniques, sequences, and procedures of construction, as well as safety precautions and programs in the performance of the Design-Build Work. The City's review and involvement in construction activities is intended for the informational purposes of the City and to monitor compliance with this Design-Build Contract. Such activities shall also be a part of the City's independent quality assurance process and shall not be viewed as an additional layer or integral part of the Design-Build Quality Management Plan.

7.5.2 “Or Equals”.

Whenever an item of material or equipment is specified in the Technical Specifications by using the name of a proprietary item or the name of a particular supplier, and is followed by the words “or equal”, material or equipment of other suppliers may be considered. The City shall determine, acting reasonably, the acceptability of proposed “or equal” items associated with the Design-Build Work. The Design-Builder shall allocate adequate time in the Document Submittal Procedures for the City to review and approve all “or equal” items for the Design-Build Work. Any delays resulting from submittal of “or equal” items later than as set forth in the Document Submittal shall be the responsibility of the Design-Builder. The Design-Builder’s design personnel shall be permitted to review proposed “or equal” suppliers for the balance of the Design-Build Work.

7.5.3 Named Suppliers.

Whenever an item of material or equipment is specified in the Technical Specifications by using the name of a proprietary item or the name of a particular supplier, and is not followed by the words “or equal”, the Design-Builder shall provide the named material or equipment.

7.5.4 Functionally Equal.

If, in the City’s reasonable discretion, an item of material or equipment proposed by the Design-Builder for the Design-Build Work is functionally equal to that named, it may be considered by the City as an “or equal” item. A proposed item of material or equipment shall be considered functionally equal to an item so named if:

- (a) the City determines that:
 - (1) it is at least equal in quality, durability, appearance, strength, and design characteristics; and
 - (2) it shall reliably perform at least equally well the function imposed by the design concept of the completed Dewatering Facility as a functioning whole; and
- (b) the Design-Builder certifies that it shall conform substantially, even with deviations, to the detailed requirements of the item named in this Design-Build Contract.

7.5.5 Corrections and Changes.

The procedures to be followed for correction of non-conforming Design-Build Work and for instituting changes and additions to such work are set forth in Article 6 (Design-Build Work) of this Design-Build Contract.

7.6 RECORD DRAWINGS AND RECORD SPECIFICATIONS

At the completion of construction, the Design-Builder shall prepare and submit to the City two complete sets of record drawings and record specifications for the Dewatering Facility as built. The record drawings and record specifications shall be submitted in accordance with the Document Submittal Procedures. The record drawings and record specifications shall be prepared in accordance with the Contract Standards and shall include all electrical and control wiring schematics/diagrams. The Design-Builder shall obtain the City's approval of the record drawings and record specifications as a condition of Final Completion. The City's approval of the record drawings and record specifications shall not be unreasonably withheld.

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APPENDIX 8
DESIGN-BUILD PRICE

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APPENDIX 8

DESIGN-BUILD PRICE

8.1 PURPOSE

The purpose of this Appendix is to set forth the procedures and requirements for determining (1) the Design-Build Price, and (2) the Guaranteed Maximum Price.

8.2 DESIGN-BUILD PRICE

8.2.1 Payment.

The City shall pay the Design-Builder the Design-Build Price for its performance of the Design-Build Work, subject to the Guaranteed Maximum Price established in accordance with Section 8.7 (Guaranteed Maximum Price) of this Appendix.

8.2.2 Design-Build Price Defined.

The Design-Build Price shall be an amount equal to the sum of:

- (a) The Design-Build Costs;
- (b) The General Conditions Fee; and
- (c) The Design-Builder Fee,

all subject to the following:

- (a) The Design-Build Price shall not include Unallowable Costs, all of which shall be borne by the Design-Builder without payment or reimbursement by the City;
- (b) The only compensation payable for General Conditions Costs is the General Conditions Fee; and
- (c) The Design-Build Price shall not exceed the Guaranteed Maximum Price.

8.2.3 Related Definitions.

As used in this Design-Build Contract, the following terms shall have the meanings set forth below:

- (a) “Design-Builder Contingency” has the meaning specified in Attachment 8C (Schedule of Values and Design-Builder Contingency) of this Appendix.

- (b) “Design-Builder Fee” has the meaning specified in Section 8.6 (Design-Builder Fee) of this Appendix.
- (c) “Design-Build Costs” has the meaning specified in Section 8.3 (Design-Build Costs) of this Appendix.
- (d) “Design-Build Price” has the meaning specified in Section 8.2.2 (Design-Build Price Defined) of this Appendix.
- (e) “General Conditions Costs” has the meaning specified in Attachment 8A hereto (Description of General Conditions Costs).
- (f) “General Conditions Fee” has the meaning specified in Section 8.5 (General Conditions Fee) of this Appendix.
- (g) “Guaranteed Maximum Price” has the meaning specified in Section 8.7 (Guaranteed Maximum Price) of this Appendix.
- (h) “Unallowable Costs” has the meaning specified in Section 8.4 (Unallowable Costs) of this Appendix.
- (i) “Uncontrollable Circumstance Costs” means, subject to Article 15 (Uncontrollable Circumstances), Section 18.7 (General Duty to Mitigate), and the other terms and conditions of this Design-Build Contract, any Design-Build Costs paid by the Design-Builder to the extent that such Design-Build Cost has been paid due to the occurrence of an Uncontrollable Circumstance.

8.2.4 Certification and Cost Substantiation.

Each Payment Request shall:

- (a) Comply with and be submitted in accordance with the procedures and requirements of Article 9 (Compensation for Design-Build Work) of this Design-Build Contract.
- (b) Be presented by element of the Design-Build Price;
- (c) If Uncontrollable Circumstance Costs are being invoiced, present such Uncontrollable Circumstance Costs separately from other Design-Build Costs.

- (d) If costs resulting from Subcontractor or Supplier delay or non-performance are being invoiced, present such costs separately from other Design-Build Costs.
- (e) For Design-Build Costs payable on a reimbursable basis, provide Cost Substantiation for the Design-Build Cost for which reimbursement is sought, including copies of all documentation reasonably necessary to demonstrate that the reimbursable Design-Build Cost has been paid or incurred.
- (f) For Design-Build Costs payable on a lump sum basis, provide copies of all documentation reasonably necessary to demonstrate the value of the Design-Build Work in place.

All such documentation shall be in a format and a level of detail reasonably acceptable to the City.

8.2.5 Relation to General Conditions Costs

Section 8.5 (General Conditions Fee) of this Appendix obligates the City to pay a fixed General Conditions Fee to the Design-Builder. The General Conditions Fee is intended to compensate the Design-Builder for General Conditions Costs, and is payable whether the actual General Conditions Costs are higher or lower than the amount of the General Conditions Fee. Accordingly, Design-Build Costs shall not include any costs constituting General Conditions Costs.

8.2.6 Discounts, Rebates and Refunds.

All cash discounts, trade discounts, rebates, refunds and returns from the sale of surplus materials and equipment shall be reported and accrue to the benefit of the City and serve to offset the Design-Build Costs.

8.3 DESIGN-BUILD COSTS

“Design-Build Costs” means the reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Work (including Commissioning and Acceptance Testing and costs resulting from the occurrence of the risks assumed by the Design-Builder under this Design-Build Contract) that (1) are described in and meet the requirements of this Section 8.3, and (2) are not Unallowable Costs.

As used in this Section, “reasonable and necessary costs paid or incurred by the Design-Builder in the proper performance of the Design-Build Work” includes (1) costs of Design-Build

Work necessitated by ordinary mistakes or inadvertence; (2) costs incurred in repairing or correcting defective, damaged or non-conforming Design-Build Work (including any warranty or corrective Design-Build Work performed after Acceptance; (3) additional costs incurred due to Subcontractor delay or non-performance; (4) costs incurred in performing corrective action needed to address a failure of the Acceptance Test to demonstrate compliance with the Acceptance Standards; and (5) Uncontrollable Circumstances Costs, in all cases except to the extent any such costs constitute Unallowable Costs.

8.3.1 Third-Party Professional Services Fees.

- (a) Professional fees and expenses payable by the Design-Builder to design engineers for design engineering services under third party design Subcontracts.
- (b) Fees and expenses payable by the Design-Builder for professional services under third-party professional services Subcontracts for other professional services, including accounting, planning, surveying, consulting and other professional services.

8.3.2 Construction Subcontractor and Major Equipment Supplier Costs.

An amount equal to the amounts properly payable by the Design-Builder to Subcontractors for Design-Build Work performed under construction Subcontracts and Subcontracts for major equipment entered into in accordance with the procedures and requirements set forth in Section 7.4 (Self-Performance and Subcontractor Selection) of this Design-Build Contract. No Subcontract shall provide for payment of Unallowable Costs. In no event shall the markup by any Subcontractor for Design-Build Work performed by direct lower-tier Subcontractors exceed 5% with respect to work that is not competitively procured on a fixed price basis nor included in work that is subject to a competitive procurement on a fixed price basis in accordance with subsection 7.4(F) (Competitive Procedures for Construction Work) of this Design-Build Contract.

8.3.3 Design-Builder's Own Labor Costs.

Except to the extent that any of the following costs are supervisory and administrative personnel costs, and, as such, constitute General Conditions Costs payable as part of the General Conditions Fee:

- (a) Wages or salaries of direct employees of the Design-Builder performing the Design-Build Work at the Dewatering Facility. The cost for such employees of

the Design-Builder shall be calculated on the basis of those rates set forth in Attachment 8B (Design-Builder's Personnel Cost Schedule) to this Appendix.

- (b) Wages or salaries of off-site direct employees of the Design-Builder performing design services in connection with the Design-Build Work. The cost for such employees of the Design-Builder shall be calculated on the basis of those rates set forth in Attachment 8B (Design-Builder's Personnel Cost Schedule) to this Appendix.
- (c) With the written consent of the City, wages or salaries of other off-site direct employees of the Design-Builder performing Design-Build Work. The cost for such employees of the Design-Builder shall be calculated on the basis of those rates set forth in Attachment 8B (Design-Builder's Personnel Cost Schedule) to this Appendix.
- (d) Costs reasonably paid or incurred by the Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, paid by the Design-Builder, excluding bonuses, to the extent such costs are based on wages and salaries paid to employees of the Design-Builder included in the Design-Build Costs under items (a) through (c) of this subsection.
- (e) The reasonable cost of travel, accommodations and meals for the Design-Builder's and primary design Subcontractor's personnel incurred outside of the City metropolitan area, necessarily and directly incurred in connection with the performance of the Design-Build Work (e.g., attendance at factory testing), as approved by the City and consistent with the City's policies for payment of such costs.

8.3.4 Costs of Materials, Equipment and Supplies.

Except to the extent any of the following constitute General Conditions Costs or costs paid or incurred under Subcontracts with Suppliers for Major Equipment:

- (a) Costs, including transportation, inspection, testing, storage and handling, of materials, equipment, systems and supplies incorporated, to be incorporated or reasonably used in completing the Design-Build Work.

- (b) Costs of materials, equipment and supplies, described in item (a) of this subsection, in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, equipment and supplies, if any, shall become the City's property at the completion of the Design-Build Work or, at the City's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the City as a deduction from the Design-Build Price.
- (c) Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, that are provided by the Design-Builder at the Dewatering Facility Site and fully consumed in the performance of the Design-Build Work; and costs (less salvage value for materials, supplies, temporary facilities, machinery, equipment and hand tools with a value of \$10,000 or more when new) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall be fair market value.
- (d) Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Design-Builder at the Dewatering Facility Site, whether rented from the Design-Builder or others, and incurred in the performance of the Design-Build Work. Rates and quantities of equipment rented shall be based upon those rates set forth in the Caltrans Department of Transportation Division of Construction "Labor Surcharge and Equipment Rental Rates" in effect for the period of the rental subject to the City's prior written approval.
- (e) Costs of materials and equipment suitably stored off the Dewatering Facility Site at a mutually acceptable location, if approved in advance in writing by the City.
- (f) Any sales commissions related to the foregoing.

8.3.5 Other Costs.

Except to the extent any of the following constitute General Conditions Costs:

- (a) Costs of conducting Commissioning and the Acceptance Test.
- (b) Premiums for Project-specific Required Insurance that the Design-Builder is obligated to obtain and maintain in accordance with Article 14 (Insurance) and Appendix 12 (Insurance Requirements) of this Design-Build Contract.
- (c) Premiums for Project-specific insurance which the Design-Builder requests and the City approves, such approval not to be unreasonably withheld.
- (d) Premiums for the Performance Bond and the Payment Bond.
- (e) Costs of handing, removal and disposal of Regulated Substances and remediating Regulated Site Conditions (except as provided in subsection 6.4(E) (Design-Builder Responsibilities) of this Design-Build Contract).
- (f) Fuel and utility costs paid or incurred in the performance of the Design-Build Work.
- (g) Sales, use or similar taxes, tariffs or duties imposed by a Governmental Body and incurred by the Design-Builder in the performance of the Design-Build Work for which the Design-Builder is not able to obtain an exemption under Applicable Law.
- (h) Costs for obtaining and maintaining Governmental Approvals.
- (i) Fees of laboratories for tests required by this Design-Build Contract.
- (j) Royalties and license fees paid for the use of a particular design, process or product required by this Design-Build Contract.

8.3.6 City Travel Policy Cost Limits.

Posted City travel expense guidelines, as in effect from time to time, shall prevail over actual travel expenses incurred by the Design-Builder in any reimbursement of Design-Build Costs relating to travel. Such guidelines provide for the reimbursement of mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3).

8.3.7 Compensation for On-Going Design Costs During the Negotiation of the Definitive Contract Amendment.

Section 5.10(B) (Negotiation and Execution of the Definitive Contract Amendment) of this Design-Build Contract anticipates that, following the Definitive Project Submittal, the parties will negotiate the Definitive Contract Amendment. The Design-Build Schedule anticipates a negotiating period of approximately three months. The Design-Builder may, but is not obligated to, continue the development of the Project design during the negotiating period in order to preserve the continuity of the design effort by the design engineers. Any costs and expenses by the Design-Builder during the negotiating period in furtherance of the Project, including the cost and expense of the design team, shall be incurred at the sole risk of the Design-Builder and shall not subject to payment or reimbursement by the City unless the City specifically agrees to the payment of such costs and expenses in connection with the negotiation and execution of a Definitive Contract Amendment, in which case such costs and expenses shall constitute Design-Build Costs hereunder. Any such costs shall be payable in the same manner as Design-Build Costs are payable following the Definitive Contract Amendment Date or in any other manner agreed to by the parties in executing the Definitive Contract Amendment.

8.4 UNALLOWABLE COSTS

8.4.1 No Payment Obligation.

Notwithstanding any other provision of this Design-Build Contract, the City shall have no obligation to pay the Design-Builder any Unallowable Costs.

8.4.2 Unallowable Costs Defined.

“Unallowable Costs” means:

- (a) Premiums for insurance, except as provided in Section 8.3.5 of this Appendix.
- (b) In the event of damage to or destruction of the Dewatering Facility that is caused by Design-Builder Fault, cost of repair or reconstruction not covered by applicable OCIP policies on account of deductibles or exceedances under the applicable policy’s stated coverage limitations.
- (c) Costs for wages, salaries and professional services fees, to the extent they exceed wage and salary rates or fees customarily paid for similar services by comparably qualified workers and professionals in the City.

- (d) Any costs incurred in handling disputes or litigation with Subcontractors or any other third party.
- (e) Salaries and other compensation for the Design-Builder's personnel stationed at the Design-Builder's principal office or branch offices, except as provided in subsections 8.3.3(b) and 8.3.3(c) of this Appendix.
- (f) Expenses of the Design-Builder's principal office or branch offices other than the Dewatering Facility Site, except as provided in Section 8.3.3 (Design-Builder's Own Labor Costs) of this Appendix.
- (g) Overhead, office and general expenses at any location, except as provided for in Section 8.3.3 (Design-Builder's Own Labor Costs) of this Appendix.
- (h) The cost of the capital (including interest on capital) used in the performance of the Design-Build Work or otherwise.
- (i) Rental costs of machinery and equipment, except as specifically provided in item (d) of Section 8.3.4 (Costs of Materials, Equipment and Supplies) of this Appendix.
- (j) Costs incurred as a result of the negligence or willful misconduct of the Design-Builder, any Affiliate, any Subcontractor or any other party performing any aspect of the Design-Build Work.
- (k) Fines, penalties, sanctions or impositions assessed or imposed by any Governmental Body as a result of Design-Builder Fault, including violations of or non-compliance with any Governmental Approval.
- (l) Any cost relating to the Design-Builder's indemnification obligations hereunder.
- (m) Travel and subsistence expenses, except as specifically provided in subsection 8.3.3 (Design-Builder's Own Labor Costs) of this Section.
- (n) Legal costs incurred for any reason.
- (o) The fees of independent experts hired to assist in connection with dispute resolution.

- (p) Amounts required to be paid the Design-Builder or any Subcontractor for federal or State income, franchise or other business Taxes (but shall not include sales, use or similar taxes, which are Design-Build Costs pursuant to item (q) of Section 8.3.5 (Other Costs) of this Appendix).
- (q) Any costs that would cause the Guaranteed Maximum Price (as such price may be adjusted in accordance with the terms of this Design-Build Contract) to be exceeded.
- (r) Premiums or fees paid to the Guarantor.
- (s) Liquidated damages payable from the Design-Builder to the City.
- (t) Profit, risk and general or indirect overhead of the Design-Builder, except to the extent that such amounts are compensated through the Design-Builder Fee and the General Conditions Fee.
- (u) General Conditions Costs, except to the extent that such costs are compensated through the General Conditions Fee.

8.5 GENERAL CONDITIONS FEE

The “General Conditions Fee” is an amount equal to 11.2% of the Design-Build Costs other than sales taxes. The General Conditions Fee is an amount attributable to General Conditions Costs, all of which shall be paid by the Design-Builder without reimbursement hereunder and irrespective of the sufficiency of the General Conditions Fee. The General Conditions Fee includes consideration for all costs and expenses paid or incurred by the Design-Builder, as well as all profit, risk, mark-up and general and indirect overhead, in connection with the General Conditions Costs. The General Conditions Fee shall be adjusted in the event the Scheduled Acceptance Date is extended as provided in Section 15.3 (Uncontrollable Circumstances Relief) of this Design-Build Contract. The General Conditions Fee shall be considered sufficient for compensation of all General Conditions Costs.

In connection with Design-Build Costs associated with work performed pursuant to Section 6.16(A) of this Design-Build Contract, the City may elect, at its sole discretion, to withhold, and in such case, the Design-Builder shall not be entitled to, the General Conditions Fee associated with such Design-Build Costs.

8.6 DESIGN-BUILDER FEE

The “Design-Builder Fee” is an amount equal to 8.9% of the Design-Build Costs for the Design-Build Work (other than the cost of the Project-specific Required Insurance, sales taxes, the Performance Bond and the Payment Bond). The Design-Builder Fee is an amount attributable to profit, risk, mark-up and general or indirect overhead with respect to the Design-Build Work, and includes an amount attributable to the cost of Additional Insurance Required From Enrolled Parties and Excluded Parties, but shall exclude an amount attributable to the reduction in the Design-Builder’s insurance costs due to eligibility for the OCIP Coverages and Other Coverages Provided by the City, all as set forth and described in Article 14 (Insurance) and Appendix 12 (Insurance Requirements). Accordingly, Design-Build Costs shall not include amounts attributable to profit, risk, markup and general or indirect overhead with respect to the Design-Build Work.

In connection with Design-Build Costs associated with work performed pursuant to Section 6.16(A) of this Design-Build Contract, the City may elect, at its sole discretion, to withhold, and in such case, the Design-Builder shall not be entitled to, the Design-Builder Fee associated with such Design-Build Costs.

8.7 GUARANTEED MAXIMUM PRICE

8.7.1 Guaranteed Maximum Price Generally.

The City shall pay the Design-Builder the Design-Build Price for the Design-Build Work, subject to the Guaranteed Maximum Price calculated in accordance with this Section. The “Guaranteed Maximum Price” shall be the sum of (1) the Base Guaranteed Maximum Price, and (2) the Base Guaranteed Maximum Price Adjustments. The Guaranteed Maximum Price represents the absolute limit of the total of all amounts payable to the Design-Builder by the City for the performance of the Design-Build Work. In the event additional amounts are required to be expended over and above the Guaranteed Maximum Price to perform the Design-Build Work and achieve Acceptance and Final Completion, liability for and payment of such additional amounts shall be the sole responsibility of the Design-Builder. The City shall not be liable for any such amounts, and the Design-Builder shall not pursue any claim for any such additional amounts against the City. Notwithstanding any reference in this Design-Build Contract to the terms “mark-up” or “profit”, the Design-Builder acknowledges that (1) the City is not guaranteeing the Design-Builder any profit, a particular level of profit, or the avoidance of any loss in the overall performance of the Design-Build Work, and (2) the obligation of the Design-Builder to complete the Design-Build Work may result in a loss or in a mark-up and profit that is less than the mark-up and profit amounts anticipated by the Design-Builder in

proposing its Design-Builder Fee, in making its Definitive Project Submittal, and in entering into this Design-Build Contract.

8.7.2 Base Guaranteed Maximum Price.

The “Base Guaranteed Maximum Price” is [_____]. **[Note: To be negotiated based on the Definitive Project Submittal and incorporated in this Section on the Definitive Contract Amendment Date.]** Except as provided in Section 8.7.3 (Base Guaranteed Maximum Price Adjustments) of this Appendix, the Base Guaranteed Maximum Price shall not be increased for any reason.

8.7.3 Base Guaranteed Maximum Price Adjustments.

The adjustments to the Base Guaranteed Maximum Price provided for in this subsection constitute the “Base Guaranteed Maximum Price Adjustments”, and each adjustment shall be reflected in a Contract Administration Memorandum. The Base Guaranteed Maximum Price shall be adjusted (increased or decreased) only to reflect adjustments required on account of:

- (a) Uncontrollable Circumstances generally, as provided in Section 15.3 (Uncontrollable Circumstances Relief) of this Design-Build Contract);
- (b) Technical Specifications changes made under Section 6.9 (Other Changes to the Technical Specifications) of this Design-Build Contract; or
- (c) Unilateral Change Directives made under Section 6.10 (Unilateral Change Directives) of this Design-Build Contract.

8.7.4 Value of Base Guaranteed Maximum Price Adjustments

The value of a Base Guaranteed Maximum Price Adjustment shall be determined as follows:

- (a) Where the Design-Build Work involved is covered by unit prices contained in this Design-Build Contract, by application of such unit prices to the quantities of the items involved;
- (b) To the extent unit prices are not applicable, by a mutually agreed lump sum; or
- (c) To the extent unit prices are not applicable and the parties are unable to reach agreement on a lump-sum value, on the basis of the Design-Build Costs of the associated Design-Build Work, as determined in accordance with this Appendix, plus the Design-Builder Fee.

A Base Guaranteed Maximum Price Adjustment may provide for markup payable to Subcontractors where Design-Build Work is performed through Subcontracts. Any such Subcontractor markup shall comply with the markup requirements of subsection 8.3.2 of this Appendix.

8.8 SHARED SAVINGS AMOUNT

In the event that upon Final Completion the Design-Build Price is less than an amount equal to (1) the Guaranteed Maximum Price minus (2) the used Design-Builder Contingency, as each such amount is finally determined in accordance with this Appendix, the City shall pay the Design-Builder an amount equal to 30% of the difference between the Guaranteed Maximum Price (minus the used Design-Builder Contingency) and the Design-Build Price (the “Shared Savings Amount”). The Shared Savings Amount shall be paid as part of the final payment to the Design-Builder in accordance with Section 9.4 (Payment Upon Final Completion) of this Design-Build Contract. The City’s determination of the Shared Savings Amount shall be final and binding upon the Design-Builder, but in no event shall the City’s determination of Design-Builder’s Shared Savings Amount exceed 30 percent.

ATTACHMENT 8A
DESCRIPTION OF GENERAL CONDITIONS COSTS

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ATTACHMENT 8A

DESCRIPTION OF GENERAL CONDITIONS COSTS

GENERAL CONDITIONS COSTS

In connection with the Design-Build Work, the Design-Builder is responsible for the General Conditions Costs, as well as the performance of the related obligations, identified in this Section. The Design-Builder's compensation for the General Conditions Costs is limited to the General Conditions Fee. Design-Build Costs shall not include any General Conditions Costs. General Conditions Costs consist solely and exclusively of costs incurred for the following items with respect to the Design-Build Work:

(1) Design-Builder Employee Supervisory and Administrative Personnel Costs

- (a) Costs of wages or salaries of the Design-Builder's supervisory and administrative personnel engaged in the performance of the Design-Build Work and who are located at the Dewatering Facility Site.
- (b) Costs of wages or salaries of the Design-Builder's supervisory and administrative personnel engaged off of the Dewatering Facility Site at factories, workshops or on the road, to assist in the coordination, production or transportation of material or equipment necessary for the Design-Build Work, but only for that portion of their time required for the Design-Build Work.
- (c) Costs of wages or salaries of the Design-Builder's personnel stationed at the Design-Builder's principal or branch offices, but only to the extent such personnel are identified in Attachment 8B to this Appendix (Design-Builder's Personnel Cost Schedule) and performing the functions set forth in such Attachment.
- (d) Costs reasonably paid or incurred by the Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments for supervisory and administrative personnel required by law, collective bargaining agreements and, for supervisory and administrative personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions paid by the Design-Builder, excluding bonuses, to the extent such costs are based on wages and salaries paid to supervisory and administrative personnel of the Design-Builder included in the Design-Build Costs under item (1)(a) of this Attachment.

- (e) The reasonable cost of travel, accommodations and meals for the Design-Builder's supervisory and administrative personnel incurred outside of the City metropolitan area, necessarily and directly incurred in connection with the performance of the Design-Build Work, as approved by the City and consistent with the City's policies for payment of such costs.

(2) Field Office and Construction Supply Costs for Design-Builder Staff Only

- Design-Builder field office mobilization and demobilization
- Office trailer rental (City will provide electric service for office trailers at City's expense)
- Office furniture and equipment
- Office janitorial
- Document reproduction services (off-site or custom)
- Copy machines, fax machines, printers, scanners and paper shredders
- Office computers, software and maintenance.
- Office telephones, and telephone and internet service
- Accounting and data processing costs
- Jobsite radios/cellular phones
- Postage, courier, and express delivery
- Scheduling expenses
- Job travel, including fuel and vehicle, in compliance with City policies (including but not limited to Employee Travel, Private Vehicle Mileage Reimbursement, and Use of Personal Vehicles) and US GSA Per Diem Rates for zip code 95134, and IRS Standard Mileage Rates.
- Job meeting expenses
- Temporary parking and laydown areas, not otherwise provided by the City.

- Storage facilities, both on and off site, not otherwise provided by the City
- Tools and tool shed
- Surveying equipment and supplies
- Office supplies
- Project redline drawings
- Project specific signage
- Reference manuals
- Employee identification system

(3) Temporary Amenities for Design-Builder Dewatering Facility Site activities:

- Temporary toilets
- Temporary fire protection
- Dewatering Facility Site security
- Traffic control equipment rental
- Fencing, barricades, partitions and protected walkways
- Temporary water distribution and meters
- Temporary power generation
- Temporary and emergency lighting
- Site erosion control
- Drinking water
- Temporary construction facilities and services
- Temporary heat and ventilation

(4) Design-Builder Site Cleanup

- Daily site cleanup and dumpsters
- Cleanup at Substantial Completion
- Cleanup at Final Completion

(5) Design-Builder Construction Trade Training Program

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ATTACHMENT 8B
DESIGN-BUILDER'S PERSONNEL COST SCHEDULE

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ATTACHMENT 8B

DESIGN-BUILDER'S PERSONNEL COST SCHEDULE

**[Note: To be Finalized on the Definitive Contract Amendment Date
Based on the Definitive Project Submittal]**

San José Biosolids Dewatering Project Walsh/BV Labor Rates

Role	Rate
DB Manager	\$229
Project Superintendent	\$226
Precon Manager	\$197
APM I	\$110
APM II	\$131
Chief Estimator	\$132
Estimator	\$115
PE I	\$91
PE II	\$105
Commissioning Mgr	\$125
Safety Mgr	\$125
Project Controls/Outreach	\$56
Sr. Project Director	\$332
Project Director	\$311
Sr. PM	\$321
Clerk	\$154
Sr. Engineering Mgr	\$253
Engineering Mgr	\$209
Odor Control Engineer	\$308
Civil Engineer	\$177
Civil Technician	\$137
Structural Director/QC	\$239
Structural Sr. Engineer	\$256
Structural Engineer	\$147
Geotech	\$277
Architect Director/QC	\$256
Senior Architect	\$239
Bldg Mech Director/QC	\$226
Bldg Mech Sr. Engineer	\$195
Bldg Mech Engineer	\$174
Fire Protection Sr. Engineer	\$223
Fire Protection Engineer	\$171
Proc Mech Director/QC	\$256
Proc Mech Sr. Engineer	\$223
Proc Mech Engineer	\$154
Chem Feed Director/QC	\$256
Chem Feed Engineer	\$154
Electrical Director/QC	\$273
Electrical Sr. Engineer	\$205
Electrical Engineer	\$171
Electrical Technician	\$130

I&C Director/QC	\$267
I&C Sr. Engineer	\$182
I&C Engineer	\$130
I&C Technician	\$130
Process Director/QC	\$308
Process Sr. Engineer	\$308
Process Engineer	\$188
O&M	\$277
BIM Coordinator	\$205
BIM Sr. Technician	\$171
BIM Technician	\$120

Above hourly rates are inclusive of overhead & profit.

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ATTACHMENT 8C
SCHEDULE OF VALUES AND DESIGN-BUILDER CONTINGENCY

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ATTACHMENT 8C

SCHEDULE OF VALUES AND DESIGN-BUILDER CONTINGENCY

GENERAL

The purpose of this Attachment is (1) to define the requirements for the Design-Builder's preparation of a Schedule of Values and the Design-Builder Contingency, which will be used as the basis for payments of the Design-Build Price pursuant to Article 9 (Compensation for Design-Build Work) of this Design-Build Contract, and (2) to describe the manner in which payment of the Design-Build Price will be made based on the Schedule of Values and the Design-Builder Contingency. **[Note: The Schedule of Values and the Design-Builder Contingency will be negotiated based on the Definitive Project Submittal, and incorporated in this Attachment 8C on the Definitive Contract Amendment Date]**

EARLY DESIGN-BUILD WORK PACKAGES

As provided in subsection 5.8(F) (Complete Early Design-Build Work Package Pricing) of this Design-Build Contract, the parties intend that each Early Design-Build Work Package Amendment will contain complete pricing for the Design-Build Work covered by the Early Design-Build Work Package, and that a schedule of values and contingency will be established for such Early Design-Build Work Package separate and apart from the Schedule of Values and Design-Builder Contingency established on the Definitive Contract Amendment Date for the balance of the Design-Build Work.

TOTAL SCHEDULE OF VALUES AMOUNT

The sum of all amounts comprising the line items in the initial Schedule of Values shall be equal to the total amount of the reasonably estimated costs of achieving Substantial Completion and Acceptance, as such total amount of reasonably estimated costs is negotiated by the parties pursuant to subsection 5.10(C) (Base Guaranteed Maximum Price Negotiating Principles) of this Design-Build Contract. The total Schedule of Values amount, and the line items in the Schedule of Values, shall be adjusted appropriately by agreement of the parties to account for Base Guaranteed Maximum Price Adjustments.

DESIGN-BUILDER CONTINGENCY AMOUNT

The Design-Builder Contingency amount shall be a single stated dollar amount equal to the amount negotiated by the parties pursuant to subsection 5.10(C)(2) (Base Guaranteed Maximum Price Negotiating Principles) of this Design-Build Contract.

SUM OF THE SCHEDULE OF VALUES AMOUNT AND THE DESIGN-BUILDER CONTINGENCY AMOUNT

The sum of the total Schedule of Values amount and the Design-Builder Contingency amount shall be equal to the Base Guaranteed Maximum Price.

PREPARATION OF THE SCHEDULE OF VALUES

As part of the Definitive Project Submittal, the Design-Builder shall prepare a Schedule of Values identifying, on a line item basis, costs of major items of Design-Build Work and other costs in accordance with this Attachment, and which shall include a Design-Builder Contingency separately stated as a block amount.

The Schedule of Values shall be consistent with the work scope and cost breakdown structure presented in the Definitive Project Submittal, as negotiated and agreed to by the City. The Schedule of Values shall assign prices to major elements of the Design-Build Work based on costs associated with scheduled activities for each such element.

The Schedule of Values shall:

- (a) Be broken down by each structure at the Dewatering Facility Site and show each specification division within each structure;
- (b) Show the division of work between the Design-Builder and each of the Subcontractors;
- (c) Include an item for:
 - (1) The General Conditions Fee;
 - (2) The Design-Builder Fee broken out in accordance with Section 8.6 of this Appendix 8;
 - (3) Commissioning and Acceptance Testing;
 - (4) The Additional Insurance Required From Enrolled Parties and Excluded Parties, the Performance Bond and the Payment Bond; and
 - (5) The Design-Builder Contingency.

The Design-Builder shall provide supporting data, including certified payrolls, as requested by the City for any Schedule of Values item. The final Schedule of Values must be approved by the City.

USE OF THE DESIGN-BUILDER CONTINGENCY

The Design-Builder shall be compensated by receiving payments of the Design-Build Price based on the Schedule of Values line items. The Design-Builder Contingency shall be used for payment of Design-Build Costs only as provided in this Section.

In the event the cost for completing Design-Build Work described in any particular Schedule of Values line item exceeds the Schedule of Values dollar amount listed for such line item, the Design-Builder shall have the right to request, and the City shall not unreasonably deny, compensation for such excess amounts from any remaining balance in the Design-Builder Contingency. If and when the Design-Builder Contingency has been fully used in compensating the Design-Builder for such excess amounts, the Design-Builder shall not be entitled to any compensation for costs of Design-Build Work exceeding the Schedule of Values line item relating to such cost (except as provided below in "Use of Line Item Savings"), notwithstanding the fact that the Design-Builder has paid or incurred Design-Build Costs in excess of such line item in the Schedule of Values; provided, however, that after the Design-Build Contingency has been exhausted, the Design-Builder shall be entitled to request and to receive compensation for such excess Design-Build Costs to the extent that payment of such costs does not cause the Design-Build Costs to exceed the Guaranteed Maximum Price.

The Design-Builder shall keep and provide the City with an ongoing record of the original amount of the Design-Builder Contingency, all uses thereof under this Appendix, and the remaining balance of the Design-Builder Contingency at any time. The Design-Builder shall provide the City with notice of all anticipated charges against the Design-Builder Contingency, and shall provide the City as part of the monthly status report all reasonably foreseeable potential uses of the Design-Builder Contingency in the upcoming three month period. Any use of the Design-Builder Contingency must be clearly identified in the associated Payment Request.

USE OF LINE ITEM SAVINGS

In administering payment of the Design-Build Price based on the Schedule of Values line items, the parties acknowledge that the Design-Build Costs associated with any particular line item may be less than the dollar amount provided for such line item in the Schedule of Values. The Design-Builder may request at any time a determination by the City that the Design-Build

Costs associated with a particular Schedule of Values line item are or are reasonably projected to be less than the dollar amount provided for such line item in the Schedule of Values. The City shall have the right in its discretion to approve or disapprove any such request. In the event the City approves any such request, the dollar value associated with the line item cost underage shall be available to be requested by and paid to the Design-Builder in the event the Design-Build Costs associated with another particular line item exceed the Schedule of Values dollar amount listed for such line item. Such line item savings amounts shall be in addition to any Design-Builder Contingency amounts that may be available to pay such Schedule of Values line item excess costs.

DAMAGE TO THE PROJECT AND INSURANCE RECOVERIES

The costs of repairing any damage to the Project constitute Design-Build Costs, and (1) are payable to the Design-Builder as part of the Design-Build Costs, as provided in Section 8.3 (Design-Build Costs) of this Appendix, (2) shall result in an appropriate revision of the Schedule of Values, and (3) shall result in a Base Guaranteed Maximum Price Adjustment, as provided in subsection 8.7.3 (Base Guaranteed Maximum Price Adjustments) of this Appendix.

SUBCONTRACTOR AND SURETY RECOVERIES

A substantial portion of the Construction of the Dewatering Facility is expected to be performed by Construction Subcontractors. The risks of delay and non-performance by Subcontractors are borne by the Design-Builder, and costs incurred by the Design-Builder that result from the occurrence of such risks constitute Design-Build Costs payable by the City from the Design-Builder Contingency hereunder, subject to the Guaranteed Maximum Price. All payments from the Design-Builder Contingency for costs incurred as a result of the occurrence of the risk of Subcontractor delay or non-performance shall be separately identified and recorded. In the event the Design-Builder, in the exercise of its mitigation duties under this Design-Build Contract, receives any judgment or settlement awards or otherwise makes any financial recoveries from Subcontractors or their guarantors or sureties on account of any such delays or non-performance, the amounts so received (net of reasonable enforcement costs), whether before or after Final Completion, shall be paid by the Design-Builder first to City, up to the amount of any Design-Builder Contingency payments made due to the occurrence of such risks. Any remaining amounts then may be retained by the Design-Builder for its own account. The obligation of the Design-Builder to take such mitigation measures and to make such payments to the City shall survive termination of this Design-Build Contract.

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ATTACHMENT 8D
INITIAL MONTHLY CASH FLOW SCHEDULE

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ATTACHMENT 8D

INITIAL MONTHLY CASH FLOW SCHEDULE

[Note: The Initial Monthly Cash Flow Schedule will be Finalized on the Definitive Contract Amendment Date based on the Definitive Project Submittal, and attached to Appendix 8 as part of this Attachment 8D]

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APPENDIX 9
COMMISSIONING AND ACCEPTANCE

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APPENDIX 9

COMMISSIONING AND ACCEPTANCE

[Note: Appendix 9 shall be expanded upon by the City and the Design-Builder upon during the Definitive Contract Submittal / Definitive Contract Amendment process. Changes to the values for the listed Minimum Acceptance Standards require City approval unless otherwise noted. Values for certain currently listed Full Acceptance Standards shall be cooperatively developed by the City and Design-Builder as described in this Appendix.]

9.1 Introduction and Objectives

This appendix to the draft DB Contract sets forth minimum requirements for Commissioning and Acceptance Testing of the Dewatering Facility (Project), including minimum requirements for the Design-Builder's Commissioning and Acceptance Test Plan.

As used in this appendix, commissioning refers to field activities on equipment or systems between the time that equipment (or system) is turned over from the construction team to the Design-Builders commissioning team and the time that the Project as a whole is ready for Acceptance Testing. It includes "fine-tuning" of equipment, systems, and the Project as a whole in advance of the Acceptance Test.

The intent of the Acceptance Test is to:

- Clearly and unquestionably demonstrate that the Project can meet the Minimum Acceptance Standards set forth in Appendix 9, Section 9.3.3
- Determine if the more stringent Acceptance Standards for dewatered cake total solids content and polymer use, to be developed and agreed upon, are met, and if any Buydown Liquidated Damages will be assessed
- Demonstrate that the Project can function as intended and operate effectively throughout the range of flow and load conditions expected for the Project.

9.2 Commissioning and Acceptance Test Plan

9.2.1 Minimum Requirements:

The Design-Builder shall develop an overall plan to guide pre-commissioning, training, Commissioning and Acceptance Testing activities. The plan may be provided as a single

document or separate plans may be provided for pre-commissioning, training, and Commissioning and Acceptance Testing. At a minimum, the plan(s) shall:

- Incorporate applicable provisions of the City’s Startup and Commissioning Specification, including Section 01 91 14 (Testing, Training and Facility Startup)
- The plan for pre-commissioning activities (may be a separate document) shall identify and describe all pre-commissioning activities, including equipment installation and testing, and functional testing of individual systems comprising the Project, including all auxiliary systems. Pre-commissioning also encompasses all activities associated with the first-time startup of all equipment, instruments, electrical gear, and/or processes and systems, including all checks and tests prior to running equipment and any laboratory tests that may be required to verify proper operation of processes. More specifically the plan shall describe:
 - Equipment tests include tests demonstrating the basic function and operation of individual Project equipment, subsystems, and infrastructure. Equipment tests include dry and clean water testing of tanks, conveyance piping, pumping equipment, and all other process and control equipment. Equipment tests shall verify that each component is installed correctly, functions as intended, and meets the technical specifications, including verification of set points and proper calibration.
 - System tests include tests intended to demonstrate the performance capability of unit process systems to achieve their design operational objectives. System tests should cover the liquid and solids processing and handling systems and support systems to demonstrate: 1) that systems meet the technical specifications, 2) Successful operation of manual and automatic control of the components and systems from the DCS; 3) ability of all motors to respond to speed set point changes generated by the control strategy programming in the DCS; 4) all alarm functions for components and systems on the DCS; 5) proper operation of the electrical power supply systems
 - Pre-commissioning schedule and protocols, including specific phases in the startup process.
 - Roles and responsibilities for pre-commissioning activities

- The training plan for City staff (may be a separate document) shall describes training for operation and maintenance of equipment, systems, and operational training, overall Project operations, including training schedules and protocols, syllabi for comprehensive training sessions delivered by equipment manufacturers and the Design-Builder.
- The Commissioning and Acceptance Test Plan shall:
 - Describe roles, responsibilities qualifications of Design-Builder’s proposed commissioning and Acceptance Testing team. At a minimum the roles and responsibilities for the following individuals will be identified and described, and the plan shall attach resumes documenting qualifications of the proposed individuals for their assigned roles:
 - Design-build Manager
 - Commissioning and Acceptance Testing Manager
 - Acceptance Lead
 - I&C Lead for Commissioning and Acceptance Testing
 - Process Mechanical Lead for Commissioning and Acceptance Testing
 - Electrical Lead for Commissioning and Acceptance Testing
 - HVAC testing, adjusting, and balancing representative

Each team member shall have experience in design, operation, and maintenance of similar facilities and systems.

- Describe the roles and responsibilities of the City during commissioning and Acceptance Testing
- Identify specific commissioning activities to be conducted prior to starting the Acceptance Test, including any commissioning standards and design specifications that will need to be met prior to starting the Acceptance Test. See Table 9-1 for a list of tests to be conducted during commissioning.

- Facility hydraulic testing (clean water) shall be included as part of the commissioning activities. Hydraulic testing shall, at a minimum, test each system for a minimum duration of 6 hours. Any ancillary or support systems for the hydraulic test and flow monitoring and measurement requirements shall be described, including calibration and accuracy requirements.
 - Testing applicable conveyance systems with digested sludge shall be included as part of the commissioning activities. The plan shall describe procedures for correlating head loss conditions between clean water and digested sludge flow in initial tests to demonstrate that pumps will operate within acceptable ranges on pump curves.
 - The plan shall establish procedures for demonstrating that all pumps achieve design flow and head ratings across the full range of design flow conditions and that the pumps operate within acceptable ranges on pump curves
 - Commissioning shall demonstrate that each system achieves the hydraulic flow and head design criteria across the full range of expected flow rates (from minimum to maximum)
 - The plan shall also identify commissioning procedures to verify the functional capabilities of the overall dewatering Project and systems in both manual and automatic mode.
- Include a logistics plan for ensuring that all required equipment, chemicals, and materials are on-site and available prior to starting the Acceptance Test and as needed for commissioning activities
 - Set forth the contractual preconditions to starting the Acceptance Test
 - Identify individual tests comprising the overall Acceptance Test (see Table 9-2)
 - Include a day-to day communication and coordination protocol to be followed by the Design-Builder and the City throughout the Acceptance Test
 - Identify the planned time of year for Acceptance Testing and anticipated flows and loads
 - Identify methods to be used to simulate peak flows and loads

- Set forth the Minimum Acceptance Standards and Acceptance Standards (see Table 9-3)
- Identify requirements for sampling, monitoring and laboratory testing during the Acceptance Test, including instrument calibration methods and proposed use of permanent and temporary instrumentation
- Description of specific activities that the City will need to conduct in order to support the Acceptance Test
- Acknowledge City override authority during Acceptance Testing
- Identify conditions that warrant restarting the Acceptance Test
- Set forth requirements for documentation and reporting during commissioning and for the Acceptance Test, including sign-offs and quality control / assurance requirements. At a minimum, the Acceptance Test Report shall include:
 - A certification stating that testing was conducted in accordance with the approved Test Plan
 - A certification of the results of each acceptance test
 - All required data measured and recorded during the acceptance test, including all laboratory analyses, chemical consumption, instrument calibrations, pressures, and other measurements
 - Copies of original data sheets, log sheets, calculations, laboratory reports, and test sheets
 - All necessary certifications relating to testing, evaluation, analyses, and performance
 - A record of all equipment failures and repairs and preventive maintenance performed
 - A summary of all data and calculations demonstrating the ability of the facility to meet the functional requirements and performance standards

- A summary of test results and conclusive evidence of compliance with all acceptance test requirements
- Any additional data reasonably requested by the City to be included in the report
- Include contingency plans for equipment failures, process upsets, unsatisfactory test results, and unanticipated interruptions
- Include detailed Commissioning and Acceptance Testing schedules

9.2.2 Required Submittals and Time Frames

The Design-Builder shall include a preliminary Acceptance Test plan for the dewatering train (primarily centrifuges) ("Preliminary Centrifuge Acceptance Test Plan) within its Basis of Design Report during the Preliminary Services Period. This Preliminary Centrifuge Acceptance Test Plan is intended to assist with the procurement and selection process for the Project centrifuges during design and may be modified or expanded upon as the overall Commissioning and Acceptance Test Plan is being developed.

As part of its Definitive Contract Submittal, the Design-Builder shall include a detailed annotated outline of its proposed Commissioning and Acceptance Test Plan. This detailed outline shall become Attachment 9-A to this Appendix 9.

At least **[X months]** prior to starting equipment and systems testing, the Design-Builder shall submit its preliminary draft Commissioning and Acceptance Test Plan for City review. The preliminary draft shall meet the minimum standards set forth in Appendix 9, Section 9.2.1 and shall describe, in detail, how all testing, commissioning and Acceptance Testing activities will occur. The City will provide comments on the preliminary draft within **[20 working days]** of receiving the preliminary draft. The Design-Builder shall revise and resubmit the draft as needed until the plan is acceptable to the City. At a minimum, a final plan shall be in place at least **[X days]** prior to the start of Commissioning. Further revisions to the Acceptance Test Plan components of the plan may be made provided they are approved by the City.

[Note: Lead times to be included as part of Definitive Contract Submittal / Definitive Contract Amendment process]

9.3 MINIMUM COMMISSIONING AND ACCEPTANCE TEST REQUIREMENTS

9.3.1 General

Before the Acceptance Testing Period begins, the WWTP shall be fully operational, capable of accepting design flows and loads, and performing functions as designed. The Design-Builder shall provide all required labor, materials, chemicals, and other elements required for troubleshooting and correcting problems throughout Acceptance Testing.

The Design-Builder shall be responsible for normal operational and routine maintenance costs during the Acceptance Test including, but not limited to, electricity, chemicals, and water. The Design-Builder shall be responsible for all costs for necessary repairs or replacements required to keep the Project operational.

The Design-Builder shall provide notice to the City a minimum of **[X]** working days prior to the start of Acceptance Testing.

[Note: Lead times to be included as part of Definitive Contract Submittal / Definitive Contract Amendment process]

9.3.2 Required Tests

In addition to continuous compliance with the Minimum Acceptance Standards over the Acceptance Test Period, at a minimum, commissioning shall include the individual tests identified in Table 9-1. The Acceptance Test shall include the tests identified in Table 9-2.

[Note: Some tests identified for the Acceptance Test could be completed during commissioning and vice versa]

Table 9-1 Minimum Functional Testing Requirements for Commissioning	
System	Required Functional Testing
Piping, conveyance and associated valves and appurtenances -- general	<ul style="list-style-type: none"> • Pressure and leak testing • Control of hydraulic transients
Digested sludge transfer	Transfer of digested sludge from D9–D16 to the new storage system using all new digested sludge transfer pumps and pipelines in all available operating configurations across the full range of design flow and head conditions
Digested sludge storage	Operation of filling/draining systems, mixing systems, gas handling systems (including operation of pressure relief systems), and overflow

Table 9-1 Minimum Functional Testing Requirements for Commissioning	
System	Required Functional Testing
	systems to meet specifications
Digested sludge conveyance	Operation of the pumping station and pipelines to convey digested sludge to the dewatering facility using all pumps and pipelines in all available operating configurations across the full range of design flow and head conditions
Polymer systems	Operation of the polymer system, including truck unloading, bulk storage (including polymer mixing and transfer), blending, and dilution systems to meet specifications
Centrifuges / Dewatering Trains	<ul style="list-style-type: none"> • Operation of dewatering trains, including digested sludge wet wells, centrifuge feed pumps and associated grinders, polymer dosing systems, dewatering centrifuges, centrate discharge, and dewatered cake discharge to meet specifications • Demonstration of proper startup and shutdown sequences of each centrifuge
Dewatered cake storage and unloading	<ul style="list-style-type: none"> • Operation of dewatered cake storage, including distribution of dewatered cake between bins, measurement of stored cake volume, leveling of stored cake, and unloading into storage bins • Truck loading system capacity and function • Truck weigh scales capacity and function • Capacity and function of appurtenant systems
Centrate conveyance	Operation of the centrate wet wells, pumping station, and pipelines to convey centrate from the dewatering facility using all centrate pumps and pipelines in all available operating configurations of the pumps and pipelines across the full range of design flow and head conditions
Foul air ventilation	<ul style="list-style-type: none"> • Operation of foul-air containment and conveyance systems (fans and ducts) in all available operating configurations across the full range of design flow and pressure conditions • System balance
Instrumentation and Controls	<p>Remote and local monitoring and control, data storage and data trending for all required equipment and systems</p> <p>Operation of communication and security systems to meet specifications</p> <p>Operation of fire alarm and suppression systems</p>
Ancillary systems	Operation of all ancillary systems in all available configurations and operating modes to meet specifications. Balance of all HVAC systems.

Table 9-2 Required Acceptance Tests	
Project System	Acceptance Tests Required for:
Piping, Conveyance,	<ul style="list-style-type: none"> • Hydraulic capacity and turn-down capability

Table 9-2 Required Acceptance Tests	
Project System and Associated Valves	Acceptance Tests Required for:
Pumping	<ul style="list-style-type: none"> • Ability to direct flow
Electrical and Energy Management	<ul style="list-style-type: none"> • Peak, average and minimum pumping capacity (each pump over its full design range and pumps operating in parallel over the full system design range) • Pump efficiency • No pump cycling beyond manufacturers' recommendations • Free from cavitation, excessive vibration, and excessive noise as required by the Minimum Acceptance Standards
System Throughput	<ul style="list-style-type: none"> • Capacity and operation of distribution network in all operating modes • Simulated power shut down and restoration with transfer from standby power source, including operation of UPSs and manual and automated restart of systems according to established control strategies • Energy management features • Safety features
Dewatering	<ul style="list-style-type: none"> • Demonstration that the entire system can process the design minimum, average and peak flows and loads, without use of required digested sludge and dewatered cake storage, except as needed to simulate peak conditions • Hydraulic and solids loading capacity • Capture efficiency • Dewatered cake total solids content • Polymer consumption • Noise • Vibration • Power efficiency • Capacity and function of appurtenant systems

9.3.3 Minimum Acceptance Standards and Full Acceptance Standards

Table 9-3 sets forth the City’s Minimum Acceptance Standards and Full Acceptance Standards for the Project. Except for Minimum Acceptance Standards for dewatered cake percent solids and polymer use, the Minimum Acceptance Standards are not subject to modification.

The City has established preliminary values for the Minimum Acceptance Standards for percent solids and polymer use. The City recognizes that it is not able to characterize the digested sludge that will be produced by its new temperature-phased anaerobic digestions system, since that system is currently under construction and is not expected to be producing

sludge until after mid-2021. However, the City is planning to characterize the digested sludge currently produced at the Regional Wastewater Facility (RWF) via mesophilic digestion. The City believes this will provide a reasonable basis for establishing final values for the Minimum Acceptance Standards for dewatered cake total solids content and polymer use. The City intends to establish these final values cooperatively with the Design-Builder as part of the Definitive Contract Submittal / Definitive Contract Amendment Process.

The City will work cooperatively with the Design-Builder to establish Full Acceptance Standards (more stringent than the minimum standards) for percent solids and polymer use as part of the Definitive Contract Proposal / Definitive Contract Amendment process, considering input from potential centrifuge manufacturers and chemical suppliers.

The Design-Builder acknowledges that the City has a long-term interest in producing dewatered cake from the dewatering facility that is as dry as reasonably possible to minimize total life-cycle costs of the dewatering process, including costs of transportation to off-site receiving facilities, polymer use, and power use.

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
Facility Throughput	Capability of the entire Project to convey and process flows at peak conditions	Same as Full Acceptance Standard	Operate the Project as a whole (i.e. all non-redundant units operating) for a minimum of 1 day at full capacity, supplementing flows with stored sludge as needed to simulate peak conditions.
Centrifuge Train Throughput	Capability to process each centrifuge's share of peak 7-day flow and load + simultaneous drawdown of DS storage over 7 days at 2042 conditions	Same as Full Acceptance Standard	Operate each dewatering train for a minimum of 2 days in isolation to simulate peak design flow and loading conditions with N+2 redundancy.

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
Dewatered Cake Total Solids Content	To be established as part of the Definitive Contract Amendment	21% TS, minimum at or below design year average conditions [NOTE: This preliminary standard may be modified based on results of testing dewaterability using sludge from the existing mesophilic digestion process.]	During all times when a centrifuge is operating at or below design year average annual conditions, verify compliance with the standard as follows: Conduct TS analysis of representative grab samples of dewatered cake collected at 4-hour intervals throughout the test period for each dewatering train Average TS of all samples for each dewatering train must be equal to or greater than the minimum standard Standard deviation of all samples for each dewatering train must not differ by more than +/- 3 percentage points from the average. When operating at peak conditions, follow the above procedures, but total solids content may be less than the Minimum Acceptance Standard, provided it does not fall below 18% and the dewatered cake remains suitable for handling and shipping.

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
Polymer Dose	To be established as part of the Definitive Contract Amendment	30 lbs. active polymer per dry ton of sludge, maximum [NOTE: This preliminary standard may be modified based on results of testing of polymer dose requirements using sludge from the existing mesophilic digestion process.]	During all times when a centrifuge is operating at or below the design year average annual conditions, verify compliance with the standard as follows: Calculate polymer dose from flow rate data for bulk polymer, polymer makeup water, polymer dilution water, and DS collected from permanently installed instruments at the time grab samples for TS analysis are collected. Obtain active polymer content from polymer manufacturer's datasheet. Average dose calculations for each dewatering train must be equal to or less than the standard. Standard deviation of all samples for each dewatering train must not differ by more than 5 lbs./DT from average. When operating at peak conditions, follow the above procedures, but polymer dose may be greater than the Minimum Acceptance Standard, provided the dose does not exceed 40 lbs. active polymer per dry ton of sludge and the dewatered cake remains suitable for handling and shipping.

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
Capture Efficiency	95%, minimum	Same as Full Acceptance Standard	During all times when a centrifuge is operating, verify compliance with the standard as follows: <ul style="list-style-type: none"> • Conduct TS analysis of representative grab samples of DS and centrate collected at 4-hour intervals throughout the test period for each dewatering train • Record flow rate data for dilute polymer feed solution and DS collected from permanently installed instruments at the time grab samples for TS analysis are collected. • Calculate capture efficiency using data collected above using the formula in Note 1. • Average capture efficiency for each dewatering train must be equal to or greater than the standard • Standard deviation of all samples for each dewatering train must not to differ by more than +/- 3 percentage points from the average
Power Efficiency (Centrifuge Motors)	To be established as part of Definitive Contract Amendment process	Same as Full Acceptance Standard	

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
Noise	When centrifuge is running at the nameplate speed equivalent to 2,700 g inside the bowl wall, the average noise level measured at 3 feet from the periphery of the complete centrifuge assembly shall not exceed 91 A-weighted decibels (dBA) at any time during factory and field testing, unless proposed unit can perform successfully at a lower dBA in which case a lower limit shall be established as part of the Definitive Contract Amendment process	Same as Full Acceptance Standard	Noise testing shall be conducted by a qualified third party with a single centrifuge in operation in accordance with American National Standards Institute (ANSI) S1.13 (Measurement of Sound Pressure Levels) on a sound level meter meeting at least the Type 2 requirements as set forth in ANSI S1.4-83 (Specification for Sound Level Meters), or any later revision thereof.
Vibration	When centrifuge is operating at maximum speed, vibration of centrifuges shall be below 0.45 inch per second root mean square (RMS) measured horizontally and vertically for all performance conditions at all times during factory and field testing	Same as Full Acceptance Standard	Vibration shall be measured in accordance with International Organization for Standardization (ISO) 10816 (Evaluation of Machine Vibration Standard), including applicable parts, or an equivalent standard accepted by the City.

Table 9-3 Acceptance and Minimum Acceptance Standards			
Parameter	Full Acceptance Standard	Minimum Acceptance Standard	How Measured
<p>Notes: Capture Efficiency shall be calculated as follows:</p> $\text{Capture Efficiency (\%)} = \frac{(C_{\text{cake}}) (C_{\text{feed}} - C_{\text{filtrate}})}{(C_{\text{filtrate}}) (C_{\text{cake}} - C_{\text{filtrate}})}$ <p>where: C_{cake} = Dewatered Cake Total Solids (%TS) C_{feed} = Feed DS Concentration (% TSS, excluding dilution from polymer solution) C_{filtrate} = Filtrate Concentration (% TSS, excluding dilution from polymer solution)</p>			

9.3.4 Buydown Liquidated Damages

As stated in Appendix 9, Section 9.3.3, the City has a long-term interest in producing dewatered cake from the dewatering facility that is as dry as reasonably possible to minimize total life-cycle costs of the dewatering process, including costs of transportation to off-site receiving facilities, polymer use, and power use. Therefore, if the Project meets all Minimum Acceptance Standards but fails to meet the more stringent Acceptance Standards for dewatered cake percent solids and polymer use, the Design-Builder shall be subject to Buydown Liquidated Damages.

The value of Buydown Liquidated Damages will be established as part of the Definitive Contract Submittal / Definitive Contract Amendment Process, based on the additional life-cycle costs incurred by the City. Specifically, increased polymer consumption and transportation of dewatered cake on a life-cycle basis will be calculated using the following assumptions

- 20-year analysis period
- Assumed average non-landfill transport/disposition rate in Year 1 of operation based on the City’s updated information on transport and disposition costs
- Escalation rate = 3.1% per year
- Discount rate = 5.0% per year

- Established digested sludge flow and loading rate design criteria for operating years 1-20, without imported materials. The flow and loading rates used in the analysis may be adjusted based on actual rates measured in the year prior to Acceptance Testing.

9.3.5 Duration of Acceptance Test

The Acceptance Test shall demonstrate Project compliance over a minimum of 30 continuous days. However, depending on the design and considering all testing requirements, a longer period than 30 days may be required and will be established as part of the Definitive Contract Submittal / Definitive Contract Amendment Process.

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ATTACHMENT 9A

PRELIMINARY OUTLINE OF COMMISSIONING AND ACCEPTANCE TEST PLAN

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ATTACHMENT 9A

PRELIMINARY OUTLINE OF COMMISSIONING AND ACCEPTANCE TEST PLAN

[Note: This Attachment will be developed and completed based on the work performed by the Design-Builder during the Preliminary Services Period.]

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ATTACHMENT 9B
PERFORMANCE GUARANTEES

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ATTACHMENT 9B

PERFORMANCE GUARANTEES

[Note: This Attachment will be developed and completed based on the work performed by the Design-Builder during the Preliminary Services Period.]

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APPENDIX 10
POST-ACCEPTANCE PERFORMANCE TESTS

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APPENDIX 10

POST-ACCEPTANCE PERFORMANCE TESTS

[Note: This Appendix will be developed in detail based on negotiations with the Design-Builder during the Preliminary Services Period. The objective of this Appendix will be to assure that, during the Performance Period following Acceptance: (1) the operating and maintenance costs for the Project are within the range projected by the Design-Builder; (2) electricity consumption is within the range projected by the Design-Builder; (3) the Post-Acceptance Performance Tests (relating to performance of the Dewatering Facility during seasonal conditions) are passed.

APPENDIX 11
TRANSITION SERVICES

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APPENDIX 11

TRANSITION SERVICES

11.1 PURPOSE

The purpose of this Appendix is to describe the Design-Builder's responsibilities related to the performance of the Transition Services during the Transition Period.

[Note: This Appendix and the attachments thereto, if requested by the City and agreed to by the Design-Builder, will be further developed in detail based on negotiations with the Design-Builder during the Preliminary Services Period.]

APPENDIX 12
INSURANCE REQUIREMENTS

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APPENDIX 12

OWNER CONTROLLED INSURANCE PROGRAM INSURANCE REQUIREMENTS

1. Owner Controlled Insurance Program

The City of San Jose (“City”) shall sponsor an Owner Controlled Insurance Program (“OCIP”) for the projects identified as capital improvement projects to be performed at the Regional Wastewater Facility and as identified with specificity in the contract documents (“Project”). The OCIP is more fully described in the insurance manual (the “OCIP Insurance Manual”) for the Project, which is incorporated herein by this reference as a contract document.

The OCIP will include Workers’ Compensation and Employer’s Liability insurance, Commercial General Liability insurance, and Excess Liability insurance, as summarily described below, in connection with the Project.

The Design-Builder shall include this Appendix 12 in every subcontract issued for the Project and shall not amend, delete, or otherwise modify the terms or condition of this Appendix 12 without having prior, written approval by the City’s designated representative. The insurance provided under the OCIP shall be referred to herein as “OCIP Coverages.”

2. OCIP Administrator

The City has designated Alliant Insurance Services, Inc. as the OCIP Administrator (“OCIP Administrator”) for the Project.

3. Premiums, Deductibles, and Proceeds

The City shall pay all premiums associated with the OCIP Coverages and Other Coverages Provided by the City as identified herein, as well as deductibles or self-insured retentions associated with such policies except as provided herein or unless otherwise stated in the contract documents.

4. Eligible and Enrolled Parties

Parties eligible to enroll in the OCIP are the Design-Builder, and its Subcontractors performing work on the Dewatering Facility Site (“Eligible Parties”). Upon enrollment, an Eligible Party shall become an “Enrolled Party.”

5. Excluded Parties.

Parties (including all contractors and subcontractors) that are not eligible to enroll in the OCIP, and who are excluded from the OCIP, are:

- (a) Hazardous materials remediation, removal and/or transport companies and their consultants;
- (b) Architects, surveyors, engineers, and soil testing engineers, and their consultants;
- (c) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers, and others who merely transport, pick up, deliver, or carry materials, personnel, parts or equipment, or any other items or persons to or from the Dewatering Facility Site;
- (d) Contractors or subcontractors performing day-to-day maintenance and operation work for Plant operations.
- (e) Any Subcontractor of any tier that does not perform any actual labor on the Dewatering Facility Site; and
- (e) Any other party or entity not specifically identified herein, that is excluded by the City in its sole discretion, even if such party or entity is otherwise eligible.

6. Summary of OCIP Coverages and Other Coverages Provided by the City

The OCIP Coverages and Other Coverages Provided by the City shall apply only to those operations of each Enrolled Party eligible for the OCIP performed at the Dewatering Facility Site and in connection with required Project work. OCIP Coverages and Other Coverages Provided by the City shall not apply to ineligible parties, even if they are erroneously enrolled in the OCIP. An Enrolled Party's operations away from the Dewatering Facility Site, including product manufacturing, assembling, or otherwise, shall only be covered by OCIP Coverages and Other Coverages Provided by the City if such off-site operations are identified and are dedicated solely to the Project. OCIP Coverages and Other Coverages Provided by the City shall not cover off-site operations until the Enrolled Party requesting off-site coverage receives written acknowledgment of such coverage from the OCIP Administrator.

A summary of the OCIP Coverages and Other Coverages Provided by the City are set out below.

SUMMARY OF OCIP COVERAGES

A. Workers' Compensation/Employer's Liability Insurance

Worker's Compensation	Statutory Limit
Employer's Liability	
Bodily Injury By Accident, each accident	\$1,000,000
Bodily Injury By Disease, each employee	\$1,000,000
Bodily Injury By Disease, policy limit	\$1,000,000

**B. Commercial General Liability Insurance
Form Equivalent to Most Current ISO Occurrence Form**

Each Occurrence Limit	\$2,000,000
Personal/Advertising Injury Limit (Each Occurrence)	\$2,000,000
General Aggregate Limit for all Enrolled Parties (Other Than Products/Completed Operations)	\$4,000,000
Products and Completed Operations Aggregate (for all Enrolled Parties)	\$4,000,000
Ten (10) Years Products & Completed Operations Extension	

C. Excess Liability Insurance (over Commercial General Liability)

Combined Single Limit	Not less than \$100,000,000
General Annual Aggregate for all Enrolled Parties	Not less than \$100,000,000
Products & Completed Operations Aggregate (for all Enrolled Parties)	Not less than \$100,000,000
Ten (10) Years Products & Completed Operations Extension	

SUMMARY OF OTHER COVERAGES PROVIDED BY THE CITY.

A. Contractor's Pollution Liability Insurance

Per Occurrence	Not less than \$5,000,000
Aggregate	Not less than \$5,000,000
Ten (10) Years Products & Completed Operations Extension	

B. Builders Risk

The City shall obtain and maintain in force during the term of this Design-Build Contract a Builders' Risk Insurance policy or policies separate from the OCIP, which shall insure against all risks of physical loss and/ or damage including flood and excluding earthquake, subject to normal policy exclusions, to all buildings, structures, materials, and real property on site, which are intended to be, or have already been incorporated into and forming part of the Project, whether or not such buildings, structures, materials, or real property will have been supplied or made available to Contractors by the City.

The Builders' Risk policy shall be endorsed to add Contractors of any tier as additional named insureds', as their interests may appear and to waive the carrier's right of recovery under subrogation against the City and all other Contractors of any tier whose interests are insured under such policy.

Unless required otherwise by the City, claims under Builders' Risk insurance provided are subject to a Contractor Claims Obligation of five thousand dollars (\$5,000) per occurrence. If a claim results from any construction activity, the responsible Contractor, Subcontractor, or Sub-Subcontractor shall pay the Contractor Claims Obligation up to \$5,000. All Builders' Risk losses will be adjusted with and payable to the City or the Designee for the benefit of all parties as their interest may appear.

The City shall not be responsible for loss or damage to, or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tool or personal effects, owned or rented to or in the care, custody, and control of a Contractor of any tier.

7. City's Obligations.

The City shall pay the costs of premiums for the OCIP Coverages and Other Coverages Provided by the City. The City will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. The Design-Builder hereby assigns to the City the right to receive all such adjustments. All Subcontractors shall be required, by written contract to assign to the City the right to receive all such adjustments. The City assumes no obligation to provide insurance other than that specified in this Appendix 12 and in the OCIP insurance policies. The City's furnishing of OCIP Coverages and Other Coverages Provided by the City shall in no way relieve or limit, or be construed to relieve or limit, any responsibility, liability, or obligation imposed the Design-Builder or any Subcontractor under the Design-Build Contract, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligations which such parties have agreed. The City reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in this Appendix 12.

8. Design-Builder's Obligations

- (a) The Design-Builder shall incorporate by reference the insurance requirements set out in this Appendix 12, into all Subcontracts.

- (b) The Design-Builder shall enroll in the OCIP prior to the commencement of construction activities at the Project. The Design-Builder shall ensure that all Subcontractors who are Eligible Parties enroll in the OCIP prior to their commencement of construction activities at the Project, and maintain enrollment during the course of the Project.
- (c) The Design-Builder shall comply with all of the requirements of the insurance policies of the OCIP Coverages and Other Coverages Provided by the City and the OCIP Insurance Manual. The Design-Builder shall provide to each of its Subcontractors of every tier a copy of the OCIP Insurance Manual, and ensure Subcontractor compliance with all provisions of the insurance policies of the OCIP Coverages and Other Coverages Provided by the City and the OCIP Insurance Manual.
- (d) The Design-Builder shall acknowledge, and require all of its Subcontractors of every tier to acknowledge, in writing, that the City and the OCIP Administrator are not agents, partners or guarantors of any OCIP insurer, that neither the City nor the OCIP Administrator are responsible for any claims or disputes between or among the Design-Builder, its Subcontractors of any tier, and any OCIP Insurer(s), and that neither the City nor OCIP Administrator guarantees the solvency or the availability of limits of any OCIP Insurer(s).
- (e) The Design-Builder shall Provide, within five (5) days of the City's request, any information related to the Design-Builder's insurance costs, including but not limited to payroll records, certified copies of insurance coverages, declaration pages of coverages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, construction cost estimates for this Project, or such other data or information as the Owner, the OCIP Administrator, or OCIP Insurers may request in the administration of the OCIP. The Design-Builder shall require its Subcontractors to provide the same information, upon request.
- (f) The Design-Builder shall comply, and require all of its Subcontractors to comply with OCIP Administrator's instructions for electronically enrolling in the OCIP.
- (g) Bid Methodology - Net Bid. In connection with its Definitive Project Submittal and proposed Guaranteed Maximum Price, the Design-Builder shall submit a proposed insurance pricing 'net' of its insurance costs for OCIP Coverages and

Other Coverages Provided by the City. The Design-Builder shall exclude from its proposed insurance pricing "Costs of OCIP Coverages", which is defined as the amount of Design-Builder's reduction in insurance costs due to eligibility for OCIP Coverages and Other Coverages Provided by the City. The Costs of OCIP Coverages includes reduction in insurance premiums, related taxes and assessments, markup on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of OCIP Coverages must include expected losses within any retained risk. The Design-Builder must exclude from its proposed insurance pricing the Cost of OCIP Coverages for all its subcontractors in addition to their own Cost of OCIP Coverages. Following final negotiation of the Definitive Contract Amendment, the Design-Builder shall also submit the insurance cost summary form provided in the OCIP Insurance Manual, identifying the amount the Design-Builder would have charged to perform the Design-Build Work had the OCIP not been implemented and the Design-Builder provided its own insurance coverages. For the purposes of preparing the insurance cost summary form, the Design-Builder shall assume it is required to provide all of the insurances required of Excluded Parties, as set out in Section 9 of this Appendix 12. During the course of the project change orders must also be priced to exclude the Cost of OCIP Coverages.

9. Additional Insurance Required From Enrolled Parties And Excluded Parties

The Design-Builder shall obtain and maintain, and shall require each of its Subcontractors of all tiers to obtain and maintain, the insurance coverage specified in this Section 9 in a form and from insurance companies reasonably acceptable to the City. The insurance limits may be provided through a combination of primary and excess policies, including the umbrella form of policy. Each policy required herein, except the Workers' Compensation policy, shall name the City, its officials, employees, agents, contractors and any additional entities as the City may request as additional insureds. The additional insured endorsement shall state that the coverage provided to the additional insureds is primary and non-contributory with respect to any other insurance available to the additional insureds. The Design-Builder shall provide certificates of insurance evidencing all required coverage prior to commencement of work on the Project. The additional insured endorsement to the general liability policy shall be provided by issuance of both ISO Form CG 2010 1001 and ISO Form CG 2037 1001 additional insured endorsements, or such other endorsement as acceptable to the City.

Enrolled Parties shall provide Worker’s Compensation, Employer’s Liability, General Liability, and Excess Liability insurance, as set out below, for off-site activities, and Automobile Liability insurance for all activities, both on-site and off-site.

Excluded Parties must provide all insurance set out below for both on-site and off-site activities.

- (a) Standard Commercial Automobile Liability Insurance covering all owned, non-owned, and hired automobiles, trucks, and trailers with a combined single limit of not less than \$1,000,000 for bodily injury, \$1,000,000 for property damage, and with a \$1,000,000 policy limit.
- (b) Statutory Workers’ Compensation Insurance and Employer’s Liability insurance with statutory limits as required by law, including Maritime coverage, if appropriate, and Employer’s Liability limits of not less than \$1,000,000 each accident, \$1,000,000 each employee, and with a \$1,000,000 policy limit.
- (c) Commercial General Liability Insurance in a form providing coverage not less than the standard ISO Commercial General Liability insurance policy (“Occurrence Form”), with limits no less than:

	<u>Enrolled Parties/Excluded Parties</u>
Each Occurrence	\$1,000,000/\$2,000,000
General Aggregate	\$2,000,000/\$4,000,000
Products/Completed Operations Aggregate	\$2,000,000/\$4,000,000
Personal/Advertising Injury Aggregate	\$1,000,000/\$2,000,000

- (d) If required by the City, Aviation and/or Watercraft Liability Insurance or other insurance, in form and with limits of liability and from an insuring entity reasonably satisfactory to the City.
- (e) Professional Liability. In the event any contract specifications requires the Design-Builder to perform professional services, such as, but not limited to, architectural, engineering, construction management, surveying, or design, the Design-Builder shall maintain a Professional Liability policy with limits not less than ten million dollars (\$10,000,000) per claim and ten million (\$10,000,000) aggregate with a minimum of five year’s tail coverage for work performed. Coverage shall be maintained for five years after the Acceptance Date. Such policy shall have a retroactive date before the commencement of any design, and

shall not include any exclusionary language relating to joint ventures or partnerships or both. The Design-Builder shall require all Subcontractors providing professional services to maintain a professional liability insurance policy pursuant to this Section.

- (f) Contractor's Pollution Liability. The Design-Builder or its subcontractors, if involved with the removal of asbestos or lead, the removal/replacement of underground tanks, or use of toxic chemicals and substances, shall purchase and thereafter maintain Contractor's Pollution Liability insurance in the amount of not less than five million dollars (\$5,000,000) per claim and five million (\$5,000,000) aggregate.
- (g) All insurance referred to herein to be carried by the Design-Builder or any Subcontractor shall be maintained by such parties at their sole expense, with insurance carriers qualified to do business in California and having a rating of not less than A-, VII from A.M. Best & Co., unless the City, in writing, in its sole discretion, accepts a lower Best's rating.
- (h) The City reserves the right to require (1) higher limits and (2) additional insurance coverages if the City determines in its sole discretion that such higher limits and/or additional coverages are reasonably necessary for the protection of the City. Such additional coverages shall be in a form and with limits of liability, additional insured endorsements, and deductibles or self-insured retentions acceptable to the City.
- (i) Prior to commencing work at the Project, the Design-Builder shall deliver to the City the endorsements and waivers of subrogation referred to herein, as well as certificates of insurance evidencing the coverages required herein. Promptly upon the City's request, the Design-Builder shall deliver to the City a copy of any and all of the insurance policies and other insurance documents required hereunder. In the case of policies expiring while work is in progress, a renewal certificate with all applicable endorsements must be delivered to the City prior to the expiration of the existing policy or policies. Permitting the Design-Builder or any Subcontractor to start work, or continue work, prior to compliance with these requirements shall not constitute a waiver of any of the requirements set forth herein. All certificates of insurance must provide the City with thirty (30)

days advance written notice of cancellation, intent to non-renew, or adverse material change in or reduction of coverage.

10. Representations and Warranties

The Design-Builder represents and warrants to the City, and shall use its best efforts to ensure that each of its Subcontractors of every tier represent and warrant to the City that:

- (a) All information they submit to the City, or to the OCIP Administrator, shall be accurate and complete.
- (b) They have had the opportunity to read and analyze copies of the insurance policies of the OCIP Coverages and Other Coverages Provided by the City that are available on request, and that they understand the OCIP Coverages and Other Coverages Provided by the City. Any reference or summary in this Appendix 12, to the amount, nature, type or extent of OCIP Coverages, Other Coverages Provided by the City and/or potential applicability to any potential claim or loss is for reference only. The Design-Builder and its Subcontractors of all tiers have not relied upon said reference, but solely upon their own independent review and analysis of the OCIP Coverages and Other Coverages Provided by the City in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverages, Other Coverages Provided by the City and/or their potential applicability to any potential claim or loss.
- (c) The Design-Builder shall not include in any request for payment any sums to provide or obtain insurance that is being maintained under the OCIP.

11. Audits

The Design-Builder and all Subcontractors agree that the City, the OCIP Administrator, and/or any OCIP insurer may audit their payroll records, books and records, insurance coverages, insurance cost information, and project cost records to confirm their accuracy, and to ensure that the City has not been billed for any cost of insurance that is being provided under the OCIP Coverages and Other Coverages Provided by the City. In the event any audit reveals that the City has been billed by the Design-Builder or any of its Subcontractors for any cost of insurance that is being provided by the City under the OCIP Coverages and Other Coverages Provided by the City, the City shall have the right to deduct from any amounts payable to the Design-Builder or any Subcontractor such cost, including all expenses and fees of audit.

12. Modification or Discontinuance of the OCIP

The City may, for any reason, modify the OCIP Coverages and Other Coverages Provided by the City, discontinue the OCIP, or request that the Design-Builder or any of its Subcontractors of any tier withdraw from the OCIP upon thirty (30) days written notice. Upon such notice the Design-Builder and/or one or more of its Subcontractors, as specified by the City in such notice, shall obtain and thereafter maintain during the performance of the work on the Project, such insurance as specified by the City. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to the City's approval. The cost of the replacement coverage(s) shall be at the City's expense, but only to the extent of the Cost such replaced of OCIP Coverages or Other Coverages Provided by the City, as applicable.

13. Waiver of Subrogation

Where permitted by law, the Design-Builder hereby waives all rights of recovery by subrogation because of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against the City, the OCIP Administrator, its or their officers, agents, or employees, and any other Subcontractor performing Work or rendering services on behalf of the City in connection with the planning, development and construction of the Project. The Design-Builder also agrees that all additional insurance maintained by the Design-Builder or any Subcontractor under this Appendix 12 shall include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against the City, the Design-Builder, or any Subcontractor. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

14. Conflicts

In the event of a conflict between the provisions of this Appendix 12, the OCIP Insurance Manual, and the provisions of the insurance policies of the OCIP Coverages and Other Coverages Provided by the City, the terms of the insurance policies of the OCIP Coverages and Other Coverages Provided by the City shall govern, then the provisions of this Appendix 12, then the provisions of the OCIP Insurance Manual.

15. Safety

The Design-Builder is solely responsible for all construction means, methods, safety, techniques, sequences, and procedures. Each subcontractor, of any tier, is responsible for all safety precautions and programs in connection with work under the Design-Build Contract.

The requirements of Cal/OSHA, the State, the City, and laws, statutes, regulations, codes, ordinances, and orders of those governing bodies having jurisdiction over the work, including the OCIP specific safety specifications listed below, establish the guidelines for this project that safety and loss prevention programs must meet or exceed.

In the event of a conflict or inconsistency between safety standards, the most stringent standard will govern.

- (a) Project Safety Team Monthly meetings. The Project Safety Team is a safety committee for the project. Each project shall have a committee comprised of the Design-Builder, Subcontractor, Project Manager and/or OCIP Safety Representative. On a monthly basis the group shall meet to discuss the projects safety program. These meetings may be incorporated into project coordination meetings.
- (b) Drug Free Work Environment. This project prohibits the use, possession, distribution or sale on its premises or workplace the following substances: alcoholic beverages, intoxicants, drugs and related drug paraphernalia. Employees must not report to work while under the influence of any drug or alcoholic beverage. Any substance, including prescription drugs, that impairs mental or motor function must not be used while working at or on this project. (Because marijuana remains illegal under Federal Law, medical marijuana cards or prescriptions permitting their use will not be allowed by the Design-Builder). The cost of enforcing this policy shall be the responsibility of each employer of the effected employee.
- (c) Safety Representative. Each Contractor shall have a designated Safety Representative with no other duties available at the site assigned the responsibilities of managing all aspects of safety related to employees under their direct control.

Subcontractors may have these duties performed by a Field Superintendent or Foreman having the required training, experience and qualifications listed

below. These employees may have duties other than safety provided appropriate adherence to State, Local Laws, Ordinances, Codes, Regulations, and these Safety Specifications are followed by personal under their direct control.

The Design-Builder/Subcontractor Safety Representative must have the following minimum qualifications:

- (i) The CSR/SSR shall have a minimum of 3 -5 years of qualified project safety experience on similar type construction projects.
 - (ii) Evidence of completing the OSHA 10 or 30 Hour Construction Outreach Training or equivalent with the past 3 yrs.
 - (iii) Current First Aid/CPR certification provided by The American National Red Cross or equivalent training.
 - (iv) Ability to stop work in the event of a workplace hazard, until corrective action has been implemented.
 - (v) Understanding of Federal and/or State Safety and OCIP Safety Regulations
 - (vi) Ability to conduct appropriate incident investigations.
 - (vii) Ability to communicate with field personal and project staff on relevant Health and Safety items.
- (d) Orientation. One of the requirements of all contractors/subcontractors and their safety representative or designees is to ensure that a complete basic safety orientation is conducted for all their employees new to the site. A Project Orientation by the Design-Builder is required before an employee can receive a project ID and enter the field. At a minimum, the orientation shall include:
- (i) Employee safety requirements and policies.
 - (ii) Site Safety and Health rules.
 - (iii) Permitting procedures, including work permits, excavation, confined space entry, lock-out, etc.

(iv) Hazard communication.

(v) Emergency alarms and evacuation procedures.

All employees will complete and sign a Safety Orientation form supplied by the Design-Builder. Upon successful the employee will receive a hard hat sticker with an identification number to be worn on the employee's hard hat at all times while on the project.

(e) Fall Protection. 100% Fall Protection shall be implemented by all trades for all fall exposures of six (6) feet or more. (Exception: Work from ladders and work around excavations, within Cal/OSHA specifications)

(f) Excavation. Trenching or excavating activities must be under the supervision of a competent person at all times.

(g) PPE

(i) Employees must at all times wear an ANSI Z89.1 approved hard hat on the jobsite.

(ii) Employers must supply all personal protective equipment.

(iii) Safety glasses with permanently affixed side shields are required at all times. All safety glasses, goggles, and face shields must have the ANSI-Z87 approval.

(iv) Sturdy work boots are required at all times on the jobsite. Employees on the jobsite shall not wear tennis shoes, running shoes, casual street shoes, sandals or shoes made of other thin material.

(iv) At minimum a Class II High Visibility reflective vest or equivalent shall be worn at all times while on-site.

(h) Hazard Communication. The Design-Builder shall maintain a copy of all Material Safety Data Sheets, and a chemical inventory list, for all hazardous substances used at the jobsite by their firm, as well as for all hazardous substances used at the jobsite by all Subcontractors regardless of tier.

- (i) Return to Work Program. Each Employer should have a written Early Return to Work Program that should be implemented on this project.

APPENDIX 12A
OWNER CONTROLLED INSURANCE PROGRAM
CONTRACTORS' INSURANCE PROCEDURES MANUAL

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San Jose – Santa Clara Regional Wastewater Facility

Capital Improvement Program

Owner Controlled Insurance Program

Contractors' Insurance Procedures Manual

July 13, 2017

Table of Contents

1.0 INTRODUCTION..... 1

 1.1 Overview 1

 1.2 About this Manual..... 2

 1.3 Responsibilities Concerning Loss Control & Claim Reporting 2

2.0 PROJECT DIRECTORY 4

3.0 PROJECT DEFINITIONS 5

4.0 CONTRACTOR RESPONSIBILITIES 7

 4.1 Alliant WrapX..... 7

 4.2 Contractor Bids 8

 4.3 Enrollment 9

 4.4 Assignment of Return Premiums 9

 4.5 Payroll Reports 9

 4.6 Insurance Company Payroll Audit 10

 4.7 Completion of Work 10

 4.8 Approved Off-Site Locations 10

 4.9 Safety..... 11

 4.10 Claims Reporting 11

 4.11 Change Order Procedures 11

5.0 INSURANCE COVERAGE 12

 5.1 Covered Parties 12

 5.2 Parties Not Covered 12

 5.3 Exclusion of Contractors from the OCIP 12

 5.4 Evidence of OCIP Coverage 12

 5.5 Description of Insurance Coverages 13

 5.5.1 Workers’ Compensation and Employer’s Liability Insurance 13

 5.5.2 Commercial General Liability Insurance 14

 5.5.3 Excess Liability Insurance 14

 5.5.4 Builders’ Risk Insurance..... 14

 5.5.5 Pollution Liability Insurance 15

 5.6 OCIP Termination or Modification 15

6.0 CONTRACTOR REQUIRED COVERAGE 16

 6.1 Workers’ Compensation 16

 6.2 General Liability 17

 6.3 Business Auto Liability 17

 6.4 Construction Equipment Insurance 17

 6.5 Professional Liability Insurance (Errors & Omissions)..... 18

 6.6 Aviation Insurance 18

 6.7 Pollution Liability 18

 6.8 Conditions of Understanding 19

 6.9 Other Insurance Required of All Contractors 19

7.0 CLAIM PROCEDURES 20

 7.1 Workers’ Compensation Claims 20

 7.2 General Liability Claims..... 20

 7.3 Property Claims..... 21

 7.4 Automobile Claims 21

8.0 APPENDIX 22

1.0 INTRODUCTION

1.1 Overview

The City of San Jose (Sponsor) has elected to use an Owner Controlled Insurance Program (OCIP) for the Regional Wastewater Facility Capital Improvement Program (Project). Under such a program, the Sponsor purchases certain insurance policies for protection of some (but not all) of the insurable risks that exist on a construction project. The insurance purchased by the Sponsor will be endorsed to extend coverage of the policy to any enrolled Contractors, Subcontractors, or Sub-Subcontractors. Contractors of every tier on the Project should carefully consider the OCIP and its implications to their company before executing a contract requiring their participation in the OCIP.

The OCIP provides the following insurance for all Contractors, regardless of tier, that are approved for participation in the insurance program:

- Commercial General/ Excess Liability
- Workers' Compensation

The following additional coverages are provided outside of the OCIP:

- Builders' Risk
- Pollution Liability Insurance

Certain Contractors are ineligible for this program. These parties are identified in the Definitions, Section 3.0 of this manual.

The Sponsor will pay all insurance premiums for the OCIP coverage listed above. You should notify your insurer(s) to delete from your insurance program charges and coverage for the on-site activities of this Project that are covered under the OCIP.

Alliant, the OCIP Program Broker/Administrator, will be administering the program on the behalf of the Sponsor.

Insurance coverage and limits provided under the OCIP are limited in scope and specific to this project only. Your insurance representative should review this information. Any additional coverage you may wish to purchase will be at your own expense and for which costs should be included in your cost proposal at the time of contracting.

The guidelines in this manual are to be used for informational purposes only. Any conflict between this document and any contract or subcontract, the contract or subcontract will govern. Any difference with the actual OCIP policies will control in the event of any inconsistency or misunderstanding.

1.2 About this Manual

This manual is designed to identify, define, and assign responsibilities for the administration of the OCIP. The guidelines in this manual are to be used for informational purposes only.

This Manual:

- Generally describes the OCIP
- Identifies responsibilities of the various parties involved in the project with regards to the OCIP
- Provides a basic description of the OCIP operation
- Describes audit and administration procedures for the OCIP
- Provides answers to basic questions about the OCIP

This manual will be updated throughout the course of the project if necessary

This Manual does not:

- Provide coverage interpretations
- Provide complete information about coverage
- Provide answers to specific claims questions

Specific questions about the OCIP, its administration, or the coverage provided should be referred to the OCIP Administrator identified in the Project Directory section immediately following this introduction.

1.3 Responsibilities Concerning Loss Control & Claim Reporting

It will be the responsibility of all Contractors of any tier to exercise every reasonable action to prevent work related injuries, property and equipment damage at the project site, as well as to minimize the exposure of risk to the public and third party property. All Contractors of any tier

will conduct loss control prevention practices according to those requirements set by Federal, State and Local Laws, statutes, and specific project procedures developed for this project.

In the event of an accident, it will be the obligation of the responsible Contractor of any tier to see that the injured workers or members of the public are given immediate medical treatment. Also, the Contractor is responsible to ensure all appropriate medical and claim forms are filed with the appropriate Authorities, the Primary OCIP Carrier, Site Safety Personnel, and the OCIP Administrator.

2.0 PROJECT DIRECTORY

OCIP ADMINISTRATOR

Alliant Insurance Services
 Construction Services Group
 701 B St, 6th Floor
 San Diego, CA 92101

PROGRAM MANAGER	PROGRAM ADMINISTRATOR
Mike Davidson Office: 619-849-3858 mdavidson@alliant.com	Katie Gatti Office: 619-849-3896 Katie.Gatti@alliant.com

WORKERS' COMPENSATION CLAIMS REPORTING

WC DIRECT CLAIM REPORTING TO:

Old Republic

WC Reporting Claims Kits may be obtained from the General Contractor in the event of a claim

OCIP PORTAL - ALLIANT WRAPX

Online Enrollment, Payroll Reporting & Document Management	
OCIP Document Submission Email:alliantwrapx@alliant.com	Website: http://alliantwrapx.alliantinsurance.com/contractorportal
*Contact Project Administrator for User Access	

OCIP Coverages

INSURANCE COMPANIES	POLICIES
Old Republic	Workers' Compensation
Old Republic	General Liability
Allied World, Endurance, Ironshore, American Fire & Casualty	Excess Liability

Additional Coverages

INSURANCE COMPANIES	POLICIES
Liberty Mutual	Builders' Risk
Ironshore Specialty	Pollution

3.0 PROJECT DEFINITIONS

The following definitions apply to this project and to the descriptions of the Project Coverage used in this manual:

Approved Off-Site Locations:

Storage yards or staging areas used solely in connection with performing work at the Project Site. All locations must be approved by the Sponsor and insurer.

Certificate of Insurance:

A Document providing evidence of the existence of coverage for a particular insurance policy or policies.

Contract:

A written agreement between the Sponsor and the Contractor for specific work and also includes an agreement between a Subcontractor and any tier of Subcontractor.

Contractor Claims Obligation:

The amount Contractors of every tier are responsible for paying as their contribution for settlement of an insured loss.

Employer:

Any individual, firm, or corporation that provides direct construction labor for work performed at the Project Site.

Enrolled:

Applies to those eligible Contractors, Subcontractors, and Sub-Subcontractors that have submitted all necessary enrollment forms and have been accepted into the OCIP as evidenced by a Certificate of Insurance. *Also described in this manual as a Participating Contractor.*

Ineligible:

Applies to Contractors of any tier excluded from participation in the OCIP, including those involved in loading, transporting, and unloading materials, personnel, parts, or equipment, or any other items to, from or within the Site. *Also described in this manual as an Excluded Contractor.*

Insured:

The Sponsor, Participating Contractors, and any other party so named in the insurance policy.

Insurer:

The insurance company named on a policy or certificate of insurance that provided coverage for the OCIP.

Participating Contractor: *See Enrolled*

Project Site:

Project Site shall mean those areas designated in writing by Sponsor for performance of the Work and such additional areas as may be designated in writing by Sponsor for Contractors use in performance of the Work. Subject to notification and other requirements for off-site locations, the term Site shall also include (a) field office sites, (b) property used for bonded storage of material for the Project approved by Sponsor, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by Contractors covered by the workers' compensation policy included in the OCIP, but excluding any permanent locations of Contractors.

Sponsor:

City of San Jose

Work:

Operations as fully described in the Contract, performed at, or emanating directly from the Project Site. Also, the entire completed construction or the various separately identifiable parts required to be furnished under the Contract documents.

4.0 CONTRACTOR RESPONSIBILITIES

Contractors of any tier are required to cooperate fully with the Sponsor and its OCIP Administrator in all aspects of OCIP operation and administration. All Contractors of any tier will be required to provide information necessary to bind coverage under the OCIP on a “per contract” basis. Responsibilities of the Contractor include:

- Identifying the cost of insurance which is excluded from their bid as appropriate; submits the Contractors Insurance Cost Worksheet (Form B) at the time of OCIP enrollment
- Completion of all OCIP enrollment forms
- Include the OCIP provisions in all subcontracts as appropriate
- Notifying the OCIP Administrator of all subcontracts awarded and to provide all necessary enrollment forms
- Notifying the OCIP Administrator of all lower tier subcontracts awarded by providing the Notice of Award Form (Form F) and ensuring eligible lower tier subcontractors enroll in the OCIP
- Maintaining and reporting monthly payroll records
- Cooperating with the OCIP Administrator’s requests for information
- Complying with insurance, claim, and safety procedures
- Paying Contractor Claims Obligation within 10 Business Days of notification from Sponsor
- Notifying the OCIP Administrator immediately of any insurance cancellation or non-renewal (contractor-required insurance)
- Complying with any Return to Work Program requirements

4.1 Alliant WrapX

Alliant WrapX (WrapX) is a proprietary Risk Management Information System (RMIS). All relevant OCIP information will be captured and stored online in a “paperless” format through WrapX. Information to be stored includes award notifications, enrollment information, OCIP

payroll, and notice of work completions for all contractors on a per contract basis. Alliant Insurance will provide all OCIP Eligible Contractors a project welcome letter detailing instructions for utilizing the WrapX contractor portal upon receipt of a Notice of Award for the awarded contractor.

Submission of all OCIP related documents should be sent by e-mail to: alliantwrapx@alliantinsurance.com

If you should have any questions or require additional information about this process or other matters related to the OCIP, please contact your OCIP Administrator identified in Section 2: Project Directory of this Manual.

4.2 Contractor Bids

Each bidder is required to **exclude from the bid/contract price** its normal cost for the insurance coverages provided by the OCIP. Contractors of any tier shall submit an Insurance Cost Worksheet (see Section 8) to the OCIP Administrator, which will identify the estimated Cost of OCIP Coverages. Insurance Cost Worksheet will be due during the OCIP enrollment process, following contract award.

The “Cost of OCIP Coverages” is defined as the amount of Contractors’ reduction in insurance costs due to eligibility for OCIP Coverages, as determined by using the Alliant WrapX system which includes the Enrollment Form and the Insurance Cost Worksheet. Instructions for access to Alliant WrapX are located in Section 8 of this Insurance Manual. The Cost of OCIP Coverages includes reduction in insurance premiums, related taxes and assessments, markup on the insurance premiums and losses retained through the use of the self-funded program, self-insured retention, or deductible program. The Cost of OCIP Coverages must include expected losses within any retained risk.

Contractor must deduct the Cost of OCIP Coverages for all lower tier subcontractors, in addition to its own Cost of OCIP Coverages. If, upon verification by the OCIP Administrator, it is found by the Sponsor that the Cost of OCIP Coverages were not excluded from the contract, a deductive change order will be issued to remove these costs.

Upon award of a contract, Contractor will receive access to the OCIP Administrator’s website, for online data submission. (see instructions in Section 8) Contractor shall submit their Insurance Cost Worksheet online, including copies of their Workers’ Compensation, General Liability and Excess Umbrella rate and declaration pages. Contractor must include any

deductible or Self Insured retention (SIR) amounts for Costs of OCIP Coverage verification purposes.

In the event the Sponsor elects not to include a Contractor of any tier's work under the OCIP, the standard terms and conditions regarding insurance listed in the Contract Document will then apply. The OCIP Administrator will advise a Contractor of any tier, which has submitted an enrollment form, if excluded from the OCIP.

Contractor shall cooperate fully with the OCIP Administrator in providing the necessary insurance data and information as required in the bid specifications and associated documents furnished by the Sponsor and/or OCIP Administrator as and when required during the duration of the project or until Sponsor-furnished insurance coverages are terminated.

4.3 Enrollment

Enrollment in the OCIP is required but not automatic. Eligible Contractors must complete the enrollment form online (see instructions in Section 8), and participate in the enrollment process for the OCIP coverage to apply. Access to the project site will not be permitted until the enrollment is complete.

Each Contractor of any tier shall provide details about its lower tier subcontractors via the Notice of Contract Award Form F (contained in Section 8). This form must be completed and submitted to the OCIP Administrator prior to mobilization. Each Contractor is responsible to complete their Enrollment online to obtain coverage under the OCIP.

A separate online Enrollment and Contractor's Insurance Cost Work Sheet is required for each Contract which you are performing Work; however, only one Workers' Compensation policy will be issued for your firm.

4.4 Assignment of Return Premiums

The Sponsor will pay the cost of the OCIP insurance coverage. The Sponsor will be the sole recipient of any return OCIP premiums or dividends. All Participating Contractors shall assign to Sponsor all adjustments, refunds, premium discounts, dividends, credits, or any other monies due from the OCIP insurers.

4.5 Payroll Reports

Each Participating Contractor must submit a Monthly Payroll Report online identifying man-hours and payroll for all work performed at the Project Site on a "per contract" basis to the

OCIP Administrator. This information will be used to provide the insurance company with the information required to determine the premium for the OCIP.

The monthly man-hour reports shall certify all Work performed at or emanating directly from the Project Site, including supervisory and clerical personnel on site.

Payroll shall be unburdened and allocated by Workers' Compensation Classification(s), and shall exclude the excess or premium paid for overtime (i.e., only the straight time rate shall apply to overtime hours worked). Furthermore, such records shall limit the payroll for Owners and Executive Officers as stated in manual rules.

A Separate Monthly Payroll is required for each Contract for Work you are performing.

4.6 Insurance Company Payroll Audit

Each Participating Contractor is required to maintain payroll records for the Project Site in accordance with the Basic Manual of Rules, Classifications, and Experience Rating Plan for Workers' Compensation and Employers Liability Insurance. Each Participating Contractor is required to participate in any audit conducted by the insurers for the OCIP, the OCIP Administrator, Sponsor, external or internal auditors of Sponsor, the State and to cooperate with the auditor(s) conducting such audit.

4.7 Completion of Work

When a Participating Contractor has completed its work, each Participating Contractor shall complete a Notice of Work Completion online and submit it to the OCIP Administrator. The Sponsor will not release final payment until all required data has been submitted to and approved by the OCIP Administrator. It is the upper-tier Contractor's responsibility to assure that each of their lower-tier subcontractors completes this form. This form must be completed separately for each contract.

Any Contractor Claims Obligation that Contractors of any tier are responsible for will be considered at the time of the Contract close-out unless the actual cost of the claim has been established and considered prior to close-out.

4.8 Approved Off-Site Locations

The Contractor is responsible, on behalf of itself or its lower tier subcontractors or sub-subcontractors, for applying for approval to have off-site locations covered by the OCIP. The Contractor, prior to the use of the site, shall notify the OCIP Administrator of the need and

shall request approval of the site. The request should include the location address, description of the site, intended use, and the duration of the work to be performed at the site. The off-site location must be dedicated 100 % to the Project. The OCIP Administrator will notify the Contractor in writing if and when the off-site location is approved by the OCIP Insurer. Contractor shall not assume OCIP coverage is provided for the off-site location until Contractor has received written confirmation from the OCIP Administrator.

4.9 Safety

Contractors of any tier are required to establish a written safety program and to provide a full-time qualified Safety Manager or designated competent safety representative who shall be onsite when any work is in progress. Non-compliance with Project Loss Control Requirements could be considered to be the same as non-compliance with another contractual condition. Minimum standards for Contractor programs are outlined in the Project Safety Manual.

The Sponsor or its loss control representatives will have the right to "Stop Work" when serious defective conditions, unsafe work activities, or life threatening hazards are identified. In accordance with contract requirements, if deemed necessary, the Sponsor may remove any contractor and/or contractor employees that blatantly violate these requirements. The Sponsor, at its discretion, will designate an individual to act on its behalf, in all matters relating to work site safety and health.

4.10 Claims Reporting

Please refer to section 7 of this Manual.

4.11 Change Order Procedures

All change orders submitted by Contractor of any tier will be priced to exclude their normal cost of insurance for the coverage(s) that are provided by the OCIP. The final adjustment will take into account all insurance charges associated with any approved change orders. The Sponsor reserves the right to adjust the initial insurance deductive change order for any significant change orders.

5.0 INSURANCE COVERAGE

5.1 Covered Parties

Contractors of any tier must enroll in the OCIP before coverage is available to them for any loss. No Contractor of any tier shall begin work on site until they have properly enrolled in the OCIP. All insurance, underwriting, payroll, rating or loss history information (including evidence of other insurance required under Section 5 requested by the Administrator) must be provided to the Administrator by Contractor of any tier within five (5) working days of the request. *A Contractor of any tier shall not be deemed to be a Participating Contractor and shall not be permitted to work on the project until enrolled in the OCIP by the Administrator. Enrollment will be established only upon issuance by the Administrator of a OCIP Certificate of Insurance to the Participating Contractor.* Every Participating Contractor shall, at all times during and after the Project, cooperate with the Sponsor, the Administrator, and the OCIP insurers and adjusters concerning matters relating to the OCIP.

5.2 Parties Not Covered

Contractors of any tier who will not be included in participation in the OCIP (Nonparticipating Contractors) shall include all vendors, suppliers, truckers, material dealers, and delivery services companies- regardless of contract size. Nonparticipating Contractors shall not be permitted to work on the Project until they have provided to the OCIP Administrator evidence of their compliance with the insurance requirements as outlined in the Contract document.

5.3 Exclusion of Contractors from the OCIP

The Sponsor has the exclusive right to exclude other Contractors of any tier from participating in the OCIP. Such Nonparticipating Contractors, who will not be covered under the OCIP, must comply with the insurance requirements as outlined in the Contract document.

5.4 Evidence of OCIP Coverage

Each Participating Contractor will be issued an individual Workers' Compensation policy including Employer's Liability coverage. The OCIP Administrator will also provide a Certificate of Insurance evidencing General Liability, and Excess Liability insurance to each Participating Contractor, each of whom will be a named insured on the policy. Other documentation including forms, posting notices, if any, will be furnished to each Participating Contractor. A complete copy of the policy will be furnished to an authorized representative of each Participating Contractor upon written request.

5.5 Description of Insurance Coverages

The following coverage is provided by the OCIP:

- Commercial General/ Excess Liability
- Workers' Compensation and Employer's Liability

The following additional coverages are provided outside of the OCIP:

- Builders' Risk
- Pollution Liability Insurance

Non-Workers' Comp Insurance Policies: Master policies will be endorsed to include the Sponsor and any of their affiliates, or subsidiary companies or corporations, as well as the Contractors enrolled in the OCIP as a Named Insured.

The following coverage summaries are provided for informational purposes only. The actual terms and conditions of the coverage provided are contained in the insurance policies under the OCIP, and the Sponsor and others shall not rely upon this summary in lieu of the policies themselves. Copies of the policies will be made available to all potential Participating Contractors upon written request.

5.5.1 Workers' Compensation and Employer's Liability Insurance

Workers' Compensation and Employer's Liability

Part One:	Workers' Compensation	Statutory Limit
Part Two:	<u>Employer's Liability</u>	<u>Annual Limits Per Insured</u>
	Bodily Injury by Accident, each accident	\$1,000,000
	Bodily Injury by Disease, each employee	\$1,000,000
	Bodily Injury by Disease, policy limit	\$1,000,000

Each Enrolled Contractor will be issued a separate workers' compensation policy

5.5.2 Commercial General Liability Insurance

	Limits of Liability Shared by All Insureds for All Projects
General Aggregate (Reinstates Annually)	\$ 4,000,000
Products/ Completed Operations Aggregate	\$ 4,000,000
Personal/ Advertising Injury	\$ 2,000,000
Each Occurrence Limit	\$ 2,000,000
Fire Damage Legal Liability (any one fire)	\$ 100,000
Medical Payments (any one person)	\$ 10,000
Products/Completed Operations Tail	10 years/Statute of Limitation
Deductible	Paid for by Sponsor

The deductible will apply only to loss covered by insurance policies in the OCIP. The deductible does not impose upon the Sponsor any duties of an insurer toward Participating Contractor. A Single General Liability policy will be issued covering all insureds.

5.5.3 Excess Liability Insurance

	Limits of Liability Shared by All Insureds for All Projects
Each Occurrence Limit	\$100,000,000
Annual General Aggregate Limit	\$100,000,000
Follow Form Excess Policy	

5.5.4 Builders' Risk Insurance

The Sponsor shall obtain and maintain in force during the term of this Agreement, a Builders' Risk Insurance policy or policies separate from the OCIP, which shall insure against all risks of physical loss and/ or damage including flood and excluding earthquake, subject to normal policy exclusions, to all buildings, structures, materials, and real property on site, which are intended to be, or have already been incorporated into and forming part of the Project, whether or not such buildings, structures, materials, or real property will have been supplied or made available to Contractors by Sponsor.

The Builders' Risk policy shall be endorsed to add Contractors of any tier as additional named insureds', as their interests may appear and to waive the carrier's right of recovery under subrogation against City of San Jose and all other Contractors of any tier whose interests are insured under such policy.

Unless required otherwise by Sponsor, claims under Builders' Risk insurance provided are subject to a Contractor Claims Obligation of five thousand dollars (\$5,000) per occurrence. If a claim results from any construction activity, the responsible Contractor, Subcontractor, or Sub-Subcontractor shall pay the Contractor Claims Obligation up to \$5,000. All Builders' Risk

losses will be adjusted with and payable to the Sponsor or the Designee for the benefit of all parties as their interest may appear.

The Sponsor shall not be responsible for loss or damage to, or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tool or personal effects, owned or rented to or in the care, custody, and control of a Contractor of any tier.

5.5.5 Pollution Liability Insurance

a.	Insurer:	Ironshore Specialty
b.	Terms of Insurance:	7/30/17 – 3/20/2023
c.	Policy Limits:	\$10,000,000 Per Occurrence \$10,000,000 Aggregate
d.	Policy Form:	Pollution Liability-Occurrence Based
e.	Coverage Extension:	- Microbial Matter Coverage Endorsement - Wrap-Up Endorsement - Products Completed Operations Extension - 10 Years
f.	Premium Payments	By Sponsor
g.	Deductibles/ SIR	By Sponsor

5.6 OCIP Termination or Modification

The Sponsor reserves the right to terminate or modify the OCIP or any portion thereof. If the Sponsor exercises this right, Contractors will be provided notice as required by the terms of their individual contracts. At its option, Sponsor may procure alternate coverage or may require the Contractors to procure and maintain alternate insurance coverage.

6.0 CONTRACTOR REQUIRED COVERAGE

Contractors of any tier are required to maintain insurance coverage that protects the Sponsor from liabilities arising from the Contractor of any tier's operations performed away from the project site, for types of coverage not provided by the OCIP, and for operations performed in connection with excluded parties operating under Contractor or any tier's operations control or direction.

Verification of insurance shall be submitted in the form of a Certificate of Insurance on a standard ACORD Form 25-S and the required and applicable endorsements to the listed policies. A sample of an acceptable Certificate of Insurance and other documentation is provided in the Appendix.

Contractors are responsible for monitoring their lower tier subcontractors insurance documents, whether enrolled or excluded. Sponsor reserves the right to disapprove the use of Contractors and their lower tier subcontractors unable to meet the insurance requirements. Certificates evidencing compliance shall be submitted to Sponsor.

The limits of liability shown for the insurance required of the Contractor is not intended to restrict the liability imposed on the Contractors for Work performed under their Contract or any indemnification provisions in Contract.

At Contractors sole cost and as shall be included in any proposals, Contractors of any tier agree to obtain and maintain during the life of this contract the following minimum insurance requirements:

6.1 Workers' Compensation

All Participating Contractors shall maintain Workers' Compensation Insurance applicable to all employees and subcontractors hired by the insured, who are not covered under the OCIP workers' compensation policy. The insurance shall provide limits as follows:

Workers' Compensation and Employer's Liability

Part One:	Workers' Compensation	Statutory Limit
Part Two:	Employer's Liability	Annual Limits Per Insured
	Bodily Injury by Accident, each accident	\$1,000,000
	Bodily Injury by Disease, each employee	\$1,000,000
	Bodily Injury by Disease, policy limit	\$1,000,000

Enrolled Contractors shall provide evidence of workers' compensation applicable to "off-site" activities. **Excluded Contractors** shall provide evidence of workers compensation applicable to "on-site" and "off-site" activities.

A certificate of insurance evidencing this coverage shall be provided to the Sponsor.

6.2 General Liability

This insurance shall include coverage for bodily injury, property damage, and personal injury with no less than the following limits:

General Liability and/or Excess Liability

	Enrolled Parties	Excluded Parties
General Aggregate	\$ 2,000,000	\$ 2,000,000
Products/ Completed Operations Aggregate	\$ 2,000,000	\$ 2,000,000
Personal/ Advertising Injury	\$ 1,000,000	\$ 4,000,000
Each Occurrence Limit	\$ 1,000,000	\$ 4,000,000

Enrolled Contractors shall provide evidence of general liability insurance for “off-site” activities.
Excluded Contractors shall provide evidence of general liability insurance applicable to “on-site” and “off-site” activities.

A certificate of insurance evidencing this coverage shall be provided to the Sponsor. This insurance shall be endorsed to name Sponsor as additional insureds and evidence of such status via additional insured endorsement(s).

6.3 Business Auto Liability

Contractors of every tier will maintain at their own expense Automobile Liability Insurance covering the operations, maintenance, use and loading and unloading of all owned, non-owned, and hired vehicles. As such, all Contractors of any tier shall furnish to the Sponsor a Certificate of Insurance showing such coverage with the following minimum limits of liability. This insurance shall be endorsed to name Sponsor as additional insureds and evidenced of such status via additional insured endorsement(s):

Business Auto Liability

Combined Single Limit: Bodily Injury and/or Property Damage	\$1,000,000
---	-------------

All Contractors shall provide evidence of automobile liability. The OCIP does not cover automobile liability.

6.4 Construction Equipment Insurance

Any policies maintained by the Participating Contractors on their owned and/or rented equipment and materials shall contain a provision requiring the insurance carriers to waive

their rights of subrogation against the Sponsor and all other indemnities named in their contract documents. The OCIP does not cover contractor's property.

6.5 Professional Liability Insurance (Errors & Omissions)

In the event any contract specifications requires a Participating Contractor, including any professional service provider, to perform professional services, such as, but not limited to, architectural, engineering, construction management, surveying, design, etc., a certificate of insurance must be provided to the [SPONSOR] prior to commencing work:

Professional Liability

Each Claim	\$ 1,000,000
Aggregate	\$ 1,000,000

Change in limits, coverage, or loss of aggregate limit due to outstanding claims must be reported to the Sponsor within thirty (30) days of any such event. ***The OCIP does not provide Professional Liability insurance.***

6.6 Aviation Insurance

In the event any fixed or rotary aircraft are used in connection with this Agreement and/or execution of the work, a minimum of five million (\$5,000,000) of aviation liability insurance must be maintained with the following requirements:

- a) The Sponsor must be named as an "additional insured" and a waiver of hull damage must be provided in favor of the Sponsor.
- b) Also, if any aircraft is to be used to perform lifts at the project site, a "slung cargo" endorsement must be included to cover the full replacement value of any equipment or material being lifted. All such lifts must be coordinated with the Sponsor for approval prior to lift execution.

The OCIP does not provide Aviation insurance.

6.7 Pollution Liability

If this Agreement involves the removal / hauling of waste or hazardous materials, the removal/replacement of underground tanks, or use of toxic chemicals and substances, the Contractor will be required to provide coverage no less than the following limits, for such exposures subject requirements and approval of the Sponsor:

Pollution Liability

Each Claim/Per Occurrence	\$ 5,000,000
Aggregate	\$ 5,000,000

6.8 Conditions of Understanding

The amount and types of insurance coverage required herein shall not be construed to be a limitation of the liability on the part of the Sponsor, Participating Contractors, Nonparticipating Contractors, or any lower-tier Subcontractors. Any type of insurance, or any greater limits of liability than described above, which the Contractor requires for their own protection or on account of statute, shall be the Contractor's own responsibility and at its own expense. The carrying of the insurance described shall in no way be interpreted as relieving a Contractor of any tier, whether Participating or Non-Participating, of any responsibility of liability under this Contract.

6.9 Other Insurance Required of All Contractors

Participating Contractor shall file certificates of such insurance with the Sponsor, which shall be subject to the Sponsor's approval for adequacy of protection, including the satisfactory character of any Insurer. If requested by the Sponsor, a certified copy of the actual policy(s) with the appropriate endorsement(s) and other documents shall be provided to the Sponsor.

Contractor shall immediately provide written notice to the Sponsor of any notice of cancellation, notice of non-renewal, or any other material modification of the insurance coverages required to be provided by the Contractor.

In the event of failure of any tier to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the Sponsor shall have the right to take out and maintain same coverage for all parties on behalf of the Contractor of any tier who also agrees to furnish all necessary information thereof and to pay the cost thereof to the Sponsor immediately upon presentation of a premium invoice.

7.0 CLAIM PROCEDURES

This section describes the basic procedures for reporting various types of claims. A claim kit will be provided to all Participating Contractors. It will include details about claim reporting and is intended for use at the job site.

7.1 Workers' Compensation Claims

The main responsibility for any Contractor is first to see that the injured worker receives immediate medical care. Next, you should notify the on-site Contractor's Safety Supervisor immediately in the event of a serious injury or accident.

An Employers First Report of Injury (Form 5020) must be completed and submitted to the on-site safety representative and the OCIP Administrator, along with the DWC-1 (Employee's Claim) and the Supervisors Report of Injury Form.

The employer of the injured employee must report all Workers Compensation claims to the OCIP insurer within 24 hours of the event.

The Sponsor and their insurer will arrange with preferred medical providers for treatment of all minor or non-life threatening injuries. A list of the providers will be provided to all Participating Contractors.

Participating Contractors must designate a representative at the site to take injured employees to the medical center, and to report the claim. This individual should remain with the injured employee at the center while he/she is being treated. The treating physician should provide a written description of whether or not the injured worker can return to work, a list of restrictions, if any, and the estimated length of time he/she will stay on modified duty.

Participating Contractors must report all Workers Compensation injuries as applicable to their employees to the OCIP insurer as soon as is practical within 24 hours of the incident. Contractor shall ensure that it or any of its subcontractors comply with any return to work policy requirements.

7.2 General Liability Claims

Accidents at or around the job site resulting in damage to property of others (other than the Work itself), or personal injury or death to a member of the public, must be reported immediately to the on-site Contractor's Safety Supervisor. A General Liability Loss Notice (Accord Form 3) shall be completed and delivered within 24 hours to the OCIP Administrator.

Contractors shall not voluntarily admit liability and shall cooperate with the Sponsor or insurer representatives in the accident investigation.

If your firm receives notice of a claim, or forthcoming lawsuit, or is served with a lawsuit arising out of your involvement with this project, please forward a copy of the documentation to the OCIP Administrator (See Section 2.0: Project Directory for Contact Information)

7.3 Property Claims

Immediately report any damages to your Work or the Work of any other Contractor to the on-site Contractor's Safety Supervisor. In addition, complete the Property Loss Notice (Accord Form 1) and submit it to the OCIP Administrator within five days of the occurrence.

7.4 Automobile Claims

No coverage is provided for automobile accidents under the OCIP. It is the sole responsibility of each Contractor to report accidents involving their automobiles to their own insurers.

In addition to reporting the claim to its own insurer, each Contractor shall report all accidents occurring in or around the job site to the on-site Contractor's Safety Supervisor. These accidents will be investigated with regard to any liability arising out of the Project construction activities that could result in future claims. Each Contractor shall cooperate in the investigation of all automobile accidents.

8.0 APPENDIX

- **Enrollment:** Alliant WrapX Online Enrollment Instructions
- **Insurance Cost Worksheet**
- **Monthly On-Site Payroll Report** – ONLINE SUBMISSION REQUIRED
- **Notice of Work Termination**
- **Notice of Contract Award**

Alliant WrapX Enrollment Process

- Enrollment into the project will be completed online.
- You will receive access to the online system: Alliant WrapX, within three days after Alliant has been notified of your awarded contract.
- Please contact the Wrap Administrator if you have not been given a login ID and Password
- Link to the Contractor Portal: <https://alliantwrapx.alliantinsurance.com/ContractorPortal>
- After logging into the system, find your newly awarded contract under the Awarded Contracts window.

Project	Contract#	Enrollment Status
VUE Project	Test-000	Complete Enrollment
BBQ-test	Test-Con2	Complete Enrollment
CSSI Test Project	TP1001-001-001	Complete Enrollment

- Click on Complete Enrollment to begin the process
- The enrollment wizard will start on the Review page. Any section that is not compliant will be listed in **Red**. Click Edit to begin updating that section, and continue through the enrollment wizard by clicking Next

Home

Review

Contract Information [Edit](#)

- Contract description is required.

Project CSSI Test Project

Parent Contractor New Alpha Contractor - Test

Contract # TP1001-001-001

Contract Status Incomplete

Contract Start Date 08/01/2011

Contract End Date 12/31/2012

Contract Value \$3,000,000.00

Contract Description

Address Information [Edit](#)

Address Type	Address Line 1	Address Line 2	City	State	ZipCode	Primary
Administrator	Office Address	A102	CA	CA	44100	✓

- Please see the required information listed below so you can have all the information ready when you are attempting to enroll.

Required Information for Online Enrollment

1	Contractor name	May include type of company: Corporation, LLC, etc...
2	Parent contractor name	Name of company you are contracted with
3	Contractor Federal ID Number	Check Alliant data and update
4	Start Date at project site	Day physical work starts at jobsite
5	Estimated completion date	Can be an estimate
6	Contract Value	
7	Contract Description	Scope of work
8	Contractor Address	Physical address of office. Any P.O. Box should be entered under Mailing address
9	Contractor Main Phone and Fax numbers	
10	Contractor Primary Contact Name	
11	Contact position	
12	Contact phone and fax numbers, and email address	Email is preferred method for communication
13	Contractor Payroll Contact Name	Can be the same as the Primary Contact
14	Payroll Contact phone and fax numbers, and email address	Email is preferred method for communication
15	Workers' Compensation Class Codes to be used on job	Can be found in your company WC rate pages
16	Estimated Man hours and Payroll	Required for enrollment
17	Risk ID #	Also called Rating Board file #
18	Rating Bureau	NCCI or WCRIB or similar name
19	Experience Modifier (EMR)	Can be found in your company WC rate pages
20	WC Offsite Carrier	Corporate WC carrier name
21	WC Offsite Policy #	Corporate WC policy number
22	WC effective date	Corporate WC effective date
23	Policy Expiration Date	Corporate WC expiration date
24	If any work is being subcontracted out, please include information about subcontractors so enrollment can be started for each contractor	At a minimum: Contractor name; estimated start date; contact name, email and phone number; and contract value for subcontracted work.

FORM - A
CONTRACTOR ENROLLMENT FORM

Section I

Company Name:		Address:	
Main Phone#:		Main Fax#:	
Federal ID#:		Company Entity Type (Circle): Corporation Partnership Sole Proprietor Limited Partnership JV LLC LLP other	
Primary Contact Name:	Primary Contact Phone#:	Primary Contact Email:	
Primary Contact Name:	Primary Contact Phone#:	Primary Contact Email:	
Work Description		Project Location/Project Name:	
Estimated Start Date:		Estimated Completion Date:	
Who are you contracted with?		Contract Value	
Are you subcontracting out any work		<input type="checkbox"/> Yes*	<input type="checkbox"/> No

Section II

Your Workers' Comp Carrier:				
WC Policy #:		Eff Date:		Exp Date:
Rating Board File#:				
Rating Date:			Experience Modifier:	
State	WC Class Code	Description	Est. Manhours	Est. Payroll
Totals				

Insurance Agent/Broker Information:

Agency Name:	Phone:
Contact:	Fax:
Email:	

Note: City of San Jose reserves the right to determine who participates in the Wrap-Up Insurance Program. I agree that the following insurance charges will be added to my base bid if I am excluded from the Wrap-Up.

*Note: Please complete a Notice of Subcontractor Award, for each of your subcontractors. All contractors MUST complete forms A and B in order for them to commence work on site. ENROLLMENT IS NOT AUTOMATIC.

Signature: _____ Date: _____

Name: _____ Title: _____

FORM - B
INSURANCE COST WORKSHEET

Section I

Contract/Bid Information

Contractor Name:	Alliant Assigned Contract #
Gross Contract Value(including insurance cost): \$	Net Contract Value(excluding insurance Cost): \$
Estimated On Site Payroll: (Auto-fill from Section II) \$	Estimated Work Hours: (Auto-fill from Section II)

Section II

Calculate your insurance premium.

WC Trade Classification	WC Class Code	Work Hours	Estimated Payrolls	Current WC Rate	Premium = Est. Payrolls x WC Rate
			\$		\$
			\$		\$
			\$		\$
			\$		\$
			\$		\$

Attach separate worksheet if more codes apply.

* Use Project Site Payroll only to calculate Total Insurance cost.

	Total Manual Premium	\$	
	x Experience Mod		
	= Modified Premium	\$	
Description	Rate	Modified \$	Running Total
	+ or -	\$	\$
	+ or -	\$	\$
	+ or -	\$	\$
	+ or -	\$	\$
= Total WC Premium			\$
WC Premium Rate (Cost/Payroll)			\$

General Liability Do you have a Large Deductible Program? Yes

Current Rate	Factor 100/1000	Payroll OR Receipts	Premium
		\$	\$
Deductible Amount:	\$		

Excess Liability Is your Excess coverage Non-auditable (Flat)? Yes

Current Rate	Factor 100/1000	Payroll OR Receipts	Premium
		\$	\$

Your O & P % (Overhead and Profit Percentage)	%	\$
TOTAL INSURANCE COST		\$
Insurance Rate (Cost/Payroll)		\$

I hereby warrant that this worksheet reflects the projected insurance cost that would apply in the event that my regular insurance program was in force at this location. I also recognize that the Sponsor or their Representative - Wrap-Up Administrator, Alliant may request copies of my actual policies to confirm these costs.

*Attach your applicable WC, GL and XS rate pages for rate verification.

Signature: _____ Date: _____

FORM - D MONTHLY ON-SITE PAYROLL REPORT

THIS REPORT MUST BE SUBMITTED TO ALLIANT INSURANCE SERVICES ON A MONTHLY BASIS

Report#: _____ Month Ending: _____

Check if this is your First Payroll report. Check if payroll is \$0 for the month.

Contractor Name:	Contract#
------------------	-----------

Name of Project:

Complete a separate form for each contract.

Workers' Compensation Class Code	Work Description	Number of Employees	Total Monthly Man Hours	Reportable Payroll*
TOTAL				

Check if this is your Last Payroll Report. Complete Form E, Notice of Work Completion and send with this payroll report.

I certify that the above information is correct.	
Signature: _____	Date: _____
Name: _____	Title: _____

Do not include overtime wages, use straight time wage rates only. No fringe benefits, sick time or holiday pay.

Please return by Email, Fax or Mail to:

Katie Gatti
Alliant Insurance Services
701 B St. 6th Floor
San Diego, CA 92101

Email: Katie.Gatti@alliant.com
Fax: 619-699-2111
Phone: 619-849-3896

FORM - E NOTICE OF WORK TERMINATION FORM

Company Name:	Address:
Contact for Audit:	Federal ID#:
Name of Project:	
First Day on Site:	Last Day on Site:
Final Total Payroll:	Original Contract Value:
Change Order Amount:	Final Contract Value (including change orders):

Complete for all subcontractors

Subcontractor Name	Completion Date	Final Contracting Value (including change orders)
		\$
		\$
		\$
		\$

We hereby verify that all contract work, including the work of subcontractors, has been completed and all on-site payrolls have been submitted.	
Signature: _____	Date: _____
Print Name: _____	

TO BE SUBMITTED TO CONTRACTOR FOR COMPLETION:

The above referenced contractor has completed their work at the project site under their contract without firm on the above date.	
General Contractor: _____	
Signature: _____	Date: _____

As per your contract, your final payment may not be released until all payroll has been submitted and payroll audits are performed, including your subcontractor's work of every tier.

Please return by Email, Fax or Mail to:

Katie Gatti
Alliant Insurance Services
 701 B St. 6th Floor
 San Diego, CA 92101

Email: Katie.Gatti@alliant.com
Fax: 619-699-2111
Phone: 619-849-3896

FORM F: NOTICE OF SUBCONTRACT AWARD

SUBCONTRACTOR MAKING AWARD:		Alliant Assigned Contract #
BY:	TITLE:	
PHONE:	FAX:	
EMAIL ADDRESS:	DATE:	

WE HAVE AWARDED A SUBCONTRACT AS FOLLOWS:	
SUBCONTRACTOR NAME:	
ESTIMATED PROJECT START DATE:	CONTRACT VALUE:
SCOPE OF WORK	
SUBCONTRACTOR ADDRESS:	
CONTACT NAME:	EMAIL ADDRESS:
PHONE:	FAX:

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APPENDIX 13
KEY PERSONNEL AND APPROVED SUBCONTRACTORS

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APPENDIX 13

KEY PERSONNEL AND APPROVED SUBCONTRACTORS

13.1 PURPOSE

The purpose of this Appendix is to identify (1) the key management and supervisory personnel proposed to be used by the Design-Builder in performing the Contract Services and (2) those Subcontractors that the City has approved for use by the Design-Builder in performing the Contract Services.

13.2 KEY PERSONNEL

As referenced in Section 7.1 (Management) of this Design-Build Contract, certain key management and supervisory personnel were proposed by the Design-Builder and shall be used by the Design-Builder in connection with the performance of the Contract Services (the “Key Personnel”). The Key Personnel and their primary responsibilities are identified in Attachment 13A to this Appendix. Any change in the Key Personnel shall be subject to review and approval of the City in accordance with Section 7.1 (Management).

13.3 SUBCONTRACTORS

13.3.1 Required Subcontractors.

As provided in Section 7.4(J) (Required Subcontractor) of this Design-Build Contract, the Subcontractors with whom the City requires the Design-Builder to enter into a Subcontract for the performance of certain aspects of the Design-Build Work are the following: **[Note: To be completed on the Definitive Contract Amendment Date.]**

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]
3.	[Insert Name/Entity]	[Insert Role]

13.3.2 Approved Subcontractors.

As of the Contract Date, there are no Approved Subcontractors. Potential Subcontractors shall be proposed by the Design-Builder and approved by the City for any Early Work Packages and for the balance of the Design-Build Work in accordance with Section 5.8 (Early Work Packages), Section 7.4 (Self-Performance and Subcontractor Selection), and Attachment 13C (Subcontracting Plan) to this Appendix 13. **[Note: The names and roles of all Approved Subcontractors as of the Definitive Contract Amendment Date shall be reflected in the table below as part of the Definitive Contract Amendment.]** Approved Subcontractors

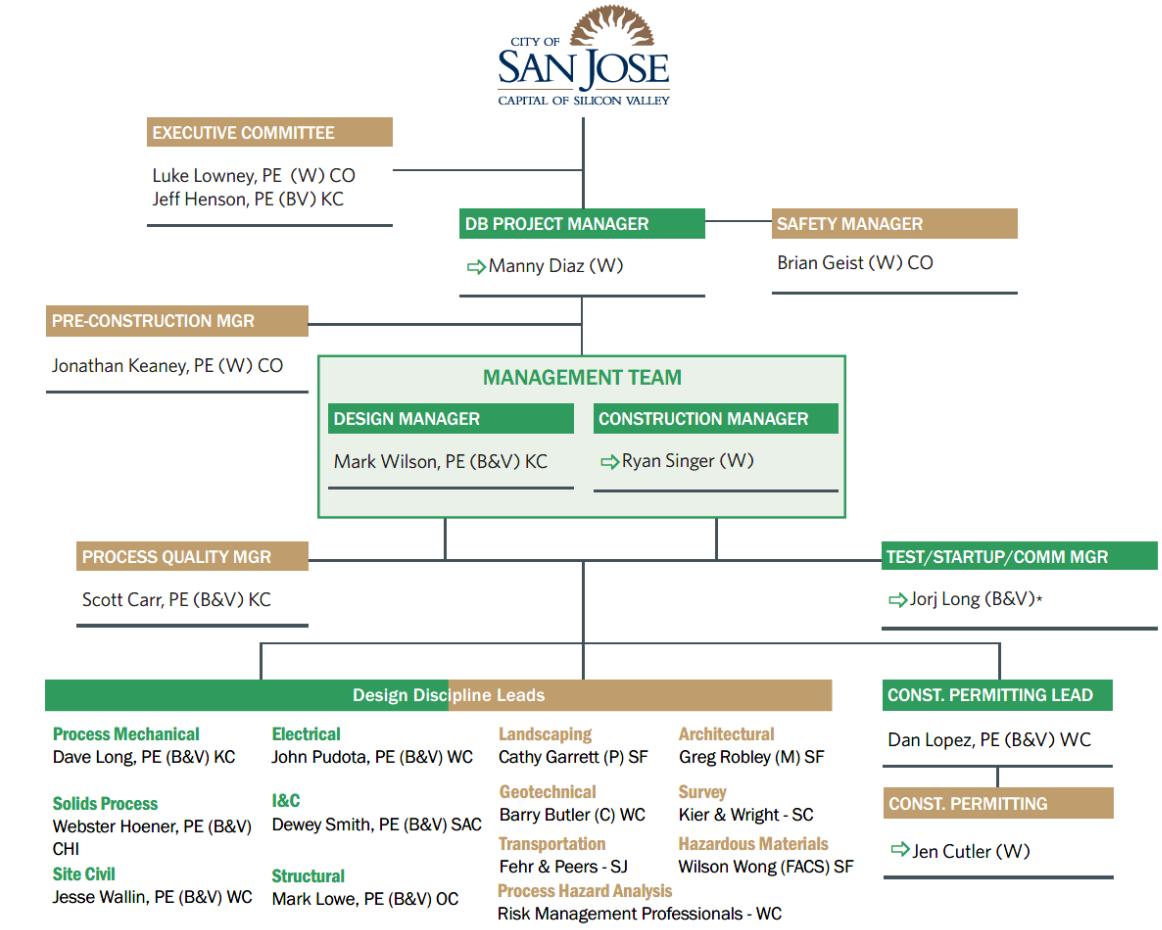
proposed by the Design-Builder and approved by the City after the Definitive Contract Amendment Date shall be reflected in a Contract Administration Memorandum.

	Subcontractor	Role
1.	[Insert Name/Entity]	[Insert Role]
2.	[Insert Name/Entity]	[Insert Role]
3.	[Insert Name/Entity]	[Insert Role]

ATTACHMENT 13A
KEY PERSONNEL CHART

ATTACHMENT 13A

KEY PERSONNEL CHART



Green = Key Personnel

* Grade V Operator
 (W) Walsh
 (B&V) Black and Veatch
 (C) Cornerstone
 (M) MWA Architects
 (P) PGAdesign
 (FACS) Forensic Analytical Consulting Services, Inc.

⇒ Denotes On-Site

Off-Site Locations
 SJ San José CA
 CO Concord, CA
 WC Walnut Creek, CA
 SF San Francisco, CA
 OC Orange County, CA
 SAC Sacramento, CA
 SC Santa Clara
 KC Kansas City, MO
 CHI Chicago, IL

NOTE: No Key Personnel were changed from the SOQ to proposal phase.

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ATTACHMENT 13B
SUBCONTRACTING PLAN

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ATTACHMENT 13B

SUBCONTRACTING PLAN

[Note: The Subcontracting Plan anticipated as of the Contract Date is included in this Attachment 13B. A proposed final Subcontracting Plan shall be proposed by the Design-Builder as part of the Definitive Project Submittal, and negotiated and agreed upon by the parties as part of the Definitive Contract Amendment.]

— PART EIGHT —

SUBCONTRACTING, SKILLED WORKFORCE AND LABOR PEACE

Walsh/B&V maintains a comprehensive subcontractor/supplier database of certified minority firms based on NAICS codes. This list will be the primary source for soliciting quotes from qualified firms and will be continuously updated to ensure maximum participation.

SUBCONTRACTING PLAN

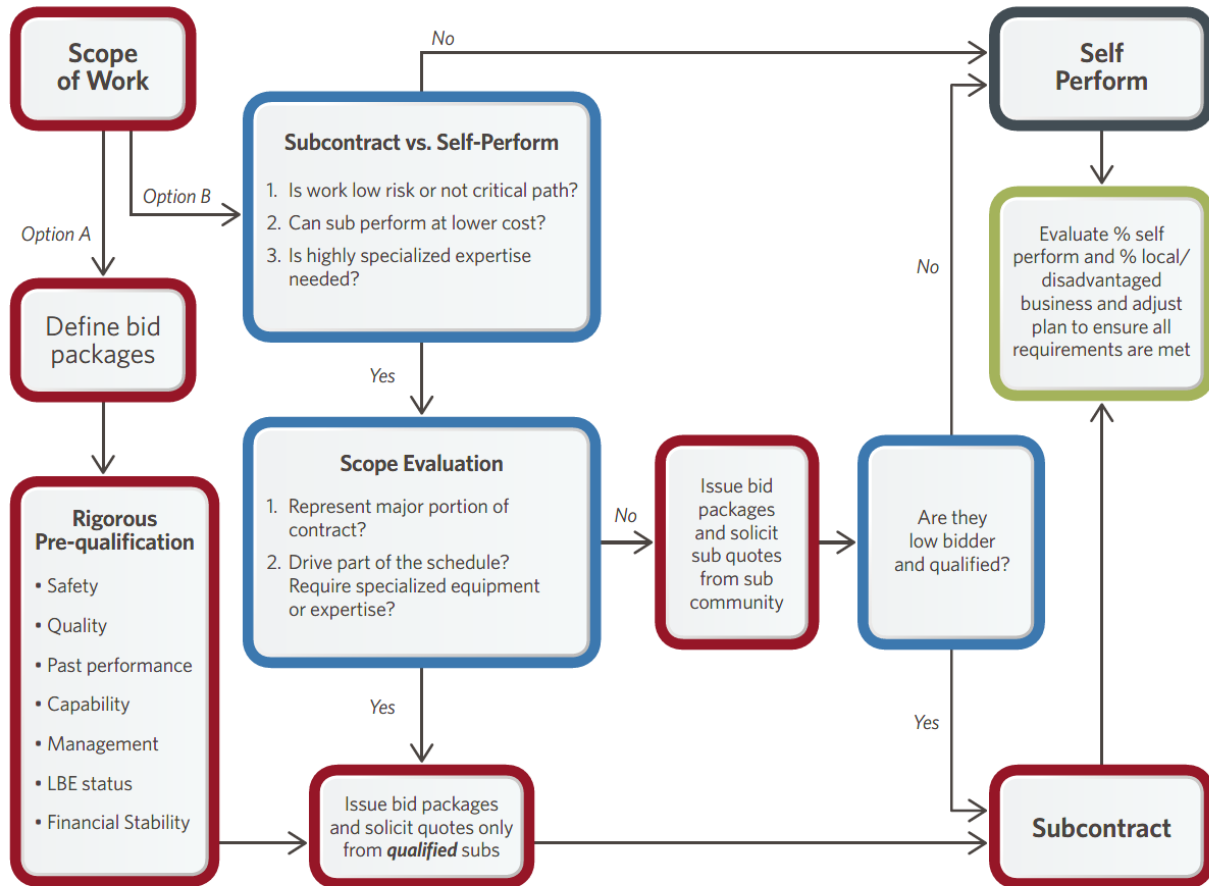
A truly successful project is one in which subcontractors fulfill integral roles that allow them to bolster their skill sets, gain independence and grow their businesses. While Walsh has the capability of self-performing up to 70 percent of this contract, we understand that this project offers local subcontractors the unique opportunity to be part of transitioning one of the largest tertiary wastewater treatment plans in the western U.S. to mechanical dewatering. This is an exciting and important local project that should be built as much as possible with local and small business talent from the Santa Clara County area. We look forward to preparing and soliciting bid packages from these firms to round out our local team.



Walsh contributed in the growth of my company. Without that first helping hand, I would not have become the company owner or valuable partner that I am today."

— ANUJ M. PATEL, PE PRESIDENT
AP ENGINEERING CONSULTANTS, INC.
(WALSH SUBCONSULTANT ON
\$894 MILLION DART PROGRAM)

Figure 8-1 Subcontractor Package Planning Process



Packaging Approach

Subcontractor packages will be logically organized, with scopes that are reasonable and consistent with local market practices. Our priority when developing subcontractor packages is to understand their business competencies, the capacity of work they can complete and their perceptions of project risks. Our approach maximizes local/disadvantaged business participation by creating economic opportunities in smaller packages. In addition, we effectively collaborate and communicate with the designer to eliminate re-design and streamline early release packages.

We employ proven techniques and methods to create the most effective and best qualified team to construct a project. Figure 1 above shows our process for planning scope packages. For portions of the work that we subcontract, we identify locally based resources whose values match our own, and limit subcontractor participation to those firms who pass our stringent prequalification process. In prequalifying, we examine multiple factors that may include such factors as prior collaboration, experience, bonding capacity, financial health, insurance, safety records, labor practices and local presence before any subcontracting opportunity is offered.

We strive to create long-lasting, meaningful employment opportunities within the communities we serve. These relationships will serve your project well in this tight labor market where the demand for skilled labor is at an all-

time high. On the D&TFU project, we are currently subcontracting 38% of the work, and have six Santa Clara County firms under contract providing concrete pumping, surveying, SWPPP, masonry, testing and photography/videography services.

On the **ENR Best-of-the-Best** \$45M Terminal Island WRP AWWP Ultimate Expansion in Los Angeles,



PRE-SOLICITATION

Extensive preparation occurs during the pre-solicitation phase. We begin by surveying the local markets to determine subcontractor availability for each respective scope and the number of local/disadvantaged subcontractors available for each trade, and complete an early cost model validation. We identify potential subcontractor scopes at the outset of our planning, rather than a typical approach were a design-builder might define its own work first, and then look for coverage of what is “left over.”

On progressive design-build projects, Walsh maintains a design evolution log that tracks cost impacts associated with project and design changes. The cost model is used interactively with the design evolution log to capture what potential impact design decisions will have on costs throughout the project. To ensure a proper cost validation, it is imperative to incorporate input from local subcontractors who could potentially perform work.

Prior to solicitation, Walsh performs multiple, extensive reviews of all drawings and specifications received from the design engineer to confirm the drawings and specifications are accurate and error free. Bidder instructions are meticulously drafted for each trade package.



Subcontractor Best Value Selection

To receive the best value at the best price, we will tailor subcontractor packages that are conducive to the size and strength of qualified subcontractors, balancing a variety of criteria with the needs of the project.

Local Outreach

Local business outreach will be especially targeted to the Santa Clara community to help ensure all firms who may have an interest in participating on the project are aware of the opportunities and the procedures for pursuing.

Walsh maintains a comprehensive subcontractor/supplier database of certified minority firms based on NAICS codes. This list will be the primary source for soliciting quotes from qualified firms and will be continuously updated to ensure maximum participation.

Individual business contacts from past projects and various subcontractor lists will be included in our outreach efforts; however, such lists are not always the most effective means of disseminating information quickly and fully to the local contracting community. We supplement the list by advertising with area minority and small business trade associations and business development organizations, e.g., Black

Contractors United, the Hispanic American Construction Industry Association, and San-Jose based organizations such as the Minority Business Development Agency (MBDA) and the Silicon Valley Organization's Minority Business Consortium.

Media advertising sources include the California Bid Bulletin, MWDVBE Weekly, Daily Breeze, Compliance News Daily and Compliance News Monthly.

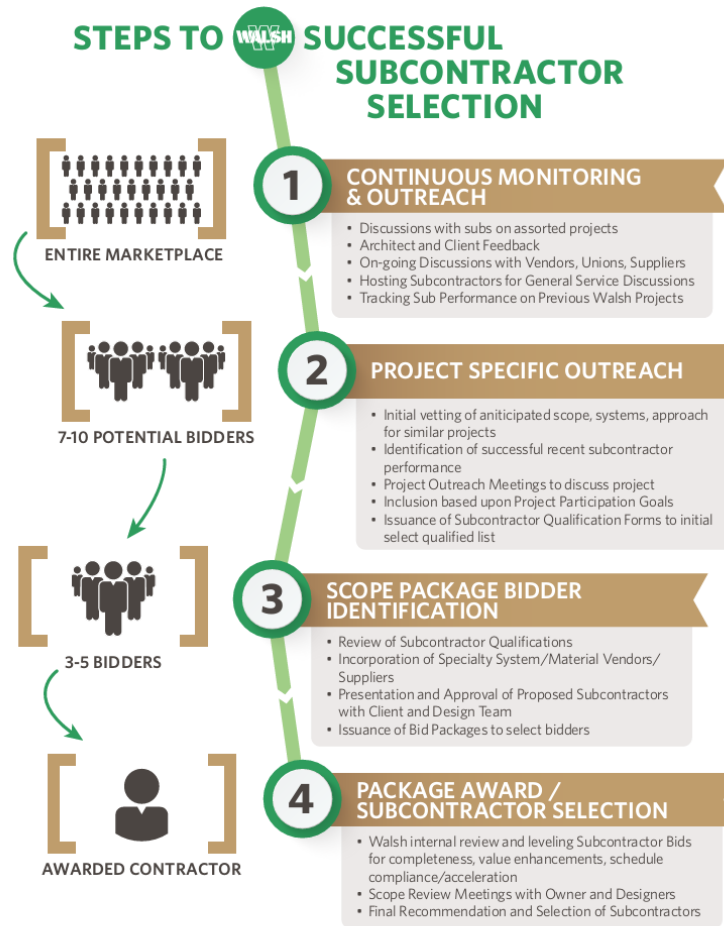
Early access to information and requirements allows for more lead time, which is critical in ensuring local/minority subcontractors and suppliers are competitive and effectively showcase their qualifications. This information can include:

- Overall project summary-level schedules
- Anticipated scopes of work
- Insurance requirements
- Bonding requirements
- Bid package/RFP release schedules
- Access to drawings and specifications
- Certification and qualification procedures and requirements
- Safety requirements
- Prevailing wage requirements
- Certified payroll

This information is disseminated at least three weeks prior to the bid date primarily through email and fax, and will be made available to the networking organizations identified above. In addition, informational public meetings will be held should the job size and complexity warrant.

We have multiple ways to help remove road blocks to submitting, such as:

- Tailoring bid package scopes and sizes to maximize involvement to the greatest extent possible.
- Sending requested copies of drawings, specifications and quantities that are not readily available to smaller businesses.



- Lifting the requirement to provide a performance and payment bond. Strategically, we provide firms with limited insurance and financing abilities special considerations, and consider them equal to bondable subcontractors during the bidding process.
- Working with subcontractors during the bidding process to complete their scope due to a lack of ability/equipment.
- Offering a mentor-protégé program to assist, promote and train personnel to facilitate additional growth.

Once a bid package has been release we are available to help firms understand and respond to bid/RFP requirements and required qualifications to promote their competitive involvement. We routinely conduct follow-up calls and/or emails within 10 days of solicitation to firms who have not responded to

determine the reason, and to see if any issues impeding participation can be rectified. Once awarded a project, Walsh holds an outreach conference to raise awareness of the project and upcoming trade packages. Walsh extends an invitation to all local businesses and local organizations through advertisement and direct contact. During this conference, Walsh outlines the project and its goals/objectives, upcoming trade package and prequalification process, if required, and answers questions from attendees.

We maintain meticulous records documenting contact with the local business community. Phone calls and emails are all recorded in the project's Good Faith Effort log.

Note, too, that Walsh believes in supporting local firms beyond just including them on the team. Whenever possible, we purchase goods and services from businesses in the immediate area of our projects, e.g., catering lunch from a local deli for our safety meetings, renting a meeting room from a local hotel or community center for outreach events, and using local print shops for banner/sign/construction notice creation.

Plan Rooms

Timely, regular access to project information (e.g., plans and specifications) is essential for subcontractors/suppliers to successfully respond to solicitations. To ensure bidding documents are readily available, Walsh will maintain an electronic "plan room" and traditional "hard copy" plan room at the San José jobsite location.

Support Services

Occasionally, local/minority subcontractors/vendors lack the technical and financial resources necessary to be competitive with their industry peers or to successfully respond to Walsh's procurements. Typical deficiencies exist in the areas of cost estimating, financial strength, project management and supervision.

During the procurement process, Walsh will provide local/minority subcontractors/vendors direct support, which may include paring them with local resources that provide the following services, or specialized training related to:

- Cost estimating
- Staffing
- Scheduling
- Contract compliance
- Bid preparation
- Financial assistance
- Cash flow management
- Job planning
- Certified payroll processing
- General record keeping
- Insurance and surety

As bonding capacity is a common roadblock, Walsh has introduced local/disadvantaged firms to insurance and surety brokers in the past that have resulted in longstanding business relationships. We also offer bonding assistance to local/disadvantaged firms to coordinate our corporate bonding policy requiring all subcontractors and suppliers with contracts greater than \$250,000 to provide payment and performance bonds unless upper management specifically waives this requirement based on the firm's local/disadvantaged status.

Subcontract Administration

Walsh is committed to providing transparent and ongoing updates to our subcontracting plan. We will create a monthly work breakdown structure (WBS) that reflects the correlation between our team and our subcontractors at all tiers. This WBS will serve as the basis of our monthly report to track work packages, self-perform, subcontracting and local commitments for all scopes of work.

The table below identifies the type and percentage of work we can self-perform through all phases of construction and for which we would intend to compete, as well as work/percent that is proposed to be subcontracted.

Type and Percent of Work to Self-Perform

Discipline/Trade	% Capable of SP	% Intend to Compete	% To be Subcontracted
Structural Concrete	100%	100%	0%
Piping/Mechanical Equipment	100%	100%	0%
Excavation/Earthwork	100%	100%	0%
Electrical Instrumentation	0%	0%	100%
Masonry	0%	0%	100%
HVAC	0%	0%	100%
Reinforcing Steel	0%	0%	100%
Paving	0%	0%	100%
Structural Steel	0%	0%	100%
Coatings	0%	0%	100%
Piles	0%	0%	100%
Post-Tension Tank	0%	0%	100%

SKILLED AND TRAINED WORKFORCE

As an established Northern California general contractor, Walsh is signatory with the following unions and will be drawing skilled union labor, including apprentices, from the following halls. In fact, Walsh currently employs nearly 70 skilled tradespeople from the various unions listed below on wastewater projects valued at more than \$200 million throughout the Bay Area.

Operating Engineers District 90 325 Digital Drive Morgan Hill, CA 95037	Northern California Laborers - Local 270 509 Emory Street San José, CA 95110	Northern California Cement Masons - Local 400 2102 Almaden Road, Suite 118 San José, CA 95125
Carpenters Union Local 405 2102 Almaden Road, Ste. 115 San José, CA 95125	Millwrights Local 102 3095 Independence Drive, Suite E Livermore, CA 94551	

LABOR PEACE

Walsh is a union contractor, and through our strong relationships with local union halls, we have worked more than 2.5 years at the SJSCWRF without a single filed labor dispute or grievance. Walsh and our subcontractors at every tier will comply with the requirements of Public Contract Code Section 22164, and we will provide the City with evidence monthly, during the Term of the Design-Build Contract.