

PROPOSAL CONTRACT

AGREEMENT TO PROVIDE LABOR, MATERIALS AND EQUIPMENT

RFPE: (PW#13-5556)

RECYCLED WATER PUMP STATION PROJECT

This AGREEMENT is made and entered into as of the date of execution by the City of Calistoga, a municipal corporation, hereinafter referred to as "CITY" and Allard General Engineering, hereinafter referred to as "CONTRACTOR".

RECITALS

The CITY requires outside assistance to provide labor, materials and equipment to complete the following: **Recycled Water Pump Station Project**.

CONTRACTOR represents itself as possessing the necessary skills and qualifications to provide the equipment and services required by the CITY;

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the CITY and CONTRACTOR agree as follows:

1.0 TERM OF AGREEMENT

1.1 This AGREEMENT shall be effective on and from the day, month and year of the execution of this document by the CITY.

1.2 CONTRACTOR shall provide the necessary labor, equipment and materials to perform the work specified in the contract within 45 calendar days from Notice to Proceed.

2.0 CONTRACTOR'S OBLIGATIONS (ATTACHMENT A)

2.1 CONTRACTOR shall provide the CITY with the specific labor, materials, and equipment that are described in Attachment "A", which is attached hereto, and incorporated herein by this reference, as though fully set forth at length, collectively hereinafter referred to as "DESCRIBED LABOR, MATERIALS AND EQUIPMENT".

2.2 CONTRACTOR shall perform all work required to provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT in conformity with applicable requirements of law: Federal, State and Local.

2.3 CONTRACTOR must be registered with the Department of Industrial Relations (DIR) in order to be authorized to work on Public Works projects and must submit certified payroll to the DIR's certified payroll website **and to the City of Calistoga Public Works Department**.

2.4 CONTRACTOR shall maintain professional certifications as required in order to properly comply with all the CITY, State, and Federal law, including a City of Calistoga Business License.

3.0 PAYMENT FOR LABOR, MATERIALS AND EQUIPMENT (ATTACHMENT A)

3.1 Compensation: The compensation to be paid to CONTRACTOR shall be at the rate and schedules attached hereto as Exhibit "A". However, in no event shall the amount exceed Thirty Eight

Thousand Six Hundred Sixty Dollars (\$38,660.00). Payment by CITY under this AGREEMENT shall not be deemed a waiver of defects, even if such defects were known to the CITY at the time of payment.

3.2 Timing of Payment: Payment shall be made in the following manner: Thirty (30) days from receipt of invoices.

3.3 Changes in Compensation: The CONTRACTOR will not undertake any extra work that will incur costs in excess of the Contract Proposal without prior written amendment to this AGREEMENT.

4.0 SUBCONTRACTING (ATTACHMENT B)

4.1 If CONTRACTOR subcontracts for any of the equipment or support services that are to be provided under this Agreement, CONTRACTOR shall be as fully responsible to the CITY for the acts and omissions of CONTRACTOR'S subcontractors and for the persons either directly or indirectly employed by the subcontractors, as CONTRACTOR is for the acts and omissions of persons directly employed by CONTRACTOR. Nothing contained in this Agreement shall create any contractual relationship between any subcontractor or CONTRACTOR and the CITY. CONTRACTOR shall bind every subcontractor to the terms of the Agreement applicable to Contractor's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CITY.

4.2 The name and location of the place of business of each subcontractor who will perform work or labor or provide equipment to the CONTRACTOR in performing this Agreement are contained in Attachment "B" which is attached hereto and incorporated herein as though fully set forth at length.

5.0 EQUIVALENT TERMS (ATTACHMENT C)

NOT USED

6.0 EXTRA WORK

CONTRACTOR shall not provide equipment or perform support services in excess of the DESCRIBED LABOR, MATERIALS AND EQUIPMENT, without the prior written approval of the CITY. All requests for extra work shall be by written change order submitted to the CITY prior to the delivery of such equipment or the commencement of such work.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONTRACTOR to any additional payment whatsoever.

8.0 TERMINATION OF AGREEMENT

In the event of CONTRACTOR'S failure to prosecute, deliver, or perform the DESCRIBED EQUIPMENT/SUPPORT SERVICES, the CITY may terminate this AGREEMENT by notifying CONTRACTOR by certified mail of said termination. The City Manager shall determine any final payment due to CONTRACTOR.

9.0 COVENANTS AGAINST CONTINGENT FEES

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONTRACTOR, to solicit or secure this AGREEMENT, and that

CONTRACTOR has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

10.0 STATUS OF CONTRACTOR

CONTRACTOR shall provide the DESCRIBED LABOR, MATERIALS AND EQUIPMENT as an independent Contractor and in pursuit of CONTRACTOR'S independent calling, and not as an employee of the CITY.

11.0 ASSIGNMENT OF CONTRACT

CONTRACTOR is without right to and shall not assign this AGREEMENT or any part thereof or any monies due hereunder without the prior written consent of the CITY, which shall not be unreasonably withheld.

12.0 HOLD HARMLESS

12.1 CONTRACTOR agrees to indemnify and hold the CITY and CITY officer's, officials, employees and agents harmless from, and against any and all liabilities, claims, demands, causes of action, losses, damages and costs, including all costs of defense thereof, arising out of, or in any manner connected directly or indirectly with, any acts or omissions of CONTRACTOR or CONTRACTOR'S agents, employees, subcontractors, officials, officers or representatives. CONTRACTOR'S obligation herein includes, but is not limited to, alleged defects in the labor, materials and equipment delivered by CONTRACTOR. Upon demand, CONTRACTOR shall, at its own expense, defend CITY and CITY's officers, officials, employees and agents, from and against any and all such liabilities, claims, demands, causes of action, losses, damages and costs.

12.2 CONTRACTOR'S obligation herein does not extend to liabilities, claims, demands, causes of action, losses, damages or costs that arise out of the CITY's intentional wrongful acts, CITY's violations of law, or the CITY's sole active negligence.

13.0 INSURANCE

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

13.2 Minimum Scope of Insurance. Coverage shall be at least as broad as:

Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001).

Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, coverage shall apply to all owned, non-owned and hired vehicles.

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

13.3 Minimum Limits of Insurance. Consultant shall maintain limits no less than:

General Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage including operations, products and completed operations, as applicable. If Commercial General Liability Insurance or other form with a general Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. If Contractor maintains higher limits than the specified minimum limits, City requires and shall be entitled to higher limits maintained by the Contractor.

Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.

Employer's Liability: \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.

13.4 Other Insurance Provisions. The commercial general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

The City, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor.

For any claims related to this project, the Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

The policy shall cover inter-insured suits and include a "Separation of Insureds" or "severability" clause which treats each insured separately

Contractor shall provide 30-day written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased.

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

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

13.5 Waiver of Subrogation. Contractor shall provide to the City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

14.0 RETENTION

None.

15.0 BONDS

Not Applicable.

16.0 TIME OF COMPLETION AND LIQUIDATED DAMAGES

The Contractor shall complete all or any designated portion of the work called for under the contract in all parts and requirements within 45 calendar days of the Notice to Proceed.

17.0 WARRANTIES

A. The CONTRACTOR shall furnish a one-year warranty to the CITY in the following format:

The warranty shall be submitted to the CITY prior to the date of filing of the Completion Notice.

(SEE FOLLOWING PAGE)

WARRANTY BOND

KNOW ALL PERSONS BY THESE PRESENTS:

WHEREAS, the City of Calistoga, California (hereinafter referred to as "Owner" and Allard General Engineering., (hereinafter referred to as "Contractor"), have entered into a written contract for furnishing of all labor, materials, equipment, transportation and services for the construction of the **Recycled Water Pump Station Project** (hereinafter referred to as the "Construction Contract"); and

WHEREAS, Contractor is required by the terms of the Construction Contract to furnish warranty security for the work performed pursuant to the Construction Contract in the amount of Thirty Eight Thousand Six Hundred Sixty Dollars (\$38,660.00) to guarantee replacement and repair of the improvements as described in the Construction Contract for a period of one year following the date of recordation of the notice of acceptance of the Improvements against any defective work or labor done, or defective materials furnished.

NOW, THEREFORE, Contractor, as principal, and _____ (hereinafter referred to as "Surety"), as surety, are held and firmly bound unto Owner in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, being not less than ten percent (10%) of the amount payable by the terms of the Construction Contract, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Principal shall indemnify City for all loss that City may sustain by reason of any defective materials or workmanship which become apparent during the period of one year from and after acceptance of the Improvements by the City Council of Owner, then this obligation shall be null and void; otherwise, this obligation shall remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees incurred by Owner in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Construction Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing the Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Owner or its successors or assigns.

Surety shall provide Owner with thirty (30) days' written notice of Principal's default prior to Surety terminating, suspending or revoking the bond.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Construction Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any way affect its obligation on this bond, and it does

hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Construction Contract or to the work or to the Specifications.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this _____ day of _____, 2019, the names and corporate seal of each corporate body being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

(Principal)
By: _____
Signature

Print Name

Title

*Note:
To be signed by Principal
and Surety and acknowledgment
and notarial seal attached.*

(Surety)

(Address)

By: _____
Signature

Print Name

Title

18.0 DISPUTES

18.1 If a dispute should arise regarding the performance of this AGREEMENT, the following procedures shall be used to address any question of fact or interpretation not otherwise settled by agreement between the parties. Such questions, if they become identified as part of a dispute between persons operating under the provisions of the AGREEMENT, shall be reduced to writing by the complaining party. A copy of such documented dispute shall be forwarded to the other party involved along with recommend methods of resolution. The party receiving the letter shall reply to the letter along with a recommended method of resolution within ten (10) days of receipt of the letter.

18.2 If the dispute is not resolved, the aggrieved party shall send to the CITY a letter outlining the dispute for City Manager's resolution.

18.3 If the dispute remains unresolved and the parties have exhausted the procedures of this section, the parties may then seek remedies available to them at law.

19.0 NOTICES

19.1 Any notices to be given under this AGREEMENT, or otherwise, shall be served by certified mail.

19.2 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CITY and the proper person to receive any notice on the CITY's behalf is:

CITY OF CALISTOGA
1232 Washington Street
Calistoga, CA 94515
Attention: Mike Kirn
Public Works Director
Public Works Department

19.3 For the purposes hereof, unless otherwise provided in writing by the parties hereto, the address of the CONTRACTOR and the proper person to receive any notice on the CONTRACTOR'S behalf is:

Allard General Engineering
Attn: Zeb Allard
1418 4th Street
Calistoga, CA 94515

20.0 ATTORNEY'S FEES

In the event that one party incurs expenses, including attorney's fees and costs, in enforcing the provisions of this AGREEMENT, such party shall be entitled to recover from the other party reimbursement for those costs including reasonable attorney's fees.

21.0 CONTRACTOR'S CERTIFICATION OF AWARENESS OF IMMIGRATION REFORM AND CONTROL ACT OF 1986

CONTRACTOR certifies that CONTRACTOR is aware of the requirements of the Immigration Reform and Control Act of 1986 (and USC 1101-1525) and has complied and will comply with these requirements, including but not limited to verifying the eligibility for employment of all agents, employees, subcontractors and consultants that are included in this Agreement.

ALLARD GENERAL ENGINEERING

CITY OF CALISTOGA,
a Municipal Corporation

By: _____
Zeb Allard, Owner

By: _____
Dylan Feik, City Manager

Date

Date

ATTEST:

Kathy Flamson, City Clerk

ATTACHMENT A
SCOPE OF WORK PROPOSAL
COMPENSATION SCHEDULE

ATTACHMENT B
SUBCONTRACTORS

NONE