EXHIBITS TO CONSTRUCTION-MANAGER-AT-RISK AGREEMENT

LIST OF EXHIBITS

EXHIBIT 14E Div 01s [Note to Proposers: Revisions to be included via the Construction Phase Amendment.]

EXHIBIT 1
PROJECT SPECIFIC INFORMATION (PRECONSTRUCTION PHASE)

[Note to Proposers: Included with the CMAR Agreement (Body).]

EXHIBIT 2

SCOPE OF WORK

[Note to Proposers: Refer to Attachment B to the RFP]

EXHIBIT 2A
ATTACHMENT A

DETAILED SCOPE OF SERVICES (PRECONSTRUCTION PHASE)

(see attached)

[Note to Proposers: This will be based on Part 6 of the Proposal as described in the RFP.]

EXHIBIT 2B

DRAFT SCOPE OF WORK (CONSTRUCTION PHASE)

(see attached)

[Note to Proposers: This will be based on Attachment B to the RFP.]

EXHIBIT 3

PROPOSAL COMMITMENTS

[Note to Proposers: This Exhibit will be developed by City based on review of the Proposal and finalized prior to execution of the Agreement.]

This Exhibit 3 identifies components of the Proposal that are included in the Contract Documents. Commitments made in the Proposal as identified in this Exhibit 3 are included in the Work; provided, however, that nothing contained in this Exhibit 3 shall limit, modify, discharge, eliminate or reduce the requirements of this Agreement or transfer any obligation or risk to City.

No.	Proposal Location	Description
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2.		
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15.		

EXHIBIT 4

SUBMITTAL REQUIREMENTS

1.0 Overview

1.1 This Exhibit 4 shall apply to all Submittals to City under the Agreement. Refer to Exhibit 2 for additional Preconstruction Phase Submittal requirements and Div 01_33_00 for additional Construction Phase Submittal requirements. This Exhibit 4, together with Exhibit 2 and Div 01_33_00 are collectively referred to as the "**Submittal Requirements**."

1.2 CMAR Firm shall prepare, submit, update and maintain all Submittals in accordance with the requirements of the Agreement, including the Submittal Requirements. Except to the extent expressly provided otherwise, in the event of any conflict between the Submittal Requirements and any other provisions of the Contract Documents related to procedures with respect to submission, review, comment, approval, consent, determination, decision or other actions with respect to Submittals, the Submittal Requirements shall exclusively prevail.

1.3 Each Submittal provided by CMAR Firm to City for information, comment, acceptance, or approval shall:

(a) be accurate, complete, and in conformity with the Agreement;

(b) if prepared by any Person other than CMAR Firm (including any Subcontractor), be reviewed by CMAR Firm for accuracy, completeness and conformity with this Agreement;

(c) include all necessary information and documentation concerning the subject matter and any additional information reasonably requested by City;

(d) be provided electronically in both native file and Adobe PDF (word-searchable) format or as otherwise specified in the Agreement or by City, in writing;

(e) include a completed transmittal form in a form to be mutually agreed, including a statement from the preparer and CMAR Firm reviewer confirming Sections **Error! Reference source not found.** through **Error! Reference source not found.**; and

(f) be transmitted using City's document management software.

1.4 Submittals shall only be made by CMAR Firm, unless otherwise approved by City.

1.5 If the information in any Submittal requires a deviation from the Project Plans and Specifications, CMAR Firm, by statement in writing accompanying the information shall identify the deviation(s) and state:

(a) the reason(s) for the deviation(s);

(b) all other changes required to correlate Work items; and

(c) all variation in costs occasioned by the deviations and CMAR Firm's assumption of the cost of all related changes if deviation is approved.

All costs associated with any proposed deviation(s), including assembling required information requested by City, shall be borne by CMAR Firm.

1.6 Without limiting any requirements under Section **Error! Reference source not found.**, each Submittal shall include descriptive information which will enable City to determine whether CMAR Firm's proposed materials, equipment, or methods of work conform to the Project Plans and Specifications.

1.7 Except as expressly provided otherwise under Sections **Error! Reference source not found.** and **Error! Reference source not found.**, CMAR Firm shall not perform any portion of the Work to which any Submittal applies unless the City Representative has previously approved the applicable Submittal.

2.0 City Discretionary Approval

2.1 If a Submittal is one where the Agreement indicates approval, consent, determination, acceptance, decision or other action (including a failure to act which constitutes a disapproval) is required from City in its discretion, then City's lack of approval, consent, determination, acceptance, decision or other action within the applicable time period under the Submittal Requirements will be deemed disapproval.

2.2 If the approval, consent, determination, acceptance, decision or other action is subject to the sole discretion of City, then its approval, consent, determination, decision or other action (including a failure to act which constitutes a disapproval) shall be final, binding and not subject to Section 28 (Disputes) of the Agreement or any other legal challenge, and such approval, consent, determination, acceptance, decision or other action will not constitute a City default under the Agreement or the basis for a Change Order, Compensable Event, Relief Event, or any other Claim.

3.0 Other City Approvals

3.1 Whenever the Agreement indicates that a Submittal or other matter is subject to City's approval, consent, determination, acceptance, decision or other action but the approval, consent, determination, acceptance, decision or other action is one not governed by Section **Error! Reference source not found.**, then the standard shall be reasonableness.

3.2 If the reasonableness standard applies and City delivers no approval, consent, determination, decision or other action within the applicable time period, then City's lack of approval, consent, determination, decision or other action within the applicable time period will be deemed disapproval. City's exception, objection, rejection, disapproval or other action (including a failure to act which constitutes a

disapproval) under this Section **Error! Reference source not found.** shall be deemed reasonable, valid and binding if based on any of the following grounds or other grounds set forth elsewhere in the Agreement:

(a) the Submittal or subject provision fails to comply, or is inconsistent, with any applicable covenant, condition, requirement, standard, term or provision of the Agreement, the Project's design concept or any City-approved Design Documents;

(b) the Submittal or subject provision is not to a standard equal to or better than Good Industry Practice;

(c) CMAR Firm has not provided all content or information required or reasonably requested in respect of the Submittal or subject provisions thereof, in which case CMAR Firm may resubmit the Submittal with the required content or information;

(d) adoption of the Submittal or subject provision, or of any proposed course of action under such Submittal, would result in a conflict with or violation of any Applicable Law or Governmental Approval; or

(e) in the case of a Submittal that is to be delivered to a Governmental Entity as a part of a proposed Governmental Approval or in order to obtain, modify, amend, supplement, renew, extend, waive or carry out a Governmental Approval, the Submittal proposes commitments, requirements, actions, terms or conditions that are inconsistent with the Agreement, Applicable Law, the requirements of Good Industry Practice, or City practices for public-private contracting.

3.3 City Review and Comment

Whenever the Contract Documents indicate that a Submittal or other matter is subject to City's review, comment, disapproval or similar action not entailing a prior approval and City delivers no comments, exceptions, objections, rejections or disapprovals within the applicable time period, then CMAR Firm may proceed thereafter at its election and risk, without prejudice to City's rights to later object or disapprove. No such failure or delay by City in delivering comments, exceptions, objections, rejections or disapprovals within the applicable time period shall constitute a City default under the Agreement or the basis for a Change Order, Compensable Event, Relief Event, or any other Claim.

3.4 Submittals Not Subject to Prior Review, Comment or Approval

Whenever the Contract Documents indicate that CMAR Firm is to deliver a Submittal to City but expresses no requirement for City review, comment, disapproval, prior approval or other action, then (a) CMAR Firm is under no obligation to provide City any period of time to review the Submittal or obtain its approval before proceeding with further Work, and (b) City may at any time review, comment on, take exception to, object to, reject or disapprove the Submittal. No failure or delay by City in delivering comments, exceptions, objections, rejections or disapprovals with respect to any such Submittal shall constitute a City default under the Agreement or the basis for a Change Order, Compensable Event, Relief Event, or any other Claim.

3.5 Limitations on CMAR Firm's Right to Rely

Section 8.4 (No Obligation to Review) of the Agreement shall apply to City's obligation to review Submittals.

EXHIBIT 5

BONDS

EXHIBIT 5A Form of Performance Bond

EXHIBIT 5B Form of Payment Bond

EXHIBIT 5A

FORM OF PERFORMANCE BONDS

[Note to Proposers: Executed copy of Performance Bond for each Phase to be attached to executed CMAR Agreement prior to commencement of the applicable Work. Form of Multiple Obligee Rider may be used with each Bond/Rider.]

FORM OF PRECONSTRUCTION PHASE PERFORMANCE BOND

Contract No.: _____

Bond No. _____

WHEREAS, the City of Ventura, California ("City"), as the primary obligee, has awarded to [_____], a [corporation][limited liability company][partnership][joint venture] organized and existing under the laws of [_____] and authorized to do business in the State of California ("Principal"), a Construction-Manager-At-Risk Agreement, dated [June [__], 2023 (as amended from time to time, "Agreement") to provide services for the Project (as defined in the Agreement) on the terms and conditions set forth in the Agreement; and

WHEREAS, Principal is required to furnish a bond guaranteeing faithful performance of its obligations under the Agreement on or before delivering to City the executed Agreement.

NOW THEREFORE, We the undersigned Principal and [SURETY], a [___] corporation, and [_____], a [_____] corporation ("Surety" or "Co-Sureties"), admitted surety insurer(s) in the State of California, are held and firmly bound unto City, in the sum of $[___] **[100% of the NTE]** subject to increase in accordance with the Construction Phase Rider ("Bonded Sum") to be paid to City for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. The Agreement is incorporated by reference in this Bond. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the Agreement.

2. If the Principal, or its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by and well and truly keep and perform all covenants, conditions, agreements, obligations and work under the Agreement, including any and all amendments, supplements, and alterations made to the Agreement as therein provided, on Principal's part to be kept and performed, at the time and in the manner therein specified, and shall indemnify, defend and save harmless City and all other Indemnified Parties, as therein stipulated, then this obligation shall become and be null and void; otherwise, it shall be and remain in full force and effect.

3. This Bond shall cover the cost to perform all the obligations of the Principal pursuant to the Agreement.

4. The obligations covered by this Bond specifically include the performance of each and every obligation of Principal under the Agreement including its liability for liquidated damages and warranties as specified in the Agreement, but not to exceed the Bonded Sum.

5. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of any of the Agreement, or in the work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating

to any of the Agreement, or any rescission or attempted rescission of this Bond, solely due to acts of Principal, or any fraud practiced by any other person other than City seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it hereby waives notice of such changes, extension of time, alterations, additions, omissions or other modifications.

6. The Surety (or Co-Sureties) agree(s) that payments made to contractors and suppliers to satisfy claims on the payment bond do not reduce the Surety's legal obligations under this Bond. Payments made to contractors or suppliers under any agreement where the Surety has arranged for completion of the work to satisfy this Bond will not be considered payment bond claims.

7. Whenever Principal is in default under the Agreement, provided that City is not then in material default under the Agreement, the Surety (or Co-Sureties) shall promptly:

(a) remedy such default, or

(b) complete the work and perform the obligations covered by this Bond in accordance with the terms and conditions of the Agreement then in effect, or

(c) select a contractor or contractors to complete all Work and perform all obligations covered by this Bond for which a notice to proceed has been issued in accordance with the terms and conditions of the Agreement, using a contractor or contractors approved by City (provided, however, that the Surety (or Co-Sureties) may not select Principal or any affiliate of Principal to complete the work and perform the obligations for and on behalf of the Surety without City's express written consent, in its sole discretion), arrange for a contract that contains substantially the same terms and conditions of the Agreement between such contractor or contractors and City, and make available as work progresses (even though there should be a default or a succession of defaults under such contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the unpaid balance of the Preconstruction Phase Services Fee; but not exceeding, including other costs and damages for which the Surety is (or Co-Sureties) (are) liable hereunder, the Bonded Sum.

8. If Surety (or Co-Sureties) does not proceed as provided in Paragraph 7 of this Bond with reasonable promptness, Surety (or Co-Sureties) shall be deemed to be in default on this Bond 15 days after receipt of an additional written notice from City to Surety (or Co-Sureties designated representative) demanding that Surety (or Co-Sureties) perform its (or their) obligations under this Bond, and City shall be entitled to enforce any remedy available to City.

9. [Use in case of multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that City will have no obligation to deal with multiple sureties under this Bond. All correspondence from City to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to City designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 202__.

Correspondence or claims relating to this Bond should be sent to the Surety (or Co-Sureties) at the following address:

_____

_____

_____

_____

[Note: If more than one surety, then add appropriate number of lines to signature block.]

_____

_____

_____

(Principal's name, title, and signature)

_____

_____

_____

Surety Name

By:_____

Attorney-in-Fact

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
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)

FORM OF CONSTRUCTION PHASE PERFORMANCE BOND

CONSTRUCTION PHASE RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Bond No. _____ ("Performance Bond").

WHEREAS, on or about the _____ day of _____, 2023, [_____] a [corporation][limited liability company][partnership][joint venture] organized and existing under the laws of the State of [_____] and authorized to do business in the State of California ("Principal"), entered into a Construction-Manager-At-Risk Agreement, dated [_____], 2023 (as amended from time to time, "Agreement") with the City of Ventura, California ("City") to provide construction services for the Project (as defined in the Agreement);

WHEREAS, initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement;

WHEREAS, City requires that Principal provide a performance bond for the Preconstruction Phase and a performance bond for the Construction Phase; and

WHEREAS, Principal and _____ ("Surety" or "Co-Sureties") have agreed to execute and deliver this Rider to the Performance Bond as a condition precedent to Construction Phase Approval on the terms and conditions herein stated.

NOW, THEREFORE, Principal and Surety (or Co-Sureties) are held and firmly bound unto City in the sum of $_____ **[100% of the GMP]** ("Construction Phase Bonded Sum"), for payment of which sum Principal and Surety (or Co-Sureties) jointly and severally firmly bind themselves and their successors and assigns.

The following terms and conditions shall apply with respect to this Rider:

1. The Surety (or Co-Sureties) shall not be liable under the Performance Bond to City unless City shall make payments to Principal (or in the case the Surety (or Co-Sureties) arranges for completion of the Agreement, to the Surety (or Co-Sureties)) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth such that no material default by City shall have occurred and be continuing under the Agreement.

2. The aggregate liability of the Surety (or Co-Sureties) under the Performance Bond to City is limited to the penal sum of the Construction Phase Bonded Sum. The total liability of the Surety (or Co-Sureties) shall in no event exceed the amount recoverable from Principal by City under the Agreement.

3. The Surety may, at its option, make any payments under the Performance Bond and Rider by check issued to City.

4. It is further understood and agreed that nothing contained in this Rider shall be held to change, alter or vary the terms of the attached Performance Bond except as set forth in this Rider. In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

5. The Rider may be executed in two or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one and same instrument.

Signed, sealed and dated this _____ day of _____, 202__.

Attest:

(SEAL)

_____
Secretary

_____
(Name of Principal)

By: _____
Title: _____

Attest:

(SEAL)

_____
Signature
Bonding Agent's Name: _____

Agent's Address: _____

_____
(Surety / Co-Surety)

By: _____
Title: _____

_____
_____
(Business Address of Surety / Co-Surety)

Attest:

(SEAL)

_____
Signature
Bonding Agent's Name: _____

Agent's Address: _____

_____
(Co-Surety)

By: _____
Title: _____

_____
_____
(Business Address of Co-Surety)

Attest:

(SEAL)

(Co-Surety)

Signature
Bonding Agent's Name:

By:
Title:

Agent's Address:

(Business Address of Co-Surety)

Attest:

(SEAL)

(Co-Surety)

Signature
Bonding Agent's Name:

By:
Title:

Agent's Address:

(Business Address of Co-Surety)

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: This Rider shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
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)

FORM OF MULTIPLE OBLIGEE RIDER

(PERFORMANCE BONDS)

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. _____ ("Performance Bond").

WHEREAS, on or about [_____, 2023], [_____], a [corporation][limited liability company][partnership][joint venture] organized and existing under the laws of the State of California and authorized to do business in the State of California ("Principal"), entered into a Construction-Manager-At-Risk Agreement, dated [_____], 2023 (as amended from time to time, the "Agreement") with the City of Ventura, California, ("City"), as the primary obligee, for construction services for the Project (as defined in the Agreement); and

WHEREAS, initially capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement; and

WHEREAS, City requires that Principal provide a performance bond and that the **[INSERT ADDITIONAL PARTIES]** (together "Additional Obligee(s)") be named as additional obligee(s) under the Performance Bond; and

WHEREAS, Principal and _____ (the "Surety" or "Co-Sureties") have agreed to execute and deliver this Rider concurrently with the execution of the Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned hereby agree and stipulate as follows:

The Additional Obligee(s) is/are hereby added to the Performance Bond as named obligee(s).

The Surety (or Co-Sureties) shall not be liable under the Performance Bond to City, the Additional Obligee(s), or any of them, unless City, the Additional Obligee(s), or any of them shall make payments to Principal (or in the case the Surety (or Co-Sureties) arranges for completion of the Agreement, to the Surety (or Co-Sureties)) in accordance with the terms of the Agreement as to payments and shall perform all other obligations to be performed under the Agreement in all material respects at the time and in the manner therein set forth, such that no material default by City shall have occurred and be continuing under the Agreement.

The aggregate liability of the Surety (or Co-Sureties) under the Performance Bond, to any or all of the obligee(s), as its/their interests may appear, is limited to the penal sum of the Performance Bond. The rights of the Additional Obligee(s) under this Rider are subject to the same defenses Principal and/or the Surety (or Co-Sureties) have against City. The total liability of the Surety (or Co-Sureties) shall in no event exceed the amount recoverable from Principal by City under the Agreement.

The Surety may, at its option, make any payments under the Performance Bond by check issued jointly to all of the obligees.

It is further understood and agreed that nothing contained in this Rider shall be held to change, alter or vary the terms of the attached Performance Bond except as set forth hereinabove. In the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

This Rider may be executed in two or more counterparts, each of which shall be deemed to be an original, but which together shall constitute one and same instrument.

Signed, sealed and dated this _____ day of _____, 202__.

Attest:

(SEAL)

_____
Secretary

_____
(Name of Principal)

By: _____
Title: _____

Attest:

(SEAL)

_____
Signature
Bonding Agent's Name:_____

Agent's Address:_____

_____
(Surety / Co-Surety)

By:_____
Title:_____

_____
_____
(Business Address of Surety / Co-Surety)

Attest:

(SEAL)

_____
Signature
Bonding Agent's Name:_____

Agent's Address:_____

_____
(Co-Surety)

By:_____
Title:_____

_____
_____
(Business Address of Co-Surety)

Attest:

(SEAL)

(Co-Surety)

Signature
Bonding Agent's Name:

By:
Title:

Agent's Address:

(Business Address of Co-Surety)

Attest:

(SEAL)

(Co-Surety)

Signature
Bonding Agent's Name:

By:
Title:

Agent's Address:

(Business Address of Co-Surety)

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
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)

EXHIBIT 5B

FORM OF PAYMENT BONDS

[Note to Proposers: Executed copy of Payment Bond for each Phase to be attached to executed Agreement prior to commencement of the applicable Work. Form of Multiple Obligee Rider may be used with each Bond/Rider.]

FORM OF CONSTRUCTION PHASE PAYMENT BOND

Agreement No.: _____

Bond No.: _____

WHEREAS, the City of Ventura, California ("City"), as the primary obligee, has awarded to [_____], a [corporation][limited liability company][partnership][joint venture] organized and existing under the laws of [_____] and authorized to do business in the State of California ("Principal"), a Construction-Manager-At-Risk Agreement, dated [_____, 2023 (as amended from time to time, "Agreement") to provide services for the Project (as defined in the Agreement) on the terms and conditions set forth in the Agreement; and

WHEREAS, Principal is required to furnish a bond guaranteeing payment of claims for the Construction Phase Work on or before delivering to City the executed Agreement.

NOW THEREFORE, We the undersigned [_____], a [_____] corporation, and [_____], a [_____] (the "Surety" or "Co-Sureties"), an admitted surety insurer in the State of California, are held and firmly bound unto City, in the sum of $[___] **[100% of the GMP]** ("Bonded Sum") for the payment whereof, well and truly to be paid to City, we bind ourselves, our heirs, successors, executors, administrators, and assigns, jointly and severally firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

1. The Agreement is incorporated by reference in this Bond. Unless the context otherwise requires, capitalized terms used but not separately defined in this Bond have the meaning given to them in the Agreement. If said Principal, or its Subcontractors, or their respective heirs, executors, administrators, successors or assigns, shall fail to pay:

(a) any of the Persons named in California Civil Code section 9100 involved in prosecution of the Work, including the design and engineering services, and/or construction services, as provided for in the Agreement, or

(b) any amounts due under the Unemployment Insurance Code, with respect to work or labor performed by such claimant under the Agreement or subcontracts, or

(c) any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board from the wages of employees of the Principal and its Subcontractors pursuant to Revenue and Taxation Code section 18662 et seq. with respect to such work and labor, or

(d) anyone required to be paid by law,

then the Surety (or Co-Sureties) shall pay for the same, in an aggregate amount not exceeding the sum specified in this Bond, otherwise the above obligation shall be null and void. In case suit is brought upon this Bond, the Surety (or Co-Sureties) will pay reasonable attorneys' fees to be fixed by the court.

2. This Bond shall inure to the benefit of any of the persons named in Civil Code section 9100 or anyone required to be paid by law under the Agreement so as to give a right of action to such Persons or their assigns in any suit brought upon this Bond.

3. The Surety (or Co-Sureties) agree(s) that no change, extension of time, alterations, additions, omissions or other modifications of the terms of the Agreement, or in the Work to be performed with respect to the Project, or in the specifications or plans, or any change or modification of any terms of payment or extension of time for any payment pertaining or relating to the Agreement, or any rescission or attempted rescission of this Bond, solely due to acts of Principal, or any fraud practiced by any other person other than the claimant seeking to recover from this Bond, shall in any way affect its obligations on this Bond, and it hereby waives notice of such changes, extension of time, alterations, additions, omissions or other modifications.

4. This Bond shall cover all payment obligations under the Agreement.

5. [Use in case of multiple or co-sureties] The Co-Sureties agree to empower a single representative with authority to act on behalf of all of the Co-Sureties with respect to this Bond, so that City and claimants will have no obligation to deal with multiple sureties under this Bond. All correspondence from City or claimants to the Co-Sureties and all claims under this Bond shall be sent to such designated representative. The designated representative may be changed only by delivery of written notice (by personal delivery or by certified mail, return receipt requested) to City designating a single new representative, signed by all of the Co-Sureties. The initial representative shall be _____.

[Signature Page(s) Follow]

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 202[_].

Correspondence or claims relating to this Bond should be sent to the Surety (or Co-Sureties) at the following address: _____ _____ _____ _____ **[Note: If more than one surety, then add appropriate number of lines to signature block.]**	_____ _____ _____ (Principal's name, title, and signature) _____ _____ _____ Surety Name By:_____ Attorney-in-Fact

NOTE: Signatures of those executing for the Surety (or Co-Sureties) must be properly acknowledged, and a Power of Attorney attached.

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA)
) ss.
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)

EXHIBIT 5C

FORM OF GUARANTY

[Note to Proposers: Executed copies of Guarantees to replace this form prior to execution of the Agreement.]

GUARANTY

This Guaranty (the "Guaranty") is made by [_], a [_], organized under the laws of [_] ("Guarantor"), in favor of the City of Ventura, California ("City").

WHEREAS, [_], a [_], as CMAR Firm ("CMAR Firm"), and City are parties to that certain Construction-Manager-At-Risk Agreement (the "Agreement") pursuant to which CMAR Firm has agreed to construct the Project (as defined in the Agreement). Unless the context otherwise requires, capitalized terms used but not separately defined in this Guaranty will have the meaning given to them in the Agreement.

To induce City to (i) enter into the Agreement; and (ii) consummate the transactions contemplated thereby, Guarantor has agreed to enter into this Guaranty.

CMAR Firm is a [_] [joint venture][limited liability company][corporation]. The Guarantor is a [_] [joint venture][corporation]. The execution of the Agreement by City and the consummation of the transactions contemplated by the Agreement will materially benefit Guarantor. Without this Guaranty, City would not have entered into the Agreement with CMAR Firm. In consideration of City's execution of the Agreement and consummation of the transactions contemplated by the Agreement, Guarantor has agreed to execute this Guaranty.

NOW, THEREFORE, in consideration of the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

1. **Guaranty.**

a. Guarantor guarantees to City and its successors and assigns the full and prompt payment and performance when due of all of the obligations of CMAR Firm arising out of, in connection with, under or related to the Agreement (including, without limitation, CMAR Firm's obligation to make payment to City for liquidated damages and indemnity). The obligations guaranteed pursuant to this Guaranty are collectively referred to in this Guaranty as the "Guaranteed Obligations."

b. Guarantor covenants to City that if at any time CMAR Firm should default in the performance or observance when due, or should commit a breach, of any of the Guaranteed Obligations, Guarantor shall promptly, upon written notice by City, perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations or otherwise cure the default in accordance with the terms of the Agreement. Notwithstanding any language to the contrary in this Guaranty, the parties agree that a "CMAR Firm Default" as that term is defined in Section 25.2 (CMAR Firm Default) of the Agreement shall be a condition precedent to City proceeding to enforce Guarantor's performance or payment of the Guaranteed Obligations pursuant to this Guaranty; provided, however, that in no event shall City be obligated to take any

action, obtain any judgment or file any claim in accordance with Section 28 (Disputes) prior to enforcing this Guaranty.

c. Guarantor agrees that, to the extent Guarantor's obligations under this Guaranty relate to obligations of CMAR Firm which require performance other than the payment of money and Guarantor fails to perform as required by subparagraph 1.b hereof, City may proceed against Guarantor subject to Section 28 (Disputes) of the Agreement to effect specific performance of such obligations (to the extent that such relief is available), provided that if CMAR Firm's breach of its obligations giving rise to the right of specific performance has been determined pursuant to the process set forth in Section 28 (Disputes) of the Agreement such determination shall control, and City's right of specific performance shall not be subject to separate dispute resolution pursuant to Section 28 (Disputes) of the Agreement. Upon a CMAR Firm Default in performance or breach of the Agreement, Guarantor agrees to assume or to procure the assumption of the Agreement, and to perform or to procure the performance of all of the terms and conditions under the Agreement should the Agreement be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving CMAR Firm, or, at the option of City, Guarantor shall, in the event of CMAR Firm's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to City, a new agreement for the balance of the term of the Agreement, which the new agreement shall be in form and substance identical to the replaced Agreement.

2. **Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 20 below, and subject to Section 28 (Disputes) of the Agreement (unless CMAR Firm's breach of obligations has been determined pursuant to the dispute resolution process under Section 28 (Disputes) of the Agreement, in which case such determination that CMAR Firm breached its obligations shall control and shall not be subject to separate dispute resolution pursuant to Section 28 (Disputes) of the Agreement), this Guaranty is an absolute, unconditional and irrevocable guarantee of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred, and whether or not enforceable against CMAR Firm. If any payment made by CMAR Firm or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will not be fulfilled or discharged, except by the complete payment and performance of the Guaranteed Obligations, whether by the primary obligor or Guarantor under this Guaranty. Without limiting the generality of the foregoing, Guarantor's obligations under this Guaranty will not be released, discharged or otherwise affected by:

a. except as to applicable statutes of limitation, failure, omission, delay, waiver or refusal by CMAR Firm to exercise, in whole or in part, any right or remedy held by CMAR Firm with respect to the Agreement or any transaction under the Agreement;

b. any change in the Agreement or the obligations under the Agreement, any change in the existence, structure or ownership of Guarantor or CMAR Firm, or any dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or similar proceeding affecting CMAR Firm, Guarantor or their respective assets or any defense that may arise in connection with or as a result of such dissolution, winding up, liquidation, insolvency, bankruptcy, reorganization or other proceeding;

c. the existence of any Claim or set-off which CMAR Firm has or Guarantor may have against City, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any Claim or prevent the assertion of any Claim by separate suit;

d. any release of CMAR Firm from any liability with respect to the Agreement, except for any release expressly releasing Guarantor;

e. any failure of consideration or lack of authority of CMAR Firm, any lack of validity or enforceability, illegality or defect or deficiency, or any other defense to formation of the Agreement (or any term, condition or covenant thereof);

f. any change in the time, manner, terms, place of payment of, or any other term of all or any of the Guaranteed Obligations, or any other amendment, waiver of, or any consent to departure from any Agreement executed in connection therewith;

g. the incapacity or lack of power or authority of, or dissolution or change in, the members or shareholders of CMAR Firm;

h. any release or subordination of any collateral then held by City as security for the performance by CMAR Firm of the Guaranteed Obligations; or

i. any other circumstance that might otherwise constitute a defense available to, or a discharge of, Guarantor with respect to the Guaranteed Obligations, other than performance or payment in full of the Guaranteed Obligations.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Agreement, Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 20 below.

3. **Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of CMAR Firm and that if any default occurs under this Guaranty, a separate action or actions may be brought and prosecuted against Guarantor whether or not CMAR Firm is joined therein. City may maintain successive actions for other defaults of Guarantor. City's rights under this Guaranty will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been indefeasibly paid and fully performed.

a. Guarantor agrees that City may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against CMAR Firm. Guarantor waives the right to require City to proceed against CMAR Firm, to exercise any right or remedy under any of the Agreement or to pursue any other remedy or to enforce any other right.

b. Guarantor will continue to be subject to this Guaranty notwithstanding: (i) any modification, agreement or stipulation between CMAR Firm and City or their respective successors and assigns, with respect to any of the Agreement or the Guaranteed Obligations; (ii) any waiver of or failure to enforce the Guaranteed Obligations or any of the terms, covenants

or conditions contained in any of the Agreement or any modification thereof, provided that the Guaranteed Obligations may not be interpreted in an inconsistent manner against CMAR Firm and Guarantor by City; and (iii) any release of CMAR Firm from any liability with respect to the Agreement.

c. The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of any provisions of the Agreement or the pursuit by City of any remedies which City either now has or may hereafter have with respect thereto under any of the Agreement.

d. Notwithstanding any other term or provision of this Guaranty to the contrary, CMAR Firm and Guarantor acknowledge and agree that Guarantor's obligations and undertakings under this Guaranty are derivative of, and not in excess of, the Guaranteed Obligations, that Guarantor shall be entitled to all rights and defenses of CMAR Firm except as waived or disclaimed in this Guaranty, and that no cure period previously used by CMAR Firm may be used or relied upon by Guarantor. Notwithstanding any other term or provision of this Guaranty to the contrary, in the event that CMAR Firm's obligations have been changed by any modification, agreement or stipulation between CMAR Firm and City or their respective successors or assigns, the term "Guaranteed Obligations" as used in this Guaranty shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which CMAR Firm is the debtor, unless otherwise specified in the modification, agreement or stipulation.

4. **Liability of Guarantor.**

a. Subject to City providing CMAR Firm with notice of and opportunity to cure a CMAR Firm Default in accordance with the requirements set forth in the Agreement, City may enforce this Guaranty upon the occurrence of a breach by CMAR Firm of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between City and CMAR Firm with respect to the existence of such a breach.

b. Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

c. City, upon such terms as it deems appropriate, with notice to CMAR Firm but without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability under this Guaranty, from time to time may (i) with respect to the financial obligations of CMAR Firm, if and as permitted by the Agreement, renew, extend, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, provided that the Guaranteed Obligations may not be interpreted in an inconsistent manner against CMAR Firm and Guarantor by City, and/or subordinate the payment of the same to the payment of any other obligations, (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto, (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations, (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to

the Guaranteed Obligations, (v) enforce and apply any security hereafter held by or for the benefit of City with respect to this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that City may have against any such security, as City in its discretion may determine, and (vi) exercise any other rights available to it under the Agreement.

d. This Guaranty and the obligations of Guarantor under this Guaranty will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them: (i) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any Claim or demand or any right, power or remedy (whether arising under the Agreement, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto, provided that the Guaranteed Obligations may not be interpreted in an inconsistent manner against CMAR Firm and Guarantor by City; (ii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Agreement or any agreement or instrument executed pursuant thereto; (iii) City's knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of CMAR Firm; (iv) any defenses, set-offs or counterclaims that CMAR Firm may allege or assert against City in respect of the Guaranteed Obligations, except as provided in Section 20.

5. **Waivers.** To the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

a. any right to require City to proceed against CMAR Firm or any other Person or to proceed against or exhaust any security held by City at any time or to pursue any right or remedy under any of the Agreement or any other remedy in City's power before proceeding against Guarantor;

b. any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor, CMAR Firm or any other Person or the failure of City to file or enforce a claim against the estate (either in administration, bankruptcy or any other proceeding) of any such Person;

c. any defense that may arise by reason of any presentment, demand for payment or performance or otherwise, protest or notice of any other kind or lack thereof;

d. any right or defense arising out of an election of remedies by City even though the election of remedies, such as non-judicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation and reimbursement against CMAR Firm by the operation of section 580d of the California Code of Civil Procedure or otherwise;

e. all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of CMAR Firm under any of the Agreement, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto;

f. any defense based upon any act or omission of City which directly or indirectly results in or aids the discharge or release of CMAR Firm or any security given or held by City in connection with the Guaranteed Obligations, or which indirectly results in the discharge or release of the Guarantor;

g. any duty on the part of City to disclose to Guarantor any facts City may now or hereafter know about CMAR Firm, regardless of whether City has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor. Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of CMAR Firm and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

h. the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in CMAR Firm; and

i. any and all suretyship defenses under applicable law.

6. **Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against CMAR Firm that arises from the performance of Guarantor under this Guaranty, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification, or participation in any claim, right or remedy of City against CMAR Firm, or any other security or collateral that City now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of CMAR Firm or any shareholders, partners, members, joint venturers of CMAR Firm to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as CMAR Firm shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by CMAR Firm or any shareholders, partners, members, joint venturers of CMAR Firm to Guarantor without the prior written consent of City. Any payment by CMAR Firm or any shareholders, partners, members, joint venturers of CMAR Firm to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for City.

7. **Cumulative Rights.** All rights, powers and remedies of City under this Guaranty will be in addition to and not in lieu of all other rights, powers and remedies given to City, whether at law, in equity or otherwise.

8. **Notices.** All demands, notices and other communications provided for under this Guaranty shall, unless otherwise specifically provided herein, comply with Section 29.7 (Notices and Communications) of the Agreement.

9. **No Waiver.** Any forbearance or failure to exercise, and any delay by City in exercising, any right, power or remedy under this Guaranty will not impair any such right, power or remedy or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

10. **Assignability.** This Guaranty is binding upon and inures to the benefit of the successors and assigns of Guarantor and City, but is not assignable by Guarantor without the prior written

consent of City, which consent may be granted or withheld in City's sole discretion, except if such assignment is due to a reorganization of Guarantor, then City shall not unreasonably withhold its consent if the proposed assignee's financial capacity is satisfactory to support the Guaranteed Obligations, as determined by City in its good faith discretion. Except as expressly provided in any writing signed by City consenting to the assignment, any assignment by Guarantor effected in accordance with this Section 10 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

11. **Amendments.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and City. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by City. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

12. **Captions**. The captions in this Guaranty are for convenience only and shall not be deemed part of this Guaranty or considered in construing this Guaranty.

13. **Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

14. **Representations and Warranties.** In addition to the representations and warranties with respect to solvency set forth in Section 16 below, Guarantor represents and warrants that:

a. it is a [corporation] duly organized, validly existing, and in good standing under the laws of the State of California and qualified to do business and is in good standing under the laws of the State of California;

b. it has full power, right and authority to execute, deliver and perform this Guaranty;

c. the execution, delivery, and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

d. this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms;

e. neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (1) the certificate of incorporation or bylaws of Guarantor, (2) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right, restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (3) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

f. it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Agreement or referred to therein, the financial status of CMAR Firm and the ability of CMAR Firm to pay and perform the Guaranteed Obligations;

g. it has reviewed and approved copies of the Agreement and is fully informed of the remedies City may pursue, with or without notice to CMAR Firm or any other Person, in the event of default of any of the Guaranteed Obligations;

h. it has made and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied, it will make its own credit analysis of CMAR Firm and will keep itself fully informed as to all aspects of the financial condition of CMAR Firm, the performance of the Guaranteed Obligations and of all circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations. Guarantor hereby waives and relinquishes any duty on the part of City to disclose any matter, fact or thing relating to the business, operations or conditions of CMAR Firm now known or hereafter known by City;

i. no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date of this Guaranty;

j. there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty;

k. it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty; and

l. it derives a substantial direct or indirect economic benefit from the Agreement.

15. **Limitation by Law.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that such exercise does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid, unenforceable, in whole or in part, or not entitled to be recorded, registered or filed under the provisions of any applicable law.

16. **Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency.**

a. The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of CMAR Firm or by any defense which CMAR Firm may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. City is not obligated to file any claim relating to the Guaranteed Obligations if CMAR Firm becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of City so to file will not affect Guarantor's obligations under this Guaranty.

b. Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in clause (a) above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been

commenced) will be included in the Guaranteed Obligations because it is the intention of Guarantor and City that the Guaranteed Obligations should be determined without regard to any rule of law or order which may relieve CMAR Firm of any portion of such Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay City, or allow the claim of City in respect of, any such interest accruing after the date on which such proceeding is commenced.

17. **Governing Law.** This Guaranty shall be governed by and construed in accordance with the law of the State of California, without regard to conflict of law principles. The venue of any court, judicial or referee proceeding under this Agreement shall be in San Diego County, California, unless changed by the judicial officer.

18. **Attorneys' Fees**. Guarantor agrees to pay to City without demand reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including such fees and costs of litigation, arbitration and bankruptcy, and including appeals) incurred by City in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

19. **Joint and Several Liability**. If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to CMAR Firm and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

20. **Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to CMAR Firm under the Agreement except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of CMAR Firm and any other defense to formation of the Agreement, and (c) defenses available to CMAR Firm under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors. Action against Guarantor under this Guaranty shall be subject to no prior notice or demand; provided, however, that City shall have first provided CMAR Firm with any notice of a CMAR Firm Default and opportunity to cure to which CMAR Firm is entitled pursuant to the terms set forth in the Agreement.

21. **Entire Agreement.** This Guaranty contains the entire understanding of the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to their subject matter.

22. **Severability.** If any clause, provision, section or part of this Guaranty is ruled invalid by a court having proper jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties. The invalidity or unenforceability of any such clause, provision, section or part shall not affect the validity or enforceability of the balance of this Guaranty, which shall be construed and enforced as if this Guaranty did not contain such invalid or unenforceable clause, provision, section or part.

23. **Additional Guarantor Waivers and Acknowledgements.**

a. Guarantor hereby waives any and all defenses it might have that liquidated damages or stipulated damages constitute a penalty or that they do not bear a reasonable relation to the actual damages.

b. GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON EXECUTION OF THIS GUARANTY. NO FORMAL ACCEPTANCE BY City IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS EFFECTIVE AS OF THE DATE HEREOF.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered by its duly authorized officer effective as of this ____ day of [_], 2023.

GUARANTOR

[_], a [_] [corporation]

By:_____

Name: _____

Title: _____

CMAR FIRM

[_], a [joint venture][limited liability company][corporation]

By:_____

Name: _____

Title: _____

EXHIBIT 6

NOT USED

EXHIBIT 7

COST OF THE WORK

SECTION 1 Overview and General Principles

1.1.1. This Exhibit 17 (Cost Schedule) describes the methods for calculating Costs of the Work, and methods for calculating costs payable for Relief Events.

1.1.2. Cost of the Work means the sum of all costs necessarily incurred and paid by CMAR Firm in the proper performance of the Work.

1.1.3. Amounts included in the Cost of the Work must be allowable in accordance with cost principles in 2 CFR Part 200 subpart E. No amounts shall be double counted.

1.1.4. In determining the amount of any Relief Event adjusting the Preconstruction Phase Services Fee or GMP, the Costs of the Work to be considered in such determination will be only those additional or incremental costs directly attributable to the Relief Event and that result in any Change to the Work or any Scope of Work.

1.2. Cost of the Work for Preconstruction Phase

Cost of the Work during the Preconstruction Phase shall include only the following items with respect to the subject Work:

(a) labor hours properly expended during the month multiplied by the all-inclusive labor hourly rates set forth in Appendix 2A to the Project Specific Information (Preconstruction Phase). The rates in Appendix 2A are inclusive of all direct wage rates, fringe benefits, labor allowances, payroll taxes, insurance, small tools, temporary facilities, consumables, expendables, overhead, profit, and all other costs and expenses incurred by CMAR Firm in performing the Preconstruction Phase Services (except as may be permitted under paragraph (b); and

(b) actual direct invoiced costs of CMAR Firm (without overhead, profit or mark-up) for materials, equipment and other costs listed in Appendix 2B (Preconstruction Phase: Table of Rates and Prices – Other Direct Costs) included in the Project Specific Information (Preconstruction Phase).

SECTION 2 Cost of the Work During Construction Phase

2.1. Costs Included in Cost of the Work During Construction Phase

2.1.1. The Cost of the Work for the Construction Phase does not include any of the costs itemized in Section 2.1.2 or 2.1.3 and shall include only the following items with respect to the subject Work:

(a) payroll costs for employees in the direct employ of CMAR Firm in the performance of the subject Work, under schedules of job classifications agreed upon by City and CMAR Firm in advance of such performance. Such employees shall include superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not

employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Agreement shall be included in the above to the extent such performance of Work is authorized by City in writing. CMAR Firm shall not submit to City (i) full social security numbers or home addresses for any of CMAR Firm's employees or (ii) any other employee information City may require CMAR Firm to exclude from time-to-time;

(b) cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and suppliers' field services required in connection with the Work. All cash discounts shall accrue to CMAR Firm unless City deposits funds with CMAR Firm with which to make payments, in which case the cash discounts shall accrue to City. All trade discounts, rebates, and refunds and returns from sale of surplus materials and equipment shall accrue to City, and CMAR Firm shall make provisions so that they may be obtained;

(c) cost of Governmental Approvals obtained by CMAR Firm;

(d) payments made by CMAR Firm to Subcontractors performing Work performed or furnished by such Subcontractors. If any Subcontract provides such Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CMAR Firm's Cost of the Work and fee;

(e) costs of special consultants, including testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work;

(f) general administrative costs and supplemental costs, including:

(i) the proportion of necessary transportation, travel, and subsistence expenses of CMAR Firm's employees incurred in discharge of duties connected with the Work;

(ii) cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed that remain the property of CMAR Firm;

(iii) any mobilization costs: (a) for Preconstruction Phase, that were included in the CMAR Firm's Proposal; and (b) if Construction Phase Approval is achieved, that were included in the City-approved Construction Phase Amendment, provided that CMAR Firm shall not be entitled to invoice City for any mobilization cost items that are not actually incurred by CMAR Firm prior to the date of the applicable invoice;

(iv) rentals of all construction or engineering equipment and machinery, and their parts, whether rented from CMAR Firm or from others in accordance with rental agreements approved by City, and the costs of transportation, loading, unloading, installation, dismantling and removal of such equipment, machinery, and parts. The rental

of any such equipment, machinery, or parts shall cease when its use is no longer necessary for the Work. The aggregate rental cost of any item charged to City shall not exceed ninety percent (90%) of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds ninety percent (90%) of the purchase and maintenance price, CMAR Firm shall purchase the equipment and turn it over to City upon final completion of the Work or, at City's option, credit City with the fair market resale value of the item;

(v) sales, consumer, use, and other similar taxes related to the subject Work, and for which CMAR Firm is liable, imposed by any Applicable Laws;

(vi) deposits lost for causes other than negligence of a CMAR Firm-Related Entity, and royalty payments and fees for permits and licenses;

(vii) Subject to Section 20.4 (Relief Due to Force Majeure Event During the Term), Losses, damages, and related expenses caused by damage to the subject Work not compensated by insurance or otherwise, sustained by CMAR Firm in connection with the furnishing and performance of the Work provided they have resulted from causes other than the negligence of a CMAR-Related Entity. Such losses shall include settlements made with the written consent and approval of City;

(viii) the cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work;

(ix) minor expenses such as telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work;

(g) other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by City and not included in the CMAR Firm's Contingency, CMAR Firm's Fee, or Lump Sum Scope of Work.

2.1.2. Costs Excluded from Cost of the Work

The Cost of the Work shall not include any of the following items:

(a) payroll costs and other compensation of CMAR Firm's officers, executives, principals (of partnerships and sole proprietorships), general managers, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expediters, timekeepers, clerks, and other personnel employed by CMAR Firm whether at the Site or in CMAR Firm's principal or a branch office for general administration of the Work and not specifically included in a schedule of job classifications set forth in the Preconstruction Phase Services Fee or GMP Proposal, as applicable, all of which are to be considered administrative costs covered by the CMAR Firm's Fee**:**

(b) expenses of CMAR Firm's principal and branch offices other than its office at the Site;

(c) any part of CMAR Firm's capital expenses, including interest on CMAR Firm's capital employed for the Work and charges against CMAR Firm for delinquent payments;

(d) except as set out in Sections 13.3(a) and 13.4(a) of the Agreement, amounts incurred and payable for correcting Defects;

(e) amounts (including damages) paid or payable by CMAR Firm to any Subcontractor by reason of any breach of contract or other wrongful act or omission by CMAR Firm including a breach by CMAR Firm of this Agreement, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of City;

(f) costs due to the negligence of any CMAR-Related Entity (including correction of any unapproved construction, defective work or damaged materials or any other Work that fails to fully comply with this Agreement covered) by any guaranty, disposal of materials or equipment wrongly supplied, and making good any damage to property;

(g) other overhead or general expense costs of any kind, and the costs of any item not specifically and expressly included in Section 2.1.1, the Proposal or the GMP Proposal, as applicable;

(h) during the Construction Phase, any costs identified as Construction Phase Fixed General Conditions Costs in accordance with Section 2.1.3, even if such costs would otherwise be included in the Cost of the Work;

(i) other amounts not properly incurred in respect of the execution of the Work or which this Agreement provides are to be borne by CMAR Firm or to be a debt due from CMAR Firm to City.

2.1.3. Construction Phase Fixed General Conditions Costs

If Construction Phase Approval is obtained, the costs listed in this Section 2.1.3 shall be Construction Phase Fixed General Conditions Costs.

(a) The Construction Phase Fixed General Conditions Costs shall not include the CMAR Firm's Fee and shall only include payroll costs for employees in the direct employ of CMAR Firm in the performance of the subject Work, under schedules of job classifications agreed upon by City and CMAR Firm in advance of such performance. Such employees shall include superintendents, foremen, and other personnel employed full-time at the Site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the subject Work. Payroll costs shall include salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation, and holiday pay applicable thereto. The expenses of performing the subject Work outside the hours or days permitted by this Agreement shall be included in the above to the extent such performance of Work is authorized by City;

(b) costs of special consultants, including testing laboratories, attorneys, and accountants, retained for services specifically related to the subject Work.

(c) general administrative costs and supplemental costs with respect to the Work, including:

(i) the proportion of necessary transportation, travel, and subsistence expenses of CMAR Firm's employees incurred in discharge of duties connected with the Work;

(ii) notwithstanding Section 2.1.1(f)(iii), the reasonable costs and expenses incurred to establish, operate and demobilize CMAR Firm's collocated onsite administrative office, including the cost of facsimile transmissions, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses;

(iii) the cost of utilities, fuel, and sanitary facilities at the Site, as applicable to the subject Work;

(iv) minor expenses such as long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work; and

(d) any other items from the Cost of the Work that the Parties designate to be included as Construction Phase Fixed General Conditions Costs.

2.1.4. Documentation

CMAR Firm will establish and maintain cost records on an Open Book Basis in accordance with GAAP and FAR practices and submit in a form acceptable to City an itemized cost breakdown together with supporting data. These records shall be submitted to City on a weekly basis and at such other times as may be required under the Scope of Work.

2.2. Permitted Markup

The aggregate total markup for overhead and profit as a percentage of the Cost of the Work ("Markup") shall not exceed 20% irrespective of the number of tiers of Subcontractors performing that Change Order work.

2.3. City Election re Change Order Work

City may, in its sole discretion, elect to price Change Order work using Unit Prices, negotiated Lump Sum or Time and Materials.

2.4. Unit Prices for Change Order Work

The unit prices shall be deemed to include all costs for the Change, including labor, equipment, material, overhead, markups and profit, and shall not be subject to change regardless of any change in the estimated quantities.

CMAR Firm shall provide to the City an accounting of all such unit prices incurred during the O&M Services. Such accounting shall include identification of the unit price and the number of units actually incurred.

CMAR Firm shall only be compensated for those unit prices that are specified in the agreed-upon Table of Rates and Prices and that are actually incurred and submitted for reimbursement in an invoice.

The final price of a Change Order may be lump sum or may be based upon a final determination of the quantities.

2.5. Negotiated Prices for Change Order Work

(a) Lump sum compensation shall be negotiated by the Parties based on estimated Extra Work Costs of

(i) Labor;

(ii) Material;

(iii) Equipment;

(iv) Third party fees and charges (e.g. permit fees, plan check fees, review fees and charges);

(v) Extra insurance costs and extra costs of bonds and letters of credit or similar instrument;

(vi) Other direct extra work costs; and

(vii) A reasonable contingency for risk associated with the lump sum pricing.

(b) Lump sum compensation also may include a reasonable, negotiated markup for indirect costs, overhead and profit for Work performed by CMAR Firm and Subcontractors and for CMAR Firm's indirect costs and overhead for such Work.

(c) Lump sum pricing shall be negotiated with reference to the original allocations of pricing to comparable activities, materials and equipment, as specified in the GMP. If requested by City, price negotiations for lump sum Change Orders shall be on an Open Book Basis.

(d) Lump Sum pricing may include sales or use taxes only to the extent that no exemption is available under applicable Law.

2.6. Time and Materials Change Order

(a) City may issue a Time and Materials Change Order at any time. The Time and Materials Change Order shall instruct CMAR Firm to perform the Work, indicating expressly the intention to treat the items as changes in the Work, and setting forth the kind, character, and limits of the Work as far as they can be ascertained, the terms under which changes to the GMP will be determined and the estimated total change in the GMP. Upon final determination of the allowable costs, City shall issue a modified Change Order setting forth the final adjustment to the GMP.

(b) Compensation for Time and Materials Change Orders shall be on a Cost of the Work Basis in accordance with Section 2.1 through Section 2.2.

(c) Payments for Time and Materials Work shall be invoiced with the regular monthly Invoice, based on the extra work reports provided by CMAR Firm for each period. Costs evidenced by daily extra work reports provided less than five working days prior to preparation of the Invoice shall be included in the subsequent month's Invoice.

2.7. Permitted Markup

The total markup for overhead and profit as a percentage of the extra Cost of the Work ("**Markup**") shall comply with the limits set forth below:

(a) for CMAR Firm, [_]% [Note: To be inserted based on Proposals] of the cost of that portion of the extra Cost of the Work to be self-performed by CMAR Firm with its own forces;

(b) for CMAR Firm, [_]% [Note: To be inserted based on Proposals] of the cost of that portion of the extra Cost of the Work to be performed by Subcontractors directly under contract to CMAR Firm;

(c) for Subcontractors, 10% of the cost of that portion of the extra Cost of the Work to be performed by Subcontractors with their own forces;

(d) for Subcontractors, 3% of the cost of that portion of the extra Cost of the Work to be performed by lower tier Subcontractors directly under contract to the Subcontractor; and

(e) notwithstanding the foregoing Section 2.7(a) through (d), the aggregate total Markup for any extra Cost of the Work shall not exceed 20% of the extra Cost of the Work irrespective of the number of tiers of Subcontractors performing that extra Work.

EXHIBIT 8

COMPLETION REQUIREMENTS

[Note to Proposers: Completion Requirements to be developed during Preconstruction Phase and incorporated as this Exhibit by the Construction Phase Amendment.]

EXHIBIT 9

INSURANCE REQUIREMENTS

Each policy required to be provided by CMAR Firm under this Exhibit 9 shall be non-contributing with and shall apply only as primary insurance and not excess to any other insurance, self-insurance, or other risk financing program available to City.

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City.

In addition, CMAR Firm shall comply with the requirements provided in Exhibit 9A (Insurance Requirements – Preconstruction Phase) and Exhibit 9B (Insurance Requirements – Construction Phase).

EXHIBIT 9A

INSURANCE REQUIREMENTS – PRECONSTRUCTION PHASE

Prior to contract approval, CMAR FIrm must procure, agree to maintain, and supply evidence of, insurance at the levels listed and in accordance with the other provisions listed in this document.

1. Coverage Types and Limits

a) Commercial General Liability (ISO CGL CG 00 01) - including coverage for bodilyinjury, property damage, products & completed operations, and personal injury arising from the CMAR Firm's activities. Commercial General Liability (CGL) per Occurrence Commercial General Liability Aggregate or Combined Single Limit (CSL)	 $2 million $4 million
b) Auto Liability for owned, hired, and non-owned vehicles per Occurrence (or non-owned & hired if CMAR Firm has no autos). Auto Liability Aggregate or Combined Single Limit	$1 million $2 million
c) Worker's Compensation *with a Waiver of Subrogation in favor of the City* Employer's Liability	Statutory Limits $500,000
d) Crime/Employee Dishonesty Policy *The Crime policy shall name The City of San Buenaventura as Loss Payee. Pertainsto IT and Financial contracts. Contact Risk Manager for specific requirements.*	n/a
e) Professional Liability Policy	$2 million per claim And $4 million aggregate
f) Cyber Liability Policy with Network Security/Data Privacy Coverage *Pertains to contracts with IT component. Contact Risk Manager for specific requirements.*	n/a
g) Technology E&O/Technology Professional Liability *Contact Risk Manager for specific requirements.*	n/a

2. Insurance Policy Provisions, Endorsements, and other Requirements

CMAR Firm agrees to comply with the following additional requirements with respect to the foregoing insurance:

a) Liability Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City and the other Indemnified Parties or any officer, employee, agent, or volunteer of City or the other Indemnified Parties . Assuch, a Primary and Non-Contributory Endorsement (with coverage at least as broad as ISO CG 2001 04 13) is required on all liability policies.

b) CMAR Firm waives its right of subrogation against the City and the other Indemnified Parties. As such, a Waiver of Subrogation Endorsement is required on the CMAR Firm's Worker's Compensation policy.

c) A "Blanket" Additional Insured Endorsement (a/k/a "automatic additional insured endorsement"), attached to the Commercial General Liability policy covering premises liability, ongoing operations, product liability, and completed operations is required. If a "Blanket" endorsement is not available, CMAR Firm may submit a combination of the following endorsements:
An Additional Insured Endorsement covering Premises and Ongoing Operations CG 20 10 04 13 or itsequivalent (CG 20 26, CG 20 33, or CG 20 38) AND
an Additional Insured Endorsement covering Completed Operations CG 20 37 04 13.

d) Each insurance policy required above shall provide that coverage shall not be canceled except with 30days' notice to the City.

e) The Description section of the Certificate identifying City as an additional insured must include the following language:
The City of San Buenaventura, its officers, officials, agents, employees and volunteers shall be named as anadditional insured under the General Liability and Auto Liability policies. All Liability policies are primary and Non-Contributory. Waiver of Subrogation applies to the Worker's Compensation policy. 30-day noticeof cancellation will be provided to the Certificate Holder.

f) A Certificate of Insurance must include the following language in the Certificate Holder section:
City of San Buenaventura, its officers, officials, agents, employees and volunteers
501 Poli Street
Ventura, CA 93002

g) CMAR Firm will provide proof that policies of insurance required herein expiring during the term of thisAgreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be submitted to the City within 10 days of renewal.

h) CMAR Firm shall provide evidence of the insurance required herein, satisfactory to City, consisting of certificate(s) of insurance and any required endorsements evidencing all of the coverages required. Anyfailure on the part of City or any other additional insured under these requirements to obtain proof of insurance required under this Agreement in no way waives any right or remedy of City or any other additional insured in this or any other regard.

i) CMAR Firm shall ensure that coverage provided to meet these requirements is applicable separately to each insured, and that there will be no cross-liability exclusions that preclude coverage for any legal action between CMAR Firm and City, between CMAR Firm and any

other named insureds or additional insureds under the insurance policy, or between City and any party associated with City or City's officers, officials, employees, agents, or volunteers.

j) Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. There shall be no cross-liability exclusion and no CMAR Firm limitation endorsement. In addition, there shall be no endorsement or modification limiting the scope of coverage for liability arising from pollution, explosion, collapse, underground property damage, or employment-related practices, except for a provision or endorsement limiting liability arising from pollution to liability caused by sudden or accidental pollution.

k) Any umbrella liability insurance over primary insurance provided to meet primary limits shall apply to bodily injury, personal injury, and property damage, at a minimum. Coverage shall be as broad as any required underlying primary coverage, and shall include a "drop down" provision providing primary coverage for liability not covered by primary policies but covered by the umbrella policy. Coverage shall be provided with defense costs payable in addition to policy limits. Coverage shall have starting and ending dates concurrent with the underlying coverage.

l) Coverage shall be written on an "occurrence basis" if such coverage is available, or on a "claims made" basis if not available. When coverage is provided on a "claims made" basis, CMAR Firm shall continue to maintain the insurance in effect for a period of five (5) years after this Agreement expires or is terminated. Such insurance shall have the same coverage and limits as the policy that was in effect during the term of this Agreement, and shall cover CMAR Firm for all claims made by City arising out of any errors or omissions of CMAR Firm, or the officers, employees or agents of CMAR Firm during the time this Agreement was in effect.

m) CMAR Firm shall require all sub-CMAR Firms or other parties hired by CMAR Firm to perform any part of the services required by this Agreement to purchase and maintain all of the insurance specified above and submit evidence of all such insurance. CMAR Firm shall obtain certificates evidencing such coverage and make reasonable efforts to ensure that such coverage is provided as required herein.

n) No contract used by any CMAR Firm, or contracts CMAR Firm enters into on behalf of City, will reserve the right to charge back to City the cost of insurance required by this Agreement. When requested, CMAR Firm shall provide City with all agreements with Subcontractors or others with whom CMAR Firm contracts on behalf of City, and with all certificates of insurance obtained in compliance with this paragraph. Failure of City to request copies of such documents will not impose any liability on City, or its employees.

o) In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right, but not the duty, to obtain the insurance it deems necessary to meet the requirements of this Agreement, and any premium paid by City for such insurance will be promptly reimbursed by CMAR Firm, or, if not promptly reimbursed, deducted from any compensation to be paid by City to CMAR Firm pursuant to this Agreement.

p) Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only and is not intended by any party to be all inclusive, or to the exclusion of

other coverage, or a waiver of any type. Coverage shall not be limited to the specific location, individual, or entity designated as the address of the project or services provided for by this Agreement. Insurance coverage limits are subject to change based on the unique liability associated with each project over and above standard coverage limits at the discretion of the City's Risk Manager or their designee.

q) CMAR Firm shall provide immediate notice to City of any claim against CMAR Firm or any loss involving CMAR Firm that could result in City or any of City's officers, employees, agents, or volunteers being named as a defendant in any litigation arising out of such claim or loss. City shall not incur any obligation or liability by reason of the receipt of such notice. However, City shall have the right, but not the duty, to monitor the handling of any such claim or loss that is likely to involve City.

r) In the event of any loss that is not insured due to the failure of CMAR Firm to comply with these requirements, CMAR Firm will be personally responsible for any and all losses, claims, suits, damages, defense obligations, and liability of any kind attributed to City, or City's officers, employees, agents, or volunteers as a result of such failure.

EXHIBIT 9B

INSURANCE REQUIREMENTS (CONSTRUCTION PHASE)

[Note to Proposers: Exhibit 9B will be added as part of the Construction Phase Amendment. City is considering use of an owner controlled insurance program for the Construction Phase.]

EXHIBIT 10

FEDERAL AND STATE REQUIREMENTS

EXHIBIT 10A	Federal Requirements
EXHIBIT 10B	EPA Requirements
EXHIBIT 10C	Subcontractor Identification Form
EXHIBIT 10D	State Requirements
EXHIBIT 10E	Public Contract Code Section 9204
EXHIBIT 10F	Iran Contracting Act of 2010
EXHIBIT 10G	Non-Collusion Affidavit
EXHIBIT 10H	Federal Prevailing Wage Rate

EXHIBIT 10A

FEDERAL REQUIREMENTS

CMAR Firm shall perform its obligations under the Agreement in accordance with the following requirements.

1. AMERICANS WITH DISABILITIES ACT

CMAR Firm shall be responsible for familiarity and compliance with (as applicable) the Americans with Disabilities Act, 42 U.S.C. section 12101 et seq. and its implementing regulations. CMAR Firm will provide reasonable accommodations to allow qualified individuals with disabilities to have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. CMAR Firm will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any contract entered into by CMAR Firm or any Subcontractor relating to the Agreement, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

2. VERIFICATION OF EMPLOYMENT ELIGIBILITY

By executing this Agreement, CMAR Firm verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented persons, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all Subcontractors at all tiers, including sub-subcontractors, subconsultants, sub-subconsultants, and consultants to comply with the same. CMAR Firm agrees that any of the following shall constitute a CMAR Firm Default: (1) failure of CMAR Firm or its subcontractors at any tier to meet any of the requirements provided for in this Section 2; (2) any misrepresentation or material omission concerning compliance with such requirements; or (3) failure to immediately remove from the Work any Person found not to be in compliance with such requirements.

3. SOLID WASTE DISPOSAL ACT

CMAR Firm shall comply with all requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). The requirements of section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of completion, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in EPA guidelines.

CMAR Firm shall include language equivalent to that in this Section 3 in each of its Subcontracts, and require each Subcontractor to include equivalent language in each of its Subcontracts.

4. TRAFFICKING IN PERSONS

CMAR Firm and its employees may not engage in severe forms of trafficking in persons during the term of this Agreement, procure a commercial sex act during the term of this Agreement, or use forced labor in the performance of this Agreement. CMAR Firm shall provide immediate notice to City of any information regarding a violation of the foregoing. CMAR Firm recognizes that any failure to comply with this Section 4 may subject City to loss of federal funds. CMAR Firm agrees to compensate City for any such funds lost due to its failure to comply with this Section 4 or the failure of any Subcontractor to comply with this condition.

CMAR Firm shall include language equivalent to that in this Section 4 in each of its Subcontracts, and require each Subcontractor to include equivalent language in each of its Subcontracts.

5. CMAR FIRM EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS

(a) This Agreement and employees working on this Agreement will be subject to the whistleblower rights and remedies in the pilot program on CMAR Firm employee whistleblower protections established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and Federal Acquisition Regulation (FAR) 3.908.

(b) CMAR Firm shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712, as described in FAR 3.908.

(c) CMAR Firm shall insert the substance of this Section 5, including this subsection (c), in all Subcontracts over the simplified acquisition threshold, as defined in FAR 2.101 on the date of Subcontract award.

6. USE OF PROHIBITTED PRODUCTS

(a) So long as section 889 of the National Defense Authorization Act of 2019 (H.R. 5515 at pp. 282-284; Pub. L. 115-232) or any comparable statute is effective, CMAR Firm shall not commit any of the following actions:

(1) deliver, install, or include any Prohibited Product under this Agreement;
(2) propose to deliver, install, or include any Prohibited Product under this Agreement; or
(3) enter into a new contract to procure or obtain any Prohibited Product.

(b) For the purpose of this Section 6, “Prohibited Product” is defined as any telecommunication or video surveillance equipment, systems, or services produced by any of the following entities:

(1) Huawei Technologies Company;
(2) ZTE Corporation;
(3) Hytera Communications Corporation;

(4) Hangzhou Hikivision Digital Technology Company;
(5) Dahua Technology Company; or
(6) Any subsidiary or affiliate of the entities mentioned in this Section 6(b).

(c) CMAR Firm shall identify the known subsidiaries and affiliates of the entities listed in Section 6(b) from the following website: https://umd.service-now.com/itsupport?id=kb_article_view&sysparm_article=KB0014132&sys_kb_id=28015b70dbe0e3849382f1a51d96193f.

EXHIBIT 10B

EPA REQUIREMENTS

CMAR Firm shall perform its obligations under the Agreement in accordance with the following requirements.

1.1. Suspension and Debarment

CMAR Firm certifies that it will not knowingly enter into a contract with anyone who is ineligible under the 2 CFR Part 1532 to participate in the Project. Suspension and debarment information can be accessed at http://www.sam.gov. CMAR Firm represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

1.2. Lobbying

Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. These requirements are implemented for US EPA in 40 CFR Part 34, which also describes types of activities, such as legislative liaison activities and professional and technical services, which are not subject to this prohibition. Upon award of this Agreement, CMAR Firm shall complete and submit to City the certification and disclosure forms in Appendix A and Appendix B to 40 CFR Part 34. CMAR Firm shall also require all Subcontractors and suppliers of any tier awarded a subcontract over $100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 CFR 34.110.

1.3. American Iron and Steel Requirement

CMAR Firm acknowledges to and for the benefit of City and the United States Environmental Protection Agency ("**EPA**") that it understands the goods and services under this Agreement are being funded with monies made available by the Water Infrastructure Finance and Innovation Act program of the EPA that has statutory requirements commonly known as "American Iron and Steel" that requires all of the iron and steel products used in the project to be produced in the United States ("**American Iron and Steel Requirement**") including iron and steel products provided by CMAR Firm pursuant to this Agreement. CMAR Firm hereby represents, warrants and covenants to and for the benefit of City and the EPA that (a) CMAR Firm has reviewed and understands the American Iron and Steel Requirement, (b) all of the iron and steel products used in the project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel Requirement, unless a waiver of the requirement is approved, and (c) CMAR Firm will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel Requirement, as may be requested by the Purchaser or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by CMAR Firm shall permit City or the EPA to recover as damages against CMAR Firm any loss, expense, or cost (including without limitation attorney's fees) incurred by City or the EPA resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by the Purchaser). While CMAR Firm has

no direct contractual privity with the EPA, as a lender to City for the funding of its project, City and CMAR Firm agree that the EPA is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the EPA.

1.4. Nondiscrimination

1.4.1. As used in Section 1.4.2 and the following provisions, the term "contractor" means CMAR Firm.

1.4.2. Contractor shall comply with the following federal non-discrimination requirements:

(a) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).

(b) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

(c) The Age Discrimination Act of 1975, which prohibits age discrimination.

(d) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(e) 40 CFR Part 7, as it relates to the foregoing.

(f) Executive Order No. 11246.

Equal Employment Opportunity Obligations Under Executive Order No. 11246:

The contractor shall comply with Executive Order No. 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order No. 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60)**.**

Contractor's compliance with Executive Order No. 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 CFR Part 60-4.

During the performance of this contract, the contractor agrees as follows**:**

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of

pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(4) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(5) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(7) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(8) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(9) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States. [Section 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, Executive Order No. 13665 of April 8, 2014, 79 FR 20749, Executive Order No. 13672 of July 21, 2014, 79 FR 42971]

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order No. 11246) located at 41 CFR 60-4.3:

1) As used in these specifications:

a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d) “Minority” includes:

i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2) Whenever the contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3) If the contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4) The contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as

percentages of the total hours of employment and training of minority and female utilization the contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Executive Order No. 11246, or the regulations promulgated pursuant thereto.

6) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7) The contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

   a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

   b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the contractor by the union or, if referred, not employed by the contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the contractor may have taken.

d) Provide immediate written notification to the Director when the union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under 7b above.

f) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and Subcontractors with whom the contractor does or anticipates doing business.

i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a contractor's work force.

k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the contractor's obligations under these specifications are being carried out.

n) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

8) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program

are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The obligation to comply, however, is the contractor's and failure of such a group to fulfill an obligation shall not be a defense for the contractor's noncompliance.

9) A single goal for minorities and a separate single goal for women have been established. The contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10) The contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11) The contractor shall not enter into any Subcontract with any person or firm debarred from government contracts pursuant to Executive Order No. 11246.

12) The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order No. 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order No. 11246, as amended.

13) The contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14) The contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which

the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

Segregated Facilities, 41 CRF 60-1.8

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; provided, that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

For bid solicitations, also include the following or equivalent information: Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order No. 11246) located at 41 CFR § 60-4.2:

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Time-tables	**Goals for minority participation for each trade**	**Goals for female participation in each trade**
	Insert goals for each year[1]	6.9%[2]

These goals are applicable to all the contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the

[1] Goals can be found at https://www.dol.gov/ofccp/TAguides/TAC_FedContractors_JRF_QA_508c.pdf
[2] Nationwide goal for all covered areas

work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

<u>Participation by Disadvantaged Business Enterprises in Procurement under EPA Financial Assistance Agreements, 73 FR 15904</u>

**Note: This is the minimal requirement of the WIFIA program. States may require additional DBE reporting.* The WIFIA Program requires borrowers of WIFIA loans to incorporate EPA's six good faith efforts during contract and subcontract procurement and maintain documentation of efforts. EPA's good faith efforts are explained in the DBE rule and website at https://www.epa.gov/resources-small-businesses/disadvantaged-business-enterprise-program-resources. Although the website provides good examples on how to implement these efforts during contract procurement, the WIFIA program does not have specific requirements for implementing each of the efforts as long as the effort is shown.

Contractor agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises. The DBE rule can be accessed at www.epa.gov/osbp. Contractor shall comply with 40 CFR section 33.301, and retain all records documenting compliance with the six good faith efforts. The Contractor shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The contractor shall carry out applicable requirements of 40 CFR part 33 in the award and administration of

contracts awarded under EPA financial assistance agreements. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

Compliance with Davis-Bacon and Related Acts

As used in the following provisions concerning "Compliance with Davis Bacon and Related Acts," the term "sub recipient" means City or Padre Dam (as applicable).

(a) In any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project) will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each

classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The WIFIA assistance recipient, City, on behalf of EPA, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The WIFIA assistance recipient shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the WIFIA assistance recipient agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), documentation report of the action taken shall be sent to the Administrator of the Wage and Hour Division (WHD Administrator), U.S. Department of Labor, Washington, DC 20210. The WHD Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification request within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the WIFIA assistance recipient do not agree on the proposed classification and wage rate (including the amount

designated for fringe benefits, where appropriate), the WIFIA assistance recipient shall refer the questions, including the views of all interested parties and the recommendation of the WIFIA assistance recipient, to the WHD Administrator for determination. The WHD Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the WIFIA assistance recipient or will notify the WIFIA assistance recipient within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) Withholding. The sub recipient(s) shall upon written request of the WIFIA Director or an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the City. The payrolls shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on the weekly payrolls. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the City for

transmission to the EPA, , the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the City.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the City, EPA or the Department of Labor, and shall permit such

representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency or State may, after written notice to the City, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and trainees –

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that

determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the WHD Administrator determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order No. 11246, as amended, and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA determines may by appropriate instructions

require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and City, EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by § 5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the

basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The City upon written request of the City shall upon its own action or upon written request of an authorized representative of the Department of Labor, or the EPA, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in § 5.1, the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require the City to insert in any such contract a clause providing that the records that are maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the US EPA, the Department of Labor and the State Water Board, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

EXHIBIT 10C

SUBCONTRACTOR IDENTIFICATION FORM – PRECONSTRUCTION PHASE

[Note to Proposers: To be completed based on Part 3 of the Proposal.]

Subcontractor Name, Address, Telephone No., License Number (CSLB and DIR)	Description of Subcontract Work	Dollar Amount of Subcontract	Est. Time of Performance

CMAR Firm: _____

Date: _____

SUBCONTRACTOR IDENTIFICATION FORM – CONSTRUCTION PHASE

[Note to Proposers: To be completed at the end of Preconstruction Phase.]

Subcontractor Name, Address, Telephone No., License Number (CSLB and DIR)	Description of Subcontract Work	Dollar Amount of Subcontract	Est. Time of Performance

CMAR Firm: _____

Date: _____

EXHIBIT 10D

STATE REQUIREMENTS

CMAR Firm shall perform its obligations under the Agreement in accordance with the following requirements.

1. LABOR CODE REQUIREMENTS

1.1 Worker's Compensation

CMAR Firm shall comply with the provisions of section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code.

1.2 Prevailing Wages

Pursuant to the provisions of section 1773 of the California Labor Code, City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in section 1773.1 of said Code, apprenticeship or other training programs authorized by section 3093 of said Code, worker protection and assistance programs or committees established under the Federal Labor Management Cooperation Act of 1978, industry advancement and collective bargaining agreements administrative fees), provided that these payments are required under a collective bargaining agreement pertaining to the particular craft, classification, or type of work within the locality or the nearest labor market area at issue and other similar purposes applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned; provided that if the prevailing wage rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in section 6700 of the California Government Code. Copies of the prevailing rates of wages are on file at City's offices, and will be furnished to CMAR Firm and other interested parties on request. For crafts or classifications not shown on the prevailing wage determinations, CMAR Firm may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for the Work. Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates as adopted. The State prevailing wages to apply to Preconstruction Phase shall be the DIR wage rates applicable upon the date when the final RFP is issued, being March 13, 2023. The State prevailing wages to apply to Construction Phase shall be the DIR wages applicable upon the date ten days prior to submittal of the GMP Proposal, except as otherwise directed by City.

If the Division of Labor Standards Enforcement determines that employees of any Subcontractor were not paid the general prevailing rate of per diem wages, CMAR Firm shall withhold an amount of moneys due to the Subcontractor sufficient to pay those employees the general prevailing wage rate of per diem wages if requested by the Division of Labor Standards Enforcement. CMAR Firm shall pay any money retained from and owed such Subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved.

Pursuant to section 1773.2 of the Labor Code, CMAR Firm shall post prevailing wage rates at a prominent place at the Site.

1.3 Hours of Work/Overtime Requirements

Eight hours labor constitutes a legal day's work.

1.4 Payroll Records

Work on the job site must comply with Labor Code sections 1720 et seq. and 8 CA Code of Regulations § 16000 et seq.

Payroll records include time cards, canceled checks, cash receipts, trust fund forms, books, documents, schedules, forms, reports, receipts or other information which reflect job assignments, work schedules by days and hours, and the disbursement of payment to workers (8 CA Code of Regs § 16000).

1.5 Apprenticeships

CMAR Firm's attention is directed to the provisions of Labor Code sections 1777.5, 1777.6, 1777.7, and Title 8, Code of Regulations, sections 200 et seq., relating to apprentice employment and training. CMAR Firm shall assume full responsibility for compliance with said sections (as applicable) with respect to all apprenticeable occupations on the Project. CMAR Firm shall obtain a certificate of apprenticeship before employing any apprentice as required under the Labor Code. To ensure compliance and complete understanding of the law regarding apprentices, CMAR Firm should (where any question exists) contact the Division of Apprenticeship Standards, 1515 Clay St, 19th floor, Ste 1902, Oakland, CA 94612 , prior to commencement of the Work.

1.6 Specific Labor Code Provisions

CMAR Firm's attention is directed to the following requirements of the Labor Code. A copy of each such Code section (except 1810, 1811 and 1812) shall be included in each Subcontract hereunder:

Labor Code Section 1725.5

1725.5. A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars ($400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars ($2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty

renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which section 1771 applies, either as the result of a determination by the director pursuant to section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with notice of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars ($25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars ($15,000) or less when the project is for maintenance work.

Labor Code Section 1771

1771. Except for public works projects of one thousand dollars ($1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable to contracts let for maintenance work.

Labor Code Section 1775

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars ($200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars ($40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars ($80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars ($120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of this section and sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

Labor Code Section 1776

1776. (a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior

to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec.186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f)(1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided nonredacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars ($100) for each calendar day, or portion thereof, for each worker, until strict

compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

Regulations implementing Labor Code section 1776 are located in sections 16000, 16400, 16401, 16402, 16403, and 16500 of Title 8, California Code of Regulations.

Labor Code Section 1777.5

1777.5. (a) This chapter does not prevent the employment of properly registered apprentices upon public works.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth

in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program.

"Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body.

Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this Section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) (A) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The grant funds shall be distributed as follows:

(i) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(ii) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(iii) All training contributions not distributed under clauses (i) and (ii) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(B) An apprenticeship program shall only be eligible to receive grant funds pursuant to this subdivision if the apprenticeship program agrees, prior to the receipt of any grant funds, to keep adequate records that document the expenditure of grant funds and to make all records available to the Department of Industrial Relations so that the Department of Industrial Relations is able to verify that grant funds were used solely for training apprentices. For purposes of this subparagraph, adequate records include, but are not limited to, invoices, receipts, and canceled checks that account for the expenditure of grant funds. This subparagraph shall not be deemed to require an apprenticeship program to provide the Department of Industrial Relations with more documentation than is necessary to verify the appropriate expenditure of grant funds made pursuant to this subdivision.

(C) The Department of Industrial Relations shall verify that grants made pursuant to this subdivision are used solely to fund training apprentices. If an apprenticeship program is unable to demonstrate how grant funds are expended or if an apprenticeship program is found to be using grant funds for purposes other than training apprentices, then the apprenticeship program shall not be eligible to receive any future grant pursuant to this subdivision and the Department of Industrial Relations may initiate the process to rescind the registration of the apprenticeship program.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

All decisions of an apprenticeship program under this section are subject to section 3081.

Labor Code Section 1810

1810. Eight hours labor constitutes a legal day's work in all cases where the same is performed under the authority of any law of this State, or under the direction, or control, or by the authority of any officer of this State acting in his official capacity, or under the direction, or control or by the authority of any municipal corporation, or of any officer thereof. A stipulation to that effect shall be made a part of all contracts to which the State or any municipal corporation therein is a party.

Labor Code Section 1811

1811. The time of service of any workman employed upon public work is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week, except as hereinafter provided for under section 1815.

Labor Code Section 1812

1812. Every contractor and subcontractor shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the public work. The record shall be kept open at all reasonable hours to the inspection of the awarding body and to the Division of Labor Standards Enforcement.

Labor Code Section 1813

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

Labor Code Section 1815

1815. Notwithstanding the provisions of sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than 11/2 times the basic rate of pay.

1.7 Labor Nondiscrimination

CMAR Firm's attention is directed to section 1735 of the Labor Code, which reads as follows:

> "A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of section 12940 of the

Government Code, as those bases are defined in sections 12926 and 12926.1 of the Government Code, except as otherwise provided in section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter."

CMAR Firm's attention is directed to the following "Nondiscrimination Clause" that is required by Chapter 5 of Division 4 of Title 2, California Code of Regulations.

Nondiscrimination Clause

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

1.8 Excavation Safety

CMAR Firm shall comply with Labor Code section 6705 while excavating. For an excavation 5 feet or more in depth, submit shop drawings for a protective system.

The drawings must show the design and details for providing worker protection from caving ground during excavation.

Shop drawings of protective systems for which the Construction Safety Orders issued by Cal/OSHA require design by a registered professional engineer must be sealed and signed by an engineer who is registered as a civil engineer in the State.

The Submittal must allow review time and include the contents shown in the following table except the review time is 65 days for an excavation on or affecting railroad property.

Drawing Review Time and Contents

Topic	**Plan not requiring a signature**	**Plan requiring a signature**
Review time	**5 Business Days before excavating**	**20 days before excavating**
Contents	**Drawings** **Calculations**	**Drawings** **Calculations**

	Material information **Proprietary system information**	**Material information** **Proprietary system information** **Soil classification** **Soil properties** **Soil design calculations**

2. PUBLIC CONTRACT CODE REQUIREMENTS

2.1 Assignment of Causes of Action

CMAR Firm's attention is directed to the following requirements in Public Contract Code section 7103.5:

> (b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body 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. section 15) or under the Cartwright Act (Chapter 2 (commencing with section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

2.2 Public Contracts: Claim Resolution

See Exhibit 10E (Public Contract Code Section 9204) for the text of Public Contract Code section 9204.

2.3 Mined Materials

CMAR Firm acknowledges and understands that, pursuant to Public Contract Code section 20676, sellers of "mined material" must be on an approved list of sellers published pursuant to Public Resources Code section 2717(b) in order to supply mined material for this Agreement.

2.4 Specifications by Brand or Trade Names

If any term in the Agreement calls for a designated material, product, thing or service by specific brand or trade name, that brand or trade name shall be deemed to be followed by the words "or equal", unless otherwise stated in the Agreement. CMAR Firm may, unless otherwise stated, offer for substitution any material, process or article which is substantially equal to or better in every respect to that so indicated or specified in the Agreement.

The burden of proof as to the equality of any material, process or article shall rest with CMAR Firm. City has the complete and sole discretion to determine if a material, process or article is an "or equal" material, process or article that may be substituted.

3. REMOVAL, RELOCATION OR PROTECTION OF EXISTING UTILITIES

CMAR Firm acknowledges and agrees that the provisions of Section 11.4 (Differing Site Conditions) of the Agreement satisfy City's obligations pursuant to Government Code section 4215. CMAR Firm agrees that to the extent that Government Code section 4215 may be construed to the contrary, CMAR Firm hereby waives the benefit of such statute.

4. COMPLIANCE WITH STATE STORM WATER PERMIT

CMAR Firm hereby acknowledges that it has investigated the risk arising from storm, surface, ground, nuisance, or other waters that may be encountered at various times during the Work and assumes all risks and liabilities arising from such waters.

CMAR Firm shall keep itself and all Subcontractors, staff, and employees fully informed of, adequately trained in, and in compliance with all Applicable Laws that may impact, or be implicated by the performance of the Work including all applicable provisions of the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) and the California Porter-Cologne Water Quality Control Act (Water Code § 13000 et seq.).

For all projects that involve construction on or disturbance of one acre or more of land or which are part of a larger common area of development, Applicable Law requires, without limitation, compliance with State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Storm Water Discharges associated with Construction Activity, Water Quality Order No. 2009-00009-DWQ as modified by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ and any other subsequent amendment, renewal, or reissuance, (referred to in this Section 4 as the "**Permit**"), and to the extent applicable, with any requirements imposed pursuant to San Diego Regional Water Quality Control Board Order No. R9-2013-0001 and any amendments, modification, renewal or reissuance thereof.

Without limiting any of CMAR Firm's other obligations with regard to Governmental Approvals, CMAR Firm shall determine whether a Permit is necessary and, as applicable, shall: (1) file a notice of intent and obtain coverage for the Work under the Permit; (2) prepare and implement a Storm Water Pollution Prevention Plan prior to initiating the Construction Work; and (3) implement all other provisions, and monitoring and reporting requirements set out in the Permit.

For construction activity which results in the disturbance of one acre or less of total land area, CMAR Firm shall be responsible for providing erosion control measures in accordance with Good Industry Practice to control soil movement and prevent storm water pollution satisfactory to City, San Diego Regional Water Quality Control Board, County, and/or any other Authority Having Jurisdiction. Erosion control measures shall be determined by CMAR Firm and shall include slope protection, desilting basins, energy dissipators, silt fences, straw bale dikes, earth dikes, gravel bagging, and storm drains. As a minimum, gravel dikes, silt fences, straw bale dikes, or equivalent control practices are required for all significant side slope and downslope boundaries of the Site. Erosion control measures shall apply to all areas of construction activities, including reservoir sites, access roads, and staging and stockpile areas.

5. CONTRACTORS' STATE LICENSE BOARD NOTICE

Contractors are required by law to be licensed and regulated by the California Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint

regarding a patent act or omission is filed within four (4) years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within ten (10) years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

6. DRUG FREE WORKPLACE CERTIFICATION

By signing this Agreement, CMAR Firm certifies that it and its Subcontractors are in compliance with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and have or will provide a drug-free workplace by taking the following actions:

(a) Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations, as required by Government Code section 8355(a)(1).

(b) Establish a Drug-Free Awareness Program, as required by Government Code section 8355(a)(2) to inform employees, contractors and subcontractors about all of the following:

1. the dangers of drug abuse in the workplace,

2. City's policy of maintaining a drug-free workplace,

3. any available counseling, rehabilitation, and employee assistance programs, and

4. penalties that may be imposed upon employees, contractors, and subcontractors for drug abuse violations.

(c) Provide as required by Government Code section 8355(a)(3), that every employee, contractor, and/or subcontractor who performs Work in connection with this Agreement:

1. will receive a copy of City's drug-free policy statement, and

2. will agree to abide by the terms of City's condition of employment, contract or subcontract.

7. STATE WATER RESOURCES CONTROL BOARD DISCLAIMER

Funding for this project has been provided in full or in part through an agreement with the State Water Resources Control Board. California's Clean Water State Revolving Fund is capitalized through a variety of funding sources, including grants from the United States Environmental Protection Agency and state bond proceeds. The contents of this document do not necessarily reflect the views and policies of the foregoing, nor does mention of trade names or commercial products constitute an endorsement or recommendation of use.

EXHIBIT 10E

PUBLIC CONTRACT CODE SECTION 9204

Public Contract Code – PCC 9204.

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with section 19100) of Part 2, and Article 1.5 (commencing with section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity’s written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and

claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as

the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2027, deletes or extends that date.

(Amended by Stats. 2019, Ch. 489, Sec. 1. (AB 456) Effective January 1, 2020. Repealed as of January 1, 2027, by its own provisions.)

EXHIBIT 10F

IRAN CONTRACTING ACT OF 2010

[Note to Proposers: To be completed by the CMAR Firm and submitted with the GMP Proposal]

In accordance with California Public Contract Code sections 2200-2208, all bidders submitting Proposals for, entering into, or renewing contracts with City for goods and services estimated at $1,000,000 or more are required to complete, sign, and submit the Iran Contracting Act of 2010 Compliance Affidavit.

CMAR Firm's signed affidavit is attached and incorporated into the Agreement by reference.

(see attached)

IRAN CONTRACTING PROHIBITION CERTIFICATION

[Note to Proposers: To be completed by the CMAR Firm and each Equity Member and submitted with the GMP Proposal]

Section 2200 et seq. of the California Public Contract Code prohibits a person from submitting a bid for a contract with a public entity for goods and services of $1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of $20,000,000 or more in the energy sector of Iran and financial institutions that extend $20,000,000 or more in credit to a person that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.

In accordance with section 2204 of the California Public Contract Code, the undersigned certifies that either:

1. it is not identified on a list created pursuant to section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in section 2202.5(a), or as a person described in section 2202.5(b), as applicable; or

2. it is on such a list but has received permission pursuant to section 2203(c) or (d) to submit a proposal in response to the Request for Proposals for construction services for the City of Ventura MBR/UV Upgrade Project.

Note: Providing a false certification may result in civil penalties and sanctions.

(Signed)_____

(Print Title)_____

(Firm)_____

(Date)_____

NOTE: In accordance with Public Contract Code section 2205, false certification of this form shall be reported to the California Attorney General and may result in civil penalties equal to the greater of $250,000 or twice the contract price, termination of the Agreement and/or ineligibility to bid on contracts for three years

EXHIBIT 10G

NON-COLLUSION DECLARATION

[Note to Proposers: To be executed by Proposer and each Equity Member and submitted with the GMP Proposal]

The undersigned declares:

I am the _____ of _____, the party making the foregoing Proposal.

The Proposal is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The Proposal is genuine and not collusive or sham. The Proposer has not directly or indirectly induced or solicited any other Proposer to put in a false or sham Proposal. The Proposer has not directly or indirectly colluded, conspired, connived, or agreed with any Proposer or anyone else to put in a sham bid, or to refrain from proposing. The Proposer has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Price Proposal of the Proposer or any other Proposer, or to fix any overhead, profit, or cost element of the Price Proposal, or of that of any other Proposer. All statements contained in the Proposal are true. The Proposer has not directly or indirectly, submitted his or her Price Proposal or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company association, organization, bid or proposal depository, or to any member or agent thereof to effectuate a collusive or sham Proposal, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a Proposer that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the Proposer.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on _____(date), at _____(city), _____(state).

(Signature)_____

(Print Name)_____

(Print Title) _____

(Date) _

EXHIBIT 10H

FEDERAL PREVAILING WAGE RATE

(SUBJECT TO CHANGE)

The federal prevailing wage rates for the Construction Phase Work or any applicable Early Work shall be those set forth under the general wage decision for [Note to CMAR Firm: To be determined prior to submission of the GMP Proposal or proposal for Early Work] projects in Ventura County, California as published on the Davis-Bacon wage determination website on the date that is ten days before submission of the GMP Proposal except as otherwise directed by City. Such prevailing wage rates shall be incorporated in this Exhibit 10H.

[The wage decisions and labor classifications in this Exhibit 10H shall be incorporated into this Agreement at or before execution of the Construction Phase Amendment or any applicable Early Work (as applicable) with the wage decisions and labor classifications in effect ten days prior to submission of the GMP Proposal, except as otherwise directed by City. CMAR Firm is not entitled to any change in the GMP for the Construction Phase or any Early Work due to the differences between the wage decisions and labor classifications in this Exhibit 10H and those in effect ten days prior to submission of the GMP Proposal or as otherwise directed by City.]

EXHIBIT 10I

EXECUTIVE ORDER N-6-22 CERTIFICATION

EXECUTIVE ORDER N-6-22

On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (EO) regarding steps to be taken by state agencies and grantees in response to Russian aggression in Ukraine. The EO is located at https://www.gov.ca.gov/wp-content/uploads/2022/03/3.4.22-Russia-Ukraine-Executive-Order.pdf.

This Exhibit 10I serves as a notice to the Proposer that the EO imposes certain economic sanctions on contractors doing business in Russia as described in the EO, with reference to certain federal executive orders and the information available on the U.S. Department of the Treasury website (https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/ukraine-russia-related-sanctions). Proposer's failure to comply with the EO requirements may result in termination of this Agreement.

Section 5.2 of the Agreement requires Proposer to provide such information, documentation and administrative assistance as City may request, and to take such actions and execute such documents as are required to enable City to meet all requirements of the Funding Programs. Proposer's signed certificate, a copy of which is included in this Exhibit 10I, is part of the Agreement.

(see attached)

EXECUTIVE ORDER N-6-22 CONTRACTING CERTIFICATION

In accordance with Executive Order N-6-22, issued on March 4, 2022 by Governor Gavin Newsom (EO), the undersigned hereby certifies on behalf of [Proposer Name] that:

1. It is in compliance with, and shall continue to comply with, economic sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under California law.

2. It has taken the following steps to assure compliance with the above-described economic sanctions [*describe measures taken*, *including, but not limited to, desisting from making new investments in, or engaging in financial transactions with, Russian entities, not transferring technology to Russia or Russian entities, and directly providing support to the government and people of Ukraine*]:

   _____
   _____
   _____.

3. It has obtained similar certifications from its Subcontractors anticipated to enter into Subcontracts valued in excess of $1 million.

4. It shall promptly notify City if it becomes aware of any noncompliance with respect to itself or any of its Subcontractors, and shall provide quarterly reports to City regarding steps it has taken to assure compliance with the above-described economic sanctions, until such time as City provides notification that the economic sanctions have been lifted and reports are no longer required.

Note: Providing a false certification may result in civil penalties and sanctions.
Date: _____

Entity: _____

Signature: _____

Title: _____

EXHIBIT 11

MBR SITE

EXHIBIT 12

EXISTING CITY FACILITIES

(see attached)

[Note to Proposer: This exhibit to be added to this Agreement by the Construction Phase Amendment.]

EXHIBIT 13

PROJECT SPECIFIC INFORMATION (CONSTRUCTION PHASE)

[Note to Proposers: Included with the CMAR Agreement (Body).]

EXHIBIT 14

PROJECT PLANS AND SPECIFICATIONS

[Note to Proposer: Exhibit 14 will include:

EXHIBIT 14A Special Provisions

EXHIBIT 14B Standard Technical Specifications

EXHIBIT 14C Project Drawings

EXHIBIT 14D Standard Plans

EXHIBIT 14E Div 01s

Exhibits 14A through 14D will be developed during, and incorporated into the Agreement through the Construction Phase Amendment in accordance with the CMAR Agreement.

Exhibit 14E is attached to the Agreement but is subject to modification by the Construction Phase Amendment.]

EXHIBIT 14E

DIV 01S

[Note to Proposers: Exhibit 14E to be provided as an addendum to the RFP.]