

PUBLIC WORKS CONSTRUCTION AGREEMENT (CUPCCAA)

(_____)

This PUBLIC WORKS CONSTRUCTION AGREEMENT ("**Agreement**") is dated _____ (the "**Effective Date**") and is between West County Wastewater District, a sanitary district organized and existing under the Sanitary District Act of 1923 ("**WCW**") and _____ ("**Contractor**") (each a "**Party**" and collectively, the "**Parties**").

A. WCW issued a solicitation, attached as Exhibit A, seeking bids for: _____ (the "**Project**").

B. Contractor submitted a _____ for the Project, attached as Exhibit B.

C. WCW and Contractor seek in this Agreement to establish the terms and conditions under which the Contractor will perform the Project for WCW.

The Parties therefore agree as follows:

Section 1. Scope of Work.

The scope of the Contractor's work is set forth in Exhibit A and Exhibit B (collectively referred to as the "**Work**"). If any conflict or other discrepancy arises or appears between the body of this Agreement and the exhibits to this Agreement, the body of the Agreement takes precedence over the exhibits, and Exhibit A takes precedence over Exhibit B.

Section 2. Duration and Time of Completion.

Contractor shall begin performing the Work no later than 5 days after the date set forth in WCW's Notice to Proceed for the Project and shall complete the Work no later than ____ calendar days after the date set forth in the Notice to Proceed.

Section 3. Compensation.

The Contractor shall perform the Work for a total amount of \$_____ ("**Contract Price**"). The Contract Price includes any and all costs for materials, labor, subcontractors, insurance, bonding, taxes, delivery, profit and any other element of expense or compensation arising out of the and required to complete the Work.

Section 4. Invoice and Manner of Payment.

4.1 Contractor shall submit invoices to WCW on a monthly basis for Work performed during the previous month no later than the tenth working day of the following month, EXCEPT if the Project's duration is 30 or days or less, then Contractor shall submit one invoice to WCW at the completion of the Work. The Contractor's invoices shall itemize all charges, including at a minimum: (i) each date of performance of the Work; (ii) identification each person who performed the Work; (iii) a detailed description of the Work performed on each date; (iv) the hourly rate at which Contractor charges WCW for each worker for the Work performed on each date; (v) the itemization of all costs incurred; and (vi) total charges for the Work for the month invoiced.

4.2 Contractor shall provide, upon WCW's request, documentation substantiating charges billed to WCW pursuant to this Agreement. WCW may perform an audit of the Contractor's relevant records pertaining to the charges. Any Work performed more than 60 days prior to the date upon which they are invoiced to WCW will not be compensable.

4.3 WCW shall render payment to Contractor within 30 days of receipt of an undisputed and properly submitted progress payment invoice pursuant to § 20104.50 of the Public Contract Code, subject to the retention provisions set forth in § 16.2 of this Agreement. No such invoice or payment will be construed to be an acceptance of any work or materials. Before any progress payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that it is not delinquent in payments to its employees, subcontractors, suppliers or other creditors for labor and materials incorporated into the work. If WCW objects to any invoice submitted by Contractor, WCW will advise the Contractor in writing giving reasons for its objection. If any invoice submitted by the Contractor is disputed by WCW, only the disputed portion will be withheld from payment and the Contractor must continue to perform diligently during the pendency of any dispute resolution process that may ensue.

Section 5. Changes.

5.1 WCW may, at any time, by written order, make changes within the Scope of Work described in this Agreement. If such changes cause an increase in the budgeted cost or the time required for the performance of the Work, upon the submission of sufficient support by Contractor for compensation for a change to either the amount of Contractor's compensation and/or the schedule for performance of the Work, the Contractor may be eligible to receive additional compensation or a time extension. If Contractor encounters any unanticipated conditions or contingencies that may affect the Scope of Work and result in an adjustment in the amount of compensation or time required for performance of the Work, Contractor must advise WCW immediately upon notice of such condition or contingency. The written notice must explain the circumstances giving rise to the unforeseen condition or contingency and must set forth the proposed adjustment in compensation and/or schedule resulting therefrom. Contractor shall give such notice to WCW before Contractor performs work related to the proposed adjustment in compensation. Any and all pertinent changes must be expressed in a written supplement or amendment to this Agreement before Contractor implements the changes.

5.2 Only WCW's Board of Directors or General Manager may authorize changed or extra work, modification of the time of completion of the Work, or additional compensation for Contractor for the Work. Contractor's failure to secure the prior written authorization for any changed or extra work will constitute a waiver of any and all right to adjustment in the Contract Price due to the unauthorized work, and Contractor will not be entitled to any compensation for the performance of that changed or extra work.

Section 6. Temporary Suspension; Termination.

6.1 WCW, in its sole discretion, may stop or suspend all or any portion of the Work for such period as WCW may deem necessary. The suspension may be due to the failure by the Contractor to carry out orders given or to perform any provision of the Agreement or to factors that are not the responsibility of the Contractor. The Contractor shall comply immediately with WCW's written order to suspend the Work wholly or in part. The Contractor shall resume the suspended work when WCW directs the Contractor in writing to resume the Work.

6.2 If the suspension is due to the Contractor's failure to perform all or a portion of the Work or to carry out its responsibilities in accordance with this Agreement, or other action or

omission by the Contractor, all costs will be at Contractor's expense and no schedule extensions will be provided by WCW.

If the Work is suspended, the Contractor will not be relieved of its obligations under this Agreement, except for those of the Contractor's obligations to perform the portions of the Work that WCW specifically directed Contractor to suspend under this section.

6.3 If the Contractor is not responsible for the suspension, the suspension of all or any portion of the Work under this section may entitle the Contractor to compensation and/or schedule extensions subject to the requirements of this Agreement.

6.4 WCW may terminate the Agreement upon seven days' written notice. Upon termination, WCW shall pay Contractor the allowable costs incurred to the date of termination and those costs reasonably necessary, as determined by WCW, to effect the termination. In the event of termination, Contractor shall cooperate with WCW's reasonable instructions to terminate the work and furnish requested materials and records. If Contractor fails to perform any of the obligations required of Contractor within the time and in the manner provided for under the terms of this Agreement, or if Contractor violates any of the terms and conditions of this Agreement, WCW may immediately terminate the Agreement and shall pay Contractor only its allowable costs to the date of termination. WCW may deduct from the compensation owed to Contractor the amount of damage sustained or estimated by WCW resulting from Contractor's breach of this Agreement. In the event of termination, WCW will not be liable for Contractor's actual or projected lost profits had Contractor completed the Work.

Section 7. Contractor's Inspection of Site of Work.

Contractor shall examine carefully the site of the Work and shall inform itself of the conditions relating to the execution of the Work. If the Contractor does not inspect the site, the Contractor is responsible for all site conditions that would have been apparent had the Contractor performed a reasonable site inspection.

Section 8. Safety.

8.1 Contractor's Responsibility for Work Conditions. Contractor shall be solely and completely responsible for conditions of its work on the jobsite, including safety of all persons and property regarding the performance of the Work. This requirement will apply continuously and not be limited to normal working hours. Contractor shall promptly and fully comply with and carry out safety requirements as prescribed by federal, state, or local laws or regulations and industry standards. Contractor shall take such measures as may be necessary or required to assure that the safety and health of its employees and of the public at or near the jobsite will be safeguarded.

8.2 Inspection by WCW. Review and inspection of the Contractor's performance by WCW any of its agents or representatives is not intended to include review of the adequacy of the Contractor's work methods, equipment, or safety measures, in, on, or near the Project site.

8.3 Nature of Work at WCW's Facilities. THE CONTRACTOR IS HEREBY INFORMED THAT WORK ON THIS PROJECT COULD BE PHYSICALLY DANGEROUS TO WORKERS. THE CONTRACTOR SHALL CAREFULLY INSTRUCT ALL PERSONNEL WORKING ON THIS PROJECT AS TO POTENTIAL DANGERS THAT COULD BE POTENTIALLY HAZARDOUS TO WORKERS' HEALTH, AND SHALL PROVIDE ALL NECESSARY SAFETY EQUIPMENT AND INSTRUCTIONS AS NECESSARY TO PREVENT INJURY TO PERSONNEL AND DAMAGE TO PROPERTY.

8.4 Potential Effects of Exposure to Wastewater. The conveyance and treatment of raw sewage and its by-products can expose workers to pathogenic organisms which may cause diseases such as salmonellosis, typhoid fever, paratyphoid fever, bacillary dysentery, cholera, infectious hepatitis, polio, amoebic dysentery, and others. Contractor acknowledges, accepts, and assumes the risks related to potential exposure to wastewater.

8.5 Direction and Control. The Contractor is responsible for the direction and control of the Work and for assuring that its workers on each project understand the hazards of the work involved and the safe work procedures required for that project. The Contractor must assure that its subcontractors of all tiers, without expense to WCW, comply with this safety responsibility. No work may proceed until each worker and subcontractor understands the scope of the work and all safety rules and work procedures to be followed. The Contractor shall not allow a new employee, subcontractor, professional or otherwise to begin work on WCW's projects without a full and proper safety orientation.

8.6 Alcohol and Drug Use. The use of alcoholic beverages and/or nonprescription drugs at WCW's facilities or jobsites is strictly prohibited. Workers who use prescription drugs that interfere with workers' ability to work safely are prohibited from the work site.

8.7 Respiratory Equipment. The Work may be in areas where approved protective respiratory equipment is required pursuant to applicable regulations. Required personal protective equipment ("PPE") may include masks, safety boots, hard hats, eye protection, paper suits, respirators and gloves. Contractor is responsible for determining the PPE needed to safely supply the Work and for ensuring that all individuals involved in performing the Work have and properly utilize necessary PPE.

8.8 Safety Program. Before starting work, Contractor may be required to submit a written safety program for WCW's review. The objective of any such safety program will be accident prevention. WCW's review, comment upon, and/or acceptance of the Contractor's safety program and/or plan does not in any way negate the responsibilities of the Contractor for safety or place any responsibility upon WCW for such safety. Such review, comment and/or acceptance may not be construed as limiting in any manner the Contractor's obligation to undertake any action which may be necessary or required to establish and maintain safe working conditions at the site.

8.9 Exposure Control Plan. Due to the COVID-19 pandemic, WCW has developed a comprehensive COVID-19 Workplace Exposure Control Plan and has implemented associated controls and guidelines to mitigate the impacts of the pandemic to WCW and its employees. Contractor will be provided with this plan and is required to follow the lead in implementing its own controls and guidelines that are at least as stringent.

8.10 WCW's Directives. Contractor shall promptly comply with any directive from WCW regarding safety. WCW reserves the right to stop work if WCW reasonably believes that there is an imminent danger to safety. WCW also reserves the right to require Contractor to revise Contractor's safety program, if any, and/or plan to eliminate future occurrences of the imminent danger. Even though WCW reserves these rights, the exercise of these rights is in WCW's sole discretion, and the reservations will not be construed as obligations of WCW to monitor or enforce the Contractor's safety program, plan, and/or method of operation. WCW's exercise of these rights will not provide a basis for any request by the Contractor for damages, extra compensation, and/or additional compensation to complete the Work.

8.11 Need for Specialized Equipment. WCW requires that Contractor provide a safe working environment, under normal conditions. Contractor acknowledges that, in certain locations

and under certain conditions, the performance of the Work may require special equipment in order to properly conform to applicable safety regulations. HOWEVER, BECAUSE OF POTENTIALLY HAZARDOUS CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, HANDLING OF CERTAIN CHEMICALS, POSSIBLE EXPOSURE TO PATHOGENS, ETC., SPECIALIZED EQUIPMENT MAY BE NECESSARY AND STRICT CONFORMANCE WITH SAFETY REGULATIONS WILL BE REQUIRED.

8.12 First Aid. Contractor shall keep adequate first aid facilities and supplies available, and it shall instruct its employees in how first aid shall be given.

8.13 Subcontractor Compliance. Contractor shall ensure that its subcontractors of all tiers, without expense to WCW, comply with this Section 8.

Section 9. Indemnification.

Contractor shall indemnify, defend, keep and save harmless WCW, the Board, each member of the Board, and WCW's officers, agents and employees ("**Indemnitees**") from and against all liability and all claims or actions, demands, damages, or costs, including reasonable attorneys' fees and charges, for any injury to persons (including wrongful death) or damage to property that may occur, or that is alleged to have occurred, arising out of or relating to the acts or omissions of Contractor, its employees, subcontractors or agents, in connection with this Agreement. If any judgment is rendered against WCW or any of the other Indemnitees in any legal action, then Contractor shall, at its expense, satisfy and discharge the same. This indemnification obligation survives the termination or suspension of this Agreement.

Section 10. Insurance.

10.1 Policies Required. Without limiting Contractor's indemnification obligations provided above, Contractor shall take out before beginning performance of the Work and maintain at all times during the life of this Agreement the following policies of insurance with insurers possessing a Best rating of not less than A-VII. Contractor may not allow any subcontractor, professional or otherwise, to commence work on any subcontract until all insurance required of the Contractor has also been obtained by the subcontractor.

(i) Workers' Compensation. Contractor shall procure and maintain at all times during the performance of the Work Workers' Compensation Insurance in conformance with the laws of the State of California and Federal laws where applicable and Employers' Liability Insurance, which must not be less than One Million Dollars (\$1,000,000) per accident or disease. In the alternative, Contractor may rely on a self-insurance program to meet its legal requirements so long as the program of self-insurance complies fully with the provisions of the California Labor Code. Contractors shall also require all subcontractors to similarly provide Workers' Compensation insurance as required by the Labor Code of the State of California for all of the subcontractor's employees. All Workers' Compensation policies must be endorsed with the provision that the insurance must not be suspended, voided, or cancelled without 30 days prior written notice has been provided to WCW by the insurer. The Workers' Compensation insurance must also contain a provision whereby the insurance company agrees to waive all rights of subrogation against WCW and its elected or appointed officials, officers, agents, and employees for losses paid under the terms of such policy which arise from, or pertain to, or relate to the Work.

(ii) Commercial General Liability Insurance. Contractor shall also procure and maintain at all times during the performance of this Agreement a policy of Commercial General Liability Insurance with a limit for each occurrence of _____ (\$ _____),

and naming as additional insureds WCW, its Board members, officers, employees and agents. The Insurer shall endorse that its policy is Primary Insurance and it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering WCW. The insurance must be occurrence-based insurance.

(iii) Automobile Liability Insurance. Contractor shall also procure and maintain at all times during the performance of the Agreement a policy of Automobile Liability Insurance covering all automobiles owned, hired, and non-owned or leased by Contractor with a limit of One Million Dollars (\$1,000,000) for each accident and naming as additional insureds WCW, its Board members, officers, employees and agents. The insurer must endorse that its policy is primary insurance and it shall be liable for the full amount of any loss up to and including the total limit of liability without right of contribution from any other insurance covering WCW. The insurance must be occurrence-based insurance.

(iv) With respect to coverages under Subsections ii and iii above, inclusion of WCW as an additional insured will not in any way affect its rights as respects to any claim, demand, suit or judgment made, brought or recovered against Contractor. Each policy must protect Contractor and WCW in the same manner as though a separate policy had been issued to each. These requirements will not operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest had been named as an insured.

10.2 Policy Contents or Endorsements. Each general liability and automobile liability insurance policy must contain or be endorsed with the following provisions:

(i) The insurance may not be suspended, voided, cancelled, or reduced in coverage or in limits except after 30 days' prior written notice has been provided to WCW.

(ii) Any failure to comply with the reporting requirements of any policy will not affect coverage provided to WCW, its elected or appointed officers, officials or employees.

(iii) Contractor shall grant to WCW a waiver of any right to subrogation which any insurer of the Contractor may acquire against WCW by virtue of the payment of any loss under such insurance. Contractor shall obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not WCW has received a waiver of subrogation endorsement from the insurer.

10.3 Insurance Certificates and Endorsements. Prior to commencing the Work, Contractor shall submit to WCW documentation evidencing the required insurance signed by the insurance agent and the companies named. This documentation must be provided on forms which are acceptable to WCW and must include all required endorsements and verify that coverage is actually in effect. Failure to provide these forms within the time specified by WCW may result in the automatic termination of this Agreement. Current certification of insurance must be kept on file with WCW at all times during the term of this Agreement.

10.4 Deductible and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by WCW.

10.5 Termination of Insurance. If WCW receives notification that Contractor's insurance will be suspended, voided, cancelled or reduced in coverage or in limits, and if the Contractor does not provide for either the reinstatement of that insurance or for furnishing of alternate insurance containing all of the terms and provisions specified above prior to the termination of that insurance,

then WCW may either terminate this Agreement for that breach, or WCW may secure the required insurance to satisfy the conditions of this Agreement and deduct the cost of that insurance from compensation which would otherwise be due and payable to the Contractor for the Work.

Section 11. Final Inspection and Acceptance.

Upon notice from the Contractor that the work has been completed, WCW will make a final inspection and provide the Contractor with written notice of final acceptance, if it is determined that the work meets this Agreement's requirements, or instructions to promptly fix defective work identified at Contractor's sole expense.

Section 12. Guaranty.

Contractor warrants to WCW that all materials and equipment furnished under this Agreement will be of good quality and new, that the Work will be free from defects in material or workmanship, and that the Work will conform to the requirements of the Agreement. Work not conforming to the Agreement's requirements may be considered defective. If, within one year after the date of final acceptance of the Work by WCW, any of the Work is found to be defective, the Contractor shall promptly correct it after written notice from WCW to do so and Contractor shall pay for any damage to other property resulting from the defective work. If the Contractor fails to correct the defective work, WCW may correct it at the Contractor's expense. Work that is corrected will be subject to a one-year warranty obligation, commencing on the date the Work is corrected. The requirements of this section relate only to the specific obligation to correct defective work and nothing in this section will establish a period of limitation with respect to other obligations of Contractor under the Agreement.

Section 13. Conditions of Use and Preservation of Property.

13.1 Contractor shall assume full responsibility for protection and safekeeping of the materials and equipment stored on the site. In the event that any stored items or activities of the Contractor interfere with WCW's operations, the Contractor shall move the items or modify the activities at its expense in accordance with WCW's direction.

13.2 Contractor shall exercise due care to avoid injury to existing improvements or facilities, utility facilities and adjacent property. Any injury to WCW's property or the property of any other third party caused by Contractor's operations must be restored or replaced by Contractor or at Contractor's expense.

Section 14. Liquidated Damages.

14.1 If the Contractor fails to complete the work within the time limit set forth in this Agreement, or as may be modified in accordance with this Agreement, WCW will sustain damage in the event of such delay, the actual amount of which will be impracticable and difficult to ascertain, Therefore, Contractor shall pay liquidated damages for delay (not as a penalty) in the amount of \$_____ per day until the work is completed. Contractor shall pay these liquidated damages, and acknowledges that WCW may deduct this amount from monies due or that may become due Contractor if not paid within seven days of a demand by WCW.

14.2 The Contractor will be granted an extension of time and will not be assessed liquidated damages for any delay in the completion of the work caused by unforeseeable causes beyond Contractor's reasonable control and without fault of the Contractor as determined by

WCW. Contractor shall notify WCW, in writing, no later than 10 days from the beginning of such delay specifying the nature of the delay and the number of days delayed. The Contractor's failure to submit written notice constitutes an absolute waiver of any claim for an extension of time and will be sufficient cause for denial of a request for an extension.

Section 15. Labor Code Provisions Applicable To Public Works Agreements.

15.1 Wage and Hour. In the performance of this Agreement, Contractor's attention is directed to the following requirements of the Labor Code:

(i) Hours of Labor. Eight hours labor constitutes a legal day's work. Work performed by employees of the Contractor in excess of eight hours per day and 40 hours during any one week will be permitted upon compensation for all hours worked in excess of eight hours per day at not less than one-and-one-half times the basic rate of pay, as provided in Section 1815. In addition, Contractor or subcontractors may be required to pay double the basic rate of pay for all hours worked in excess of 12 hours in any workday and under other circumstances. (See California Code of Regulations §§ 16100(c)(6), 16200(a)(3)(F) and applicable prevailing wage determinations.)

(ii) Prevailing Wages. Contractor shall comply with California Labor Code §§ 1770 to 1780, inclusive. Pursuant to the provisions of § 1773 of the Labor Code, WCW has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work applicable to the work to be done from the Director of the Department of Industrial Relations. Copies of the prevailing wage rates are on file at WCW and are available for review upon request. Pursuant to §1773.2 of the Labor Code, the Contractor shall post general prevailing wage rates at a prominent place at the site of the work.

(iii) If the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by WCW, Contractor shall bring such categories of workers to the WCW's attention immediately, and to obtain the appropriate wage rate from the Department of Industrial Relations (with WCW's assistance if necessary). (See Title 8 California Code of Regulations § 16202.)

15.2 Payroll Records. The Contractor's attention is directed to the following provisions of Labor Code § 1776. The Contractor shall be responsible for the compliance with these provisions by his subcontractors.

(i) The Contractor and each subcontractor shall keep an accurate payroll record, 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.

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

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

(b) A certified copy of all payroll records enumerated in subdivision (a) must be made available for inspection or furnished upon request to WCW, the Division of Labor Standards Enforcement and the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) A certified copy of all payroll records enumerated in subdivision (a) must be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public must be made through either WCW, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (ii), the requesting party must, prior to being provided the records, reimburse the costs of preparation by the Contractor, subcontractor and the entity through which the request was made. The public shall not be given access to such records at the principal office of the Contractor.

(iii) Contractor and each subcontractor shall submit electronic certified payroll records to the California Labor Commissioner in the manner and format set forth in California Labor Code § 1771.4. The certified payroll records must be on forms provided by the Division of Labor Standards Enforcement or must contain the same information as the forms provided by the Division.

(iv) The Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within 10 days after receipt of a written request.

(v) Any copy of records made available for inspection as copies and furnished upon request to the public or the WCW, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement must be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor must not be marked or obliterated.

(vi) The Contractor shall inform WCW of the location of records enumerated under subdivision (a), including the street address, city and county, and if the location of such records changes, Contractor shall within five working days provide WCW with notice of such change of location and address.

(vii) If Contractor fails to comply with the requirements of this Section, the Contractor will have no more than 10 days in which to comply subsequent to receipt of written notice specifying in what respects the Contractor must comply with this Section. Should noncompliance still be evident after such 10-day period, the Contractor may be liable to the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement for penalties for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon request by the Division of Apprenticeship Standards of the Division of Labor Standards Enforcement, WCW shall withhold such penalties from progress payments then due. The penalties specified in subdivision (g) of Labor Code § 1776 for noncompliance with the provisions of § 1776 may be deducted from any monies due or which may become due to the Contractor.

(viii) The Contractor and each subcontractor shall preserve their payroll records for a period of three years from the date of completion of the Agreement.

15.3 Labor Non-Discrimination. Attention is directed to Labor Code § 1735 which provides that Contractor shall not discriminate against any employee or applicant for employment because of race or color, religion, physical or mental disability, national origin or ancestry, medical

condition, marital status or sex of such persons, except as provided in Section 12940 of the Government Code. Contractor further agrees to include a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

15.4 Apprentices. The Contractor and all subcontractors shall comply with the requirements of California Labor Code §§ 1777.5, 1777.6 and 1777.7 regarding the employment and of apprentices.

15.5 Workers' Compensation. Pursuant to the requirements of § 1860 of the California Labor Code, the Contractor will be required to secure the payment of workers' compensation to its employees in accordance with the provisions of § 3700 of the Labor Code.

Prior to commencement of work, the Contractor shall sign and file with WCW a certification in the following form:

"I am aware of 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, and I will comply with such provisions before commencing the performance of the work of this Agreement."

15.6 Public Works Registration. The Contractor and any subcontractor(s) must be registered with the California Department of Industrial Relations ("**DIR**") pursuant to Labor Code § 1725.5. This Agreement is subject to monitoring and enforcement by the DIR pursuant to Labor Code § 1771.4. The Contractor shall furnish the records specified in Labor Code Section 1776 directly to the Labor Commissioner, on a monthly basis and in a format prescribed by the Labor Commissioner.

15.7 Agreement with Debarred Subcontractors. The Contractor is prohibited from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to §§ 1777.1 or 1777.7 of the Labor Code.

15.8 Trench Safety. For all Agreements over \$25,000, Contractor may not begin excavation of any trench five feet or more in depth until Contractor has submitted to and received approval from WCW of the Contractor's detailed plan for worker protection from the hazards of caving ground during the excavation of such trench. Contractor shall submit the plan no later than five days before the Contractor intends to begin excavation for the trench. The plan must show the details of the design of shoring, bracing, sloping or other provisions to be made for worker protection during the excavation. No such plan may allow the use of shoring, sloping or a protective system less effective than that required by the Construction Safety Orders of the Division of Industrial Safety. If the plan varies from the shoring system standards established by the Construction Safety Orders, the plan must be prepared and signed by an engineer who is registered as a Civil or Structural Engineer in the State of California. The Contractor's attention is directed to the provisions of § 6705 of the Labor Code concerning trench excavation safety plans.

Section 16. Public Contract Code Public Works Requirements

16.1 Claims Procedures. Compliance with all change order procedures in Section 5 is a prerequisite to filing a Public Contract Code Claim pursuant to this section. Claims must be submitted no later than (a) 30 days after change order procedures are complete and the Contractor has notified WCW in writing that the work is being performed, or that the determination direction is

being complied with under protest or (b) 30 days after the occurrence of the event giving rise to the claim.

16.2 In accordance with the procedures set forth in Public Contract Code §§ 9204 and 20104-20104.6, the Contractor may submit a claim by registered 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 WCW; (b) payment by WCW of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this Agreement and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by WCW.

16.3 The Contractor shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Agreement upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that the Contractor requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation, and 6) a notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code § 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Contractor to provide sufficient documentation will result in denial of the claim. WCW reserves the right to request additional documentation, or clarification of the documentation provided.

16.4 Upon receipt of a claim, WCW will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. WCW and the Contractor may, by mutual agreement, extend the 45 day time period. If WCW does not respond to a claim within the time periods described above, then the claim will be deemed to be rejected in its entirety. Additionally, amounts not paid in a timely manner will bear interest at 7 percent per year. For any undisputed portion of a claim, WCW must make payment within 60 days of its issuance of the written statement.

16.5 If the Contractor disputes WCW's written statement, or if WCW fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. WCW will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, WCW will provide a written statement identifying any portion of the claim that remains in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

16.6 After the meet and confer conference, any disputed portion of the claim may be submitted to nonbinding mediation. If mediation is unsuccessful, the parts of the claim that remain in dispute will be subject to applicable procedures set forth below.

16.7 Alternatively, 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.

16.8 In the event that the mediation is unsuccessful, the Contractor must file a government claim pursuant to Government Code § 910 et seq. prior to initiating a civil action.

16.9 In any civil action filed to resolve claims of less than \$375,000, the court under Public Contract Code Sec. 20104-20104.4 will submit the matter to nonbinding mediation within 60 days following the filing or responsive pleading, provided that the Parties have not already participated in mediation of the claim as outlined above. If the matter remains in dispute after nonbinding mediation, the court shall submit the matter to judicial arbitration pursuant to Code of Civil Procedure § 1141.10 et seq. If the matter remains in dispute after judicial arbitration, WCW or the Contractor may request a trial de novo.

16.10 Retention of Progress Payments.

(i) WCW will retain five percent (5%) of the estimated value of the work done and five percent (5%) of the value of materials estimated to have been furnished and delivered and unused, or furnished and stored as part security for the fulfillment of the Agreement by the Contractor. At any time after fifty percent (50%) of the work has been completed, if WCW finds that satisfactory progress is being made, then WCW may reduce the total amount being retained from payment pursuant to the above requirements to two and one-half percent (2.5%) of the Contract Price in accordance with Public Contract Code § 9203.

(ii) Pursuant to Public Contract Code § 22300, the Contractor may elect, in lieu of having progress payments retained by WCW, to deposit in escrow with WCW, or with a bank acceptable to WCW, securities eligible for investment under Government Code § 16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security agreed to by the Contractor and WCW. If the Contractor elects to submit securities in lieu of having progress payments retained by WCW, the Contractor shall, at the request of any subcontractor performing more than 5% of the Contractor's total bid, make the same option available to its subcontractors.

16.11 Excavation. In accordance with state law (Public Contract Code § 7104), with respect to any work involving digging trenches or excavations that extend deeper than four feet, the Contractor shall notify WCW promptly in writing of any of the following conditions: (a) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code § 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law; (b) subsurface or latent physical conditions at the site differing from those indicated; (c) unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Agreement Documents. Contractor shall notify WCW of such conditions prior to disturbing them, and shall await direction from WCW as to how to proceed.

16.12 List of Subcontractors. Attention is directed to the requirements of §§ 4100 to 4113, inclusive, of the California Public Contract Code which are applicable to this Agreement. Each Contractor shall list the name and business address of each subcontractor to whom the Contractor proposes to subcontract a portion of the work in an amount in excess of one-half of one percent (0.5%) of the Contract Price, along with a description of the portion of the work which shall be done by each subcontractor, by executing the "List of Subcontractors" form attached to this Agreement.

16.13 Contractor's License Requirements. Contractor and any approved subcontractors shall hold such current and valid Contractor's licenses as required by California Law. The license(s) required to perform the work is/are _____.

16.14 Non-Collusion Declaration. Pursuant to Public Contract Code § 7106, Contractor shall execute a Non-Collusion Declaration, in a form provided by WCW, which is attached and incorporated herein.

16.15 Performance and Payment Bonds. For all Agreements over \$25,000, the Contractor must provide a performance and a payment bond, each in the amount equal to one hundred percent (100%) of the Contract Price and issued by a California admitted surety. The payment bond must provide WCW with security for Contractor's full payment to all subcontractors for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Agreement. Full compensation for furnishing the performance and payment bonds is included in the Contract Price.

16.16 Antitrust Claims. The Contractor's attention is directed to the following provision of Public Contract Code § 7103.5(b) which shall be applicable to the Contractor and its subcontractors:

"In entering into a public works Agreement or a subcontract to supply goods, Work or materials pursuant to a public works Agreement, the Contractor or subcontractor offers and agrees to assign to the awarding body all right, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 [commencing with § 16700] of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, Work or materials pursuant to the public works Agreement 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."

16.17 Third-Party Claims. Pursuant to Public Contract Code § 9201, WCW may compromise or otherwise settle any claim relating to the Agreement at any time. WCW shall timely notify the Contractor of its receipt of any third-party claim relating to the Agreement. WCW's notice to the Contractor will be in writing and will be provided within 30 days of WCW's receipt of the claim.

16.18 Utility Relocation. Pursuant to California Government Code § 4215, if during the course of the Work the Contractor encounters utility installations which are not shown or indicated in the Agreement's plans or specifications or which are found in a location substantially different from that shown, and such utilities are not reasonably apparent from visual examination of the work site, then Contractor shall promptly notify WCW in writing. Where necessary for the Work, WCW will amend the Agreement to adjust the scope of work and the compensation to allow the Contractor to make such adjustment, rearrangement, repair, removal, alteration, or special handling of such utility, including repair of the damaged utility. If the Contractor fails to give the notice specified above and thereafter acts without instructions from WCW, then Contractor shall be liable for any or all damage to such utilities or other Work that arises from its operations subsequent to the discovery, and Contractor shall repair and make good such damage at its own cost.

Section 17. Dispute Resolution.

WCW and Contractor shall attempt in good faith to resolve all disputes informally. Alternate methods of dispute resolution, such as mediation, may be utilized. Unless otherwise directed by WCW, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.

Section 18. Subcontractors.

Contractor shall not subcontract any work to be performed by it under this Agreement without the prior written approval of WCW. If WCW consents to a subcontractor, Contractor will be fully responsible to WCW and third parties for all acts or omissions of the subcontractor to which the Work or any portion thereof is subcontracted. Contractor shall be solely responsible for reimbursing any subcontractors and WCW shall have no obligation to them.

Section 19. Equal Employment Opportunity.

19.1 Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws,

19.2 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religious creed (including religious dress and grooming practices), color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender (which includes pregnancy, childbirth, breastfeeding, or related medical conditions), gender identity, gender expression, age (if 40 or over), military and veteran status, taking or requesting statutorily protected leave, or any other category protected under federal, state, or local laws. Such actions will 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 consulting officer setting forth the provisions of this nondiscrimination clause.

19.3 The Contractor shall, 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.

19.4 The Contractor shall 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. This provision does 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.

Section 20. Non-Discrimination Assurance.

20.1 The Contractor shall comply with all applicable provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and/or the Fair Employment and Housing Act Government Code §§

12940 et seq. and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285 et seq).

20.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12940 et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

20.3 In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of such rules, regulations, or orders, this Agreement may be canceled, terminated or suspended in whole or in part.

Section 21. Compliance With All Applicable Laws.

Contractor shall comply with all the applicable requirements of federal, state and local laws, statutes, regulations, and ordinances relative to the execution of the work. If Contractor fails to comply with these requirements, then WCW may stop any work until such noncompliance is remedied. No part of the time lost due to any such cessation of the work will be made the subject of a claim for an extension of time or increase in the compensation. Contractor shall provide WCW with evidence of compliance with any applicable law, ordinance, regulation, or order upon request, including, without limitation, Cal/OSHA Interim General Guidelines on Protecting Workers from COVID-19 within their written Injury & Illness Prevention Program.

Section 22. Contractor's Status.

Neither Contractor nor any party subcontracting with the Contractor is an agent or employee of WCW. The Contractor is and will be an independent contractor, and the legal relationship of any person performing Work for Contractor will be one solely between those parties.

Section 23. Assignment.

Contractor shall not assign any of its rights nor transfer any of its obligations under this Agreement without the prior written consent of WCW.

Section 24. Records.

Pursuant to Government Code § 8546.7, Contractor shall retain all project-related records for a period of three years after final payment on this Agreement, which shall be subject to audit or inspection by WCW or the State Auditor during this period.

Separate and apart from the obligations under § 8546.7, WCW may audit project records at its discretion under the following circumstances: (a) submission of a Public Records Act request regarding the Project; (b) inability to resolve a disputed Agreement change order; or (c) submission of a claim.

Section 25. WCW Warranties.

WCW makes no warranties, representations, or agreements, either express or implied, beyond such as are explicitly stated herein.

Section 26. Conflict of Interest.

26.1 The Contractor warrants and represents that it presently has no interest and agrees that it will not acquire any interest that would present a conflict of interest under California Government Code §§ 1090 et seq. or §§ 87100 et seq. during the performance of Work under this Agreement. The Contractor shall not knowingly employ any person having such an interest in the performance of this Agreement. Violation of this provision may result in this Agreement being deemed void and unenforceable.

26.2 Depending on the nature of the work performed, a Contractor of WCW is subject to the same conflict of interest prohibitions that govern WCW's employees and officials (Cal. Govt. Code § 1090 et seq. and Cal. Govt. Code § 87100 et seq. as well as all applicable federal regulations and laws). During the duration of the Agreement, the Contractor and its employees may be required to disclose financial interests.

26.3 Depending on the nature of the work performed, the Contractor may be required to publicly disclose financial interests under WCW's Conflict of Interest Code. Upon request by WCW, the Contractor shall promptly submit a Statement of Economic Interest on a form provided by WCW.

26.4 No person previously in the position of director, officer, employee or agent of WCW may act as an agent or attorney for, or otherwise represent, the Contractor by making any formal or informal appearance, or any oral or written communication, before WCW, or any officer or employee of WCW, for a period of 12 months after leaving office or employment with WCW if the appearance or communication is made for the purpose of influencing any action involving the issuance, amendment, award or revocation of a permit, license, grant or Agreement.

26.5 The Contractor must take all reasonable measures to preclude the existence or development of an organizational conflict of interest in connection with work performed under this Agreement and other solicitations. An organizational conflict of interest occurs when, due to other activities, relationships, or Agreements, a firm or person is unable, or potentially unable, to render impartial assistance or advice to WCW; a firm or person's objectivity in performing the Agreement work is or might be impaired; or a firm or person has an unfair competitive advantage in proposing for award of an Agreement as a result of information gained in performance of this or some other Agreement.

26.6 The Contractor may not engage any subcontractor or independent Contractor on the Work if the subcontractor or independent Contractor, or any employee of the subcontractor or independent Contractor, has an actual or apparent organizational conflict of interest related to work or Work contemplated under this Agreement.

26.7 If at any time during the duration of this Agreement, the Contractor becomes aware of an organizational conflict of interest in connection with the Work, the Contractor immediately must provide WCW with written notice of the facts and circumstances giving rise to this organizational conflict of interest. The Contractor's written notice shall also propose alternatives for addressing or eliminating the organizational conflict of interest. If at any time during the term of this Agreement, WCW becomes aware of an organizational conflict of interest in connection with the Contractor's performance of the work hereunder, WCW will similarly notify the Contractor. If a conflict is presented, whether disclosed by the Contractor or discovered by WCW, then WCW will consider the conflict presented and any alternatives proposed and meet with the Contractor to determine an appropriate course of action. WCW's determination as to the manner in which to address the conflict will be final.

26.8 During the duration of this Agreement, the Contractor must maintain lists of its employees, and the subcontractors and independent Contractors used and their employees. The Contractor must provide this information to WCW upon request. However, the submittal of such lists does not relieve the Contractor of its obligation to assure that no organizational conflicts of interest exist. The Contractor must retain this record for five years after WCW makes final payment under this Agreement. Such lists may be published as part of future WCW solicitations.

26.9 The Contractor must maintain written policies prohibiting organizational conflicts of interest and must ensure that its employees are fully familiar with these policies. The Contractor must monitor and enforce these policies and must require any subcontractors and affiliates to maintain, monitor and enforce policies prohibiting organizational conflicts of interest.

26.10 Failure to comply with this section may subject the Contractor to damages incurred by WCW in addressing organizational conflicts that arise out of work performed by the Contractor, or to termination of this Agreement for breach.

Section 27. Notices.

All notices and communications deemed by either party to be necessary or desirable to be given to the other party must be in writing and may be given by personal delivery to a representative of the Parties or by mailing the same postage prepaid, addressed as follows:

If to WCW: West County Wastewater District
 2910 Hilltop Drive
 Richmond, CA 94806
 Attn: General Manager
 with a courtesy copy by email to: MSavannah@wccd.org

If to Contractor: _____

 Attn: _____
 with a courtesy copy by email to: _____

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

Section 28. Attorneys' Fees.

If any legal proceeding is instituted by either of the Parties to enforce the terms or to determine the rights of the Parties of this Agreement, then the prevailing party in that proceeding will recover, in addition to all court costs, reasonable attorneys' fees.

Section 29. Publicity.

The Contractor, its employees, subcontractors, and agents may not refer to WCW, or use any logos, images or photographs of WCW for any commercial purpose, including, but not limited to, advertising, promotion or public relations, without WCW's prior written consent; except that written consent will not be required for the inclusion of WCW's name on a customer list.

Section 30. Applicable Law; Venue.

This Agreement, its interpretation and all work performed thereunder, is governed by the laws of the State of California. The Superior Court of California, County of Contra Costa has exclusive jurisdiction over all disputes arising out of this Agreement.

Section 31. No Third Party Beneficiaries.

This Agreement is not for the benefit of any person or entity other than the Parties.

Section 32. Severability.

If any provision of this Agreement is deemed invalid or unenforceable, that provision will be reformed and/or construed consistently with applicable law as nearly as possible to reflect the original intentions of this Agreement, and in any event, the remaining provisions of this Agreement will remain in full force and effect.

Section 33. Entire Agreement; Modification.

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended except by a written amendment executed by authorized representatives of both Parties.

Section 34. Binding on Successors.

All of the terms, provisions and conditions of this Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives.

The Parties are executing this Agreement by their duly authorized officers, to be effective as of the last signature date.

WEST COUNTY WASTEWATER DISTRICT

By: _____
Lisa Malek-Zadeh
General Manager

By: _____
Print Name: _____
Title: _____

Date: _____

Date: _____

Exhibit A
WCW Solicitation

Exhibit B
Contractor's _____