AGREEMENT NO. _____

INDEPENDENT CONTRACTOR'S AGREEMENT

This **INDEPENDENT CONTRACTOR'S AGREEMENT** ("Agreement") is made and entered into on _____, by and between the **CITY OF BAKERSFIELD**, a municipal corporation, ("CITY") and **B.R. FROST COMPANY** ("CONTRACTOR").

RECITALS

WHEREAS, CITY issued a Request for Qualifications (RFQ) dated April 21, 2020 and CONTRACTOR submitted a proposal in response to the RFQ concerning On-Call Wastewater Maintenance for the Wastewater Division; and

WHEREAS, CONTRACTOR represents CONTRACTOR is experienced, well qualified and a specialist in the field of repairing and maintaining: pumps, pipes, and valves; general construction, welding, and other wastewater maintenance; and

WHEREAS, CITY does not have expertise currently on staff to carry out the above tasks and CITY anticipates the need for these services in the future.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and CONTRACTOR mutually agree as follows:

1. **SCOPE OF WORK.** In exchange for the Compensation (defined below), CONTRACTOR shall perform the following: provide, as directed by CITY staff, miscellaneous pipefitting, welding, general construction, and wastewater maintenance. A detailed scope of work is delineated in the RFQ, attached hereto as **Exhibit A** and incorporated by reference herein ("Scope of Work").

   The Scope of Work shall include all items and procedures necessary to properly complete the task CONTRACTOR has been hired to perform, whether specifically included in the Scope of Work or not.

2. **COMPENSATION/PAYMENT PROCEDURE.** Subject to the conditions of this section, CITY will pay CONTRACTOR as follows for performing the Scope of Work ("Compensation"):

A total payment of Two Hundred Thousand Dollars ($200,000) which shall be paid as follows: upon successful completion of tasks assigned to CONTRACTOR as described in the RFQ and at the rates specified in the submitted hourly rate sheet, attached hereto as **Exhibit B** and incorporated by reference herein.

CITY will pay CONTRACTOR within 30 days after CONTRACTOR submits an itemized invoice for the portions of the Scope of Work completed and that invoice is approved by CITY. The Compensation will be the total amount paid to CONTRACTOR for performing the Scope of Work and includes, but is not limited to, all out-of-pocket costs and taxes. CITY will pay no other compensation to CONTRACTOR. In no case will CITY compensate CONTRACTOR more than $ 200,000 for performing the Scope of Work.

3. **TERM.** Unless terminated sooner, as set forth herein, this Agreement shall terminate on June 30, 2022. The agreement is renewable for two consecutive one-year periods at the CITY's option and upon mutually agreeable terms.

4. **TERMINATION.** Either party may terminate this Agreement after giving the other party written notice, as provided herein, ten days before the termination is effective.

5. **COMPLIANCE WITH ALL LAWS.** CONTRACTOR shall, at CONTRACTOR's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.

6. **INDEPENDENT CONTRACTOR.** This Agreement calls for CONTRACTOR's performance of the Scope of Work as an independent contractor. CONTRACTOR is not an agent or employee of the CITY for any purpose and is not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with CONTRACTOR other than that of an independent contractor.

7. **DIRECTION.** CONTRACTOR retains the right to control or direct the manner

in which the services described herein are performed.

8. **EQUIPMENT.** CONTRACTOR will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement.

9. **STARTING WORK.** CONTRACTOR shall not begin work until authorized to do so in writing by CITY. No work will be authorized before the date first written above.

10. **KEY PERSONNEL.** CONTRACTOR shall name all key personnel to be assigned to perform the Scope of Work. All key personnel shall be properly licensed and have the experience to perform the work called for under this Agreement. CONTRACTOR shall provide background for each of the key personnel including, without limitation, resumes and work experience performing work similar to the Scope of Work. CITY reserves the right to approve key personnel. Once the key personnel are approved, CONTRACTOR shall not change such personnel without CITY's written approval.

11. **INCLUDED DOCUMENTS.** Any bid documents, including, without limitation, special provisions and standard specifications and any Request for Proposals, Request for Qualifications and responses thereto relating to this Agreement are incorporated by reference as though fully set forth herein.

12. **LICENSES.** CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits and approvals which are legally required for CONTRACTOR to practice its profession and perform the Scope of Work. If CONTRACTOR is a corporation, at least one officer or key employee shall hold the required licenses or professional degrees. If CONTRACTOR is a partnership, at least one partner shall hold the required licensees or professional degrees.

13. **STANDARD OF PERFORMANCE.** The Scope of Work shall be performed in conformity with all legal requirements and industry standards observed by a specialist of CONTRACTOR's profession in California.

14. **SB 854 COMPLIANCE.** To the extent Labor Code Section 1771.1 applies to this Agreement, a contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, be subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the

Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. The prime contractor is required to post job site notices in compliance with Title 8 California Code of Regulations Section 16451. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

15. **NO WAIVER OF DEFAULT.** The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time and shall not serve to vary the terms of this Agreement.

16. **INSURANCE.**

16.1 Types and Limits of Insurance. In addition to any other insurance or security required under this Agreement, CONTRACTOR must procure and maintain, for the duration of this Agreement, the types and limits of insurance below ("Basic Insurance Requirements").

16.1.1 Automobile liability insurance, providing coverage for owned, non-owned, and hired autos on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than $1,000,000 per occurrence.

16.1.2 Commercial general liability insurance, unless otherwise approved by CITY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than $1,000,000 per occurrence. The policy must:

16.1.2.1 Provide contractual liability coverage for the terms of this Agreement;

16.1.2.2 Provide products and completed operations coverage;

16.1.2.3 Provide premises, operations, and mobile equipment coverage; and

16.1.2.4 Contain an additional insured endorsement in

favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

16.1.3 **Workers' compensation insurance** with limits of not less than $1,000,000 per occurrence. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Pursuant to Labor Code Section 1861, CONTRACTOR must submit to CITY the following certification before beginning any work on the Improvements:

> I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's 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 contract.

By executing this Agreement, CONTRACTOR is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

16.2 General Provisions Applying to All Insurance Types.

16.2.1 All policies required of CONTRACTOR must be written on a first-dollar coverage basis, or contain a deductible provision. Subject to CITY's advance approval, CONTRACTOR may utilize a self-insured retention in any or all of the policies provided, but the policy or policies may not contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured or by any means including other insurance or which is intended to defeat the intent or protection of an additional insured.

16.2.2 All policies required of CONTRACTOR must be primary insurance as to CITY and its mayor, council, officers, agents, employees, or designated volunteers and any insurance or

self-insurance maintained by CITY and its mayor, council, officers, agents, employees, and designated volunteers must be excess of CONTRACTOR's insurance and must not contribute with it.

16.2.3 The insurance required above, except for workers' compensation insurance, must be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII. Any deductibles, self-insured retentions, or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.

16.2.4 The insurance required in this section must be maintained until the Scope of Work is satisfactorily completed as evidenced by CITY's written acceptance. All policies must provide that there will be continuing liability thereon, notwithstanding any recovery on any policy.

16.2.5 Full compensation for all premiums which the CONTRACTOR is required to pay to satisfy the Basic Insurance Requirements shall be considered as included in the prices paid for the performance of the Scope of Work, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

16.2.6 It is further understood and agreed by CONTRACTOR that its liability to CITY will not in any way be limited to or affected by the amount of insurance obtained and carried by CONTRACTOR in connection with this Agreement.

16.2.7 Unless otherwise approved by CITY, if any part of the Scope of Work is subcontracted, the Basic Insurance Requirements must be provided by, or on behalf of, all subcontractors even if CITY has approved lesser insurance requirements for CONTRACTOR, and all subcontractors must agree in writing to be bound by the provisions of this section.

17. **THIRD PARTY CLAIMS.** In the case of public works contracts, CITY will timely notify CONTRACTOR of third party claims relating to this Agreement. CITY shall be allowed to recover from CONTRACTOR, and CONTRACTOR shall

pay on demand, all costs of notification.

18. **INDEMNITY.** CONTRACTOR shall indemnify, defend, and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions, causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by CONTRACTOR or CONTRACTOR's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for CITY's sole active negligence or willful misconduct.

19. **ASSIGNMENT.** Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.

20. **ACCOUNTING RECORDS.** CONTRACTOR shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at CONTRACTOR's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and made available to CITY representatives upon request at any time during regular business hours.

21. **BINDING EFFECT.** The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.

22. **CORPORATE AUTHORITY.** Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

23. **COUNTERPARTS.** This Agreement may be executed in any number of

counterparts, each of which shall be considered as an original and be effective as such.

24. **EXECUTION.** This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

25. **EXHIBITS.** In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

26. **FURTHER ASSURANCES.** Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

27. **GOVERNING LAW.** The laws of the State of California will govern the validity of this Agreement and its interpretation and performance. Any litigation arising in any way from this Agreement shall be brought in Kern County, California.

28. **INTERPRETATION.** Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

29. **MERGER AND MODIFICATION.** This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the City Council and signed by all the parties.

30. **NON-INTEREST.** No CITY officer or employee shall hold any interest in this Agreement (California Government Code section 1090).

31. **NOTICES.** All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: **CITY OF BAKERSFIELD**
CITY HALL
1600 Truxtun Avenue
Bakersfield, California 93301

CONTRACTOR: **B.R. FROST COMPANY**
5172 SISSON DR
Huntington Beach, CA 92649

32. **RESOURCE ALLOCATION.** All CITY obligations under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.

33. **TITLE TO DOCUMENTS.** All documents, plans, and drawings, maps, photographs, and other papers, or copies thereof prepared by CONTRACTOR pursuant to the terms of this Agreement, shall, upon preparation, become CITY property.

34. **TAX NUMBERS.**

CONTRACTOR's Federal Tax ID Number 20-8366798
CONTRACTOR is a corporation? Yes X No
(Please check one.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

"CITY"
CITY OF BAKERSFIELD

By:_____
KAREN GOH
Mayor

"CONTRACTOR"
B.R. FROST COMPANY

By:_____
Print Name: Craig S. Frost

Title: Vice President & General Counsel

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By:_____
JOSHUA RUDNICK
Deputy City Attorney II

Insurance:_____

APPROVED AS TO CONTENT:
PUBLIC WORKS DEPARTMENT

By:_____
NICK FIDLER
Public Works Director

COUNTERSIGNED:

By:_____
RANDY MCKEEGAN
Finance Director

Attachment: Exhibits A, B