



Request for Qualifications (RFQ)

**On-call Construction Services for
City of Bakersfield Water Resources Department
Bakersfield, California**

May 9, 2023

Companies wishing to be considered for this project should thoroughly read this RFQ.

I. GENERAL DESCRIPTION AND REQUIREMENTS

The City of Bakersfield Water Resources Department ("City") owns and operates several miles of the Kern River and associated canals. The City also owns a domestic water system servicing approximately 46,000 connections over fifty (50) square miles.

The City desires to enter into an agreement with one or more general engineering contractors ("Contractor"), which will provide the City with construction services in the field of water resources on an "on-call" basis for the Water Resources Department. The agreement(s) term shall be in place for two years till June 30, 2025, unless otherwise modified by amendment.

Assignments are expected to begin with very short notice, which may be during weekends and nights. Typical services include, but are not limited to, installation, repair, modification, and replacement of water system infrastructure. Such infrastructure may include, but is not limited to, potable water lines and appurtenances, river structures, and canal structures. Projects will be non-federally funded.

Contractor shall have extensive documented experience in providing construction services for water resources projects. Compensation to the Contractor under the agreement will be made by City. The terms of the agreement are not subject to the requirements associated with federal funding. However, the State of California's prevailing wage rates will apply.

Please note that, Contractor is responsible for compliance with all applicable laws, including, but not limited to, the Labor Code, Public Contract Code, and Government code of the State of California. City does not represent the applicability or inapplicability of any laws regarding contracts, especially the payment of prevailing wages thereunder. Contractor will not hold or seek to hold City liable for any failure by the Contractor to comply with any such laws without regard to whether City knew, could have known, or should have known the necessity of such compliance.

For the purpose of this project, the following definitions shall apply:

- CITY is the City of Bakersfield Water Resources Department.
- PROPOSER is a company that provides a submittal package in response to this RFQ.
- CONTRACTOR is the company selected by City to provide services under the agreement as described in this RFQ.
- LOCAL REGULATORY AGENCY refers to all Divisions and Departments of the City of Bakersfield that oversee this type of work.
- STATE REGULATORY AGENCY refers to all State of California agencies with jurisdiction over the project design and/or construction.

- FEDERAL REGULATORY AGENCY refers to all United States of America federal agencies that might have jurisdiction over the project design and/or construction.

II. PROJECT ASSIGNMENT AND FEE PROPOSAL

In the event that the City enters into agreements with more than one company, the assignment of projects may be based on the expertise of the company as presented in their SOQ.

When a specific project is identified, City will issue to Contractor a Request For fee Proposal (RFP) letter providing the scope of work and desired completion dates of the project. Contractor shall then prepare a fee proposal and schedule and submit to City for review. Failure of the Contractor to respond in a timely manner may result in no further project assignments or in the termination of the agreement.

Contractor's fee proposal shall be formatted in accordance with the instructions in the RFP letter. Unless specified otherwise in the request, the fee proposal shall be on a time and materials basis, with a not-to-exceed amount, in accordance with Contractor's Rate Schedule (Hourly Billing Rates) per the agreement. The fee proposal shall include a schedule of values for the various items purchased, the anticipated number of hours for each person and piece of equipment that will work on the project, their hourly billing rate, other reimbursable expenses, and the total estimated cost of the project.

Upon City's acceptance of the proposal, a notice to proceed will be issued. If City and Contractor are not able to agree upon the proposal for the project, or should the Contractor not be able to complete the project within the timelines needed by City, City will inform Contractor that their proposal is rejected. City will then request a proposal from another on-call contractor.

Under certain emergency situations, City may verbally authorize the contractor to proceed with the work before the submittal of the fee proposal.

III. PREVAILING WAGE

Pursuant to Chapter 1 of Part 7 Division 2 of the Labor Code (commencing with Section 1720), Contractor agrees that in performing work, by himself or through any subcontractor, eight hours labor shall be one (1) day's work and forty (40) hours labor shall be one (1) week's work, and that Contractor shall keep an accurate record showing the name and actual hours worked for all workers employed in said work, and that said record shall be kept open at all reasonable hours for inspection pursuant to Section 1812 of the Labor Code. Contractor and all subcontractors shall pay not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime to all workers employed in the construction of this project. The prevailing rate for each craft, classification or type of work is determined by the Director of the California Department of Industrial Relations. This schedule of prevailing rates is on file and available for inspection in the Public Works Department and through the Department of Industrial Relations' website <http://www.dir.ca.gov/DLSR/PWD/>. The schedule is incorporated herein by this reference. City shall have the right to inspect payroll records during normal working hours and shall have the right to question workers at any time concerning the wages being paid. Contractor shall not interfere in any way with City's right to investigate conformance with the wage provisions of this contract.

Proposer and all proposed subcontractors must have a current registration with the Department of Industrial Relations (DIR) at the time submittal packages are received, otherwise submittal

packages will be deemed non-responsive. Contractor and subcontractor must maintain registration with the DIR during the duration of the agreement, otherwise the agreement may be terminated.

IV. COMPENSATION

Total compensation paid by City during the term of the agreement(s) for these on-call construction services as described in this RFQ shall not exceed \$3,000,000 unless otherwise modified by an amendment to the agreement(s). If more than one agreement is awarded, the limit of compensation paid to Contractor will be determined based on Contractor's qualifications. There will be no minimum payment in connection with the agreement(s).

Contractor shall electronically send PDF invoices to City. For long duration projects, invoices may be submitted on a monthly basis for the work performed. For short duration projects, a single invoice may be submitted at the end of construction. The invoices shall be in accordance with Contractor's fee proposal and shall be accompanied with a report itemizing the work completed in that period. The report shall include a description of activities performed, an estimate of the percent of work completed (if submitted monthly), and a summary of any problems encountered.

No compensation above the proposed not-to-exceed amount as specified in Contractor's fee proposal will be made to Contractor unless a revised fee proposal, along with written justification of increasing the not-to-exceed amount, has been submitted to and accepted by City.

V. TYPICAL SERVICES TO BE PROVIDED BY CONTRACTOR (SCOPE OF WORK)

Contractor shall provide all the services necessary to perform the work to the satisfaction of City. Work shall be performed in accordance with all applicable State, Federal, and Local Laws and Ordinances; industry standards; and City plans, specifications, and standards.

Contractor shall have the resources necessary to respond to a call for service immediately, and if not an emergency situation, shall be able to submit a proposal within five (5) working days after receiving a RFP from City, and shall be able to complete the project in a timely manner as shown on their project schedule submitted with their proposal.

Based on the needs of the assigned project, either for the domestic water system or river system, Contractor may be required to:

- Perform routine and emergency repairs;
- Construct, install, and/or repair waterlines and appurtenances;
- Install and/or repair fire hydrants;
- Replace and/or repair water service lines;
- Replace and/or repair roadway paving, curb & gutter, sidewalk, etc.;
- Replace and/or repair headgates, weirs, and other water diversion structures;
- Replace and/or repair concrete canal panels;
- Perform grading and earth moving as directed; and
- Provide other construction duties as requested by City related to water resources.

Guarantee. Contractor shall guarantee that all work performed shall be free from faulty material and/or workmanship, and agrees to repair or replace, without cost and to the satisfaction of City, all defects or imperfections appearing in the work for the period of no less than one (1) year from the date of final acceptance. Should the work fail to perform as guaranteed, the cost of all

consequent repairs to remedy the failure shall be paid for by Contractor and Contractor shall make such changes as necessary to meet the guarantees and further monitor the work to prove its guaranteed performance, all at no additional cost to City.

When Contractor's work is complete and accepted by City, all reports, sketches, documents, calculations, computer files, photos, reproductions, recorded media, etc., used in the project shall become the property of City, including their copy rights and any inherited interests.

VI. ITEMS AND SERVICES TO BE PROVIDED BY THE CITY OF BAKERSFIELD

- A. City will provide access to the project site and will assist Contractor to obtain right of entry to private properties if needed.
- B. City will provide pertinent project documentation, if available, such as plans and specifications, record drawings, maintenance logs, photos, verbal history, calculations and estimates, etc.
- C. City will provide all services required to plan, supervise, monitor, and finance the work except for the services to be provided by Contractor as set forth herein or specifically identified in the RFP.
- D. The City will provide a single point of contact during normal business hours and a 24 hour contact for after hour communications.

VII. TIME SCHEDULE FOR ASSIGNED PROJECTS

Contractor shall execute its work for the specified project in a timely manner in order to complete its assignment within the schedule approved by City. Failure to respond by completing scheduled work in a timely manner may result in no further project assignments or in termination of the agreement.

VIII. PROPOSER'S TEAM AND MINIMUM QUALIFICATIONS

This invitation is open only to companies that are familiar with the City's standards/requirements and have staffed offices and yards within the Bakersfield Metropolitan Area.

Proposer shall be highly qualified and shall have the necessary experience, expertise, and licenses to provide on-call construction services as described in this RFQ. Proposer shall have the following:

- A. A minimum five (5) years of experience in providing water resources related construction services for public agencies, municipalities, or water purveyors;
- B. A State of California Class "A" Contractor's License;
- C. A minimum of two (2) Project Managers who will manage the work;
- D. A minimum of two (2) Foreman who will oversee the work in field;
- E. A minimum of twenty (20) field persons who will be performing the work;
- F. Adequate construction equipment in good repair; and
- G. Professional office staff.

City does not require nor expect that Proposer have subcontractors on their team. However, if subcontractors are elected to be used to perform work, such subcontractors shall be properly licensed and insured.

IX. SUBMITTAL REQUIREMENTS

Proposers must include in their submittal package the following items:

- Three (3) copies of Proposer's SOQ (refer to *Section X – Statement of Qualifications*), including a statement of insurance coverage signed by a company official. The SOQ should not exceed fifteen (15) pages. Resumes will not be counted toward the fifteen (15) page maximum.
- One (1) signed copy of the "General Information Sheet" (refer to *Attachment RFQ-1*)
- One (1) signed copy of the sample agreement (refer to *Section XIII – Contract Documents* and *Attachment RFQ-2*)
- One copy of the Proposer's schedule of hourly billing rates in its own sealed envelope labeled: "Hourly Billing Rates."
- One (1) USB flash drive containing electronic (PDF) copies of the above-mentioned items.

The submittal items must be placed into a sealed envelope bearing Proposer's name and the words:

Statement of Qualifications for
On-call Construction Services for
City of Bakersfield Water Resources Department
Bakersfield, California

Before 3:30 pm on Tuesday, June 6, 2023, the submittal package must be delivered to:

Attn: Sameena Gill
City of Bakersfield
Water Resources Department
1000 Buena Vista Road
Bakersfield, California 93311

City assumes no responsibility for non-receipt of submittal packages due to any delay including, but not limited to, carrier delay. It is Proposer's responsibility to meet the deadline stated above.

Submittals that do not contain the required number of copies and all of the information requested in this RFQ may be considered non-responsive and rejected without evaluation.

Submittals received after the deadline or at the wrong location may be considered non-responsive. Fax or e-mail copies will not be accepted. All submittals become the property of the City of Bakersfield and will not be returned.

X. STATEMENT OF QUALIFICATIONS

Proposers shall submit a Statement of Qualifications (SOQ) which shall not exceed fifteen (15) pages (excluding resumes) and shall contain at a minimum the following information:

- A. Proposer's and proposed subcontractor's Contractor's Licenses and DIR numbers.
- B. A statement of Proposer's knowledge and expertise in water resources projects.

- C. A statement of Proposer's management principles and procedures and how they will be applied to work performed under the agreement in regards to:
 - 1. Development of a project construction schedule and adhering to that schedule;
 - 2. Establishment of a cooperative relationship with City, any other contractors or consultants hired by City; and
 - 3. Complete and successful performance of all tasks assigned to Contractor.
- D. Name and relevant experience of Proposer's Project Managers who will manage the work.
- E. Name and relevant experience of Proposer's Foremen who will oversee the work in field.
- F. Quantity and relevant experience of Proposers field persons who will be performing the work.
- G. List and condition of Proposer's relevant construction equipment.
- H. Quantity and relevant experience of office personnel.
- I. A list of all current projects, including the amount of Proposer's resources allocated to those projects and the completion date of Proposer's work at that level of allocation.
- J. A list of water resources related projects on which Proposer has been involved during the past five (5) years. The list should include at least four different clients and should provide the following information for each project:
 - 1. Project title, location, and description including size of the project;
 - 2. Nature of Proposer's responsibility;
 - 3. Start and end dates of Proposer's involvement in the project;
 - 4. Names of Proposer's key personnel involved in the project;
 - 5. Total dollar amount of Proposer's contract;
 - 6. Name, address and phone number of the project owner;
 - 7. Name and address of Proposer's client if different from the project owner; and
 - 8. Name and phone number of contact person at Proposer's client's office.
- K. A statement of Proposer's approach in working within the allocated time schedule and budget. Include examples of how this approach was proven effective in past projects for the City or other governmental agencies.
- L. A statement of Proposer's availability to respond to requests for services on short notice.
- M. A statement of why Proposer believes it should be selected for this project.
- N. A list of all subcontractors that Proposer will be utilizing on this project. This list shall include the following information for each proposed subcontractor:
 - 1. Name, address, and phone number for subcontractor's office that will be performing work on the project;
 - 2. Name and relevant experience for subcontractor's key employees that will be working on this project; and
 - 3. Description of work that the subcontractor will perform on the project.
- O. A list of Proposer's claims history in the last five (5) years in accordance with the following:

1. A list of all claims, demands for arbitration and/or, law suits filed by Proposer, predecessor companies, or company officers against project owners or their agents. This list shall include the following information for each claim:
 - a. Name of project owner
 - b. Project completion date
 - c. Basis for claim
 - d. Claim or suit amount
 - e. Current status
 - f. Award or settlement amount
 2. A list of all claims, demands for arbitration, and/or lawsuits filed by project owners, their agents, or subcontractors against Proposer, predecessor companies, its agents, or bonding company in connection with Proposer, its officers, its agents, or bonding company. This list shall include the following information for each claim:
 - a. Name of project owner
 - b. Project completion date
 - c. Basis for claim
 - d. Claim or suit amount
 - e. Current status
 - f. Award or settlement amount
- P. A statement of Proposer's current insurance coverage signed by a company official. **Do not submit a certificate of insurance in lieu of this statement.** City requires a minimum of One Million Dollars (\$1,000,000) Professional Liability Insurance, Automobile Liability Insurance, General Liability Insurance, and Workers' Compensation Insurance. If the current coverage does not meet City's minimum requirements, a statement of Proposer's ability and intent to obtain the required coverage must be included.
- Q. Additional information Proposer deems necessary for City to complete its evaluation of Proposer based on the criteria described in *Section XI – Selection of Contractor(s)*.
- R. Brief resumes of Proposer's Project Managers and Foremen.

XI. SELECTION OF CONTRACTOR(S)

Proposers must provide in their submittal package verifiable evidence demonstrating that they have considerable current and past experience in providing on-call construction services in the field of water resources as described in this RFQ.

In no particular order, Proposers will be evaluated and selected based on the following:

- A. Proposer's experience and management principles in regards to water resources projects.
- B. Qualifications and experience of Proposer's Project Manager, Foremen, and field persons.
- C. Proposer's resources, response times, and its capability to perform the required services within the required time frames and budgets.
- D. Proposer's construction equipment.
- E. Proposer's submittal and subjective statements.

- F. Proposer's past performance on City projects (a neutral score will be assigned to Proposers with no past experience with City).

The selected Proposer(s) will be contacted by City to provide a Rate Schedule, and if said Rate Schedule is agreed upon, City will award the contract to the selected Proposer(s).

XII. SOLICITATION CAVEAT

Proposer and its subcontractors understand and agree that City shall have no financial responsibility for any costs incurred by Proposer and its subcontractors in responding to this RFQ and City shall not be liable for any of Proposer's or its subcontractors' costs attributed to their own study and investigation in regards to this RFQ. City shall also have no financial responsibility for any costs incurred by Contractor until Contractor has executed an agreement with City and has been authorized in writing to proceed. City reserves the right to terminate this RFQ at any time.

The submission of a proposal shall be conclusive evidence that Proposer and its subcontractors have investigated and satisfied themselves as to the conditions to be encountered; the character, quality, and scope of work to be performed; and any municipal and ordinance requirements of the City of Bakersfield.

As outlined in *Clause 5 – Compliance with All Laws* of the ON-CALL INDEPENDENT CONTRACTOR'S AGREEMENT, once final selection occurs Contractor will need to obtain a City of Bakersfield business tax certificate prior to execution of an agreement with City.

XIII. CONTRACT DOCUMENTS

A sample copy of the City's ON-CALL INDEPENDENT CONTRACTOR'S AGREEMENT is included with this RFQ as *Attachment RFQ-2*. Please review the agreement carefully. This is the agreement Contractor will be expected to execute without alteration. If any changes are desired, Proposer must submit a copy of the requested modifications to City for approval at least ten (10) calendar days prior to the date that submittal packages are due. If approved, City will then issue the changes to all prospective Proposers via addendum prior to the due date. City will not approve requested modifications to the insurance clause nor the indemnity clause of the agreement.

An officer of Proposer must sign and return the "Sample Agreement Acceptance" clause located on the last page of the agreement and return the sample ON-CALL INDEPENDENT CONTRACTOR'S AGREEMENT, which is attached to this RFQ, as part of Proposer's submittal package. The clause states:

"I have received and reviewed the entire sample ON-CALL INDEPENDENT CONTRACTOR'S AGREEMENT, which was attached to the RFQ. My signature below shall signify our company's acceptance of said agreement if our company is selected for the award of services as described in said RFQ. This acceptance is made with the understanding that blanks in the sample agreement, where appropriate, will be modified."

The signature indicates that Proposer accepts all clauses of the agreement, with the understanding that blanks in the sample agreement, where appropriate, will be modified. Failure to execute the agreement without alteration may result in the rejection of Proposer's submittal and retaining of a different Proposer by City.

Contractor's Rate Schedule will be attached to the agreement. The Rate Schedule shall be applicable to all items of work performed under the agreement and shall be held constant for the duration of the agreement.

At the time of contract execution, Contractor will be required to provide evidence of insurance coverage (Certificates of Insurance) as specified in the agreement.

XIV. CONTACTS AT THE CITY OF BAKERSFIELD

All questions concerning this RFQ, City's review and evaluation of the submittal packages, and City's selection of Contractor(s) must be submitted in writing, at least ten (10) calendar days before the submittal packages are due, to:

Sameena Gill, P.E.
City of Bakersfield
Water Resources Department
Email: sgill@bakersfieldcity.us

XV. ATTACHMENTS

The following documents are attachments to this RFQ:

- Attachment RFQ-1, General Information Sheet
- Attachment RFQ-2, Sample Agreement



Attachment RFQ-1 -- General Information Sheet

On-call Construction Services for
City of Bakersfield Water Resources Department
Bakersfield, California

Date: _____

Legal Name of Firm: _____

Type of Organization: _____
Individual, Partnership or Corporation

For corporations, the state in which the firm is incorporated: _____

Federal Employer I.D. Number: _____

Street Address: _____

Mailing Address: _____

Telephone Number: _____

Facsimile Number: _____

Contact Person: _____
Name

Phone Number

E-Mail

Name of Principal-in-charge	Title	License Number
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Signature of an officer of the firm

Title

Date

Attachment RFQ-2 -- Sample Agreement

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 (referred to herein as "CITY"), and _____ a [business type: Sole Proprietorship; Partnership; Corporation; LLC; etc.] authorized to do business in California (referred to herein as "CONTRACTOR").

RECITALS

WHEREAS, CONTRACTOR represents that CONTRACTOR is experienced, well qualified and a specialist in the field of _____.

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:

("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"): **[choose one]**

(1) A total, lump sum payment of \$ _____ after the Scope of Work is completed to CITY's satisfaction, or

(2) On an hourly [or time/material] basis in accordance with the hourly rates as shown on **Exhibit A**.

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 \$_____ for performing the Scope of Work.

3. **TERM.** Unless terminated sooner, as set forth herein, this Agreement shall terminate on _____ **[Date]**.
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 licenses 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: _____

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
CONTRACTOR is a corporation? Yes _____ 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

"CONTRACTOR"

By: _____

KAREN GOH
Mayor

By: _____

Print Name:

Title:

[Signatures on Following Page]

APPROVED AS TO CONTENT:
CITY DEPARTMENT NAME

By: _____
DEPARTMENT HEAD NAME
TITLE

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
(NAME & TITLE)

Insurance: _____

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

Attachment: Exhibit ____

"I have received and reviewed the sample INDEPENDENT CONTRACTOR'S AGREEMENT including the INDEMNITY clause which was sent to me with the City's RFQ. My signature below shall signify our firm's acceptance of said contract if our firm is selected for awarding a contract for the project as described in said RFQ. This acceptance is made with the understanding that the Compensation and Time for Completion clauses will be modified to contain the amounts and dates established for this contract."

Signature: _____

Date: _____