

AGREEMENT

between

**THE CITY OF CORONADO
as City**

and

**NAME OF CONTRACTOR
as Contractor**

for construction of the

Parker Pump Station Replacement Project

CONTRACT NO. XX-XX-XX-XXX

CITY OF CORONADO, CALIFORNIA

THIS AGREEMENT is made as of _____, 20__, by and between the City and the Contractor.

The City and the Contractor hereby agree as follows:

ARTICLE 1 – BASIC INFORMATION

- 1.1 City: City of Coronado
1825 Strand Way
Coronado, CA 92118
- 1.2 Project Name: **Parker Pump Station Replacement Project**
- 1.3 City's Address for Notices: James R. Newton, Acting City Engineer
City of Coronado
Public Services & Engineering Department
1825 Strand Way
Coronado, California 92118-3005
- 1.4 Contractor: **Contractor's Name**
Street Address
City, State Zip
- 1.5 Contractor's Address for Notices: **Contractor's Name**
Street Address
City, State Zip
- Attention: **Individual's Name**
- 1.6 Project Location: **Address or Describe Location, Coronado, CA**
- 1.7 City's Contract Officer: Ed Walton, City Engineer
Public Services & Engineering Department
- 1.8 Civil Engineer: Psomas
401 B Street
San Diego, CA 92101
619 961-2800
- 1.10 City Representative: Katherine Odiorne
Public Services & Engineering Department
(619) 522-7383

ARTICLE 2 – WORK

2.1 Contractor shall provide all labor, materials, equipment, tools, and services required by and shall perform all Work described in the Contract Documents. Contractor agrees to do additional Work arising from changes ordered by the City pursuant to Section 3 of the Greenbook.

ARTICLE 3 – CONTRACT DOCUMENTS

3.1 The Contract Documents consist of this executed Agreement; Pre-Bid Information; Bidding Requirements; Notice of Award; Notice to Proceed; General Conditions; Supplementary General Conditions; Exhibits; Specifications; Standard Specifications for Public Works Construction (Greenbook), 2018 Edition; Caltrans Standard Specifications, 2015 Edition; all Drawings shown on the List of Drawings; all Bonds required; the Addenda as shown below; and Change Orders.

3.2 The following addenda are incorporated into the Contract Documents:

No.	Date of Issue:
_____	_____
_____	_____
_____	_____
_____	_____

3.3 The Contract Documents may not be modified orally or in any manner other than in writing in accordance with Section 3 of the Greenbook. All such modifications shall be incorporated in the Contract Documents.

3.4 Precedence of Contract Documents:

3.4.1 In the event of a conflict between component parts of the Contract Documents, the document highest in precedence shall control. The precedence shall be:

- .1 Agreement;
- .2 Change Orders
- .3 Special Provisions and Addenda;
- .4 General Conditions;
- .5 Specifications (Technical Provisions);
- .6 Project Plans;

- .7 Standard Drawings, Details, and Specifications as referenced in the Plans and Specifications;
 - .8 Reference Specifications: Greenbook, 2018 Edition, and Caltrans Standard Specifications, 2015 Edition;
 - .9 Notice of Award, Notice to Proceed, Pre-Bid Information, Bidding Requirements, Exhibits, and Bonds
- 3.5 The Contract Documents comprise the entire Contract between the City and Contractor concerning the Work to be performed for this Project. All prior negotiations or stipulations regarding this matter which preceded or accompanied the executing of these Contract Documents are conclusively deemed to be superseded by these Contract Documents. The Contract Documents are complementary; what is called for in one is binding as if called for by all. To the extent that portions of the Contract Documents are not attached to this Agreement, they shall be deemed incorporated fully herein by reference.
- 3.6 The interpretation, validity, and enforcement of the Contract Documents shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to these Contract Documents shall be filed and heard in a court of competent jurisdiction in the County of San Diego.

ARTICLE 4 – CONTRACT SUM

- 4.1 City shall pay to Contractor, for the performance of the Work, the Contract Sum pursuant to General Conditions Article 9, subject to adjustment for unit price items, and as modified pursuant to the terms of the Contract Documents.
- 4.2 Contract Sum, including the Additives accepted by the City, is established as follows:
- | | |
|--------------|----------|
| Contract Sum | \$XX,XXX |
|--------------|----------|
- 4.3 The Contract Sum is: **Spell out amount** Dollars.

ARTICLE 5 – CONTRACT TIME

- 5.1 After the construction contract has been fully executed, a Limited Notice to Proceed (LNTP) will be issued for the Contractor to proceed with submittals, shop drawings, material procurement, etc. The LNTP shall not include onsite construction work and shall extend for a duration not to exceed 3 months (60 working days). After this duration, or earlier at the Contractor’s request, a Notice to Proceed (NTP) will be issued and Contractor shall complete the Work within three hundred and ninety (390) working days after the commencement date specified in the NTP.

Time is of the essence in the performance of all obligations under these Contract Documents, and all timing requirements shall be strictly adhered to unless otherwise modified by the City.

ARTICLE 6 – LIQUIDATED DAMAGES

- 6.1 If Contractor fails to complete an area's Work within the Contract Time as described in Article 5, Contractor shall pay to the City, as liquidated damages and not as a penalty, the sum of **Seven Thousand Five Hundred Dollars (\$7,500)** for each calendar day after the expiration of the Contract Time per area that the Work remains incomplete. The City and Contractor agree that in the event the Work is not completed within the Contract Time, the City's damages would be extremely difficult or impracticable to determine and therefore the City and Contractor agree that the amount stated herein is a reasonable estimate of the amount of such damages. The City may deduct any liquidated damages owed to the City, as determined by the City, from any payments otherwise payable to Contractor under this Contract. Nothing contained herein shall limit the City's rights or remedies against Contractor for any default other than failure to complete the Work within the Contract Time. This provision for liquidated damages shall not be applicable nor act as a limitation upon the City if Contractor abandons the Work. In such event, Contractor shall be liable to the City for all losses incurred.

ARTICLE 7 – INDEMNIFICATION

- 7.1 In addition to any other obligations contained herein, Contractor shall defend (with counsel acceptable to City), indemnify, and save harmless the City and its officers, agents, consultants, and employees, and each of them, from and against any and all liability, claims, judgments, demands, causes of action, damages, costs, expenses, property damage, contract disputes, penalties, losses or liability, in law or in equity, of every kind and nature whatsoever, including but not limited to injuries or damages to persons or property arising directly or indirectly out of the conduct of the Contractor or its employees, agents, subcontractors, or others in connection with the execution of the Work covered by these Contract Documents or failure to execute the work, except only for those claims or litigation arising from the established sole willful misconduct or active negligence of the City, its officers, agents, or employees. Contractor's indemnification shall include all claims for damages arising out of any infringement of patent rights or copyrights incidental to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents. Contractor's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by the City, its officers, agents, or employees in enforcing the provisions of this section, and in defending against such claims, whether the same proceed to judgment or not. Contractor shall reimburse City for any expenditures, including reasonable attorneys' fees and expert costs, City may make by reason of such matters, and Contractor at its own expense shall, upon written request by the City, defend any such suit or action brought against the City or its officials, officers, agents, employees, volunteers or representatives.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

8.1 Successors and Assigns

8.1.1 The City and Contractor respectively bind themselves and their successors, permitted assigns, and legal representatives to the other party and to the successors, permitted assigns, and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. This Contract and any portion thereof shall not be assigned or transferred, nor shall any of the Contractor's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Contract without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

8.2 Survival

8.2.1 The provisions of the Contract, which by their nature survive termination or final completion of the Contract, including all warranties, indemnities, payment obligations, and the City's right to audit Contractor's books and records, shall remain in full force and effect after final completion or any termination of the Contract.

8.3 Rights and Remedies

8.3.1 All the City's rights and remedies under the Contract Documents shall be cumulative and in addition to and not in limitation of all other rights and remedies of the City under the Contract Documents or otherwise available at law or in equity.

8.3.2 No term or provision hereof shall be deemed waived and no default or breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented to such breach. The consent by any party to or waiver of a breach or default by the other shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach or default.

8.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the City, the City Representative, or Contractor.

8.4 Compliance with Law

8.4.1 The Contractor shall be responsible for complying with all local, state, and federal laws, whether or not said laws are expressly stated or referred to herein, now existing and hereafter enacted or modified.

8.5 The City's Right to Audit

- 8.5.1 The City and entities and agencies designated by the City shall have access to and the right to audit all of Contractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Contractor shall preserve all such records for a period of at least three (3) years after final completion and shall provide copies of same at City's request.
- 8.6 Notices
- 8.6.1 All notices, demands, requests, consents, or other communications which this Agreement contemplates or authorizes, or requires or permits either party to give to the other, shall be in writing and shall be personally delivered or mailed to the respective party at the addresses set forth in Article 1 of this Agreement. Either party may change its address by notice to the other party as provided herein.
- 8.6.2 Communications shall be deemed to have been given and received on the first to occur of (1) actual receipt at the offices of the party to whom the communication is to be sent, as designated above; or (2) three (3) working days following the deposit in the United States Mail of registered or certified mail, postage pre-paid, return receipt requested, addressed to the offices of the party to whom the communication is to be sent, as designated above.

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Addendum 3 – Sample Agreement

IN WITNESS WHEREOF, the undersigned represent and warrant that they have the right, power, legal capacity, and authority to enter into and execute this document on behalf of the City and the Contractor, and do hereby agree to the full performance of the conditions and covenants herein contained, and have caused this document to be executed by setting hereto their names, titles, signatures and date:

CITY:

CONTRACTOR:

(2 signatures required)

Contract/Agreement is approved for content:

City Engineer Signature Date

Name: Date
Title:

Contract/Agreement is approved as to form:

City Attorney Signature Date

Name: Date
Title:

City Manager Signature Date

Attest:

City Clerk Signature Date

California Contractor's License(s):

(Name of License Holder)

(License Classification) (License Number)

(Expiration Date)

(Attach Notary acknowledgment for all signatures of Contractor.)

ATTACHMENT B

STATE PREVAILING WAGE RATES

State Prevailing Wage Rates: This project is a “public work” in accordance with Labor Code §1720, et seq. It is the sole responsibility of the Contractor to ensure that all workers employed in the execution of the contract are paid the correct prevailing wage rate of wages. Contractor is required to comply with California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815, which are incorporated by reference, and the Contractor agrees to comply with all the above-referenced provisions and any other statutes or regulations as may be applicable to the performance of its work on this project. Specifically, the Contractor agrees to:

- a. Pay all workers not less than the general prevailing rate of per diem wages for work of similar character in the locality in which the public work is performed.
- b. Pay all workers not less than the general prevailing rate of per diem wages for holiday and for overtime work that exceeds 8 hours in one day and 40 hours in one week.
- c. Adhere to the compliance measures outlined in Labor Code 1775(b) for any subcontractor that the Contractor chooses to use on this project.
- d. Maintain payroll records as required.
- e. Comply with all apprenticeship requirements pursuant to Labor Code 1777.5.

Not less than the State general prevailing wages, as determined by the Director of the Department of Industrial Relations shall be paid by the Contractor and its subcontractors to all workers employed on the project, as applicable. The statutory provisions for penalties for failure to pay prevailing wages and for failure to comply with state’s wage and hour laws will be enforced.

The City has obtained from the Director of the Department of Industrial Relations said Director’s General Prevailing Wage Determinations for the locality in which the work is to be performed. Said determinations are on file and available for review online at the Department of Industrial Relations’ website located at: <http://www.dir.ca.gov/DLSR/PWD>.

SB 854 Notice: City of Coronado public works projects are subject to compliance monitoring and enforcement by the Department of Industrial Relations (DIR) in accordance with Labor Code Section 1771.4(a)(1). As part of this program, Contractors and Subcontractors on Public Works Projects are required to be registered with DIR in accordance with Labor Code Section 1725.5. Unregistered contractors are not qualified to bid on, be listed in a bid, listed as a Subcontractor, or engage in the performance of any Public Works Contract, all as more particularly described in Labor Code Section 1771.1(a). The City of Coronado has no duty to accept a bid or enter into a contract without proof of the contractor’s current registration pursuant to Labor Code Section 1771.1(b). The prime Contractor shall be required to post the job site with all notices required by regulations per Labor Code Section 1771.4(a)(2), whether or not the City also posts.

Labor Code Compliance: Contractor shall comply with the provisions of the Labor Code requiring the payment of prevailing wages on public works, commencing with Section 1720. In accordance with Labor Code, Section 1775, the Contractor shall forfeit an amount, as determined by the Labor Commissioner, for each worker paid less than the applicable prevailing wage rate for the work or craft in which that worker is employed for any work done under Contract by Contractor or by any Subcontractor. Contractor agrees to pay the difference between the prevailing wage rate and amount paid to each worker in accordance with Labor Code, Section 1775(a)(2)(E).

Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. In accordance with Labor Code, Section 1773.2, copies of the prevailing rate of per diem wages are on file and can be viewed during normal business hours at Coronado City Hall, located at 1825 Strand Way, Coronado, CA 92118. Contractor shall post a copy of the applicable prevailing wage rates at the job site.

Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the City due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing its Bid.

If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate, the Contractor shall obtain a wage rate determination. The rates thus determined shall be applicable as minimum from the time of initial employment. Contractor shall be responsible for paying the applicable rate.

The Contractor and each Subcontractor shall keep and make available accurate payroll records in accordance with Labor Code, Section 1771.4(a)(3) and Section 1776. The record shall contain the names, addresses, social security numbers, work classifications, 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 the Contractor and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the City, the Contractor's and Subcontractor's certified payroll records shall be furnished within 10 days. The Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.

Apprentices: The Contractor and each subcontractor shall comply with the requirements of Labor Code Section 1777.5, and any related regulations regarding the employment of registered apprentices. Properly registered apprentices shall be employed in the execution of the Work at the ratios required, but in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The Contractor shall be responsible for compliance with Labor Code Section 1777.5 for all apprenticeable occupations.