

AGREEMENT

THIS AGREEMENT is by and between **California-American Water Company** (Owner) and Hal Hays Construction Inc. (Design/Builder). Owner and Design/Builder, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 – THE WORK

1.01 Design/Builder shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Design, construct, renovate, start-up, commission, turn over and warrant facilities for **Fitch Park ASR Wells 5 and 6 Above Ground Facilities**

ARTICLE 2 - THE PROJECT

2.01. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Fitch Park ASR Wells 5 and 6

ARTICLE 3 - CONTRACT TIMES

3.01. Dates for Substantial Completion and Final Payment

The Work will be substantially completed in accordance with paragraph 13.05 of the General Conditions on or before **July 31, 2022** and completed and ready for final payment in accordance with paragraph 13.08 of the General Conditions on or before **August 31, 2022**. In addition the following interim milestones will be met:

Design Memo Completion: July 13, 2019 (42 days from June 1, 2019 to complete the Design Memorandum).

Design Phase Completion: October 19, 2019 (140 days from June 1, 2019 to complete the Final Design).

3.02. Liquidated Damages

Design/Builder and Owner recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.01 above, plus any extensions thereof allowed in accordance with paragraph 11.02 of the General Conditions. The parties also recognize the delays, expenses, and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof,

Owner and Design/Builder agree that as liquidated damages for delay (but not as a penalty) Design/Builder shall pay Owner **\$2,000** for each day that expires after the time specified in paragraph 3.01 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if Design/Builder shall neglect, refuse, or fail to complete the remaining Work within the time specified in paragraph 3.01 for completion and readiness for final payment or any proper extension thereof granted by Owner, Design/Builder shall pay Owner **\$500** for each day that expires after the time specified in paragraph 3.01 for completion and readiness for final payment.

ARTICLE 4 - CONTRACT PRICE

4.01 As full compensation for completion of the Work in accordance with the Contract Documents, Owner shall pay Design/Builder a lump sum Contract Price. The Contract Price shall be increased or decreased only in accordance with Article 11 of the General Conditions. The initial Contract Price shall be the lump sum amount of \$5,968,847.50.

ARTICLE 5 - COST OF THE WORK

5.01 Cost of the Work shall be determined as provided in paragraph 10.01 of the General Conditions, as revised or amended by the Supplementary Conditions.

5.02. At final completion should the Cost of the Work, as audited and approved by the Owner exceed the Target Cost, the Design/Builder shall be entitled to a 50% payment for the difference between the Final Cost of the Work and the Target Cost as provided.

5.03 At final completion should the Cost of the Work as audited and approved by the Owner be less than the Target Cost, an additional payment shall be made to the Design/Builder equal to 50% of the difference between final Cost of the Work and Target Cost as an incentive to the Design/Builder to reduce the project cost to Owner.

5.04. It is understood that the Contract Price has been calculated on the basis of Conceptual Documents and that further development will occur as necessary to produce Final Contract Drawings and Specifications necessary to complete the design, to obtain regulatory approvals and to perform the Work. No adjustment will be made to the Contract Price unless future development of these Conceptual Documents during the Preliminary Design Phase results in material changes in the scope, extent or character of the work to be performed or furnished or in the quality or function of the intended completed project not reasonably inferable or anticipatable from the Conceptual Documents by a Design/Builder experienced in the construction of water treatment facilities.

ARTICLE 6 - DESIGN/BUILDER'S FEE

6.01. Not Used.

ARTICLE 7 - GUARANTEED MAXIMUM PRICE

7.01. Not Used.

ARTICLE 8 - CHANGES IN THE CONTRACT PRICE

8.01. The amount of any increases or decreases in the Contract Price which results from a change in the Work shall be determined in accordance with Article 11 of the General Conditions.

ARTICLE 9 - PAYMENT PROCEDURES

9.01. Design/Builder shall submit and Owner will process Applications for Payment in accordance with Article 13 of the General Conditions.

A. Progress Payments; Retainage. Owner shall make progress payments on account of the Contract Price on the basis of Design/Builder's Applications for Payment on or about the 25th day of each month during performance of the Work as provided in paragraph 9.01.A.1. All such payments will be measured by the acceptable Schedule of Values established in paragraph 2.06 of the General Conditions (and in the case of Unit Price Work based on the number of units completed).

1. For Cost of the Work: Progress payments on account of the Cost of the Work will be made:

a. Prior to Substantial Completion, and upon receipt of Release of Liens from suppliers and subcontractors whose Work is completed on the Project, in an amount equal to the percentage indicated below, but in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold in accordance with paragraph 13.03.B of the General Conditions.

(1) Unless otherwise agreed to in advance by Owner for specific subcontracts or material/equipment purchase orders, 100% of Cost of the Work completed (with the balance being retainage) with the exception of the lump sum amounts identified in paragraph 5.01 hereof.

(2) Unless otherwise agreed to in advance by Owner for specific subcontracts or material/equipment purchase orders, 95% of the cost of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 13.02.A of the General Conditions).

(3) 100% (no retainage) of the Work completed relative to the lump sum items to be included in the Cost of the Work identified in paragraph 5.01 hereof.

b. Upon Substantial Completion and receipt of Release of Liens from suppliers and subcontractors whose Work is completed on the Project, in an amount to increase the total payments to the Design/Builder such that retained funds will be approximately equal to the value of the remaining Work. Value to be agreed upon by Owner and Design/Builder, less such amounts as Owner shall determine that

Owner may withhold, in accordance with paragraph 13.04.B of the General Conditions.

- b. Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 13.09 of the General Conditions, Owner shall pay the remainder of the Contract Price.

ARTICLE 10 – Diverse Business Enterprise Requirement

- A. Owner utilizes the established guidelines from the California Public Utilities Commission (“CPUC”) to qualify diverse suppliers and requires certification as a Diverse Business Enterprise (“DBE”) by the Supplier Clearinghouse and/or the California Department of General Services. Generally, a DBE is a business in which 51% or more of the ownership interest is held, and 51% or more of the daily management and control of the business is performed, by one or more certified diverse suppliers. DBEs are divided into four classifications, as follows: Minority Business Enterprises (“MBE”), Women-Owned Business Enterprises (“WBE”), Disabled Veteran Business Enterprises (“DVBE”), and Lesbian, Gay, Bi-Sexual and Transgender Business Enterprises (“LGBTBE”).
- B. Consultant represents and warrants that the percentage of the Contract Price that will be paid to DBEs, including to the Consultant and any of Consultant’s subcontractors, will be at least **100%** (the “DBE Requirement”). If Consultant fails to meet the DBE Requirement, such failure will be deemed a Default and may result in termination of this Agreement by Owner pursuant to Section 15.02 of the General Conditions.
- C. The CPUC requires Owner to report the amount of Owner’s DBE spend in compliance with General Order 156. In order for Owner to meet this requirement, Consultant is required to submit a quarterly report to Owner, in a form provided by or acceptable to Owner, identifying (1) the total dollar amount of Contract Price paid by Owner to Consultant as of date of report (“Amount Paid to Date”), (2) the percentage of Amount Paid to Date that has been paid to DBEs, whether to Consultant or any of Consultant’s subcontractors (“DBE Percentage”), and (3) the breakdown of the DBE Percentage into a percentage for each of the four classifications of DBEs (i.e., MBE, WBE, DVBE, and LGBTBE). Consultant will participate and assist, as requested by Owner, in any audit activities relating to this program. In addition, Consultant will produce copies of invoices and cancelled checks to DBE subcontractors if requested by Owner.

ARTICLE 11 - DESIGN/BUILDER'S REPRESENTATIONS

- 11.01. To induce Owner to enter into this Agreement, Design/Builder makes the following representations:
 - A. Design/Builder has examined and carefully studied the Contract Documents (including the Addenda) listed in paragraphs 13.01.A through J and the other related data identified in the Request for Proposals but excluding the documents described in paragraph 13.01.K.
 - B. Design/Builder has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

- C. Design/Builder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Design/Builder has carefully studied all: (1) reports of explorations and tests of subsurface conditions (if any) at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified or made available by Owner and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site which have been identified or made available by Owner.
- E. Design/Builder is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- F. Design/Builder has correlated the information known to Design/Builder, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.
- G. Design/Builder has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Design/Builder has discovered in the Contract Documents and the written resolution thereof by Owner is acceptable to Design/Builder.
- H. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 12 - ACCOUNTING RECORDS

- 12.01. Design/Builder shall keep such full and detailed accounts of all materials, equipment, and labor entering into the Work as may be necessary for proper financial management under this Agreement, and the accounting methods shall be satisfactory to Owner. Owner shall be afforded access to all Design/Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and other similar data relating to the Cost of the Work and Design/Builder's fee. Design/Builder shall preserve all such documents for a period of three years after final payment by Owner.

ARTICLE 13 - CONTRACT DOCUMENTS

- 13.01. The Contract Documents consist of the following:
 - A. This Agreement (pages A-1 to A-10, inclusive);
 - B. Performance Bond (pages PB-1 to PB-2, inclusive);
 - C. Labor and Material Payment Bond (pages LMP-1 to LMP-2, inclusive);
 - D. Scope of Design Services Pages SDS-1 to SDS-10;
 - E. Standard General Conditions of the Contract Between Owner and Design/Builder (pages 1 to 28, inclusive);

- F. Supplementary Conditions (pages SC-1 to SC-16, inclusive);
- G. Appendices to the Supplementary Conditions:
 - Appendix A – Limits of Liability Insurance and Sample Certificate Consists of 2 pages;
 - Appendix C – Conditional Waiver and Release on Progress Payments;
 - Appendix D – Conditional Waiver and Release on Final Payment;
 - Appendix H – Design Memorandum Requirement;
- H. Design/Builder's Proposal;
- I. Addenda numbers 1 through 5 inclusive;
- J. Exhibits to this Agreement:
 - Exhibit A – *DBE Good Faith Efforts Requirements 3 Pages;*
 - Exhibit B - *Davis Bacon Contract Provisions 9 Pages;*
 - Exhibit C - *Local Resources Utilization Plan;*
- K. Technical Requirements for the Project (Rev. 1-7.9.2018) Consisting of 23 Pages;
 - Title Sheet & Facility Map Drawings consisting of 14 sheets;
 - Technical Memorandum from Pueblo Water Resources dated May 12, 2017 and consists of 3 pages;
 - Technical Memorandum from Pueblo Water Resources Inc. Date June 6, 2017 and consists of 5 pages;
 - Preliminary Piping and Instrument Diagram drawing dated 06/05/2017 and consists of 1 page; Pueblo Water Resources Figure 1. This-Predicated Drawdown sheet consisting of 1 page;
 - Column Selection Chart consisting of 1 page;
 - Technical Memorandum from Pueblo Water Resources Inc. Date July 27, 2017 and consists of 3 pages; Assess Chlorination Station @ Fitch Park from Pueblo Water Resources dated 9/26/17 and consists of 1 page;
 - Technical Memorandum from Pueblo Water Resources Inc. Date October 4, 2017 and consists of 3 pages;
 - American Water Electrical Standards Dated March 27, 2018 and consists of 16 pages;
 - American Water Power System Study and ARC Flash Analysis Requirements Dated December 2016 with the Latest Engineering Review March 2018 and consists of 18 pages;
 - American Water Acceptable Electrical Equipment Manufacturers and Suppliers Dated Revised 3-23-2018 and consists of 5 pages;
 - SEL Device Monitoring Points (Modbus to SCADA/RTU) and consists of 7 pages;
 - PG&E Application Number 112903042, consists of 4 pages;
 - Figure 1, Project Location Map;
 - Exhibit 3 Site Plan;
 - Plate 2 Monitoring Wells No.1 Location Map;
 - Disposal location map;
 - Sample On-line Diagram Pump Station – AECOM Drawing “Carmel Valley Pump Station Electrical Single Line Diagram” consisting of 1 sheet;
 - Sample VFD Schematic Wiring Diagram – AECOM Drawing “Carmel Valley Pump Station VFD Schematic Wiring Diagram” consisting of 1 sheet;
 - Tree Removal Map ASR-6 Site consisting of 1 sheet;
 - Tree Removal Map ASR-5 Site consisting of 1 sheet;

Email dated 12/12/2017 PGE Power Grid (Fort Ord Circuit) consisting of 1 sheet;
PGE Application for Power for ASR 5 and ASR 6 (app. #11290342) submitted on
06/01/2017 and consisting of 4 pages.
Hal Hays Construction Inc. Letter dated February 6, 2019, Re: ASR 5 & 6, Above
Ground Facility; HCCI Clarification Response consisting of 66 pages.

M. The following, which may be delivered, prepared, or issued after the Effective Date of this Agreement and are not attached hereto:

1. Notice to Proceed;
2. All Work Change Directives, and Change Orders amending, modifying or supplementing the Contract Documents pursuant to paragraph 3.04.A of the General Conditions;
3. Specifications as defined in Paragraph 1.01.A.40 of the General Conditions; and
4. Drawings as defined in Paragraph 1.01.A.18 of the General Conditions.

13.02. The documents listed in paragraph 13.01 above are attached to this Agreement (except as expressly noted otherwise above).

13.03. There are no Contract Documents other than those listed above in this Article 13.

13.04. The Contract Documents may only be amended, modified, or supplemented as provided in paragraph 3.03.A of the General Conditions.

ARTICLE 14 - MISCELLANEOUS

14.01. The Standard General Conditions of the Contract Between Owner and Design/Builder are referred to herein as the General Conditions.

14.02. Terms used in this Agreement will have the meanings indicated in the General Conditions.

14.03. No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

14.04. Owner and Design/Builder each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

- 14.05. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Design/Builder, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 14.06. Government Regulations: The following clauses, where applicable, are incorporated in this Agreement by reference as is fully set out; the Equal Opportunity Clause prescribed in 41 CFR 60-1.40, the Affirmative Action Clause prescribed in 41 CFR 60-250.4, regarding veterans and veterans of the Vietnam Era, and the Affirmative Action Clause for Handicapped Workers prescribed in 41 CFR 60-741.4.
- 14.07. Local Resources Goal: Owner acknowledges the benefit that the local community receives through utilization of local contractors, laborers, and suppliers. Design/Builder has submitted a local resources utilization plan which is included in Exhibit C (Local Resources Utilization Plan). Design/Builder will make a good faith effort to employ qualified individuals who are, and have been for at least one year out of the three years prior to the opening of Proposals, residents of Monterey County, San Benito County, or Santa Cruz County in sufficient numbers so that no less than fifty percent of Design/Builder's total work force, including any Subcontractor work force (with exception of specialty subcontractor items), measured in labor work hours, is comprised of residents of such counties. Design/Builder must comply with such plan and shall monitor and report at least quarterly the continued implementation of the Local Resources Utilization Plan throughout the performance of this Contract.
- 14.08 Public Funding/Labor Law Compliance.
- A. Prevailing Wages and Labor Compliance Program. Design/Builder shall pay prevailing wage rates. The general prevailing wage rates for the Work are available on the California Department of Industrial Relations' website at <http://www.dir.ca.gov>. Further, the Work may be subject to a statutory requirement to adopt and enforce a labor compliance program for the monitoring and enforcement of prevailing wage requirements. Design/Builder shall, at no additional cost to Owner, comply with any applicable labor law and labor compliance program requirements. Design/Builder is responsible for all failures by Subcontractors to comply with labor compliance program requirements. Pursuant to section 1773 of the California Labor Code, the general prevailing wage rates in the county in which the Work is to be done have been determined by the Director of the California Department of Industrial Relations.
- B. CWSRF Funding Responsibilities.
1. Application and Submittals. Owner shall submit all filings, applications and reports necessary to obtain reimbursement from the Clean Water State Revolving Fund ("CWSRF") for the Project.
2. Design/Builder Responsibilities. Design/Builder shall be responsible for cooperating with and providing reasonable assistance to Owner in all activities related to the loan agreement regarding the CWSRF loan from the State Water Resources Control Board ("SWRCB") to the Owner to partially fund the Project ("CWSRF Loan Agreement") including:
- (a) coordinating with Owner or Owner's consultant on the schedule and content of the submittals required for the CWSRF program;

- (b) assisting Owner or Owner's consultant in developing and furnishing all necessary and reasonably required supporting material;
- (c) supplying all data and information which may be reasonably required;
- (d) familiarizing itself with the terms and conditions of the CWSRF program relating to construction activities and practices;
- (e) complying with the terms and conditions of the CWSRF Loan Agreement or other financing document required by the CWSRF program or by applicable law with respect to construction activities and practices, including requirements described in Exhibits A and B;
- (f) attending meetings, as necessary, with SWRCB and other governmental bodies; and
- (g) taking all other actions reasonably requested by Owner in order to assist and support Owner related to the CWSRF financing for the Project.

Design/Builder shall take all reasonable actions necessary to comply with the conditions to disbursement of proceeds of the CWSRF Loan Agreement and to maximize Owner's eligibility to receive timely reimbursement under the CWSRF Loan Agreement. Design/Builder shall perform its CWSRF-related responsibilities in a manner which complies with all CWSRF program requirements.

3. Data and Information. All data, information and action required to be supplied or taken in connection with any CWSRF financing shall be supplied and taken on a timely basis considering the CWSRF requirements at Design/Builder's sole cost and expense. The data and information supplied by Design/Builder to Owner or Owner's consultant and the SWRCB in connection therewith shall be correct and complete in all material respects and shall be submitted in draft form to Owner or Owner's consultant sufficiently in advance to allow full and meaningful review and comment by Owner. Design/Builder shall not be entitled to any schedule or price relief or escalation which result from a delay due to the submission of materially incorrect or incomplete information. Owner reserves the right to reject, modify, alter, amend, delete or supplement any information supplied by Design/Builder pursuant to this Section.

4. CWSRF Requirements. Owner is informed that in order to obtain CWSRF financing for the Project: (a) American Iron and Steel (AIS) requirements will apply; (b) the State Water Resources Control Board ("SWRCB") CWSRF policy will apply; and (c) the SWRCB applies USEPA guidance on AIS requirements. Design/Builder agrees to cooperate with Owner to meet all CWSRF financing requirements applicable to the Project and Design/Builder has included all costs necessary to comply with AIS requirements in the Contract Price.

14.09 Design/Builder accepts this Agreement and will supply any information relating to federal or state laws, rules or regulations relating to the above.

IN WITNESS WHEREOF, Owner and Design/Builder have signed this Agreement in duplicate. One counterpart each has been delivered to Owner and Design/Builder. All portions of the Contract Documents have been signed, initialed, or identified by Owner and Design/Builder.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

Owner:

Design/Builder:

By: _____

By: _____

[CORPORATE SEAL]

Attest: _____

Address for giving notices:

Address for giving notices:

Engineer License
or Certificate No. _____
(Where applicable)
State: _____

Contractor License No. _____
(Where applicable)
State: _____

(If Design/Builder is a corporation, attach
evidence of authority to sign.)

Designated Representative:

Designated Representative:

Name: _____
Title: _____

Name: _____
Title: _____

Address: _____

Address: _____

Phone: _____
Fax: _____

Phone: _____
Fax: _____