

GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT made on _____, by and between the CITY OF MERCED, a municipal corporation of the State of California, hereinafter called the Owner, and BOWEN ENGINEERING AND ENVIRONMENTAL hereinafter called the Contractor:

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. CONTRACT DOCUMENTS. The complete contract consists of the following documents, to wit:
 - (1) This General Construction Contract;
 - (2) Faithful Performance Bond;
 - (3) Laborers and Materialmens Bond;
 - (4) Guaranty;
 - (5) Special Provisions for PROJECT NO. 117047;
 - (6) Amendments to the Standard Specifications;
 - (7) Project Plans;
 - (8) Standard Specifications;
 - (9) City Standards;
 - (10) Proposal;
 - (11) Instructions to Bidders;
 - (12) Notice Inviting Bids;
 - (13) Bidder's Bond;
 - (14) Notice of Determination of Prevailing Wages;
 - (15) List of Subcontractors and Material Dealers; and
 - (16) Safety Provisions.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract are sometimes hereinafter referred to as the Contract Documents. In case of conflict between any of the documents, the order of documents first listed above shall be the order of precedence's, with the first item listed having the highest precedence.

2. THE WORK. Said Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with Contract Documents in the manner designated in, and in strict conformity with, the Plans and Specifications for PROJECT NO. 117047, which said Plans and Specifications are entitled, "WELL SITE 3 TANK REMOVAL," for construction in Merced County in Merced, and which were included in the award of bid made by the City Council of the City of Merced on _____, 2020.

It is understood and agreed that said tools, equipment, apparatus, facilities, labor, transportation and material, except materials to be supplied by the City as designated in the Contract Documents, shall be furnished and said work performed and completed as required in said Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner or its representative. The Owner hereby designates the City Engineer as its representative for the purpose of this Contract.

3. **CONTRACT PRICE.** The Owner agrees to pay, and the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and doing all work contemplated and embraced in this agreement to wit:

| ITEM NO. | ITEM | UNIT OF MEASURE | ESTIMATED QUANTITY | ITEM TOTAL (IN FIGURES) |
|----------|------------------------------------------------------|-----------------|--------------------|-------------------------|
| 1 | Project Planning and Document Preparation | LS | 1 | \$ <u>7,500.00</u> |
| 2 | Mobilization and Demobilization | LS | 1 | \$ <u>10,000.00</u> |
| 3 | Demolition of Water Tower | LS | 1 | \$ <u>243,000.00</u> |
| 4 | Excavation, Footing Removal, Compaction and Repaving | LS | 1 | \$ <u>45,000.00</u> |
| 5 | Fence Removal and Replacement | LS | 1 | \$ <u>7,500.00</u> |
| 6 | Submission of Project Closeout Documentation | LS | 1 | \$ <u>5,000.00</u> |

TOTAL BID ITEMS 1 THROUGH 6: \$ 318,000.00

4. **TERMINATION.** If the Contractor should be adjudged as bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract Documents, the Owner may serve written notice upon him and his surety of its intention to terminate the Contract; such notice to contain the reasons for such intention to terminate the Contract, and, unless within ten (10) days after serving of such notice such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that if the surety within fifteen (15) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

5. **NOTICE AND SERVICE THEREOF.** Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice, or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, (a) if the notice is given to the Owner, per personal delivery thereof

to the City Engineer of said Owner, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the Owner, postage prepaid and registered; (b) if the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his duly authorized representative at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to said Contractor at 4664 S. Cedar Ave., Fresno, CA 93725, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

6. ASSIGNMENT OF CONTRACT. Neither the Contract nor any part thereof, nor moneys due, or to become due thereunder, may be assigned by the Contractor without the prior written approval of the Owner.

7. CONTRACT SECURITY. The Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. The Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

8. INSURANCE. The Contractor shall not commence work under this Contract until he has obtained all insurance required by Section 7-3 of the Standard Specifications for Public Works Construction (1997 Edition), as amended, and such insurance has been approved by the City Attorney of Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract, and particularly paragraph 9 hereof. Said insurance obtained by the Contractor shall be primary and noncontributory as to any insurance maintained by owner. ***Endorsement for additional insured shall be submitted on Standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects.*** Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy.

The Contractor shall furnish the City a policy or certificate of liability insurance in which the City is the named insured or is named as an additional insured with the Contractor. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the City shall be the insured or named as an additional insured covering the work, whether liability is attributable to the Contractor or the City. The policy shall insure the City, its officers, employees and agents while acting within the scope of their duties on the work, against all claims arising out of or in connection with the work.

The Contractor may file insurance acceptable to the City covering more than one project. The coverage shall provide the following minimum limits:

| | |
|------------------|--------------------------------|
| Bodily Injury... | \$500,000.00 each person |
| | \$1,000,000.00 each occurrence |

\$1,000,000.00 aggregate products and completed operations

Property Damage... \$250,000.00 each occurrence
\$500,000.00 aggregate

A combined single limit policy with aggregate limits in the amount of \$1,250,000.00 will be considered equivalent to the required minimum limits.

The Contractor will require all subcontractors to take out and maintain bodily injury liability and property damage liability in the amounts stated above.

The Contractor and subcontractors shall save, keep and hold harmless the City, its officers and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or of personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by the Contractor, any of the Contractor's employees, or any subcontractor. The City will not be liable for any accident, loss or damage to the work prior to its completion and acceptance.

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provided that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the Agency shall be notified by registered mail, return receipt requested, giving sufficient time before the date thereof to comply with the applicable law or statute, but in no event less than thirty (30) days before expiration or cancellation is effective.

All insurance required by this section shall be from a California admitted insurance company.

The cost of this insurance shall be included in the Contractor's bid.

CANCELLATION CLAUSE

NOTE: The standard form used by insurance carriers will not be acceptable unless the word "endeavor" is crossed out where the paragraph states, "The issuing company will (endeavor to) mail . . ." A portion of the last paragraph should be crossed out, which states, "but failure to mail such notice shall impose no obligation or liability of any kind upon the company."

9. **HOLD HARMLESS.** Contractor shall indemnify and hold harmless City, its officers, employees, agents and volunteers from and against all liability, loss, damage, expense, and cost (including, without limitation, reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Contractor's negligence, recklessness, or willful misconduct in the performance of work hereunder, or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage caused by the active negligence, sole negligence or willful misconduct of the City. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement. Notwithstanding the above, the Contractor shall, wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the Owner and are for the express benefit of the general public.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire such protection at its expense.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

10. ACCIDENT PREVENTION. Precaution shall be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

11. PAYMENT. The Owner will make partial and final payment to the Contractor in accordance with Section 9-3.2 of the Standard Specifications, as amended, except that the Owner will retain the five percent (5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by Owner of notice of acceptance of completion of all work covered by this Contract, if such notice be recorded within ten (10) days after the acceptance of completion of such Contract; or, if such notice be not so recorded within ten (10) days, until the expiration of ninety-five (95) days after the acceptance of completion of such work of improvement, at which time and not before, Owner shall pay to Contractor the whole of the remaining five percent (5%) of said contract price so held back as provided.

The payment of progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, but the entire work is to be subjected to the inspection and approval of the Owner and subject to whatever inspection and approval may be required by law.

12. CALIFORNIA LABOR CODE. The Contractor is aware of, and hereby agrees to comply with Sections 1770, 1773, 1776, and 1777.5 of the California Labor Code.

13. SUBSTITUTION OF SECURITIES FOR WITHHELD AMOUNTS. Pursuant to Section 22,300 of the Public Contracts Code of the State of California, securities may be substituted for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a State or Federally-chartered bank as the escrow agent, who shall pay such moneys to the Contractor upon satisfactory completion of the Contract.

Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code of the State of California, or bank or savings and loan certificate of deposit.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Any escrow agreement entered into pursuant to this section shall contain, as a minimum, the following provisions:

- (a) The amount of securities to be deposited;
- (b) The terms and conditions of conversion to cash in case of the default of the Contractor; and
- (c) The termination of the escrow upon completion of the Contract.

14. TRENCHES AND EXCAVATIONS. Should the Contractor be required to dig trenches or other excavations that extend deeper than four (4) feet below the surface, then the following clauses shall apply:

- (a) The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:
 - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - (2) Subsurface or latent physical conditions at the site differing from those indicated;
 - (3) Unknown physical conditions at the site of any unusual nature different materially from those ordinarily encountered, and generally recognized as inherent in work of the character provided for in the contract.
- (b) The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in this contract.
- (c) In the event that a dispute arises between the City and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

15. CLAIMS. This clause applies to all Contractor claims of three hundred seventy-five thousand dollars (\$375,000), or less, which arise out of this contract.

- (a) "Claim" means a separate demand by the Contractor for (1) a time extension, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract, and payment of which is not otherwise expressly provided for or the Contractor not otherwise entitled to, or (3) an amount the payment of which is disputed by the City.

- (b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing herein shall extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (c) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.
 - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
 - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- (d) For claims of over fifty thousand dollars (\$50,000) and less than, or equal to, three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within sixty (60) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim, or relating to defenses or claims the City may have against the Contractor.
 - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
 - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater
- (e) If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within fifteen (15) days of receipt of the City's response, or within fifteen (15) days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
- (f) If, following the meet and confer conference, the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title I of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits its written claim pursuant to Subdivision (b) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- (g) The following procedures shall be followed for all civil actions filed to resolve claims subject to this clause:

- (1) Within sixty (60) days, but no earlier than thirty (30) days following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
 - (2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
 - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- (h) The City shall not fail to pay money as to any portion of a claim which is undisputed, except as otherwise provided in this contract.
- (i) In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

ATTEST:

CITY OF MERCED, a Municipal Corporation
(Herein called Owner)

By: _____
Deputy City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

BOWEN ENGINEERING AND ENVIRONMENTAL
(Herein called Contractor)

By: _____
City Attorney

By: Erik Bowen _____
Contractor

ACCOUNT DATA:

TAXPAYER I.D. NO: [REDACTED]

Project No. **117047**

VENDOR NUMBER: _____

Project Account Number(s) / Amount

ADDRESS: 4664 S. Cedar Ave., Fresno, CA

557-1106-637.65-00-117047 \$ 318,000.00

93725

PHONE (559) 233-7464

FAX: 559-233-7468

EMAIL: bowendemo@yahoo.com

By: _____
Finance Officer Verification

(SEAL)

GUARANTY

To the City of Merced, California:

PROJECT NO. 117047

The undersigned guarantees the construction and installation of the work included in this project as described in the Contract Documents.

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, within one year after date on which the "Notice of Completion" is recorded by the City, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring said work to that contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the City, to replace any such material and to repair said work completely without cost to the City so that said work will function as contemplated.

The City shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned. In the event the City elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the City. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of said failure or refusal.

By: Erik Bowen
Contractor

Date: 4/20/20