

CITY OF BLYTHE

SPECIFICATIONS FOR

ENGEVIK PARK PLAYGROUND IMPROVEMENT PROJECT NW Corner of Carlton and W. Barnard Blythe, CA 92225

August 2021

Proposal Deadline:

2:00pm on Thursday, September 29, 2022

**Attn: Mallory Crecelius, City Clerk
235 N. Broadway, Blythe, CA 92225**

Prepared by:

**CITY OF BLYTHE
235 N. Broadway
BLYTHE, CA 92225
Phone: (760) 922-6161**

CITY OF BLYTHE

INVITATION FOR PROPOSALS

**CITY OF BLYTHE
235 NORTH BROADWAY
BLYTHE, CALIFORNIA 92225**

Sealed proposals for the work described in the specifications and contract documents entitled:

ENGEVIK PARK PLAYGROUND IMPROVEMENT PROJECT

will be received at the City of Blythe, Office of the City Clerk, 235 N. Broadway, Blythe, CA 92225 until 2:00pm prevailing local time, on **Thursday, September 29, 2022** at which time they will be publicly opened and read aloud in the Multi-Purpose Room at said address.

**MANDATORY PRE-BID MEETING
10:00am on Tuesday, September 6, 2022**

Questions regarding bidding, the bidding process and the project plans, specifications and contract documents may be communicated to the City during the mandatory pre-bid meeting scheduled for Tuesday, September 6, 2022 at 10:00am. In addition, the City will receive questions concerning the project until 4:00pm on Friday, September 9, 2022. Questions concerning this project may be addressed to Mallory Crecelius by email to msutterfield@cityofblythe.ca.gov. Responses to all questions received will be issued by Thursday, September 16, 2022.

Sole responsibility rests with the bidder to ensure that their proposal is received on time at the stated location, either in person, or via mail or express delivery. Proposals received after the established date and time will not be considered, and any proposals so received shall be deemed non-responsive and returned to the bidder.

Proposals shall conform to the specification of the Invitation for Proposal. The City reserves the right to accept or reject any or all proposals or any combination thereof, to waive any informality or irregularity in the proposal and evaluation process and make award in the best interest of the City. Bidder(s) may bid any one section or multiple sections or all sections.

Project Description:

The work consists of, but not to be limited to, the installation of playground equipment at Engevik Park located at the NW corner of N. Carlton and W. Barnard Street, in the City of Blythe, California. The work is to include the installation of commercial grade playground equipment within the existing constructed playground area boundaries, equipment footings and installation of 4,096 square feet of colored rubber mulch and associated liner.

The City of Blythe will provide demolition of the existing playground equipment and the 4,096 square feet of playground area graded to 7 inches below the top of the existing curb surrounding the playground area.

The City of Blythe requires bidders to provide and install a play system that meets or exceeds all current federal CPSC, ASTM, IPEMA standards and ADA requirements. The proposals shall include the costs of delivered play systems as designed, inclusive of the equipment structures, components, hardware, detailed technical installation instructions and maintenance & operations manuals from manufacturer.

Play system features in priority order are:

1. Provide one play structure with capacity for 20 to 25 children combining elements to be used by ages 5 to 12.
2. Provide one swing set which shall have a minimum of 2 swings for children ages 5 to 12 and a minimum of 1 swing for toddlers.
3. Other desired elements include a standalone spinner element or standalone climbing element.

Project Budget

The City's budget for the construction of the project is \$110,000 including demolition, provision and installation of playground equipment, installation of concrete sub-base and installation of the colored rubber mulch. Contractor should be aware of this budget when submitting a proposal.

Obtaining or Inspecting Contract Documents

Contract documents for the above referenced project are available on the City of Blythe website at: <http://www.cityofblythe.ca.gov>. Any addenda will be posted on the website. It will be the responsibility of the Contractor to acquire the addenda from this source.

Contractor's License Classification: At the time of bid submittal, potential bidders must possess any of the following Contractor's License Classifications: A- General Engineering Contractor, B- General Building Contractor, C-61/D12- Synthetic Products or C-61/D34- Prefabricated Equipment. The Contractor's License shall be issued by the Contractors State License Board. The Contractor's subcontractor(s) performing work shall possess the appropriate state licenses for the work to be performed on each specialty subcontracted. Each bidder shall submit a copy of its active contractor's license with the bid documents. The awarded Contractor and subcontractors will also be required to obtain a City Business License.

Proposal Forms: Proposals shall include the total cost and be signed by an authorized company representative using the provided forms. **The proposals shall be submitted by the deadline in one sealed envelope entitled: Engvik Park Playground Improvement Project.**

Wage Requirements: Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. These wages are set forth in the General Prevailing Wage Rates for this project, available at Blythe 235 N. Broadway Blythe, California and available from the California Department of Industrial Relations' Internet web site at <http://www.dir.ca.gov>. Future effective general prevailing wages rates which have been predetermined and are on file with the California Department of Industrial Relations are referenced but not printed in the general prevailing wage rates.

Contract Time: The work includes but is not limited to providing all required equipment for installation of the water well and electrical panel. The work shall be completed **sixty (60) calendar days** following receipt of a written Notice to Proceed from the City.

Award of Contract: The contract will be awarded on the basis of lowest price from a responsive and responsible bidder and will provide for progressive payments and liquidated damages as fixed in the specifications. All proposals must be made on the forms as contained in the specifications for the previously described project and shall in all respects comply with the Instructions to Bidders and Contract Documents. Bids must be in writing and signed by or on behalf of the bidder.

Bonding and Insurance Requirements: The successful bidder will be required to furnish a Performance Bond for 100% of the contract price to secure fulfillment of all the bidder's obligations under such contract. The successful bidder will further be required to furnish a Labor and Material Bond for 100 % of the contract price to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. Contractor's General Public Liability and Property Damage Insurance, Workers Compensation Insurance, and "All Risk" Type Builder's Risk Insurance will be required during the contract time.

Retainage from Payments: Monthly progress payments shall be made to the Contractor for the value of the work completed during the preceding month, less a five percent (5%) security withhold.

The City reserves the right to reject any or all bids or any parts thereof and to waive any irregularities or informalities in any bid or in the bidding process and to make a contract award in the best interest of the City.

No bidder may withdraw his bid for a period of sixty (60) calendar days after the date set for the opening of bids.

All bidders are advised to observe the project conditions.

CITY OF BLYTHE, Dated August 19, 2022
Published by: Mallory Crecelius, City Clerk
Published on: August 19, 2022

EXHIBIT A

Specifications and Procedures

The project consists of, but not be limited to the installation of playground equipment at Engevik Park located at the NW corner of N. Carlton and W. Barnard Street, in the City of Blythe, California. The work is to include the installation of commercial grade playground equipment within the existing constructed playground area boundaries, equipment footings and installation of 4,096 square feet of colored rubber mulch and associated liner.

The City of Blythe will provide demolition of the existing playground equipment and the 4,096 square feet of playground area graded to 7 inches below the top of the existing curb surrounding the playground area.

1. Design Element Guidelines and Play System Specifications
 1. Bidders should base their playground equipment designs on meeting all accessibility and safety standards as well as the guidelines & specifications listed in this RFP. Quality of equipment components, quality of design, play value, cost, and appropriateness to location and target demographic must be taken into consideration in the play system proposed.
2. Required Items:
 1. All play system elements must meet and/or exceed all federal, CPSC, ASTM & IPEMA guidelines.
 2. All concrete footings installed per all federal standards.
3. Play System Features:
 1. Provide a minimum of one structure designed for 20-25 children ages 5 to 12. Exhibits and plans in Section VIII shows as an example the City's expectation for the Engevik Park Playground equipment which includes: 1 single slide; 1 single curved slide and 1 double bedway slide; 1 horizontal loop ladder/climber; transform platform with guardrail and 2 hexagonal decks.
 2. One stand alone spinner element or one standalone climbing element.
 3. Provide one swing set which shall have minimum 2 swings for ages 2 to 5 and a minimum of 1 swing for toddlers.
4. Preferred Play System Qualities
 1. All play system elements must demonstrate the highest level of durability in materials and finishes selected in consideration of child health and safety.
 2. Structures should provide a variety of built-in activity panels and climbers.

In the proposal, provide a list of the components proposed for the Engevik Park play system. Include structure and component model numbers, materials, color choices and recommendations, protective area requirements, target age ranges and developmental levels, target play type or activity, estimated lifetime of equipment including manufacturers warranty and any other relevant descriptive information. Play system design shall safely fit in the playground area as shown on the site plans (Section VIII).

Suppliers are encouraged to be creative in their designs and to maximize the role of unstructured play in their proposals. Suppliers may submit proposals from non-traditional type playground structures, if desired, in whole or as components of the overall playground.

5. Assembly Installation and Inspection

The play system assembly and installation will be provided and managed by the Supplier. The Supplier must supply direct supervision from manufacturer or supply qualified and certified representative familiar with playground installation. All tools and equipment required to install play equipment shall be provided by the Supplier. All work shall be completed within **sixty (60) calendar days** following receipt of a written Notice to Proceed from the City.

It is the requirement of this RFP that Suppliers shall provide and install all equipment.

A representative of the Supplier is required to conduct a post installation inspection of equipment upon completion to insure the proper installation of the equipment. If not properly installed, modifications must be submitted in writing to the City and remedied immediately. Co-inspection with the Supplier's representative of assembly and installation work will be conducted by the City following installation. The City will supply the punch list for final completion generated by this co-inspection. The Supplier shall submit to the City the manufacturer's certification of compliance and warranty following punch list completion.

Warranty: Upon completion of installation, the Supplier must provide documentation attesting the equipment has been installed meeting all specifications thereby warranted by manufacturer. Additionally, it is the Supplier's responsibility to provide to the City the manufacturer's warranty of installed equipment.

All equipment must meet and/or exceed all federal, CPSC, ASTM & IPEMA guidelines. Documentation of compliance must be provided to the City with the Supplier's proposal. All equipment must comply with Americans with Disabilities Act (ADA). The designs submitted by the Supplier must incorporate either a transfer platform or ramp in each design when necessary.

EXHIBIT B

1. Proposal Forms

CONTRACTOR

The undersigned hereby proposes to the City of Blythe to furnish all labor, technical and professional services, supervision, materials, and equipment and to perform all operations necessary and required to complete the Miller Park Water Well Project.

The work shall be completed in accordance with the provisions of this document and the associated drawings, and at the prices stated opposite the respective items set forth in the Schedule of Items and Prices attached hereto.

The undersigned agrees that this Proposal constitutes a firm offer to the City of Blythe which cannot be withdrawn for sixty (60) calendar days from and after the date set for opening of proposals, or until a contract is fully executed by the City and a third party, whichever is earlier.

The undersigned certifies that it has examined and is fully familiar with all of the provisions of this document, the drawings, narrative and any addenda thereto; that it has carefully checked all of the words and figures shown in its Schedule of Items and Prices; that it has carefully reviewed the accuracy of all statements in this proposal and attachments hereto; and it understands and agrees that the City of Blythe will not be responsible for any errors or omissions on the part of the undersigned in preparing this proposal.

The undersigned represents that it has made careful examination of this document and the drawings and by examination of the actual site conditions has satisfied itself as to the nature and location of all work, the general and local conditions to be encountered in the performance of any work and all other matters which can in any way affect the work or the cost thereof. If awarded a contract, the undersigned agrees to execute and deliver to City of Blythe within ten (10) calendar days, a signed contract, the necessary insurance certificates, and all other required documents. Upon receipt of a Notice to Proceed, the undersigned shall complete all work within sixty (60) calendar days. Liquidated damages in the amount of one thousand dollars (\$1,000.00) per calendar day shall be assessed after the designated sixty (60) have expired.

The undersigned represents that they understand that the City retains the privilege of deleting work items from the final contract.

The undersigned represents that they have or will obtain a valid City of Blythe Business License.

The undersigned certifies that it is now licensed in accordance with the provisions of the Contractor's License Law of the State of California, and the number of said license is _____ and that said license expires _____, 20 ____.

(SEAL)

Bidder: _____

By: _____

Title _____

(Type or print name)

BIDDER'S BUSINESS ADDRESS

Dated:

PHONE () _____

NOTE:

If bidder is a corporation, enter State of Incorporation in addition to Business Address; if a partnership or joint venture, provide full names of all partners or joint venturers.

2.SCHEDULE OF ITEMS AND PRICES

In accordance with City's **INVITATION FOR PROPOSALS**, the undersigned **BIDDER** hereby proposes to furnish all materials, equipment, tools, labor and incidentals required for the above stated project as set forth in the Plans, Specifications and contract documents and any addenda, thereto, and to perform all work in the manner and time prescribed therein.

BIDDER understands that a bid is required for the entire work. It is agreed that the unit and/or lump sum prices bid include all appurtenant expenses, bonds, taxes, royalties, transportation and fees.

If awarded the Contract, the undersigned further agrees that in the event of the **BIDDER'S** default in executing the required contract and filing the necessary bonds and insurance certificates within ten working days after the date of the City's notice of award of contract to the **BIDDER**, the proceeds of the security accompanying this bid shall become the property of the City and this bid and the acceptance hereof may, at the City's option, be considered null and void.

In case of discrepancies in the amounts bid, unit prices shall govern over extended amounts, and the accurate and mathematically correct summation of the total bid item amounts shall govern over the total for comparison summation figure and words listed on the proposal form.

**ENGVIK PARK PLAYGROUND IMPROVEMENT PROJECT
SCHEDULE, QUANTITIES AND PRICES**

Bid Item	Description	Quantity	Unit of Measure	Unit Price	Total
1	MOBILIZATION, PERMITS, LICENSES, CONSTRUCTION STAKING, TAXES, PERFORMANCE BOND, PAYMENT BOND, INSURANCE, POTABLE DRINKING WATER, CONSTRUCTION WATER, FREIGHT, UTILITY RELOCATIONS, PROJECT SIGNS, TEMPORARY RESTROOM FACILITIES, SITE SECURITY, DEMOBILIZATION, CLEAN UP AND OTHER COSTS SPECIFICALLY ADDRESSED WITHIN THIS SCHEDULE OF ITEMS AND PRICES	1	LS	\$	\$
2	PROVIDE AND INSTALL 2,875 SF CONCRETE SUB-BASE @ 4 INCH DEPTH INCLUDING 417 LF TURNDOWN EDGE	2,875	FT	\$	\$
3	PROVIDE AND INSTALL 2,875 SF OF POURED IN PLACE SURFACING @ 3.5 INCH DEPTH INCLUDING REQUIRED TURNDOWN EDGES.	2,875	FT	\$	\$
4	PROVIDE PLAYGROUND STRUCTURE PER DESCRIPTION.	1	LS	\$	\$
5	PROVIDE SWING FOR TODDLERS	1	E.A.	\$	\$
6	PROVIDE SWINGS FOR CHILDREN AGES 5 TO 12	2	E.A.	\$	\$
7	INSTALLATION OF ALL PLAYGROUND EQUIPMENT	1	LS	\$	\$
8	FORCE ACCOUNT ALLOWANCE	1	LS	10%	

Total Project Bid Price in Numbers (Items 1-8)

\$ _____

Total Bid in Words:

Notes:

Prices shall include all work and material required in the Plans and Specifications although not specifically said on the Bid Schedule. Bids are to be submitted for the entire work.

The bidder shall set forth for lump-sum item a total for all components considered to be included in the bid item, all in clearly legible figures in the respective spaces provided for this purpose.

The Contract prices paid for the work shall include full compensation for all taxes which the contractor is required to pay, whether imposed by federal, state, or local government, including, without being limited to, federal excise tax. No tax exemption certificate nor any document designed to exempt the contractor from payment of any tax will be furnished to the contractor by the City as to any tax or labor, services, materials, transportation, or any other items furnished pursuant to the contract.

The City of Blythe retains the right to award on the basis of bids received or to reject any or all bids.

No conditional bids will be accepted.

The undersigned hereby acknowledges the receipt of the following addendum:

None No. 1 No. 2 No. 3 No. 4 No. 5

Date: _____

Name of Contractor: _____

Signature: _____

Address: _____

City State Zip

LIST OF PROPOSED SUBCONTRACTORS

If awarded the contract, the bidder proposes to employ the following subcontractors, which will perform work or labor or render service to the bidder in or about the construction of the work in an amount in excess of one-half of one percent (0.50%) of the total amount bid. The bidder shall not be allowed to substitute another subcontractor for the subcontractor listed below without the written approval of the City. If no subcontract work is proposed, except within the one-half of one percent (0.50%) limit set forth above, the bidder shall so state.

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

Subcontractor Name: _____

Address: _____

License Number: _____ Expiration Date: _____

Description of Work to be Subcontracted: _____

EXHIBIT C

SAMPLE AGREEMENT

THIS AGREEMENT, dated MMMM dd, yyyy, is made by the City of Blythe, a municipal corporation, ("City") and Name of Contractor a State and Type of Corporation, ("Contractor").

ACCORDINGLY, the parties hereto agree as follows:

1. SCOPE OF WORK.

The Work consists of the rehabilitation of San Luis Way Street from Barnard Street to Wisconsin Street. The project consists of grinding, removal and overlay of asphalt pavement, demolition and construction of curb, gutter, sidewalk, cross-gutters and spandrels, and the construction of pedestrian ramps.

The Work is further described in the "Contract Documents" referred to below.

The Project is "San Luis Way – Street Rehabilitation Project".

2. CONTRACT DOCUMENTS.

The complete Agreement consists of the following documents relating to the Project: this Agreement; notice inviting bids; the Contractor's bid; the complete plans, profiles, detailed drawings and specifications, including general provisions and special provisions; the provisions of the most current edition of California Building Code; 2012 International Building Code Edition; Faithful Performance Bond and Labor and Material Bond, including agent's Power of Attorney for each Bond; certificates of insurance; and all addenda setting forth any modifications or interpretations of those documents. The documents comprising the complete Agreement will be referred to as the "Contract Documents."

All of the Contract Documents are intended to complement one another, so that any Work called for in one and not mentioned in another is to be performed as if mentioned in all documents.

In the event of an inconsistency in the Contract Documents the terms of this Agreement shall prevail over all other Contract Documents. The order of precedence between the remaining Contract Documents shall be as set forth in the agreement.

The Contract Documents constitute the entire agreement between the parties and supersede any and all other writings and oral negotiations.

3. CITY'S REPRESENTATIVE.

The City's Representative is Name/Last Name, who shall be referred to herein as the Project Manager ("Project Manager").

4. SCHEDULE.

All Work shall be performed in accordance with the schedule approved on behalf of City by the Project Manager, and in accordance with the time of performance set forth in Paragraph 7.

5. EQUIPMENT - PERFORMANCE OF WORK.

Contractor shall furnish all tools, equipment, apparatus, facilities, labor and materials necessary to perform and complete the Work of construction in a good and workmanlike manner in strict conformity with the Contract Documents.

The equipment, apparatus, facilities, labor and material shall be furnished and such Work performed and completed as required in the plans and specifications to the satisfaction of the Project Manager or his designee, and subject to his approval.

6. CONTRACT PRICE - \$ Total Bid Price.

7. TIME OF PERFORMANCE.

Work shall begin within ten (10) days after the date this Agreement is executed by City unless a later time is agreed upon in writing by the parties, and the Work shall be completed within forty five (45) calendar days from the first day of commencement of the Work.

8. OPTION OF CITY TO TERMINATE AGREEMENT IN EVENT OF FAILURE TO COMPLETE WORK.

If Contractor refuses or fails to prosecute the Work or any severable part of it with such diligence as will ensure its timely completion, or if Contractor fails to complete the Work on time, or if Contractor, or any subcontractor, violates any of the provisions of the Contract Documents, the Project Manager may give written notice to Contractor and Contractor's sureties of the City's intention to terminate this Agreement; and, unless within five (5) days after the serving of that notice, such conduct shall cease and arrangements for the correction thereof be made to the satisfaction of the City, this Agreement may be terminated at the option of City effective upon Contractor's receipt of a second notice sent by the City indicating that the City has exercised its option to terminate.

If Contractor is adjudged a bankrupt or files for any relief under the Federal Bankruptcy Code or State insolvency laws, this Agreement shall automatically terminate without any further action or notice by City.

9. LIQUIDATED DAMAGES.

In the event the Work is not completed, for any reason, within the time required including any approved extensions of time, and to the satisfaction of the Project Manager, City may, in addition to any other remedies, equitable and legal, including remedies authorized by Paragraph 8 of this Agreement, charge to Contractor or his sureties, or deduct from payments or credits due Contractor, a sum equal to \$1,000 as liquidated damages for each day beyond the date provided for the completion of such Work.

The parties hereto agree that the amount set forth above, as liquidated damages constitutes a fair and reasonable estimate of the costs the City would suffer for each day that the Contractor fails to meet the performance schedule. The parties hereby agree and acknowledge that the delays in the performance schedule will cause City to incur costs and expenses not contemplated by this Agreement.

10. PERFORMANCE BY SURETIES.

In the event Contractor fails or refuses to perform the Work, City may provide Contractor with a notice of intent to terminate as provided in paragraph 8, of this Agreement. The City shall immediately give written notice of such intent to terminate to Contractor and Contractor's surety or sureties, and the sureties shall have the right to take over and perform this Agreement; provided, however, that the sureties must, within five (5) days after City's giving notice of termination, (a) give the City written notice of their intention to take over the performance of this Agreement; (b) provide adequate assurances, to the satisfaction of the City that the Work shall be performed diligently and in a timely manner; and, (c) must commence performance thereof within five (5) days after providing notice to the City of their intention to take over the Work. Upon the failure of the sureties to comply with the provisions set forth above, City may take over the Work and complete it, at the expense of Contractor, and the Contractor and the sureties shall be liable to City for any excess costs or damages including those referred to in Paragraph 9, incurred by City. In such event, City may, without liability for so doing, take possession of such materials, equipment, tools, appliances, Contract Documents and other property belonging to Contractor as may be on the site of the Work and reasonably necessary therefor and may use them to complete the Work.

11. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting whether any delay is excusable, or its duration, or the value of the Work done, or of any Work omitted, or of any extra Work which Contractor may be required to do, or respecting any payment to Contractor during the performance of this Agreement, such dispute shall be decided by the Project Manager, and his decisions shall be final and binding upon Contractor and his sureties.

12. SUPERINTENDENCE BY CONTRACTOR.

At all times during performance of the Work, Contractor shall give personal superintendence or have a competent foreman or superintendent on the worksite, with authority to act for Contractor.

13. INSPECTION BY CITY.

Contractor shall at all times maintain proper facilities and provide safe access for inspection by City to all parts of the Work and to all shops on or off-site where the Work or portions of the Work, are in preparation. City shall have the right of access to the premises for inspection at all times. However, City shall, at all times, comply with Contractor's safety requirements on the job site.

14. CARE OF THE WORK AND OFF-SITE AUTHORIZATION.

Contractor warrants that it has examined the site of the Work and is familiar with its topography and condition, location of property lines, easements, building lines and other physical factors and limitations affecting the performance of this Agreement. Contractor, at Contractor's sole cost and expense, shall obtain any permission, and all approvals, licenses, or easements necessary for any operations conducted off the premises owned or controlled by City. Contractor shall be responsible for the proper care and protection of all materials delivered to the site or stored off-site and for the Work performed until completion and final inspection and acceptance by City. The risk, damage or destruction of materials delivered to the site or to Work performed shall be borne by Contractor.

15. PAYMENTS TO CONTRACTOR.

On or before the last Monday of each and every month during the performance of the Work, Contractor shall meet with the Project Manager or his designee to determine the quantity of pay items incorporated into the improvement during that month. A "Progress Payment Order" will then be jointly prepared, approved, and signed by the Project Manager and the Contractor setting forth the amount to be paid and providing for a 5% retention. Upon approval of the progress payment order by the City Engineer, or his designee, it shall be submitted to City's Finance Department and processed for payment by obtaining approval from the City Council to issue a warrant.

Within three (3) days following City Council's approval to issue a warrant, City shall mail to Contractor a warrant for the amount specified in the progress payment order as the amount to be paid. Unless otherwise authorized under law, the retained five percent (5%) shall be paid to Contractor thirty-five (35) days after the recording of the Notice of Completion of the Work by the City and after

Contractor shall have furnished releases of all claims against City by persons who furnished labor or materials for the Work, if required by City.

Upon the request of Contractor and at his expense, securities equivalent to the amount withheld pursuant to the foregoing provisions may be presented to City for substitution for the retained funds. If City approves the form and amount of the offered securities it will release the retained funds and will hold the securities in lieu thereof. Contractor shall be entitled to any interest earned on the securities.

In the event that claims for property damage or bodily injury are presented to City arising out of Contractor's or any subcontractor's Work under this Agreement; City shall give notice thereof to Contractor, and Contractor shall have thirty-five (35) days from the mailing of any such notice to evaluate the claim and to settle it by whole or partial payment, or to reject it, and to give notice of settlement or rejection to City. If City does not receive notice within the above-mentioned thirty-five day period that the claim has been settled, and if the Project Manager, after consultation with the City Attorney, determines that the claim is meritorious, City may pay the claim or a portion of it in exchange for an appropriate release from the claimant, and may deduct the amount of the payment from the retained funds that would otherwise be paid to Contractor upon completion of the Work; provided, however, that the maximum amount paid for any one claim pursuant to this provision shall be one thousand dollars (\$1,000), and the maximum amount for all such claims in the aggregate paid pursuant to this provision shall be five thousand dollars (\$5,000).

16. PROMPT PAYMENT OF SUBCONTRACTORS.

The Contractor agrees to pay each subcontractor under this Agreement for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Contractor receives from City.

The Contractor agrees further to release retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City.

17. CONTRACT SECURITY AND GUARANTEE.

Unless previously provided by Contractor to City, Contractor shall furnish, concurrently with the execution of this Agreement, the following: (1) a surety bond in an amount equal to one hundred percent (100%) of the contract price as security for the faithful performance of this Agreement, and (2) a separate surety bond in an amount equal to at least one hundred percent (100%) of the contract

price as security for the payment of all persons furnishing labor or materials in connection with the Work under this Agreement. Sureties for each of the bonds and the forms thereof shall be satisfactory to City. In addition, such sureties must be authorized to issue bonds in California; sureties must be listed on the latest revision to the U.S. Department of the Treasury Circular 570; and must be shown to have sufficient bonding capacity to provide the bonds required by the Contract Documents.

Contractor shall provide a certified copy of the certificate of authority of the surety issued by the Insurance Commissioner; a certificate from the clerk of the county in which the court or officer is located that the certificate of authority of the surety has not been surrendered, revoked, canceled, annulled, or suspended or, in the event that it has, that renewed authority has been granted; and copies of the surety's most recent annual statement and quarterly statement filed with the Department of Insurance pursuant to Article 10 (commencing with Section 900) of Chapter 1 of Part 2 of Division 1 of the Insurance Code.

Contractor guarantees that all materials used in the Work and all labor performed shall be in conformity with the Contract Documents including, but not limited to, the standards and specifications set forth in the most current edition of Caltrans Standard Specifications. Contractor shall, at his own expense, make any and all repairs and replacements that shall become necessary as the result of any failure of the Work to conform to the aforementioned Contract Documents, and standard specifications; provided, however, that Contractor shall be obligated under this provision only to the extent of those failures or defects of which he is given notice within a period of twelve (12) months from the date that the Notice of Completion is recorded.

The rights and remedies available to City pursuant to this provision shall be cumulative with all rights and remedies available to City pursuant to statutory and common law, which rights and remedies are hereby expressly reserved, and neither the foregoing guarantee by Contractor nor his furnishing of the Bonds, nor acceptance thereof by City, shall constitute a waiver of any rights or remedies available to City against Contractor.

18. INDEMNIFICATION.

Contractor agrees to protect, defend, indemnify and hold harmless City and its elected and appointed boards, officers, agents, and employees from any and all claims, liabilities, expenses, or damages of any nature, including attorney fees, for injury to or death of any person, and for injury or damage to any property, including consequential damages of any nature resulting therefrom, arising out of or in any way connected with the performance of this Agreement, except that the indemnity

obligation of Contractor shall be reduced by an amount proportional to the active negligence of City, if any.

Contractor shall comply with all of the provisions of the Workers' Compensation insurance laws and Safety in Employment laws of the State of California, including the applicable provisions of Divisions 4 and 5 of the California Labor Code and all amendments thereto and regulations promulgated pursuant thereto, and all similar State, Federal or local laws applicable; and Contractor shall indemnify and hold harmless City from and against all claims, liabilities, expenses, damages, suits, actions, proceedings and judgments, of every nature and description, including attorney fees, that may be presented, brought or recovered against City for or on account of any liability under or failure to comply with any of said laws which may be incurred by reason of any Work performed under this Agreement by Contractor or any subcontractor or others performing on behalf of Contractor.

City does not, and shall not, waive any rights against Contractor which it may have by reason of the above hold harmless agreements, because of the acceptance by City or the deposit with City by Contractor of any or all of the insurance policies described in this Agreement.

The hold harmless agreements by Contractor shall apply to all liabilities, expenses, claims, and damages of every kind (including but not limited to attorney fees) incurred or alleged to have been incurred, by reason of the operations of Contractor or any subcontractor or others performing on behalf of Contractor, whether or not such insurance policies are applicable. Contractor shall require any and all tiers of subcontractors to afford the same degree of indemnification to the City of Blythe and its elected and appointed boards, officers, agents, and employees that is required of Contractor and shall incorporate identical indemnity provisions in all contracts between Contractor and all tiers of his subcontractors.

In the event that Contractor and City are sued by a third party for damages caused or allegedly caused by negligent or other wrongful conduct of Contractor, or by a dangerous condition of City's property created by Contractor or existing while the property was under the control of Contractor, Contractor shall not be relieved of its indemnity obligation to City by any settlement with any such third party unless that settlement includes a full release and dismissal of all claims by the third party against the City.

19. INSURANCE.

(1) Minimum Scope and Limits of Insurance. Contractor shall obtain, maintain, and keep in full force and effect during the life of this Agreement all of the following minimum scope of insurance coverages with an insurance company admitted to do business in California, rated "A," Class

X, or better in the most recent Best's Key Insurance Rating Guide, and approved by City:

- (a) Commercial general liability, including premises-operations, products/completed operations, broad form property damage, blanket contractual liability, independent contractors, personal injury or bodily injury with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or shall be twice the required occurrence limit.
- (b) Business automobile liability for owned vehicles, hired, and non-owned vehicles, with a policy limit of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence for bodily injury and property damage.
- (c) Workers' compensation insurance as required by the State of California. Contractor agrees to waive, and to obtain endorsements from its workers' compensation insurer waiving subrogation rights under its workers' compensation insurance policy against the City, its officers, agents, employees, and volunteers arising from work performed by Contractor for the City and to require each of its subcontractors, if any, to do likewise under their workers' compensation insurance policies.
- (d) Professional errors and omissions ("E&O") liability insurance with policy limits of not less than One Million Dollars (\$1,000,000.00), combined single limits, per occurrence and aggregate. Architects' and engineers' coverage shall be endorsed to include contractual liability. If the policy is written as a "claims made" policy, the retro date shall be prior to the start of the contract work. Contractor shall obtain and maintain, said E&O liability insurance during the life of this Agreement and for three years after completion of the work hereunder.

(2) Endorsements. The commercial general liability insurance policy and business automobile liability policy shall contain or be endorsed to contain the following provisions:

- (a) Additional insureds: "The City of Blythe and its elected and appointed boards, officers, officials, agents, employees, and volunteers are additional insureds with respect to: liability arising out of activities performed by or on behalf of the Contractor pursuant to its contract with the City; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; automobiles owned, leased, hired, or borrowed by the Contractor."

- (b) Notice: "Said policy shall not terminate, be suspended, or voided, nor shall it be cancelled, nor the coverage or limits reduced, until thirty (30) days after written notice is given to City."
- (c) Other insurance: "The Contractor's insurance coverage shall be primary insurance as respects the City of Blythe, its officers, officials, agents, employees, and volunteers. Any other insurance maintained by the City of Blythe shall be excess and not contributing with the insurance provided by this policy."
- (d) Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the City of Blythe, its officers, officials, agents, employees, and volunteers.
- (e) The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(3) Deductible or Self Insured Retention. If any of such policies provide for a deductible or self-insured retention to provide such coverage, the amount of such deductible or self-insured retention shall be approved in advance by City. No policy of insurance issued as to which the City is an additional insured shall contain a provision which requires that no insured except the named insured can satisfy any such deductible or self-insured retention.

(4) Non-limiting. Nothing in herein shall be construed as limiting in any way, the indemnification provision contained in this Agreement, or the extent to which Consultant may be held responsible for payments of damages to persons or property.

20. PROOF OF INSURANCE.

Certificates of insurance and additional insured endorsements shall be furnished to the City thirty (10) days after the effective date of this Agreement, and no payments for services provided by the Developer under this Agreement shall be made by the City until it is in receipt of said certificates. Refusal to submit such certificates shall constitute a material breach of this Agreement entitling the City to any and all remedies at law or in equity, including termination of this Agreement. If proof of insurance required under this Agreement is not delivered as required or if such insurance is canceled and not adequately replaced, the City shall have the right but not the duty to obtain replacement insurance and to charge the Developer for any premium due for such coverage. The City has the option to deduct any such premium from the sums due to the Developer.

21. LEGAL WORK DAY - PENALTIES FOR VIOLATION.

Eight hours of labor shall constitute a legal day's work during any one calendar day. Contractor shall forfeit to City the sum of twenty-five dollars (\$25.00) for each workman employed in the execution of this Agreement by Contractor or by any subcontractor for each calendar day during which such workman is required or permitted to work more than eight (8) hours in any one calendar day and 40 hours in any one calendar week in violation of California Labor Code Sections 1810 through 1815, inclusive.

22. PREVAILING WAGE SCALE.

Contractor shall also comply in all respects with California Labor Code, Sections 1770 et seq., including the keeping of all records required by the provisions of Labor Code Section 1776.

Contractor, who is engaged in the construction, prosecution, completion or repair of any public building or public work, or building or work shall furnish each month to City's Project Administration Division a statement with respect to the wages of each of its employees during the preceding monthly payroll period.

23. NON – DISCRIMINATION.

In performing this Agreement, Contractor will not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status or sex, or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

24. CONTRACT ASSURANCE.

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The Contractor will require that the above provision is included in all subcontracts.

25. PROVISIONS CUMULATIVE

The provisions of this Agreement are cumulative and in addition to, and not in limitation of, any other rights or remedies available to City.

26. NOTICES.

It shall be the duty and responsibility of Contractor to notify all tiers of subcontractors and material men of the following special notice provision; namely, all preliminary 20-day notices or stop notices shall be directed only to the City Clerk and to no other department, and shall be either personally delivered or sent by certified mail, postage prepaid.

All other notices shall be in writing and delivered in person or sent by certified mail, postage prepaid. Notices required to be given to City pursuant to this Agreement shall be addressed as follows:

The City of Blythe
235 N. Broadway
Blythe, California 92225

Attention: Construction Management

Notices required to be given to Contractor shall be addressed as follows:

Notices required to be given to Contractor's sureties shall be addressed as follows:

27. INDEPENDENT CONTRACTOR.

27.1 The parties hereto acknowledge and agree that the relationship between City and Contractor is one of principal and independent Contractor and no other. All personnel to be utilized by Contractor in the performance of this Agreement shall be employees of Contractor and not employees of the City. Contractor shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes. Nothing contained in this Agreement shall create or be construed as creating a partnership, joint venture, employment relations, or any other relationship except as set forth between the parties. The parties specifically acknowledge and agree that Contractor is not a partner with City, whether general or limited, and no activities of City or Contractor or statements made by City or Contractor shall be interpreted by any of the parties hereto as establishing any type of business relationship other than an independent Contractor relationship.

27.2 PERS Eligibility Indemnity.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or 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.

Notwithstanding any other agency, state or federal policy, rule, regulation, law or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

28. VALIDITY.

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any of the other provisions of this Agreement.

29. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any legal action relating to or arising out of this Agreement shall be subject to the jurisdiction of Riverside County, California.

30. NO THIRD PARTY BENEFICIARY RIGHTS.

This Agreement is entered into for the sole benefit of the City and Contractor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

31. ASSIGNABILITY

This Agreement may not be sold, transferred or assigned by either party, or by operation of law, to any other person or persons or business entity, without the other party's written permission. Any such sale, transfer or assignment, or attempted sale, transfer or assignment without written permission, may be deemed by the other party to constitute a

voluntary termination of this Agreement and this Agreement shall thereafter be deemed terminated and void.

32. WAIVER.

No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought referring expressly to this Paragraph. The waiver of any right or remedy in respect to any occurrence or event shall not be deemed a waiver of any right or remedy in respect to any other occurrence or event, nor shall any waiver constitute a continuing waiver

33. HEADINGS.

Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, and are not intended to modify or explain or to be a full or accurate description of the content thereof.

34. COUNTERPARTS.

This Agreement may be executed in one or more counterparts by the parties hereto. All counterparts shall be construed together and shall constitute one Agreement.

35. CORPORATE AUTHORITY.

The persons executing this Agreement on behalf of the Parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said Parties and that by doing so, the Parties hereto are formally bound to the provisions of this Agreement.

36. ADDITIONAL SERVICES.

Contractor shall not receive compensation for any services provided outside the scope of the Contract Documents unless such additional services, including change orders, are approved in writing by City prior to Contractor performing the additional services.

It is specifically understood that oral requests or approvals of such additional services, change orders or additional compensation and any approvals from City shall be barred and are unenforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written

ATTEST:

CITY OF BLYTHE

City Clerk of the City of Blythe

Interim City Manager

APPROVED AS TO FORM:

CONTRACTOR:

City Attorney

(Name)

Title: _____

State License No.: _____

Federal Tax I.D. No.: _____

Address: _____

Telephone: _____