

**COUNTY OF SANTA BARBARA  
DEPARTMENT OF PUBLIC WORKS  
LAGUNA COUNTY SANITATION DISTRICT**



**AGREEMENT  
FOR  
PHASE 1 PLANT UPGRADE  
PROJECT NO. PLEXP1**

**SCOTT D. MCGOLPIN  
DIRECTOR OF PUBLIC WORKS**

**LAGUNA COUNTY SANITATION DISTRICT AGREEMENT**

**PHASE 1 PLANT UPGRADE PROJECT (PLEXP1)**

Auditor-Controller Contract No. \_\_\_\_\_

THIS AGREEMENT, herein called Agreement, is made by and between the Laguna County Sanitation District, a county sanitation district, hereinafter called District and W.M. Lyles Co., hereinafter referred to as Contractor, for the completion of the work identified herein, on the following terms, conditions and provisions:

**1. CONTRACT**

This agreement includes and incorporates by reference all Contract Documents.

The Contract is comprised of all documents distributed to bidders as part of the Bid Package, including, but not limited to:

1. Project Plans
2. Specifications comprised of:
  - a. Bidding and contract documents
  - b. Standard General Conditions (Engineers Joint Contract Documents Committee)
  - c. Supplementary Conditions (Engineers Joint Contract Documents Committee) including Owner Controlled Insurance Program documents
  - d. Technical Specifications (Engineers Joint Contract Documents Committee)
3. Referenced state codes and Santa Barbara County Code
4. Labor Surcharge and Equipment Rental Rates in effect on the date the work is accomplished
5. The Bid Form executed and submitted by the Contractor
6. Notice to Bidders
7. The Faithful Performance and Payment Bonds, and
8. Any Addenda

The Contractor acknowledges receipt of all such documents as were not already in the Contractor's possession. Said incorporated documents are referred to herein as the "Contract" or "Contract Documents"

Copies of all said documents are on file in the Laguna County Sanitation District office located at 620 West Foster Road in Santa Maria and have been and will be made available to the Contractor during the term of this Agreement.

The project specifications for the work to be done are entitled:

**LAGUNA COUNTY SANITATION DISTRICT; NOTICE TO BIDDERS AND SPECIFICATIONS FOR Phase 1 Plant Upgrade Project, Project No. PLEXP1**

The project plans for the work to be done are entitled:

**LAGUNA COUNTY SANITATION DISTRICT; PLANS FOR THE CONSTRUCTION OF Phase 1 Plant Upgrade Project, Project No. PLEXP1**

## **2. WORK**

Contractor agrees, at his own proper cost and expense, to do all the work and furnish all equipment and materials, except such as mentioned in the specifications to be furnished by the District, necessary to perform and complete the work described in the documents referred to above, in a good and workmanlike manner to the satisfaction of the County of Santa Barbara Director of Public Works, all in strict accordance with the Plans and the Contract Documents provided.

The bidder shall perform all of its services under this Agreement as an independent contractor and not as an employee of District. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a District employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure.

## **3. TERM**

The Contractor shall complete the work in 760 working days <sup>AD20</sup> for Substantial Completion and 825 working days <sup>AD20</sup> for Final Completion in accordance Article 9 CONTRACT TIMES of Section 00200 INSTRUCTIONS TO BIDDERS.

## **4. PAYMENTS NOT ACCEPTANCE**

No certificate given or payments made under this Contract shall be evidence of the performance of this Contract, either wholly or in part, against any claim upon Contractor. Final payment for the work performed under this Contract shall not be made until the lapse of thirty (30) days after the Notice of Completion of said work has been filed for record and no payment shall be construed to be acceptance of any defective work or improper materials. Contractor's acceptance of payment for final quantities due under this Contract and the payment of undisputed contract amounts due for any work in accordance with any amendments of this Contract, shall release the District from any and all claims or liabilities on account of work performed under this Contract or any amendments thereof related to those amounts. In addition to guarantees required elsewhere, Contractor shall and does hereby guarantee all workmanship and material to be free of defects for a period of one year from and after the recordation of the Notice of Completion by the District, and Contractor shall repair or replace any or all work and material, together with any other portions of the work which may be displaced in so doing, that in the opinion of the Engineer, is or becomes defective during the period of said guarantee without expense whatsoever to the District.

## **5. PAYMENT**

As full compensation for furnishing all labor, supervision, overhead, materials and equipment and for doing all the work completed and embraced in this Agreement and subject to adjustments and liquidated damages, if any, as provided in the Contract Documents, the base amount to be paid to the Contractor for satisfactory completion of all requirements of the Contractor under this Agreement is and shall be \$53,063,500.00, to be paid as provided in the Contract Documents.

The Engineer is authorized to order, as change order work, changes and additions to the work being performed under this contract in an amount not to exceed \$2,653,175.00, to be paid as provided in the Contract Documents. In no event shall District be liable for the cost of any changes or additions to work being performed under this contract unless approved in advance and in writing by the Engineer.

## **6. CONFLICT OF INTEREST**

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to District, in writing, any potential conflict of interest. District retains the right to waive a conflict of interest disclosed by Contractor if District determines it to be immaterial, and such waiver is only effective if provided by District to Contractor in writing.

## **7. NO PUBLICITY OR ENDORSEMENT**

Contractor shall not use District's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use District's name or logo in any manner that would give the appearance that the District is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of District. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the District or its projects, without obtaining the prior written approval of District.

## **8. DISTRICT PROPERTY AND INFORMATION**

All of District's property, documents, and information provided for Contractor's use in connection with the services shall remain District's property, and Contractor shall return any such items whenever requested by District and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any District property, documents, or information without District's prior written consent.

## **9. RECORDS, AUDIT, AND REVIEW**

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain such records for at least four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. District shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the District or as part of any audit of the District, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by District or the State, at no charge to District.

If federal, state, or District audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or District governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments, and all other costs of whatever nature. Immediately upon notification from District, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to District as specified by District in the notification.

## **10. SEVERABILITY**

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability

shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

#### **11. ENTIRE AGREEMENT AND CHANGE ORDERS**

In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties, or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

#### **12. COMPLIANCE WITH LAW**

Contractor, its agents and employees, shall, at its sole cost and expense, keep fully informed of and comply with all District, state and federal laws, statutes, ordinances and regulations now in force or which may hereafter be in force with regard to this Agreement which do or may affect the conduct of the work, the materials used therein or persons engaged or employed thereon and all such orders of bodies and tribunals having any jurisdiction over same. If it be found that the General Conditions, Supplementary Conditions or Technical Specifications for the work conflict with any such law, ordinance or regulation, the Contractor shall immediately report same to the Engineer in writing. Contractor acknowledges, particularly, the provisions of Sections 9100 through 9510, inclusive, of the Civil Code of California. Contractor shall protect and indemnify District, the Board of Directors, and/or any officer, agent or employee of the District against any claims or liability arising from or based on the violation of any such law, ordinance, regulation or decree whether by Contractor, or a subcontractor, agent or employee.

#### **13. CALIFORNIA LAW AND JURISDICTION**

This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to the County of Santa Barbara, if in federal court.

Should any dispute arise which the parties are unable to resolve by negotiation respecting the interpretation, construction or meaning of any of the plans or specifications or provisions affecting the work or respecting the true value of any extra work or work omitted, the dispute shall be submitted to arbitration. Such arbitration shall be carried out in accordance with provisions of the Public Contract Code, any applicable provision of Santa Barbara County ordinance, regulation or standard and in accordance with standards of the American Arbitration Association. Any resulting arbitration ruling or result shall be binding on the parties, unless there is a mutual written agreement to litigate the matter.

The Contractor's attention is directed to the provisions of Public Contract Code 20104 for resolutions of claims of \$375,000 or less. 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 in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

#### **14. EXECUTION OF COUNTERPARTS**

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

**15. AUTHORITY**

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

**16. SURVIVAL**

All provisions of this Agreement which by their nature are intended to survive the termination or expiration of this Agreement shall survive such termination or expiration.

**17. PRECEDENCE**

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in Section 1, contract documents herein, these numbered sections shall prevail.

# CONTRACTOR SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the District and Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by District.

## CONTRACTOR

W. M. Lyles Co.

License No.: 422390

1210 W. Olive Ave.

IRS No.: 77-0004110

Fresno, CA 93728

Business type:

Corporation X

Partnership \_\_\_\_\_

By: 

Kevin R. Shigematsu, Vice President (Authorized Rep.) Sole Proprietorship \_\_\_\_\_

Date: 06/05/20

### DISTRICT SIGNATURE PAGE

Agreement for services and work to be performed by Contractor between the District and Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by District.

LAGUNA COUNTY SANITATION DISTRICT

By:   
GREGG HART, Chair  
Board of Directors

Date: 8-18-20

ATTEST:  
MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
EX-OFFICIO CLERK OF BOARD OF DIRECTORS  
OF THE LAGUNA COUNTY SANITATION DISTRICT

By:   
Deputy Clerk

APPROVED AS TO FORM  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM  
BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By: \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
RAY AROMATORIO, ARM, AIC  
RISK MANAGER

By: \_\_\_\_\_  
Risk Manager

APPROVED AS TO FORM:  
SCOTT D. MCGOLPIN, PE  
PUBLIC WORKS DIRECTOR

By:   
Public Works Director



## DISTRICT SIGNATURE PAGE

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IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by District.

LAGUNA COUNTY SANITATION DISTRICT

By: \_\_\_\_\_  
GREGG HART, Chair  
Board of Directors

Date: \_\_\_\_\_

ATTEST:  
MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
EX-OFFICIO CLERK OF BOARD OF DIRECTORS  
OF THE LAGUNA COUNTY SANITATION DISTRICT

By: \_\_\_\_\_  
Deputy Clerk

APPROVED AS TO FORM  
MICHAEL C. GHIZZONI  
COUNTY COUNSEL

*Lina Somait*  
By: Lina Somait (Jul 24, 2020 10:44 PDT)  
Deputy County Counsel

APPROVED AS TO ACCOUNTING FORM  
BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

By: *C. Edith*  
Deputy

APPROVED AS TO FORM  
RAY AROMATORIO, ARM, AIC  
RISK MANAGER

By: *Ray Aromatorio*  
Risk Manager

APPROVED AS TO FORM:  
SCOTT D. MCGOLPIN, PE  
PUBLIC WORKS DIRECTOR

By: *Scott D. McGolpin*  
Public Works Director