

ITEM 4.14

**CITY MANAGER'S REPORT
DECEMBER 9, 2019, CITY COUNCIL REGULAR MEETING**

ITEM: **APPROVE A CONSTRUCTION CONTRACT FOR SANITARY SEWER PUMP STATION UPGRADES, PURSUANT TO CIP WW 19-01 WOODFIELD SEWER PUMP STATION UPGRADES AND RELATED BUDGET AMENDMENT**

RECOMMENDATION: **Adopt Resolution Approving Construction Contract with Telstar Instruments for Sanitary Sewer Pump Station Upgrades, Pursuant to CIP WW 19-01 Woodfield Sewer Pump Station Upgrades and Related Budget Amendment**

SUMMARY:

On July 9, 2018, City Council approved Capital Improvement Project (CIP) WW 19-01 Woodfield Sewer Pump Station Upgrades to accommodate additional flows from the North Harlan Road/Roth Road industrial area and to alleviate stress on the downstream Historic Lathrop system. Contract plans and specifications for this project were completed in September 2019 and were advertised for bid on October 2, 2019 according to the Public Contract Code and the Lathrop Municipal Code, Section 2.36.060.

On November 12, 2019, a total of four (4) bids were received and opened by the City Clerk. After review and evaluation of the bids, the lowest responsive and responsible bidder for the project was determined to be Telstar Instruments (Telstar) based on the base bid alone for a total of \$1,036,050.

Staff requests City Council approve a construction contract with Telstar for CIP WW 19-01 of \$1,036,050. Staff also requests Council approve a 10% contingency in the amount of \$103,605 for a total cost not to exceed \$1,139,655.

BACKGROUND:

Improvements to the Woodfield Sewer Pump Station are needed to accommodate additional flows from the North Harlan Road/Roth Road industrial area and to alleviate stress on the downstream Historic Lathrop system. The project will upgrade the Woodfield Sewer Pump Station with new pumps and establish a connection to an existing 10-inch force main that will allow its flow to be pumped to the Manteca Water Quality Control Facility (MWQCF) using existing mains that connect to the McKinley Avenue Sewer Pump Station. This project will also facilitate a potential future connection of the Sharpe Army Depot to the City's wastewater collection system by providing additional flows needed to prevent settling of solids in the sewer main on McKinley Avenue. The costs for this project may be paid using funds allocated from Fund 6060 Wastewater Capital Replacement.

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APPROVE A CONSTRUCTION CONTRACT FOR CIP WW 19-01 WOODFIELD
SEWER PUMP STATION UPGRADES

In September 2019, staff completed the plans and specifications for the Woodfield Sewer Pump Station Upgrades. The project was advertised for bid through Stockton ARC in accordance with Lathrop Municipal Code Section 2.36.060. A total of four (4) bids were received that were determined to be responsive and responsible. The bid results are summarized below.

Table 1: Summary of Bid Results

Contractor	Total Bid
Telstar Instruments	\$1,036,050
Cazadoro Construction	\$1,328,000
RTC Construction Management	\$1,348,163
Preston Pipelines	\$1,435,000

Staff reviewed the bids and determined that the lowest responsive and responsible bidder is Telstar. Staff requests that City Council adopt a resolution approving a construction contract with Telstar in the amount of \$1,036,050. Staff also requests City Council authorize a 10% construction contingency of \$103,605 and authorize staff to spend the contingency as necessary to achieve the goals of the project for a total cost not to exceed \$1,139,655.

Staff complied with the CEQA process for this project with the preparation and filing of a Notice of Exemption (NOE) pursuant to the CEQA Guidelines Section 15301(c).

REASON FOR RECOMMENDATION:

The Woodfield Sewer Pump Station Upgrades are needed to accommodate additional flows from the North Harlan Road/Roth Road industrial area and to alleviate stress on the downstream Historic Lathrop system. Approving a construction contract with Telstar and the allocation funds will allow staff to move forward with construction.

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APPROVE A CONSTRUCTION CONTRACT FOR CIP WW 19-01 WOODFIELD
SEWER PUMP STATION UPGRADES

FISCAL IMPACT:

The proposed contract with Telstar Instruments is for \$1,036,050. A 10% contingency is requested in the amount of \$103,605 for a total cost not to exceed \$1,139,655. The amount of \$520,000 was included in the FY 19/20 Budget for CIP WW 19-01 Woodfield Sewer Pump Station Upgrades. Staff requests City Council approve a budget amendment transferring \$185,896 from the Wastewater Connection Fees Fund (6030) and \$433,759 from the Wastewater Capital Replacement Fund (6060) to the Wastewater CIP Fund (6090) as follows:

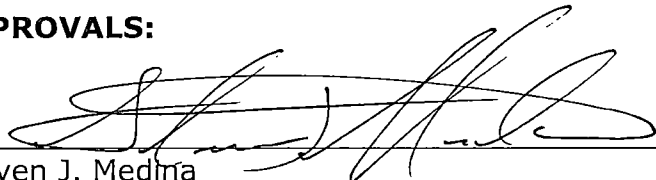
<u>Increase Transfer Out</u>		
6030-9900-990-9010		\$185,896
(Wastewater Connections Fees)		
6060-9900-990-9010		\$433,759
(Wastewater System Capital Replacement)		
<u>Increase Transfer In</u>		
6090-9900-393-0000	WW 19-01	\$619,655
(Wastewater CIP)		
<u>Increase Appropriation</u>		
6090-8000-420-12-00	WW 19-01	\$619,655
(Wastewater CIP Construction Contracts)		

ATTACHMENTS:

- A. Resolution Approving Construction Contract with Telstar Instruments for Sanitary Sewer Pump Station Upgrades, Pursuant to CIP WW 19-01 Woodfield Sewer Pump Station Upgrades and Related Budget Amendment
- B. Construction Contract with Telstar for Woodfield Sewer Pump Station Upgrades, CIP WW 19-01

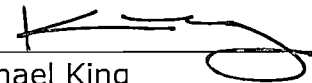
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APPROVALS:



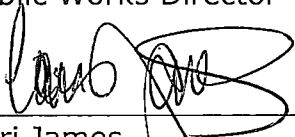
Steven J. Medina
Assistant Engineer

11/14/19
Date




Michael King
Public Works Director

11-14-19
Date




Cari James
Finance & Administrative
Services Director

11/19/19
Date



Salvador Navarrete
City Attorney

11-14-19
Date



Stephen J. Salvatore
City Manager

11-21-19
Date

RESOLUTION NO. 19-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING CONSTRUCTION CONTRACT WITH TELSTAR INSTRUMENTS FOR SANITARY SEWER PUMP STATION UPGRADES, PURSUANT TO CIP WW 19-01 WOODFIELD SEWER PUMP STATION UPGRADES

WHEREAS, on July 9, 2018, City Council approved the formation of Capital Improvement Project (CIP) WW 19-01 Woodfield Sewer Pump Station Upgrades to accommodate additional flows from the North Harlan Road/Roth Road industrial area and to alleviate stress on the downstream Historic Lathrop system; and

WHEREAS, contract plans and specifications for this project were completed in September 2019 and were advertised for bid on October 2, 2019 according to the Public Contract Code and the Lathrop Municipal Code, Section 2.36.060; and

WHEREAS, a total of four (4) bids were received and opened by the City Clerk on November 12, 2019; and

WHEREAS, upon review and evaluation of the bids, the lowest responsive and responsible bidder for the project was determined to be Telstar Instruments with a base bid amount of \$1,036,050; and

WHEREAS, staff also requests City Council to authorize a 10% contingency in the amount of \$103,605 and authorize staff to spend the contingency as necessary to achieve the goals of the project for a total cost not to exceed \$1,139,655; and

WHEREAS, staff also requests City Council approve a budget amendment increase transferring \$185,896 from the Wastewater Connection Fees Fund (6030) and \$433,759 from the Wastewater Capital Replacement Fund (6060) to the Wastewater CIP Fund (6090) as follows: as follows:

<u>Increase Transfer Out</u>		
6030-9900-990-9010		\$185,896
(Wastewater Connections Fees)		
6060-9900-990-9010		\$433,759
(Wastewater System Capital Replacement)		
<u>Increase Transfer In</u>		
6090-9900-393-0000	WW 19-01	\$619,655
(Wastewater CIP)		
<u>Increase Appropriation</u>		
6090-8000-420-12-00	WW 19-01	\$619,655
(Wastewater CIP Construction Contracts)		

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop hereby approves a construction contract with Telstar Instruments for Sanitary Sewer Pump Station Upgrades, pursuant to CIP WW 19-01 Woodfield Sewer Pump Station Upgrades for a cost of \$1,036,050; and

NOW, THEREFORE, BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop does hereby approve a 10% construction contingency in the amount of \$103,605 for a total construction cost not to exceed \$1,139,655 and authorizes staff to spend this amount, as necessary, to accomplish the goals of the project.

The foregoing resolution was passed and adopted this 9th day of December 2019, by the following vote of the City Council, to wit:

AYES:

NOES:

ABSTAIN:


ABSENT:

Sonny Dhaliwal, Mayor

ATTEST:

Teresa Vargas, City Clerk

APPROVED AS TO FORM:



Salvador Navarrete, City Attorney

CONTRACT

THIS CONSTRUCTION CONTRACT (hereinafter "Contract"), dated _____, is entered into by and between the **City of Lathrop**, a municipal corporation of the State of California (hereinafter "City"), and **Telstar Instruments**, (hereinafter "Contractor"), whose Taxpayer Identification Number is _____.

For and in consideration of the following covenants, terms and conditions, City and Contractor (the parties) agree:

1. Term. This Contract shall commence on, and be binding on the parties on, the date of execution of this Contract, and shall expire on the date of recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder, subject to the earlier termination of this Contract.
2. General Scope of Project and Work. Construction Documents for **Woodfield Sewer Pump Station Upgrades CIP WW 19-01** (hereinafter "Project"). Contractor shall furnish labor, services, materials and equipment in connection with the construction of the Project and complete the Work in accordance with the covenants, terms and conditions of this Contract to the satisfaction of City. The Project and Work is generally described as follows:

The work to be performed under this contract includes all work contained in the Construction Documents, including, but not limited to the construction of the Woodfield Sewer Pump Station, an electrical power SES and power generators in Lathrop, CA as defined in the Contract Documents; and any task necessary to accomplish the aforementioned tasks.

The work shall be complete, and all appurtenant work, materials, and services not expressly shown or called for in the Construction Documents which may be necessary for the complete and proper construction of the Work in good faith shall be performed, furnished, and installed by the Contractor as though originally specified or shown. The Contractor will be compensated for work actual work performed in accordance with the unit prices and provisions contained in these Construction Documents.

Base Bid Total: \$ 1,036,050

2. Construction Documents. This Contract shall include the Construction Documents which are on file with the Public Works Department and are hereby incorporated by reference (i.e. Project Specifications, Project Plans, addenda, performance bond, labor and materials bond, certification of insurance, workers' compensation certification, and guaranty). For the purposes of construing, interpreting and resolving inconsistencies between the provisions of this Contract, these documents and the provisions thereof are set forth in the order of precedence described in Article 3 of the General Conditions.

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4. Compensation. In consideration of Contractor's performance of its obligations hereunder, City shall pay to Contractor the amount set forth in Contractor's Bid in accordance with the provisions of this Contract and upon the receipt of written invoices and all necessary supporting documentation within the time set forth in the Construction Documents.

Contractor hereby shall not be permitted to invoice the City nor accept compensation for work not yet complete. In no event, shall the Contractor be entitled to payment for work not included in the approved scope of work, a written task order, or change order signed by the City's Public Works Director prior to commencement of any work.

5. Insurance. On or before the Date of Execution, Contractor shall obtain and maintain the policies of insurance coverage described in Section 5.2 of the General Conditions on terms and conditions and in amounts as may be required by the City. City shall not be obligated to take out insurance on Contractor's personal property or the personal property of any person performing labor or services or supplying materials or equipment under the Project. Contractor shall furnish City with the certificates of insurance and with original endorsements affecting coverage required under this Contract on or before the Date of Execution. The certificates and endorsements for each insurance policy shall be signed by a person who is authorized by that insurer to bind coverage in its behalf. Proof of insurance shall be mailed to the Project Manager to the address set forth in Section 00002 of this Bid Specifications.

6. Indemnification. Contractor agrees to protect, defend, indemnify and hold City, its City Council members, officers, employees, engineer, and construction manager harmless from and against any and all claims, demands, liabilities, losses, damages, costs, expenses, liens, penalties, suits, or judgments, arising in whole or in part, directly or indirectly, at any time from any injury to or death of persons or damage to property as a result of the willful or negligent act or omission of Contractor, or which results from Contractor's noncompliance with any Law respecting the condition, use, occupation or safety of the Project site, or any part thereof, or which arises from Contractor's failure to do anything required under this Contract or for doing anything which Contractor is required not to do under this Contract, or which arises from conduct for which any Law imposes strict liability on Contractor in the performance of or failure to perform the terms and conditions of this Contract, except as may arise from the sole willful or negligent act or omission of City or any of its City Council members, officers, employees. This indemnification shall extend to any and all claims, demands, or liens made or filed by reason of any construction, renovation, or remodeling work performed by Contractor under this Contract at any time during the term of this Contract, or arising thereafter.

7. Assumption of Risk. Contractor agrees to voluntarily assume any and all risk of loss, damage, or injury to the property of Contractor which may occur in, on, or about the Project site at any time and in any manner, excepting such loss, injury, or damage as may be caused by the sole willful or negligent act or omission of City or any of its City Council members, officers, or employees.

8. Waiver. The acceptance of any payment or performance, or any part thereof, shall not operate as a waiver by City of its rights under this Contract. A waiver by City of any breach of any part or provision of this Contract by Contractor shall not operate as a waiver or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the parties in the administration of any part or provision of this Contract be construed to waive or to lessen the right of City to insist upon the performance of Contractor in strict compliance with the covenants, terms and conditions of this Contract.
9. Compliance with Laws. Contractor shall comply with all Laws now in force or which may hereafter be in force pertaining to the Project and Work and this Contract, with the requirement of any bond or fire underwriters or other similar body now or hereafter constituted, with any discretionary license or permit issued pursuant to any Law of any public agency or official as well as with any provision of all recorded documents affecting the Project site, insofar as any are required by reason of the use or occupancy of the Project site, and with all Laws pertaining to nondiscrimination and affirmative action in employment and hazardous materials.

DEPARTMENT OF INDUSTRIAL RELATIONS- COMPLIANCE MONITORING UNIT

DIR REGISTRATION

- a) Contractor and Subcontractor Compliance. Strict compliance with DIR registration requirements pursuant to Labor Code Section 1725.5 is a material obligation of the Contractor under the Contract Documents. The foregoing includes without limitation, compliance with DIR Registration requirements at all times during performance of the Work by the Contractor and all Subcontractors of any tier. The failure of the Contractor and all Subcontractors of every tier to be DIR registered at all times during the performance of the Work is the Contractor's default of a material obligation of the Contractor under the Contract Documents.
- b) No Subcontractor Performance of Work without DIR Registration. No portion of the Work is permitted to be performed by a Subcontractor of any tier unless the Subcontractor is a DIR Registered contractor.
- c) Contractor Obligation to Verify Subcontractor DIR Registration Status. An affirmative and on-going obligation of the Contractor under the Contract Documents is the Contractor's verification that all Subcontractors, of all tiers, are at all times during performance of Work in full and strict compliance with DIR Registration requirements. The Contractor shall not permit or allow any Subcontractor of any tier to perform any Work without the Contractor's verification that all such Subcontractors are in full and strict compliance with DIR Registration requirements.

- d) Contractor Obligation to Request Substitution of Non-DIR Registered Subcontractor. If any Subcontractor identified in the Contractor's Subcontractor List submitted with the Contractor's proposal for the Work is not DIR Registered at the time of opening of proposals for the Work or if a Subcontractor's DIR registration lapses prior to or during a Subcontractor's performance of Work, the Contractor shall request the CITY's consent to substitute the non-DIR registered Subcontractor pursuant to Labor Code Section 1771.1(c)(3) and/ or Labor Code Section 1771.1(d).

CERTIFIED PAYROLL RECORDS

- a) Compliance with Labor Code Section 1771.4 and 1776. A material obligation of the Contractor under the Contract Documents is: (i) the Contractor's strict compliance with the requirements pursuant to Labor Code Section 1771.4 and 1776 for preparation and submittal of Certified Payroll Records ("CPR"); and (ii) the Contractor's enforcement of CPR preparation and submittal for all Subcontractors of every tier.
- b) Express Condition Precedent to Payment of Contract Price. Strict compliance with CPR requirements established pursuant to Labor Code Section 1776 is an express condition precedent to the CITY's obligation to: (i) process any request for payment of any portion of the Contract Price; or (ii) to disburse any portion of the Contract Price to the Contractor. The Contractor shall demonstrate strict compliance with CPR preparation and submittal requirements by delivery to the CITY of electronic files or hard copies of all CPR's submitted by the Contractor and/ or Subcontractors for Work pursuant to Labor Code Section 1771.4 and 1776 concurrently with the submittal thereof to the Labor Commissioner. The CITY: (i) shall not be obligated to process or disburse any portion of the Contract Price; or (ii) shall not be deemed in default of the CITY's obligations under the Contract Documents unless the Contractor's demonstrates strict compliance with CPR preparation and submittal requirements.
- c) PWR Monitoring and Enforcement. During the Work pursuant to Labor Code Section 1771.4(a)(4), the Department of Industrial Relations shall monitor and enforce the obligation of the Contractor and Subcontractors of every tier to pay the laborers performing any portion of the work the PWR established for the classification of work/ labor performed.

RECORD OF WAGES PAID: INSPECTION

Pursuant to Labor Code section 1776, Contractor stipulates to the following:

- a) Contractor and each subcontractor shall keep an accurate payroll record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work under the Facilities lease and Construction Provisions. Such records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information of such forms. The payroll records may consist of payroll data that are maintained as computer records, if printouts contain the same information as the forms provided by the division and the printouts are verified as specified in subdivision (a) of Labor Code section 1776.
- b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:
 - (1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employees or his or her authorized representative on request.
 - (2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the CITY, the Division of Labor Standards Enforcement, and Division of Apprenticeship Standards of the Department of Industrial Relations.
 - (3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or copies thereof. However, a request by the public shall be made through either the CITY, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, subcontractors, and the entity through which the request was made. The public shall not be given access to such records at the principal office of Contractor.
- c) Contractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested such records within ten (10) days after receipt of the written request.

- d) Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency, by the CITY, the Division of Apprenticeship Standards, or the division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of contractor awarded the contract or performing the contract shall not be marked or obliterated.
- e) Contractor shall inform the CITY of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within (5) working days, provide a notice of a change of location and address.
- f) In the event of noncompliance with the requirements of this Article, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this Article. Should noncompliance still be evident after such 10-day period, Contractor shall pay a penalty of One- Hundred Dollars (\$100.00) to the CITY for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the progress payment then due.

The responsibility for compliance with this Article shall rest upon Contractor.

10. Bonds. As a condition precedent to City's obligation to pay compensation to Contractor, and on or before the date of Execution, Contractor shall furnish to the Project Manager the Bonds as required under the Notice to Contractors.
11. Representations and Warranties. In the supply of any materials and equipment and the rendering of labor and services during the course and scope of the Project and Work, Contractor represents and warrants:
 - (1) Any materials and equipment which shall be used during the course and scope of the Project and Work shall be vested in Contractor;
 - (2) Any materials and equipment which shall be used during the course and scope of the Project and Work shall be merchantable and fit to be used for the particular purpose for which the materials are required;
 - (3) Any labor and services rendered and materials and equipment used or employed during the course and scope of the Project and Work shall be free of defects in workmanship for a period of one (1) year after the recordation of the Notice of Substantial Completion, or, if no such notice is required to be filed, on the date that final payment is made hereunder;
 - (4) Any manufacturer's warranty obtained by Contractor shall be obtained or shall be deemed obtained by Contractor for and on behalf of City.

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WOODFIELD SEWER PUMP STATION UPGRADES

CONTRACT

- (5) Any information submitted by Contractor prior to the award of Contract, or thereafter, upon request, whether or not submitted under a continuing obligation by the terms of the Contract to do so, is true and correct at the time such information is submitted or made available to the City;
 - (6) Contractor has not colluded, conspired, or agreed, directly or indirectly, with any person in regard to the terms and conditions of Contractor's Bid, except as may be permitted by the Notice to Contractors;
 - (7) Contractor has the power and the authority to enter into this Contract with City, that the individual executing this Contract is duly authorized to do so by appropriate resolution, and that this Contract shall be executed, delivered and performed pursuant to the power and authority conferred upon the person or persons authorized to bind Contractor;
 - (8) Contractor has not made an attempt to exert undue influence with the Project Manager or any other person who has directly contributed to City's decision to award the Contract to Contractor;
 - (9) There are no unresolved claims or disputes between Contractor and City which would materially affect Contractor's ability to perform under the Contract;
 - (10) Contractor has furnished and will furnish true and accurate statements, records, reports, resolutions, certifications, and other written information as may be requested of Contractor by City from time to time during the term of this Contract;
 - (11) Contractor and any person performing labor and services under this Project is duly licensed as a contractor with the State of California as required by California Business & Professional Code Section 7028, as amended; and
 - (12) Contractor has fully examined and inspected the Project site and has full knowledge of the physical conditions of the Project site.
12. Assignment. This Contract and the performance required hereunder is personal to Contractor, and it shall not be assigned by Contractor. Any attempted assignment shall be null and void.
 13. Claims of Contractor. All claims pertaining to extra work, additional charges, or delays within the Contract Time or other disputes arising out of the Contract shall be submitted by Contractor in accordance with the General Conditions.
 14. Audits by City. During the term of this Contract and for a period of not less than three (3) years after the expiration or earlier termination of this Contract, City shall have the right to audit Contractor's Project-related and Work-related writings and business records, as such terms are defined in California Evidence Code Sections 250 and 1271, as amended, during the regular business hours of Contractor, or, if Contractor has no such hours, during the regular business hours of City.

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15. Notices. All contracts, agreements, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) days by delivery of a hard copy of the material sent by facsimile transmission, in accordance with (1), (2) or (3) above. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
City Clerk
390 Towne Centre Drive
Lathrop, CA 95330

Copy to: City of Lathrop
Department of Public Works
390 Towne Centre Drive
Lathrop, CA 95330

PHONE: (209) 941-7363
FAX: (209) 941-7449
ATTN: Ken Reed, Project Manager

To Contractor: Telstar Instruments
4017 Vista Park Court
Sacramento, CA 95834

PHONE: (928) 671-2888
FAX: (928) 671-9507
ATTN: Robert S. Marston, President

16. Miscellaneous.

- (1) Bailee Disclaimer. The parties understand and agree that City does not purport to be Contractor's bailee, and City is, therefore, not responsible for any damage to the personal property of Contractor.
- (2) Consent. Whenever in this Contract the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (3) Controlling Law. The parties agree that this Contract shall be governed and construed by and in accordance with the Laws of the State of California.

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- (4) Definitions. The definitions and terms are as defined in these specifications.
- (5) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Contract, which directly results from an Act of God or an act of a superior governmental authority.
- (6) Headings. The paragraph headings are not a part of this Contract and shall have no effect upon the construction or interpretation of any part of this Contract.
- (7) Incorporation of Documents. All documents constituting the Construction Documents described in Section 3 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in this Contract and shall be deemed to be part of this Contract.
- (8) Integration. This Contract and any amendments hereto between the parties constitute the entire contract between the parties concerning the Project and Work, and there are no other prior oral or written contracts between the parties that are not incorporated in this Contract.
- (9) Modification of Contract. This Contract shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (10) Provision. Any contract, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Contract shall define or otherwise control, establish, or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (11) Resolution. Contractor shall submit with its Bid a copy of any corporate or partnership resolution or other writing, which authorizes any director, officer or other employee or partner to act for or on behalf of Contractor or which authorizes Contractor to enter into this Contract.
- (12) Severability. If a court of competent jurisdiction finds or rules that any provision of this Contract is void or unenforceable, the provisions of this Contract not so affected shall remain in full force and effect.
- (13) Status of Contractor. In the exercise of rights and obligations under this Contract, Contractor acts as an independent contractor and not as an agent or employee of City. Contractor shall not be entitled to any rights and benefits accorded or accruing to the City Council members, officers or employees of City, and Contractor expressly waives any and all claims to such rights and benefits.
- (14) Successors and Assigns. The provisions of this Contract shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.

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- (15) Time of the Essence. Time is of the essence of this Contract and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday, or any Day observed as a legal holiday by City, the time for performance shall be extended to the following Business Day.
- (16) Venue. In the event that suit is brought by either party hereunder, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of San Joaquin or in the United States District Court for the Eastern District of California.
- (17) Recovery of costs. The prevailing party in any action brought to enforce the terms of this Contract or arising out of this Contract, including the enforcement of the indemnity provision(s), may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.
- (18) Contractor and subcontractors must comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC1368), Executive Order 11738, and Environmental Protection Agency Regulations at 40 CFR Part 15.
- (19) Contractors and subcontractors must comply with mandatory standards and policies relating to the energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation ACT (Public Law 94-163, 89 stat 871).
- (20) The Contractor shall provide access to the site for the Environmental Protection Agency and its duly authorized representatives, and the City.
- (21) If during the course of construction evidence of deposit of historical or archaeological interest is found, the Contractor shall cease operation affecting the find and shall notify the City, who shall notify the EPA and the State Historic Preservation Officer. No further disturbance of the deposits shall ensue until the Contractor has been notified by the City that construction may proceed. The City will issue a notice to proceed only after the state official has surveyed the find and made a determination to the EPA and the City. Compensation to the contractor, if any, for lost time or changes in construction to avoid the find, shall be determined in accordance with changed conditions or change order provisions of the Construction Documents.

SECTION 00500

WOODFIELD SEWER PUMP STATION UPGRADES

CONTRACT

- (22) Notice to Proceed. Prior to commencing work under this Contract, CONTRACTOR shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary bonds and insurances have been received. City shall not be obligated to pay CONTRACTOR for any services prior to issuance of the Notice to proceed.
- (23) Signatures. The individuals executing this Contract represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Contract on behalf of the respective legal entities of the CONTRACTOR and the CITY. This Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.
- (24) This project is a public works project: Contractor shall comply with requirements of California Labor Code § 1700 and following, and prevailing wages shall be paid for work performed on this project.
- (25) The statutory provisions for penalties for failing to comply with the State of California wage and labor laws be enforced, as well as that for failing to pay prevailing wages.

SECTION 00500

WOODFIELD SEWER PUMP STATION UPGRADES

CONTRACT

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first above stated in Lathrop, California.

CONTRACTOR:

By: _____

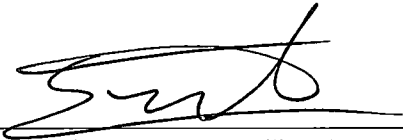
Name: Robert S. Marston

Title: President

CITY OF LATHROP

APPROVED AS TO FORM:

By: _____


Salvador Navarrete, City Attorney

RECOMMENDED FOR APPROVAL:

By: _____

Michael King, Public Works Director

APPROVED:

By: _____

Stephen Salvatore, City Manager

(END OF SECTION)

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