

Pursuant to the provisions of the Governor's Executive Orders N-29-20, which suspended certain requirements of the Brown Act, you may view the agenda, agenda packet and/or the minutes of the meeting at www.atwater.org.

If you wish to make either a general public comment or to comment on a specific agenda item, please submit your comment (include Agenda Item Number in the subject line) to the City Clerk at cityinfo@atwater.org. Email comments will be accepted on or before 11:30 AM of the meeting date.

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the City in advance of the meeting, and as soon as possible, at (209) 357-6300.

NOTICE OF SPECIAL MEETING CITY COUNCIL OF THE CITY OF ATWATER

NOTICE IS HEREBY GIVEN that a special meeting of the City Council of the City of Atwater will be held on **Monday, June 7, 2021 at 12:00 PM**, or as soon thereafter as may be held. This meeting will be held in the City Council Chambers located at the Atwater Civic Center, 750 Bellevue Road, Atwater, California.

AGENDA

SPECIAL MEETING CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

ROLL CALL:

Ambriz _____, Button _____, Cale _____, Raymond _____, Creighton _____



PUBLIC COMMENT: Pursuant to Government Code Section 54954.3, citizens wishing to address the City Council regarding **only the items on the agenda may do so when the item is read for consideration**. You may state your name and address for the record; however, it is not required. Please limit comments to three (3) minutes or less. Under the provisions of the California Government Code, the City Council may not discuss or take action on any item that is not on the agenda.

AGREEMENTS:

- **Declaring Emergency under the Public Contract Code and approving a General Construction Contract with W.M. Lyles of Fresno, California for the emergency repair of E. Juniper Avenue Sewer Manhole (Public Works/Community Development Director Thompson)**

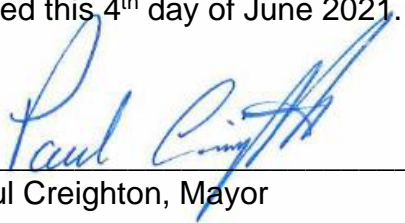
Staff's Recommendation: Motion to adopt Resolution No. 3228-21 declaring an emergency pursuant to Public Contract Code Section 1102 resulting from the collapse of the E. Juniper Avenue sewer manhole; and approving a General Construction Contract, in a form approved by the City Attorney, with W.M. Lyles of Fresno, California, for the emergency repair of E. Juniper Avenue sewer manhole pursuant to Public Contract Code Section 22050(a), Project No. 21-06, in an amount not to exceed \$71,500; and

Motion to authorize and direct the City Manager, or her designee, to execute the contract on behalf of the City; or

Motion to approve staff's recommendation as presented.

ADJOURNMENT:

Dated this 4th day of June 2021.

A handwritten signature in blue ink, appearing to read "Paul Creighton", is written over a horizontal line.

Paul Creighton, Mayor

pc: Mayor and City Council Members
Atwater Signal/Merced Sun Star
Atwater New Times



CITY COUNCIL AGENDA REPORT

CITY COUNCIL

Paul Creighton, Mayor
Danny Ambriz Tyler Button
John Cale Brian Raymond

MEETING DATE: June 7, 2021

TO: Mayor and City Council

FROM: Greg Thompson, Public Works/Community Development Director

SUBJECT: Declaration of Emergency under the Public Contract Code and approving a General Construction Contract with W.M. Lyles of Fresno, California for the emergency repair of E. Juniper Avenue Sewer Manhole

RECOMMENDED COUNCIL ACTION:

It is recommended that City Council:

1. Adopt Resolution No. 3228-21 declaring an emergency pursuant to Public Contract Code Section 1102 resulting from the collapse of the E. Juniper Avenue sewer manhole; and approving a General Construction Contract, in a form approved by the City Attorney, with W.M. Lyles of Fresno, California, for the emergency repair of E. Juniper Avenue sewer manhole pursuant to Public Contract Code Section 22050(a), Project No. 21-06, in an amount not to exceed \$71,500; and
2. Authorize and direct the City Manager, or her designee, to execute the contract on behalf of the City.

I. BACKGROUND:

Public Works crew were doing routine inspections of the adjacent utility infrastructure around the 1,2,3- TCP Mitigation Project on East Juniper Avenue at the intersection of Bridgewater and Valley Streets. During the inspection, the crew reached the sewer manhole and discovered the concrete base of the manhole had collapsed and disintegrated. Due to the collapsed base, the street has started cracking and road base underneath the pavement has infiltrated the manhole, leaving the pavement at risk of caving in.

Staff opinion is that this manhole collapse represents an "emergency" as defined in Public Contract Code Section 1102. An "emergency" is defined as a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate

action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

Section 22050 of the Public Contract Code allows an agency, pursuant to a four-fifths vote, to repair or replace a public facility in the event of an emergency without a formal bid process. Section 22050 requires that the agency shall make a finding, based on substantial evidence, that the emergency will not permit a delay resulting from a competitive solicitation for bids, and that the action is necessary to respond to the emergency. Here the sewer and manhole collapse represents an imminent threat to public health and safety and a delay for formal bidding will result in undue delay and risk to the public welfare and safety.

II. ANALYSIS:

Due to collapse of the sewer manhole, the City crew has been monitoring the site around the clock to protect the safety and welfare of the public. It is therefore of paramount importance to construct a new sewer manhole and demolish the failed existing manhole to eliminate any potential health and safety hazards, immediately.

This project consists of an emergency rehabilitation of a collapsing sewer manhole located at E. Juniper Ave and Bridgewater Street. Rehabilitation includes construction of a new sewer manhole, demolition of the failed existing manhole, pipe connections, application of interior protective coating, and other related work. Work also includes a required Traffic Control Plan and other work conducive to completing rehabilitation work to sewer manholes.

Scope of work includes:

1. Install new SS drop manhole downstream of existing manhole, including 48” diameter shafting with T-Lock lining and cast in place concrete base (concrete base will not receive any linings/coatings).
2. Re-route 8” PVC SS force main from existing manhole to new manhole.
3. Demo existing SS drop manhole and install new 12” pipe in place of existing manhole.
4. Backfill and restore asphalt surfacing at both new and existing manholes.
5. Traffic control.

III. FISCAL IMPACTS:

Funds are available in the Wastewater Enterprise Fund, Professional Services Account 6010-5051-3030. The total cost is estimated not to exceed \$71,500.

IV. LEGAL REVIEW:

This item has been reviewed by the City Attorney’s Office.

V. INTERDEPARTMENTAL COORDINATION:

An interdepartmental routing sheet was sent to all required departments and their comments and conditions have been incorporated.

VI. PUBLIC PARTICIPATION:

The public will have an opportunity to provide comments on this item prior to City Council action.

VII. ENVIRONMENTAL REVIEW:

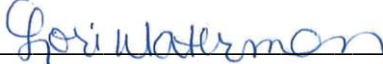
Pursuant to the California Environmental Quality Act (CEQA) guidelines section 15301 existing facilities this project is exempt.

VIII. STEPS FOLLOWING APPROVAL:

Upon City Council approval, the City Manager will sign General Construction Agreement with W.M. Lyles and the purchase order amount will be increased accordingly.

Prepared by: Christina Thurman, Administrative Assistant II

Submitted by: 
Greg Thompson, Public Works/Community Development Director

Approved by: 
Lori Waterman, City Manager

Attachments:

1. Resolution No. 3228-21
2. W.M. Lyles General Construction Contract



**CITY COUNCIL
OF THE
CITY OF ATWATER**

RESOLUTION NO. 3228-21

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ATWATER DECLARING AN EMERGENCY PURSUANT TO PUBLIC CONTRACT CODE SECTION 1102 RESULTING FROM THE COLLAPSE OF THE E. JUNIPER AVENUE SEWER MANHOLE AND AUTHORIZING A GENERAL CONSTRUCTION CONTRACT WITH W.M. LYLES IN AN AMOUNT NOT TO EXCEED \$71,500

WHEREAS, the E. Juniper Avenue Sewer manhole suddenly and unexpectedly collapsed; and

WHEREAS, the collapsed conditions present a clear and imminent danger requiring immediate action to avoid any health and safety issues; and

WHEREAS, the City Council may order any action to repair or replace the public facility pursuant to Public Contract Code Section 22050(a); and

WHEREAS, the City Council may authorize any repair or replacement of the sewer manhole and any associated costs for labor, material, and equipment; and

WHEREAS, funding for the emergency work is currently available in the sewer capital improvement project account; and

WHEREAS, Public Contract Code Section 22050(a) requires that a resolution authorizing the expenditure be adopted by a four-fifths vote of the City Council; and

WHEREAS, the exigencies of this emergency will not permit a delay resulting from a competitive solicitation for bids, and the contemplated actions are necessary to respond to the emergency.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Atwater does hereby resolve, declare, and determine as follows:

1. The above recitals are incorporated as though fully set forth herein.
2. The E. Juniper Avenue sewer manhole collapse is hereby declared to be an emergency pursuant to Public Contract Code Section 1102.
3. The City Manager, or her designee, is hereby authorized and directed to execute a General Construction Agreement, in a form approved by the City Attorney, with W.M. Lyles in the amount not to exceed \$71,500 for the emergency repair of E. Juniper Ave sewer manhole pursuant to public Contract Code section 22050, subdivision (a).

The foregoing resolution is hereby adopted this 7th day of June 2021.

AYES:

NOES:

ABSENT:

APPROVED:

PAUL CREIGHTON, MAYOR

ATTEST:

LUCY ARMSTRONG, CITY CLERK

GENERAL CONSTRUCTION CONTRACT

This GENERAL CONSTRUCTION CONTRACT (“Contract”) is made by and between the CITY OF ATWATER, a California municipal corporation (“City”) and WM Lyles of Fresno (“Contractor”) as of June 8, 2021, City and Contractor shall be referred to herein separately as a “Party” and collectively as “Parties”.

1. The Contract. It is mutually agreed and understood that the complete Contract shall consist of the following component documents, all of which are fully a part hereof as if herein set out in full, or if not attached, as if hereto attached:

- A. This Contract;
- B. Plans and Specifications for **PROJECT NO.21-06**;
- C. Special Provisions for **PROJECT NO.21-06**;
- D. Notice to Contractors;
- E. Proposal to the City of Atwater;
- F. Performance Bond;
- G. Labor and Material Bond;
- H. Current edition of the Caltrans Standard Specifications;
- I. Current edition of the Caltrans Standard Plans;
- J. The latest revisions to the General Prevailing Wage Rates; and
- K. Any Published Addenda.

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

All of the above component documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The component documents comprising the complete Contract are sometimes hereinafter referred to as the “Contract Documents”. To the extent any of the Contract Documents are in conflict with each other, the component documents shall have priority based upon their hierarchical order set forth above.

2. Effective Date. This Contract shall only become effective once all of the Parties have executed the Contract (the “Effective Date”). Contractor, however, shall not commence the performance of the work until it has been given notice by City (“Notice to Proceed”).

3. Term. This Contract shall commence on the Effective Date and naturally terminate after Final Payment of Contractor by City as defined by Section 5-1.08 of the Special Provisions. Section 8-1.14 of the 2010 Caltrans Standard Specifications provides for Terminations. Section 2-1.12A of the 2010 Caltrans Standard Specifications allows for termination in accordance with 49 CFR 26.13(b) for failure by the contractor to carry out the requirements of 49 CFR part 26 in the award and administration of this contract.

4. The Work. Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with the Contract Documents, and in the manner designated in, and in strict conformity with, the Project Plans and Specifications for PROJECT NO. 21-06, entitled, “EAST JUNIPER MANHOLE REPLACEMENT” for construction in Atwater, Merced

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

City, without invalidating this Contract, may order changes to the work, consisting of additions, deletions, or other revisions. All such changes to the work, including in the Contract Price and Contract time for performance, shall be authorized by Change Order or Work Change Directive, signed by the City Manager. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract time for performance if it fails to secure such written authorization for such work, except in the case of an emergency as provided in the 2010 Caltrans Standard Specifications or the Special Provisions.

5. Contract Price. The City agrees to pay in the amount of \$65,000, and the Contractor agrees to receive and accept, the following Contract prices as full compensation for furnishing all materials and performing all work in accordance with this Contract as follows:

Scope of work includes:

1. Install new SS drop manhole downstream of existing manhole, including 48" diameter shafting with T-Lock lining and cast in place concrete base (concrete base will not receive any linings/coatings)
2. Re-route 8" PVC SS force main from existing manhole to new manhole
3. Demo existing SS drop manhole and install new 12" pipe in place of existing manhole
4. Backfill and restore asphalt surfacing at both new and existing manholes
5. Traffic control

Total Contract Amount: \$65,000

6. Additional services may be authorized by the City Manager in an amount up to, but not to exceed 10% of the Total Contract Amount stated above as \$65,000.00. In the event that additional services are deemed necessary, the Contractor shall provide a written request to the City Manager indicating the reason for the additional work, scope and cost of such work. The City Manager shall provide a written response to the request, either approving or denying the additional expenditure, in whole or in part, based upon a recommendation by the Public Works Director, or his designee. If additional services are requested and approved, they shall not exceed the amount approved in writing by the City Manager. In that event, the new total compensation shall not exceed the Total Contract Amount as stated herein, plus 10% of that price, or \$71,500. If additional services in excess of this amount (total contract price plus 10%) are deemed necessary by City staff, an amendment to this Agreement will be required and must be approved by City Council prior to commencing the work.

If to Surety:

9. Assignment of Contract. The Contractor shall not assign the Contract, moneys due under the Contract, or monies to become due under the Contract, without first obtaining the prior written consent of the City.

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

11. Insurance. Contractor shall maintain in full force and effect policies of insurance set forth herein, which shall be placed with insurers with a current A M Best's rating of no less than A VII and will provide City with written proof of said insurance. Contractor shall maintain coverage as follows and will provide City with written proof of said insurance. Such insurance shall remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective work. The cost of such insurance shall be included in the contractor's bid. Contractor shall maintain coverage as follows:

A. Minimum Scope of Insurance.

1. Commercial General Liability coverage at least as broad as the Insurance Services Office, Inc. (ISO Form CG 00 01) with limits of liability of at least \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance forms or other forms with a general aggregate limit are used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be \$4,000,000.

2. An Additional Insured Endorsement to the Commercial General Liability coverage form naming the City as an insured at least as broad as ISO form CG 20 37 10 01 entitled ADDITIONAL INSURED-OWNERS, LESSEES OR CONTRACTORS COMPLETED OPERATIONS.

3. Business Auto Liability coverage at least as broad as ISO form CA 00 01 with limits of liability of at least \$1,000,000 combined single limit per accident for bodily injury and property damage, covering any automobile owned, leased, hired or borrowed by the Contractor, its agents, representatives, or employees, or for which the Contractor is responsible.

4. An Automobile Liability Special Endorsement to the Business Auto Liability form naming the City as an insured with regard to damages and the defense of claims arising out of use of any automobile for which the Contractor is responsible. (In the alternative, the Contractor may provide a Designated Insured Endorsement form at least as broad as ISO Form CA 00 01).

5. Workers' Compensation coverage for the Contractor's employees with limits as required by California law, and Employers Liability coverage with limits of liability of at least \$1,000,000 per accident or occurrence.

6. A Certificate of Liability Insurance showing evidence of the above liability coverages prior to the commencement of work.

B. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to the City, its officers, public officials, employees and volunteers, or (2) the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

C. Other Insurance Provisions.

The Commercial General Liability and Automobile Liability policies are to contain, or be endorsed to contain the following provisions:

1. The City, its officers, public officials, agents, employees and volunteers are to be covered as insured's with respect to liability and defense arising out of automobiles owned, leased, hired or borrowed by or on behalf of the contractor; and with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (CG 20 10), or as a separate owner's policy.

2. For any claims related to this project, the Contractor's liability insurance coverage shall be primary insurance as respects the City, its officers, public officials, employees and volunteers. Any insurance of self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

3. Each insurance policy required by this clause shall be endorsed shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

5. The Contractor agrees that any and all liability insurance coverages available to it as a named insured will be applicable to the City as an Additional Insured.

6. If other than ISO forms are used by the insurer(s) for the Contractor, each form used will require individual review and approval by the City of Atwater.

D. Acceptability of Commercial Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than "A: VII."

E. Verification of Coverage.

Contractor shall furnish the City with Certificates of Liability Insurance and amendatory endorsements effecting coverage required by this clause. The endorsements should be on forms provided by the City or on other than the Entity's forms, provided those endorsements or policies conform to the requirements of the Contract. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

F. Subcontractors.

Contractor shall include all subcontractors as insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the insurance requirements stated herein.

G. For Construction Risks.

If this is a Proposal and Contract that involves a construction risk, in addition to the Insurance Requirement specified above, the Contractor shall procure and maintain Course of Construction (Builder's Risk) insurance covering all risks of loss with limits of liability of not less than the completed value of the project with no coinsurance penalty provisions.

The Course of Construction insurance policies shall contain the following provisions:

1. The City shall be named as loss payee; and
2. The insurer shall waive all rights of subrogation against the City.

12. Indemnification. The Contractor will indemnify, defend with counsel selected by the City, save, keep, and hold harmless, the City and all officers, public officials, employees, and agents thereof from and against any and all actions, claims, loss, cost, damage, injury (including, without limitation, disability, injury or death of an employee of Contractor or its subcontractors), expense and liability of every kind, nature and description that arise out of, pertain to or relate to performance of the work, provided that any such action, claim, loss, cost, damage, injury, expense or liability is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting there from but

only to the extent caused by any negligent act or omission of Contractor, subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work or anyone for whose acts any of them may be liable. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Notwithstanding the above, the Contractor shall, wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the City and are for the express benefit of the general public.

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

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

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

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

14. Payment. The City will make partial and final payment to the Contractor except that the City will retain five percent (5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by City of the notice of acceptance of completion of all work covered by this Contract, at which time and not before, City shall pay to Contractor the remaining five percent (5%), less any previous payments and deductions provided for herein.

The closure date for the purpose of making monthly progress payment will be the last calendar day of that month. The Contractor may request in writing that such monthly closure date be changed. The Engineer may approve such request when it is compatible with the City's payment procedure.

Each month, the Contractor will submit its own invoice for work performed through the closure date and the Engineer will make an approximate measurement of the work performed through the closure date and as a basis for making monthly payments, estimate its value based on the Contract unit prices or as the Engineer deems appropriate. The City will endeavor to, not later than twenty (20) working days after receipt of the Contractor's invoice, make partial payment to the Contractor, based on work performed and material incorporated in the project as of the closure date of the particular calendar month, providing that the Contractor's invoice for the work performed agrees with the Engineer's determination. If the Engineer's determination differs from the Contractor's invoice, the City will make payment to the Contractor for those items or portions of items not in dispute not later than payment would have been made had no dispute occurred. Within ten (10) calendar days after agreement on disputed work is achieved between the City and the Contractor, the City shall pay the Contractor for any additional monies due as a result of settling any dispute. When the work has been satisfactorily completed, the Engineer will determine the quantity of work performed and prepare the final estimate.

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

It is further agreed by the Parties that before each payment is made as provided above, receipts and releases of liens of all kinds for all labor and materials and all other indebtedness connected with the work shall be presented to the City by the Contractor upon the request of the City.

15. Prevailing Wage. The statement of prevailing wages appearing in the General Prevailing Wage Rates is hereby specifically referred to and by this reference is made a part of this Contract. It is further expressly agreed by and between the Parties hereto that should there be any conflict between the terms of this instrument and the bid or proposal of said Contractor, then this instrument shall control and nothing herein shall be considered as an acceptance of the terms of said proposal conflicting herewith.

16. Article VI. The improvements contemplated in the performance of this Contract is a Federal-Aid improvement over which the State of California shall exercise general supervision. The State of California therefore shall have the right to assume full and direct control over this Contract whenever the State of California, at its sole discretion, shall determine that its responsibility to the United States so requires. In such cases, the State Contract Act will govern.

17. General Provisions.

- (a) *Modification.* No alteration, amendment, modification, or termination of this Contract shall be valid unless made in writing and in accordance with the Contract Documents.
- (b) *Waiver.* No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

- (c) *Authority.* All Parties to this Contract warrant and represent that they have the power and authority to enter into this Contract and the names, titles, and capacities herein stated on behalf of any entities, persons, states, or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Contract have been fully complied with.
- (d) *Drafting and Ambiguities.* Each Party acknowledges that it has reviewed this Contract with its own legal counsel, and based upon the advice of that counsel, freely entered into this Contract. Each Party has participated fully in the review and revision of this Contract. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Contract.
- (e) *Governing Law.* This Contract shall be governed by and construed in accordance with the laws of the state of California.
- (f) *Venue.* Venue for all legal proceedings shall be in the Superior Court of California for the County of Merced.
- (g) *Severability.* If this Contract in its entirety is determined by a court to be invalid or unenforceable, this Contract shall automatically terminate as of the date of final entry of judgment. If any provision of this Contract shall be determined by a court to be invalid and unenforceable, or if any provision of this Contract is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date of this Contract, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Contract.
- (h) *Counterparts.* This Contract may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- (i) *Audit.* City shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor's charges to City under this Contract.
- (j) *Entire Contract.* This Contract, together with its specific references, attachments and exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.
- (k) *Supersedes Prior Agreement.* It is the intention of the Parties hereto that this Contract shall supersede any prior agreements, discussions, commitments, or representations whether, written, electronic or oral, between the Parties with respect to the subject matter of this Contract.
- (l) *Mandatory and Permissive.* "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

- (m) *Headings*. Headings used in this Contract are for reference purposes only and shall not be considered in construing this Contract.
- (n) *Attorney's Fees and Costs*. If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Contract, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.
- (o) *Necessary Acts and Further Assurances*. The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Contract.
- (p) *Time is of the Essence*. Time is of the essence in this Contract for each covenant and term of a condition herein.

[signatures on the following page]

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

CITY OF ATWATER, a Municipal Corporation

W.M. Lyles Co.

By: _____
Lori Waterman, City Manager

By: _____
Contractor licensed in accordance with an act providing for the registration of contractors.

Date: _____

Date: _____

ATTEST:

By: _____
Lucy Armstrong, City Clerk

APPROVED AS TO FORM:

By: _____
Frank Splendorio, City Attorney

ACCOUNT DATA:

LICENSE NO. _____

PROJECT NO. 21-06

TAXPAYER I.D. NO. _____

Contract No. _____

VENDOR NO. _____

Project Account No./Amount:

ADDRESS: _____

_____ / \$ _____

PHONE: _____

FAX: _____

EMAIL: _____

By: _____
Finance Director Verification

(SEAL)