

Attachment 1

CITY OF SANTA ROSA

INVOICE TO: Municipal Service Center South
Public Works (PW)
69 Stony Circle
Santa Rosa, CA 95401

PURCHASE ORDER NO.**167100**

INQUIRIES TO: City of Santa Rosa
Purchasing Section
635 1st Street, 2nd Floor
Santa Rosa, CA 95404
(707) 543-3700 Fax: 543-3703

VENDOR: Peterson Power Systems Inc
PO Box 101775
Pasadena, CA 91189

DELIVER TO: See Special Delivery Instructions in body of PO.

Vendor Contact:

Order Date: 06/22/2022

Buyer Name		Vendor Email	FOB	Freight	Terms
Myles, Jennifer			Destination	Pre-Paid and Add	Per Terms
Buyer Phone #		Buyer Email		End User	Date Required
(707)543-3709		jmyles@srcity.org		Greg Dwyer	04/24/2023
QTY	UNIT	DESCRIPTION		UNIT PRICE	EXTENDED PRICE
1	EA	SLS-03 - 60kw Diesel Generator 208/120V, 3 Phase, 137 gallon sub base tank, Sound Enclosure		\$49,990.00	\$49,990.00
1	EA	SLS-04 - 150kw Diesel Generator 480/277V, 3 Phase, 400 gallon sub base tank, Sound Enclosure		\$61,610.00	\$61,610.00
1	EA	SLS-05 - 60kw Diesel Generator 240/120V, 3 Phase, 137 gallon sub base tank, Sound Enclosure		\$49,990.00	\$49,990.00
1	EA	SLS-90 - 80kw Diesel Generator 240/120V, 3 Phase, 209 gallon sub base tank, Sound Enclosure		\$59,780.00	\$59,780.00
1	EA	SLS-10 - 40kw Diesel Generator 240/120V, 1 Phase, 137 gallon sub base tank, Sound Enclosure		\$48,670.00	\$48,670.00
1	EA	SLS-11 - 150kw Diesel Generator 480/277V, 3 Phase, 402 gallon sub base tank, Sound Enclosure		\$68,540.00	\$68,540.00
1	EA	SLS-17 - 60kw Diesel Generator 240/120V, 3 Phase, 137 gallon sub base tank, Sound Enclosure		\$49,990.00	\$49,990.00
1	EA	SLS-18 - 125kw Diesel Generator 480/277V, 3 Phase, 400 gallon sub base tank, Sound Enclosure		\$55,700.00	\$55,700.00
1	EA	SLS-19 - 100kw Diesel Generator 240/120V, 3 Phase, 209 gallon sub base tank, Sound Enclosure		\$61,420.00	\$61,420.00
1	EA	SLS-21 - 125kw Diesel Generator 480/277V, 3		\$55,700.00	\$55,700.00

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Buyer Name Myles, Jennifer		Vendor Email	FOB Destination	Freight Pre-Paid and Add	Terms Per Terms
Buyer Phone # (707)543-3709		Buyer Email jmyles@srcity.org		End User Greg Dwyer	Date Required 04/24/2023

QTY	UNIT	DESCRIPTION	UNIT PRICE	EXTENDED PRICE
		Phase, 400 gallon sub base tank, Sound Enclosure		
1	EA	S-01 - 400kw Diesel Generator 480/277V, 3 Phase - Indoor Unit, Stainless Steel Harco Silencer	\$108,970.00	\$108,970.00
1	EA	S-04 - 750kw Diesel Generator 480/277V, 3 Phase - Indoor Unit, Stainless Steel Harco Silencer	\$388,270.00	\$388,270.00
1	EA	S-10 - 40kw Diesel Generator 240/120 V, 1 Phase, 137 gallon sub base tank, Sound Enclosure	\$48,670.00	\$48,670.00
1	EA	S-13 - 200kw Diesel Generator 480/277V, 3 Phase, 402 gallon sub base tank - Indoor Unit, Includes Remote Fuel Fill Panel, Stainless Steel Harco Silencer	\$90,700.00	\$90,700.00
1	EA	S-14 - 150kw Diesel Generator 480/277V, 3 Phase, 402 gallon sub base tank - Indoor Unit, Remote Fuel Fill Panel, Stainless Steel Harco Silencer	\$78,020.00	\$78,020.00
1	EA	S-16 - 400kw Diesel Generator 480/277V, 3 Phase, 660 gallon sub base tank - Indoor Unit, Remote Fuel Fill Panel, Stainless Steel Harco Silencer	\$116,440.00	\$116,440.00
1	EA	S-17 - 450kw Diesel Generator 480/277V, 3 Phase, 660 gallon sub base tank - Indoor Unit, Remote Fuel Fill Panel, Stainless Steel Harco Silencer	\$120,500.00	\$120,500.00
1	EA	S-18 - 100kw Diesel Generator 480/277V, 3 Phase, 203 gallon sub base tank - Indoor	\$62,750.00	\$62,750.00

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Order Date: 06/22/2022

Buyer Name Myles, Jennifer		Vendor Email	FOB Destination	Freight Pre-Paid and Add	Terms Per Terms
Buyer Phone # (707)543-3709		Buyer Email jmyles@srcity.org		End User Greg Dwyer	Date Required 04/24/2023
QTY	UNIT	DESCRIPTION		UNIT PRICE	EXTENDED PRICE
		Unit, Remote Fuel Fill Panel, Stainless Steel Harco Silencer Attachments are made part of Purchase Order: Attachment 1 " Peterson Power Systems, Inc. Quote dated 3/10/2022 Quote numbers 30953087-30953089 - 31008398 Revision 4 Attachment 2 " Location Map and Information Attachment 3 "Federalized Purchase Order Terms and Conditions Attachment 4 - Exhibit C " Federal Provisions Attachments 3 & 4 take precedence over any other terms presented in this order.			
				Net:	1,575,710.00

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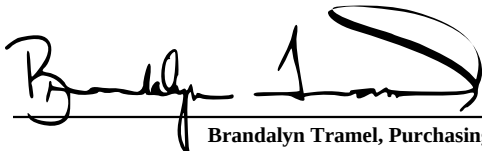
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Buyer Phone # (707)543-3709		Buyer Email jmyles@srcity.org		End User Greg Dwyer	Date Required 04/24/2023	
QTY	UNIT	DESCRIPTION			UNIT PRICE	EXTENDED PRICE
				TOTAL	\$1,575,710.00	


Brandalyn Tramel, Purchasing Agent

PO 167100

Attachment 1

Thank you for the opportunity to propose new Caterpillar power equipment from Peterson Power Systems. Selecting Caterpillar equipment assures you of durable, reliable, and high quality products. Choosing Peterson assures you detailed customer service throughout the purchase, start up, and ownership process.

I am pleased to quote as follows:

Item	Qty	Description	Unit Price	Ext. Price
1	1	SLS-03 - 60kw Diesel Generator - Tier 3 - C4.4 Critical 208/120V, 3 Phase 137 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 3987 CLEARBROOK CT	49,990.00	49,990.00
2	1	SLS-04 - 150kw Diesel Generator - Tier 3 - C7.1 GC 480/277V, 3 Phase 400 gallon sub base tank, Sound Enclosure Lead Time: 40 - 42 weeks Address: 4021 SKYFARM DR	61,610.00	61,610.00
3	1	SLS-05 - 60kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 3 Phase 137 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 3925 FAWN GLEN PL	49,990.00	49,990.00
4	1	SLS-09 - 80kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 3 Phase 209 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 601 PIEZZI RD	59,780.00	59,780.00
5	1	SLS-10 - 40kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 1 Phase 137 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 1426 COUNTRY MANOR DR	48,670.00	48,670.00
6	1	SLS-11 - 150kw Diesel Generator - Tier 3 - C7.1 Critical 480/277V, 3 Phase 402 gallon sub base tank, Sound Enclosure Lead Time: 40 - 42 weeks Address: W COLLEGE AVE and FULTON RD	68,540.00	68,540.00

7	1	SLS-17 - 60kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 3 Phase 137 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 8810A OAKMONT DR	49,990.00	49,990.00
8	1	SLS-18 - 125kw Diesel Genenerator - Tier 3 - C7.1 GC 480/277V, 3 Phase 400 gallon sub base tank, Sound Enclosure Lead Time: 40 - 42 weeks Address: 3975 SHELTER GLEN WAY	55,700.00	55,700.00
9	1	SLS-19 - 100kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 3 Phase 209 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 3710 NEWBURY CT	61,420.00	61,420.00
10	1	SLS-21 - 125kw Diesel Generator - Tier 3 - C7.1 GC 480/277V, 3 Phase 400 gallon sub base tank, Sound Enclosure Lead Time: 40 - 42 weeks Address: 3919 FLINTRIDGE DR	55,700.00	55,700.00
11	1	S-01 - 400kw Diesel Generator - Tier 3 - C15 Critical 480/277V, 3 Phase - Indoor Unit Stainless Steel Harco Silencer Lead Time: 50 - 52 weeks Address: 280 FOUNTAIN GROVE PKWY	108,970.00	108,970.00
12	1	S-04 - 750kw Diesel Generator - Tier 4 Compliant - C18 Critical 480/277V, 3 Phase - Indoor Unit Add Stainless Steel Harco Silencer Lead Time: 50 - 52 weeks Address: 2260 SONOMA AVE	388,270.00	388,270.00
13	1	S-10 - 40kw Diesel Generator - Tier 3 - C4.4 Critical 240/120V, 1 Phase 137 gallon sub base tank, Sound Enclosure Lead Time: 24 - 27 weeks Address: 4738 WOODVIEW DR	48,670.00	48,670.00

14	1	S-13 - 200kw Diesel Generator - Tier 3 - C7.1 Critical 480/277V, 3 Phase 402 gallon sub base tank - Indoor Unit Includes Remote Fuel Fill Panel Stainless Steel Harco Silencer Lead Time: 40 - 42 weeks Address: 801 WHITE OAK DR	90,700.00	90,700.00
15	1	S-14 - 150kw Diesel Generator - Tier 3 - C7.1 Critical 480/277V, 3 Phase 402 gallon sub base tank - Indoor Unit Remote Fuel Fill Panel Stainless Steel Harco Silencer Lead Time: 40 - 42 weeks Address: 1051 WHITE OAK DR	78,020.00	78,020.00
16	1	S-16 - 400kw Diesel Generator - Tier 3 - C13 GC Remove factory tank and replace with custom 660 gal fuel tank 480/277V, 3 Phase 756 gallon sub base tank - Indoor Unit Remote Fuel Fill Panel Stainless Steel Harco Silencer Lead Time: 45 - 47 weeks Address: 4177 CHANATE RD	116,440.00	116,440.00
17	1	S-17 - 450kw Diesel Generator - Tier 3 - C15 GC Custom 660 gallon fuel tank 480/277V, 3 Phase 960 gallon sub base tank - Indoor Unit Remote Fuel Fill Panel Stainless Steel Harco Silencer Lead Time: 45 - 47 weeks Address: 2750 FOUNTAIN GROVE PKWY	120,500.00	120,500.00
18	1	S-18 - 100kw Diesel Generator - Tier 3 - C4.4 GC 480/277V, 3 Phase 203 gallon sub base tank - Indoor Unit Remote Fuel Fill Panel Stainless Steel Harco Silencer Lead Time: 24 - 27 weeks Address: 2195 FOUNTAIN GROVE PKWY	62,750.00	62,750.00

19	18	Start Up, Testing, and Commissioning Services Fuel tank pressure tested w/Fire Marshall during regular business hours Genset start-up, testing and commissioning services ATS startup combined with generator startup, separate dedicated trips are Performed during regular business hours Standard start up includes: fuel alarm setup, interconnect wiring verification 2 hour, 1.0 PF Load Bank Test w/50' cable standard length Fuel not included	Included	-
20	18	Training One 2 hours on site session w/ owner's representatives during regular	Included	-
TOTAL BID PRICE - Subtotal less sales tax - Freight Included				\$1,575,710.00

Notes (N), Deviations (D), Exceptions (E):

(N) Fuel not included

(N) Only S-04 750kW genset includes/requires Tier 4F compliant aftertreatment (shipped loose), as noted with respect to RFP 21-44 Section 7, step 2.B all other units are Tier 3 or Tier 2

(N) Some fuel tank sizes vary from Appendix "A", please see above.

(N) Some enclosure dB(A) ratings vary from Appendix "A," see section C.

(N) 1.01.C Installation of equipment, piping, and wiring is by others.

(E) 1.01.J Permitting by others.

(D) 2.05.D.1.I By remote annunciator. Remote annunciator does not include dry contact.

(D) 2.06.A.1.a Exhaust silencers are as specified in drawings, and revised as specified in communication with Brelje and

(E) 2.06.A.3 Day tank and auxiliary tank vents extended by others.

(D) 2.06.A.5.b.1 Mechanical fill gauge does not include custom markings.

(E) 2.06.A.5.b.3 Signage by others.

(E) 2.06.A.6 Day tanks are by others.

(D) 2.06.A.6.b.13 Epoxy coating not provided, anti-corrosive non-volatile interior coating in lieu.

(E) 2.06.A.7 Above ground auxiliary fuel tanks are by others.

(E) 2.06.A.7.b Tank warranty will be manufacturer's standard 1 year.

(E) 2.06.A.7.c Fuel vents will be as required by UL. Fuel fill will be manufacturer's standard 2" aluminum quick connect with cap. Fuel fill and switches will be manufacturer's standard. Seismic restraints provided by others.

(D) 2.06.A.10.a 16 gauge mild steel enclosures included. Doors provided in lieu of removable panels for access.

(D) 2.06.A.10.d No louvers on discharge, upturn duct provided.

(D) 2.06.A.11.a LSI breakers are provided.

(D) 2.06.A.11.b For 208V and 240V gensets the breakers are rated at 65 kAIC, for 480V gensets the breakers are rated at 35 kAIC, except 400A breakers which are rated at 25 kAIC at 480V.

(E) 3.03.A Factory witness tests not available at this time.

(E) 3.03.C Not included.

(D) 3.06 (2) hours of training provided per site.

Submittal Availability: Estimated 2-4 weeks

Freight: FOB Jobsite. Off loading, crane, rigging, and installation by others

Credit: Order subject to approval. Ten percent (10%) down with order, twenty five percent (25%) due at submittal approval, and sixty five percent (65%) due at delivery of equipment. Payment due net 30 days from date of invoice.

Standard Exclusions (unless expressly provided for in writing in the quote):

- All off engine piping, hangers, flanges, gasket, bolts, insulation, other materials and labor to install.
- Items noted are "shipped loose" for contractor installation including any required interconnecting piping or to customer connections.
- Permits: Any and all permit applications or costs including but not limited to local City, County, State and AQMD. Peterson Power will provide information as requested for use with permit application but assumes no responsibility or obligation to apply for or obtain subject permits. Peterson Power has provided equipment that to the best of our knowledge complies with all local, state and federal requirements.
- Testing: Any and all associated testing, inspection, equipment, and certifications requested or required to be performed by a third party including circuit breaker coordination, system commissioning or building load testing. Not limited to NETA testing, infrared scanning, harmonic content or other 3 party agency testing of switchgear, switchboards, protective relays, circuit breakers, arc flash studies and reactive load testing.
- Additional items that may be required by local utility for interconnection and parallel operation.
- Electrical, Mechanical, Civil, and Structural professional engineering and design services. Peterson is not responsible for systems design or engineering and does not guarantee system performance standards. Peterson will provide documentation and assistance to others responsible for engineering, design and performance.
- Engineering services other than supply of Peterson Power Systems standard drawings, equipment cut-sheets and controls per quoted scope of supply.
- Startup and Commissioning service charges other than as noted in the quoted scope of supply. Additional field or shop labor including travel costs to/from the jobsite will be quoted and charged separately at time of requested services.
- Balance of plant equipment, controls, and monitoring except as quoted.
- All fuel system piping and equipment not limited to: supply, return, venting, vent extensions, flame arrestors, coolers, valves, pumps, filters, storage tank and senders external to the generator set package. All fuel for testing and initial fill and on site fuel tank pressure testing.
- Intake and exhaust louvers, air dampers, sheet metal ducting, flex adapters, sound baffles, all off engine piping, connectors, labor, and coolant for remote cooling systems.
- All off engine wiring, field terminations of wiring, lugs and connectors.
- Mounting bolts and anchors.
- Environmental Protection Agency (EPA), local air quality district or Authority Having Jurisdiction (AHJ), including acoustical.
- All protective relay settings, breaker settings, PLC programing and all other device programming.
- Site specific labeling, exhaust back pressure, vibration analysis and airflow restriction.
- Any bonds, payment, or performance bond or other type of bond.

- Any application sales tax, permits, fees, or licenses.
- All items listed above are excluded and will only be supplied by Peterson Power Systems if agreed upon, in writing, by sales representative for Peterson.

Quote Term, Scope:

The Quote is valid for 14 days. The price is firm provided drawings are approved and returned within 14 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. Inclusion of dates or delivery times in this Quote or any purchase order connected with a Quote are for reference purposes only. Please collaborate closely with Peterson as you make commitments to your customers to assure we can meet your budget and delivery requirements. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation, or fuel, unless otherwise stated. This Quote / Proposal is subject to the Standard Commercial Terms and Conditions on the attached to this Quote/Proposal.

SPECIAL NOTE ON COMMODITIES COSTS

Due to the increasing cost of commodities, (steel and copper) Peterson is making the following changes to our terms effectively immediately. Quote validity is 14 days.

Inclusion of dates or delivery times in this Quote or any purchase order connected with a Quote are for reference purposes only. Please collaborate closely with Peterson as you make commitments to your customers to assure we can meet your budget and delivery requirements.

Be assured that Peterson is working diligently to manage costs and lead times. Our entire staff is focused on managing our way thru these volatile times. Your sales rep or project manager is the best source for accurate up to the minute information.

Thank you for considering Peterson Power Systems. Please contact me with any questions regarding this proposal.
I am available to discuss design and planning concerns with you.

Sincerely,

Thao Maw
PPSI Sales Rep
510-206-2114

Accepted By:

Signature

Date

Printed Name

Company Name

Purchase Order #**Standard Commercial Terms and Conditions**

- 1 **Conditions.** These Terms and Conditions (collectively, "Terms") together with the Quote, Sales Order and/or Credit Application on the front side, are hereinafter referred to as this "Agreement" and shall constitute the entire agreement between the customer ("Customer") identified in this Agreement and Peterson Power Systems, Inc. ("Peterson") and supersede any previous agreement or understanding (oral or written) between the parties with respect to the equipment ("Equipment") identified in this Agreement.
- 2 **Quote Term, Scope:** The Quote is valid for 14 days. The price is firm provided drawings are approved and returned within 14 days after submission and ship date is not extended beyond published lead times. Any delays may result in escalation charges. A Sales Order for Equipment is accepted on hold for release basis. The Sales Order will not be released and scheduled for production until written approval to proceed is received. The Quote is limited to plans and specifications section set forth in the Quote. No other sections shall apply. Additional requirements for administrative items may require additional costs. The Quote does not include off unit wiring, off unit plumbing, offloading, rigging, installation, exhaust insulation, fuel, or permits unless otherwise stated.
- 3 **Order and Delivery of Equipment.** Any and all references to dates or delivery are for planning and scheduling purposes only. No guaranty is stated or implied, retention and or back charges are expressly excluded. All orders for equipment are subject to credit approval, which is subject to final acceptance by Company in its sole discretion. Peterson will exercise commercially reasonable efforts to meet any performance dates set forth in the Agreement, but Customer understands and agrees that any such dates are estimates only and failure by Peterson to deliver any equipment by such date shall not be deemed a breach of the sales agreement. Company will have no liability for any loss associated with the delay in the delivery of equipment, additionally, Peterson will not be deemed in breach of its obligations under this Agreement or otherwise liable to Customer or any third party for any costs, charges, losses sustained or incurred by Customer or applicable third party for any delay in the delivery or equipment arising out of, caused by or in any way related or connected with any circumstances beyond Peterson's control, including, but not limited to delays caused by acts or omissions to acts by Customer or its Agents (defined below), acts of God, acts of war or terrorism, fire or other casualty, storms or adverse weather, strikes, labor shortages or disturbances, shortages of materials, manufacturer delays, theft or vandalism, transport and handling accidents, or revisions to laws, regulations or governmental requirements. As used herein, the term "Agents" means principals, employees, contractors, subcontractors, consultants, agents, representatives and any persons within the direction or control of Customer or acting on behalf of or for the benefit of Customer.
- 4 **Customer's Obligations.** Customer shall comply with Applicable Law (defined below) in connection with its use, handling, maintenance, storage and operation of the machinery and equipment and shall cause its Agents to comply with all such Applicable Law. As used herein "Applicable Law" means all applicable federal, state and local laws pertaining to its covenants and obligations under the Agreement and its performance of the same, together with these Terms and all rules, regulations, standards, procedures and protocols pertaining or related to the equipment and each and all of them, subject to the Agreement, as stated or endorsed by Company or the manufacturer of such applicable equipment. Customer shall cooperate with Peterson in all matters relating to the sale and delivery by Peterson of the equipment. The representations and warranties of Customer under this Agreement, including, but not limited to, the foregoing, shall survive any expiration or termination of this Agreement.

Date: March 10, 2022

- 5 **Cancellation; Charges.** If Customer cancels all or a portion of this Agreement after its release to Peterson, written cancellation notice is required.

Calendar Days	Cancellation Schedule	Cancellation Charge
From	To	Percent of Order
Order	15 ARO	5
16 ARO	30 ARO	10
31 ARO	60 ARO	20
61 ARO	91 before RTS	70
90 before RTS	On/after RTS	90

ARO – After receipt of order, RTS – Ready to ship

- 6 **Pricing:** Unless expressly provided for in writing on a quote, pricing for future orders is subject to change without notice. Unless otherwise stated pricing and risk of loss for purchased equipment is FOB Peterson's site. If purchased equipment is shipped FOB factory, pricing and risk of loss is the responsibility of the customer and any claims for shortages, damages, or delays must be made by Customer direct to the carrier.
- 7 **Taxes:** Customer will promptly pay to Peterson any taxes that Peterson is required to collect with respect to the purchase of the equipment or any amounts payable by Customer under the Agreement, including, but not limited to, value added, personal property, sales, use, excise and similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity (collectively, "Taxes"). For any Taxes on which Customer claims exemption, Customer must provide Peterson with properly completed exemption certificates and any documentation needed to validate the exemption. If Customer refuses or fails to provide an appropriate exemption certificate and supporting documentation, as determined by Peterson, Customer will remain liable for all such Taxes. Customer will indemnify, defend and hold harmless Peterson for any and all claim, loss or liability related to Taxes for the equipment. To the extent any taxing authority audits Peterson and assess any taxes related to this purchase, the Customer shall provide proper documentation to support that such taxes have been paid, and will be responsible for any unpaid assessments, interest, penalties, withholdings, defense cost and/or reimbursement to Peterson of defense cost.
- 8 **Freight:** Freight costs indicated in the Agreement/Quote are estimated and subject to change. Any delivery, shipping, installation or performance dates indicated in this Agreement/Quote are estimated and not guaranteed. Peterson shall use best efforts to meet estimated dates, but shall not be liable for any delay in delivery, shipping, installation or performance, however occasioned.
- 9 **Title, Risk of Loss:** Title and risk of loss for the Equipment shall pass to Customer with delivery made in accordance with the delivery terms set forth above.
- 10 **Inspection and Acceptance:** Customer shall inspect the Equipment upon delivery, before offloading, for damage, defects and shortage. Any and all claims which could have been discovered by such inspection shall be deemed absolutely and unconditionally waived unless noted by Customer on the bill of lading. Where Equipment is alleged to be non-conforming or defective, written notice of defect must be given to Peterson within five (5) days from date of delivery after which time Equipment shall be deemed accepted. Peterson shall have a commercially reasonable period of time in which to correct such non-conformity or defect. If non-conformity or defect is not eliminated to Customer's satisfaction. Customer may reject the Equipment (but shall protect the Equipment until returned to Peterson) or allow Peterson another opportunity to undertake corrective action. In the event startup of the Equipment is included in the services, acceptance shall be deemed to have occurred upon successful startup.

Date: March 10, 2022

- 11 **Payment Terms, Credit, Retainage:** For Customers with an open credit account with Peterson, payments terms are 10% with order, 25% due at submittal approval, and 65% at delivery of material unless otherwise stated in the proposal. Payment due Net 30 from the date of invoice. For Customers who do not have an open credit account with Peterson, progress payments with full payment in advance may be required. Peterson may, in its sole discretion, at any time: (a) revoke credit; (b) modify terms and conditions of credit; (c) require payment in advance; and/or (d) withhold equipment until receipt of full payment then owing by Customer to Peterson, whether such outstanding obligation of Customer is for the equipment described on the reverse side or otherwise. If payment is not received when due, in an addition to any rights Peterson has under the law and charges that Peterson may levy against Customer under statute (including attorney fees and costs of collection), Peterson may charge customer eighteen percent (18%) interest annually, or the maximum amount allowed by law, on late payments. Payment shall be due in advance if Customer does not have approved credit. Retainage is not acceptable nor binding, unless accepted and confirmed in writing by Peterson prior to shipment.
- 12 **Invoice, Fees and Expenses:** Failure to notify Peterson in writing of any dispute regarding an invoice within thirty (30) days of receipt thereof will be deemed a waiver by Customer of Customer's right to dispute such invoice. Customer's obligation to pay amounts invoiced is and will be absolute and unconditional and shall not be subject to any delay, reduction, set-off, defense or counter-claim.
- 13 **Bonds:** Cost for any required bid bond, payment and performance bond, or any other type of bond will be reimbursed to Peterson by Customer.
- 14 **Permits, Fees, & Licenses:** Cost for any permits, fees, and licenses are the responsibility of the customer and if paid for by Peterson, will be reimbursed to Peterson by Customer.
- 15 **Temporary Storage of Equipment Purchase:** Whereas Customer has purchased the equipment listed in this agreement from Peterson, and Customer has requested that Peterson provide storage for the equipment until such time as Peterson has the equipment delivered to their site, Customer will pay Peterson a monthly storage fee, and Exhibit A will be applicable and incorporated in these Terms.
- 16 **Training, Startup Services, Installation:** Startup services, load bank testing, commissioning, and owner training are not provided, unless otherwise stated in the quote. Site startup services require customer's account be current and will be performed during regular Peterson business hours, Monday through Friday. Additional charges may be added for work requested to be done outside normal business hours, on weekends or holidays. One visit for startup is allowed unless specified otherwise in the quote. A minimum of two weeks prior notice is required to schedule site startup and subject to availability of startup technicians and prior commitments of equipment. A signed site check sheet confirming system readiness is required, including and not limited to; wire termination, fuel lines connected, fuel tank full, and exhaust system complete. Peterson personnel may perform an installation audit prior to startup being completed to assure system readiness for startup. Any issues identified by the installation audit may be corrected at the customer's expense prior to startup. Portable load banks for site test (if offered in the Quote) are equipped with only 50 feet of cable. Additional lengths may be arranged at an extra cost. Installation of equipment is performed by others and not included unless otherwise stated in the quote.
- 17 **Warranties:**
- (a) **Equipment.** For new equipment purchased by Customer from Peterson, Customer understands and acknowledges that (i) Peterson is not the manufacturer of the equipment or any parts thereof; (ii) Peterson does not and will not have any liability or responsibility to Customer or any third party with respect to any warranty for the Goods, except that Peterson will pass through to Customer the manufacturer's warranty to the extent permitted by the terms of such warranty; and (iii) any claims Customer or its Agents may have with respect to the manufacturer's warranty shall be made solely against the manufacturer. Notwithstanding anything contained to the contrary in this Agreement, including this Section 17(a), Peterson makes no representation or warranty as to the equipment, its condition, purpose or use, or as to any manufacturer's warranty for such Goods.

Date: March 10, 2022

(b) Extended Protection or Coverage. Customer acknowledges that Customer may have the option of purchasing an equipment protection plan or extended services coverage (each, an "Extended Protection Plan") and Customer agrees that if an Extended Protection Plan is available and purchased by Customer at the time of sale, the Extended Protection Plan will be subject to the terms, conditions and exclusions contained in such applicable Extended Protection Plan.

(c) Disclaimer of Warranties. Except as may be expressly described in the Agreement and these terms, company makes no warranty of any nature, scope or kind whatsoever hereunder. Peterson disclaims any warranty, express or implied, including, but not limited to, any (i) warranty of merchantability; (ii) warranty of fitness for a particular purpose; (iii) warranty of title; or (iv) warranty against infringement of intellectual property rights of a third party, whether express or implied by law, course of dealing, course of performance, usage of trade or otherwise. Peterson is neither a manufacturer of the goods or any parts thereof nor an agent of a manufacturer of such goods. Although Peterson may administer warranties issued by a manufacturer, Customer acknowledges and agrees that: (1) any express warranties by such manufacturer are not the responsibility of Peterson; (2) such manufacturer's warranty may contain limitations; and (3) Customer may incur certain repair, transportation or other charges by Peterson which are not covered by such manufacturer's warranty. Any warranty by Peterson shall be null and void and have no legal effect if Customer has failed to pay for the equipment at issue. Except for any express warranties contained hereunder, no other representation or warranty of any kind or nature will be binding on or obligate Peterson.

18 **Limitation on Warranties:** Peterson expressly disclaims all warranties, either express or implied, including any implied warranty of merchantability and warranty for fitness or a particular purpose, to the extent permitted by law. The warranties set forth herein are the sole warranties made by Peterson. Some states do not allow limitation on warranties, so these limitations may not apply to you. The limited warranty does not cover Equipment failures resulting from: (a) inappropriate use relative to application guidelines; (b) normal wear and tear; (c) improper and/or unauthorized installation; (d) negligence, accidents or misuse; (e) lack of maintenance or unauthorized repair; (f) noncompliance with any Peterson published guideline or policy; (g) use of improper or contaminated fuels, coolant or lubricants; (h) improper storage before and after commissioning; (i) owners delay in making Equipment available after notification of potential equipment problem; (j) replacement parts and accessories not authorized by Peterson; (k) owner or operator abuse or neglect such as: operation without adequate coolant or lubricants; over fueling; over speeding; lack of maintenance to lubricating, cooling or air intake systems; late servicing and maintenance; improper storage; starting, warm-up, run-in or shutdown practices, or (l) damage to parts, fixtures, housings, attachments and accessory items that are not part of the generating set.

19 **Limitation of Liability:**

(a) IN NO EVENT SHALL PETERSON, ANY PETERSON ENTITIES, AFFILIATES OR ITS PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRATORS, REPRESENTATIVES, AGENTS OR SUCCESSORS OR ASSIGNS (collectively, "Company Party") BE LIABLE TO CUSTOMER, ITS AGENTS OR ANY THIRD PARTY FOR ANY LOST PROFITS, LOST REVENUE, LOST BUSINESS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING WHETHER OR NOT THAT PARTY WAS AWARE OF THE POSSIBILITY OF THOSE DAMAGES AND DESPITE THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED IN THIS AGREEMENT.

Date: March 10, 2022

(b) EXCEPT FOR DAMAGES FOR PERSONAL INJURY, INCLUDING DEATH AND PROPERTY DAMAGE RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN CONNECTION WITH THE SALE OR DELIVERY BY PETERSON OF THE GOODS, OF ANY EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF PETERSON OR ANY COMPANY ENTITY OR THE PRINCIPALS, OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES OR AGENTS OF COMPANY OR ANY COMPANY ENTITIES, IN NO EVENT WILL THE AGGREGATE LIABILITY OF PETERSON OR ANY PETERSON PARTY ARISING OUT OF THIS CSA EXCEED THE LESSER OF THE AMOUNT CUSTOMER HAS ACTUALLY PAID TO COMPANY UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTHS IMMEDIATELY PRIOR TO THE SUBJECT CLAIM OR TEN MILLION DOLLARS \$10,000,000.

(c) THE PARTIES AGREE THAT THIS SECTION 19 REPRESENTS A REASONABLE ALLOCATION OF RISK.

(d) THE PROVISIONS OF THIS SECTION 19 SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THIS AGREEMENT.

- 20 **Indemnification:** Neither Peterson nor any Peterson Party will be responsible for any loss or injury resulting from the condition of the Goods sold, including, but not limited to, any defects in the equipment or from the subsequent use of the equipment. Customer expressly agrees as a condition of the purchase and sale of the equipment that Customer will indemnify, defend and hold harmless Peterson and any applicable Peterson Party from and against any and all claims that may hereafter at any time be asserted by any subsequent owner or user of the items sold hereunder or asserted by any agent, contractor, employee, heirs, or successor or assigns of such owner or user or by any third party arising from the condition of the equipment, including but not limited to, any purported defect in the equipment or parts thereof, or by reason of the use of the equipment. Customer agrees to assume all responsibility in connection with the equipment upon delivery thereof to Customer or to a common carrier.

Customer shall indemnify and hold harmless Peterson and the Peterson Party from and against any and all losses, expenses, demands, and claims made against Peterson by Customer, its Agents, any subsequent owner or user of the equipment or any persons claiming under or through such persons because of injury or illness (including death), actual or alleged, whether caused by the sole negligence of Customer, its Agents, such subsequent owner or user or person claiming under or through such persons (the "Customer Parties"), the concurrent negligence of Peterson with Customer, or any Customer Parties arising from, resulting from, or in any way connected with the operation, maintenance, possession, use, transportation, or disposition of the equipment. Customer agrees to defend any suit action or cause of action brought against Peterson or the Peterson Party based on any such alleged injury, illness, or damage and to pay all damages, costs and expenses including reasonable attorney's fees in connection therewith or resulting therefrom.

- 21 **Force Majeure:** Peterson shall not be liable, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement to the extent such failure or delay is caused by or results from acts or circumstances beyond Peterson's reasonable control including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, pandemic/epidemic, Bankruptcy, lock-outs, strikes or other labor disputes (whether or not relating to either Party's workforce), restraints or delays affecting carriers, and inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage.
- 22 **Privacy Statement:** Customer consents to the collection, use, retention and disclosure of information by Peterson and/or a Peterson Party in accordance with Peterson's Privacy Statement, which is posted on Peterson's website (as such statement may be revised from time to time), and agrees that such information may be accessed by Peterson or a Peterson Party and their partners and manufacturers with a legitimate business reason to access it, as well as third parties who may process such information on their behalf.
- 23 **Entire Agreement:** This Agreement and the exhibits and attachments hereto, represent and constitute the entire agreement between the parties, may only be amended in writing signed by both parties, and supersede all prior agreements and understandings with respect to the matters covered by this Agreement.

Date: March 10, 2022

- 24 **Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the Parties hereto.
- 25 **Severability:** If any provision of this Agreement is found unenforceable or invalid, the remainder of the Agreement will remain in full force and effect and it and any related provisions will be interpreted to best accomplish the unenforceable provision's essential purpose.
- 26 **Counterparts:** This Agreement may be executed in any number of counterparts, including facsimile, PDF and other electronic copy, each of which when taken together shall constitute one instrument. No counterpart shall be effective until each Party has executed at least one counterpart.
- 27 **Assignment:** Neither Party may assign, convey or transfer this Agreement, or any portion thereof, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed, except that Peterson may assign this Agreement or any portion thereof without the prior consent of Purchaser to a person or entity controlling, controlled by or affiliated with Peterson or its parent company.
- 28 **No Waiver:** A waiver of any term, right or condition of this Agreement by a party must be in writing to be effective and will in no way be construed as a waiver of any later breach of that provision. No express waiver of any term, right or condition of this Agreement shall operate as a waiver of any other term, right or condition.
- 29 **Relationship of the Parties:** No employment, agency, joint venture, or similar arrangement is created or intended between Customer and Peterson.
- 30 **Construction:** Words used herein, regardless of the number or gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. The provisions of this Agreement and the documents and instruments referred to herein, have been examined by the parties and no implication shall be drawn nor made against any party hereto by virtue of drafting this Agreement. The term "including" used herein shall mean "including, but not limited to". The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of the provisions herein. Each Party acknowledges that they have read this Agreement, have had an opportunity to review with an attorney of their respective choice, and have agreed to all of its terms, including these Terms. Each Party agrees that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement and that in the event of any ambiguity in any provisions of this Agreement, including any Exhibits or attachments or agreed upon Change Orders hereto and whether or not placed of record, such ambiguity shall not be construed for or against any Party hereto on the basis of such Party did or did not author the same.
- 31 **No Third Party Beneficiaries:** Unless otherwise expressly provided, no provisions of this Agreement are intended or will be construed to confer upon or give to any person or entity other than Customer and Peterson any rights, remedies or other benefits under or by reason of this Agreement.
- 32 **Attorneys' Fees, Enforcement Costs and Expenses:** If any claim or action is brought by either party hereunder against the other party regarding the subject matter hereof, the prevailing party shall be entitled to recover from the non-prevailing party, in addition to any other relief granted, reasonable attorneys' fees and the expense of litigation.
- 33 **Governing Law, Venue:**

Date: March 10, 2022

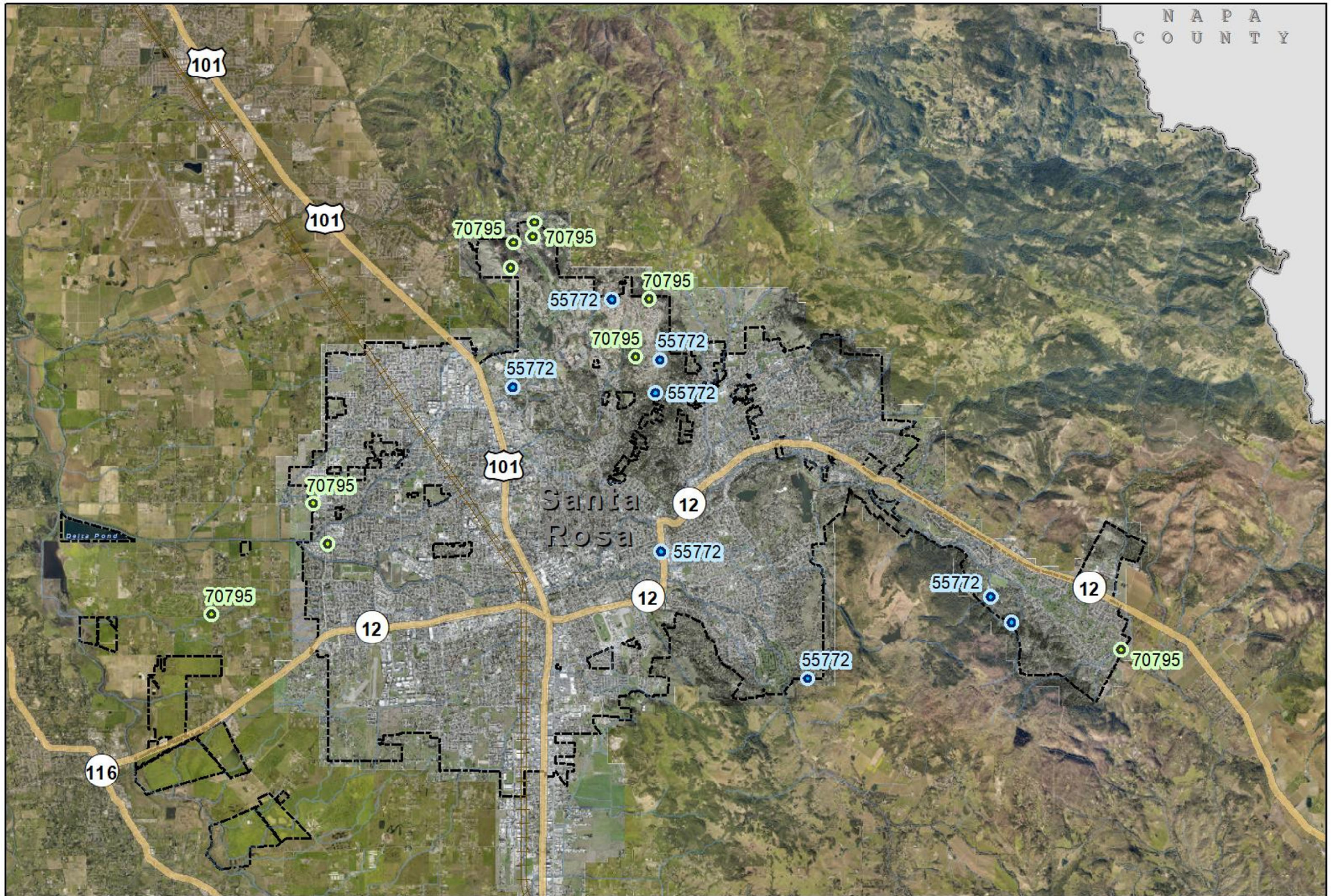
(a) This Agreement and any attachments or documents related thereto shall be governed, construed and enforced in accordance with (i) the laws of the State of California, excluding conflict of law rules, for all sales made or accepted by Peterson at its offices within such state, (ii) with the laws of the State of Oregon, excluding conflict of law rules, for all sales made or accepted by Peterson at its office within such state, and (iii) with the laws of the State of Washington, excluding conflict of law rules, for all sales made or accepted by Peterson at its office within such state. For agreements made or accepted by Peterson in the State of California, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Alameda County, California and the United States District Court for the Northern District of California, for the purposes of any action, proceeding, suit or claim arising out of this Agreement. For agreements made or accepted by Peterson in the State of Oregon, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Multnomah County, Oregon and the United States District Court for the District of Portland in Portland, Oregon. For agreements made or accepted by Company in the State of Washington, each party hereby irrevocably submits to the personal and exclusive jurisdiction of the state courts of Cowlitz County, Oregon and the United States District Court for the Western District of Washington in Seattle, Washington.

(b) Each party irrevocably and unconditionally waives any objection to the laying of venue as described herein.

34 **Survival:** Notwithstanding anything contained herein to the contrary, Sections 7, 17(c), 19, 20, 21, 22, 30, 32, 33, and 34 will survive any termination or expiration of this Agreement.

PO 167100

Attachment 2



Project Number: 2256

Backup Generators - Water and Wastewater Facilities

Project Status: Design

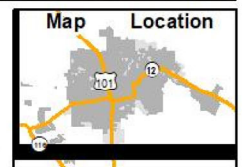
Project Areas (JL Keys labeled)

 Water  Sewer

0 1,800 3,600 7,200 10,800 14,400 18,000 21,600 25,200 Feet

City (2020) & County (2018) Aerials shown.
Map Date: 4/21/2022

- Information and features shown on this map are intended for general location use only and may contain errors. Map produced by City of Santa Rosa, Asset Management Division. -



Backup Generator Location Addresses

Sewer Lift Station List

Station Name	Address
Clearbrook, SLS-03	3987 Clearbrook Court
Skyfarm "B", SLS-04	4021 Skyfarm Drive
Fawnglen, SLS-05	3925 Fawnglen Place
Piezzi, SLS-09	601 Piezzi Road
SLS-10	1426 Country Manor Drive
West College, SLS-11	1098 Fulton Road
Oakmont, SLS-17	8810 Oakmont Drive
Shelter Glen, SLS-18	3975 Shelter Glen Way
Hadley Hill, SLS-19	3710 Newberry Court
Flintridge, SLS-21	3919 Flintridge Drive

Water Pump Station List

Station Name	Address
S1	280 Fountaingrove Parkway
S4	2260 Sonoma Avenue
S10	4738 Woodview Drive
S13	801 White Oak Drive
S14	1051 White Oak Drive
S16	4177 Chanate Road
S17	280 Fountaingrove Parkway
S18	2195 Fountaingrove Parkway

PO 167100

Attachment 3

**CITY OF SANTA ROSA
PURCHASE ORDER
TERMS AND CONDITIONS
FEDERAL PROCUREMENTS**

1. ORDER ACKNOWLEDGEMENT: Contractor's commencement of work or delivery shall be deemed acceptance of the terms and conditions of the Purchase Order ("Order"). Contractor shall furnish the City of Santa Rosa ("City") Purchasing Agent, within ten days of the Order date, written Order acceptance. The Order, and these "Terms and Conditions," together with any attachments, constitutes the entire agreement between the parties. Any terms proposed in Contractor's acceptance of City's Order which add to, vary from or conflict with the terms herein are null and void. No waiver, modification or addition to the terms of this Order shall be valid unless in writing and made in accordance with Section 2, CHANGE ORDER below.
2. CHANGE ORDER: The City may at any time prior to the delivery date specified herein, issue a written change order for the modification of the Order. Such modification(s) shall be the result of negotiation and agreement between both parties. No change in this Order shall be made unless the City gives its prior written approval. Contractor shall be liable for all direct and consequential damages resulting from any unauthorized changes to the Order.
3. ASSIGNMENT AND SUBCONTRACTING: Contractor shall not assign or subcontract the Order, or any part thereof, without the previous written consent of City, nor shall Contractor assign, by power of attorney or otherwise, any of the money payable under this Order unless the prior written consent of the City has been obtained. No right under this Order, nor any claim for money due, or to become due hereunder, shall be asserted against the City, or persons acting for the City, by reason of any so-called assignment of this Order or any part thereof, or to become due under this Order. The instrument of assignment shall contain a clause subordinating the claim of the assignee to all prior liens for services rendered or goods supplied.

Should any subcontractor fail to perform in a satisfactory manner the work undertaken by subcontractor, the subcontract shall be immediately terminated by Contractor upon notice from the City. Contractor shall be fully responsible and accountable to the City for the negligent acts and omissions of any subcontractors, and of persons directly or indirectly employed by the subcontractor, as it is for the negligent acts and omissions of persons directly employed by Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the City.

4. DELIVERY: All ordered goods shall be delivered F.O.B. destination, delivery charges prepaid, unless otherwise shown on the front of the Order. The goods shall be delivered to the individual project site locations. If the generators arrive prior to a period of 10 calendar days from the issuance of the Notice to Proceed to the lowest responsible bidder, the generators shall be delivered to the address shown below:

CITY OF SANTA ROSA
UTILITIES FIELD OPERATIONS BUILDING
35 STONY POINT ROAD

SANTA ROSA, CA 95401

Delivery will be made on or before the date indicated on the front of the Order. Contractor shall be liable for damages resulting from Contractor's failure to deliver by the delivery date or in conformance with this Order. Goods or the tender of delivery that fail in any respect to conform to the Order will not be accepted unless the City gives its written acceptance.

5. INSPECTION: The City reserves the right before payment or acceptance to inspect all goods, and shall have the right to reject all goods that do not conform to the Order, provided; however, the City will make a visual inspection upon product delivery and note any observed damage. The City reserves the right to extend the date of acceptance until it can be determined that the generators are in proper working order according to manufacturer's specifications.
6. TITLE: Title to goods shall pass to the City at the F.O.B. point designated under Section 4 DELIVERY, subject to the City's right to reject the goods.
7. ACCEPTANCE AND PAYMENT: Acceptance shall be made when the City determines the goods conform to the Order, or when City notifies Contractor that it will accept the goods or services despite nonconformity. Unless otherwise stated in the Order, payment terms are net 30 days. In no event shall City be obligated to pay late fees or interest, whether or not such requirements are contained in Contractor's invoice. Payment will be scheduled upon complete delivery and acceptance of all goods or services and receipt of an original and one copy of an invoice acceptable to the City. Invoices for goods provided in June or for any goods not previously invoiced shall be submitted to City no later than July 10 to facilitate City fiscal year end closing. The City reserves the right to withhold up to ten (10%) percent of the Order price in the event it conditionally accepts nonconforming goods or services.
8. MATERIALS: Unless otherwise specified in the Order, materials used shall be of new and recent manufacture and of best quality.
9. WARRANTY: Warranty period shall start upon acceptance of the goods, which includes testing to ensure the goods are in proper working order according to manufacturer's specifications. Contractor is not a manufacturer of any goods and will pass through to City, the manufacturer's warranty for new equipment purchased by City from Contractor to the extent permitted by the terms of such warranty. Any claims City or its Agents may have with respect to the manufacturer's warranty shall be made solely against the manufacturer. Certain exclusions may apply to the manufacturer's warranty, including but not limited to, improper use of the goods, failure to maintain or repair in accordance with applicable guidelines, normal wear and tear, negligence, accidents or misuse, delay in providing notification of defect or failure to have maintenance work performed in a timely manner. Notwithstanding anything contained to the contrary in this Order. CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY AS TO THE EQUIPMENT, ITS CONDITION, PURPOSE OR USE, OR AS TO ANY MANUFACTURER'S WARRANTY FOR SUCH GOODS. CONTRACTOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY AND WARRANTY FOR FITNESS OR A PARTICULAR PURPOSE, TO THE EXTENT PERMITTED BY LAW. The warranties set forth herein are the sole warranties made by Contractor.

For services purchased by City from Contractor, Contractor warrants that its services will be performed and completed in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services, with such service warranty extending for a period of time expressly set forth in the service warranty, commencing from completion of the original services. If replacement parts used by Contractor in connection with the provision of services include a manufacturer's warranty, Contractor will pass such warranty through to City to the extent permitted by the terms of the manufacturer's warranty. Contractor's service warranty will be voided in the event of any of the following: misuse or abuse of the ordered goods by City, subsequent repairs performed by City or vendors other than Contractor, use beyond ordinary wear and tear, failure to maintain and operate the ordered goods in accordance with the maintenance and operations manual of the manufacturer (including, but not limited to, use of fluids that do not meet the manufacturer's standards or failure to maintain fluid levels recommended by the manufacturer) or damage due to theft, vandalism or casualty. In the event of a conflict between the terms and conditions set forth in any applicable service warranty and these Terms, the provisions of the applicable service warranty shall control.

10. TERMINATION FOR CAUSE: If at any time 1) Contractor fails to conform to the requirements of this Order; 2) Contractor seeks relief under any law for the benefit of insolvents or is adjudicated bankrupt; 3) any legal proceeding is commenced against Contractor which may materially interfere with the performance of this Order; or 4) Contractor has failed to supply an adequate working force, or materials of proper quality, or has failed in any other respect to prosecute the work with the diligence and force specified and intended in and by the terms of this Order, which default is not fully corrected or remedied to the reasonable satisfaction of City within ten (10) days following the date a written notice thereof by City, then City shall have the right and power, at its option and without prejudice to any other rights or remedies it may have, to immediately terminate this Order and recover the aggregate of: 1) any amount necessary to compensate City for all the detriment caused by Contractor's failure to perform its obligations or that, in the ordinary course of things, would be likely to result from its failure; and 2) all other amounts in addition to or in lieu of those previously set out as may be permitted from time to time by applicable California or Federal law. Any cost or expense incurred by City to the extent arising out of Contractor's breach or default hereunder shall be the obligation of Contractor and may, at City's discretion, be deducted from any amounts that may then be owing to Contractor under this Order, without any release or waiver of any other rights or remedies in law or equity to which City may be entitled.
11. TERMINATION FOR CONVENIENCE: The Order may be terminated by the City by giving ten (10) days' notice to Contractor in writing of its intent to terminate the Order. Upon such termination, Contractor shall submit to the City an itemized statement of services performed or goods delivered as of the termination date. City shall not in any manner be liable for lost profits that might have been made by Contractor had the Order not been terminated or had Contractor completed the services required by the Order.
12. LEGALITY: If any provision of the Order is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
13. CALIFORNIA LAW; VENUE: The Order shall be governed according to the laws of the State of California. The adjudication of any disputes related to the Order shall occur exclusively and solely in Sonoma County.

14. **COMPLIANCE WITH LAWS AND REGULATIONS:** Contractor represents and warrants that Contractor has all licenses, permits, a City Business Tax Certificate, qualifications, and approvals of whatsoever nature that are legally required for Contractor to provide goods and/or services under the Order. Contractor shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including but not limited to, (i) the Americans With Disabilities Act (ADA) of 1990, (42 U.S.C. 12101, et seq.), and any regulations and guidelines issued pursuant to the ADA, which prohibits discrimination against individuals with disabilities and may require reasonable accommodations; (ii) and Labor Code Sections 1700-1775, which require prevailing wages (in accordance with DIR schedule at www.dir.ca.gov) be paid to any employee performing work covered by Labor Code Section 1720 et seq.; (iii) California Occupational Safety and Health Administration (Cal/OSHA) regulations; and (iv) the Immigration Reform and Control Act of 1986. Contractor shall, if requested by City, provide certification and evidence of compliance. If Contractor is an out-of-state corporation, Contractor warrants and represents that it possesses a valid certificate of qualification to transact business in the State of California issued by the California Secretary of State pursuant to Section 2105 of the California Corporations Code.
15. **PATENTS AND ROYALTIES:** All costs, fees, royalties and claims for any patented invention, article, process or method that may be used upon or in any manner connected with the supply of goods herein shall be paid by Contractor. Should Contractor, its agents or employees or any of them be enjoined from furnishing or using any invention, article, material or plans supplied or required to be supplied or used under the terms herein, Contractor shall promptly substitute other articles, materials or appliances in lieu thereof of equal finish, efficiency, quality, suitability and market value and satisfactory in all respects to City. In the event that City elects, in lieu of such substitution, to have supplied and to retain and use any inventions, articles, materials, or plans as may be required to be supplied, Contractor shall pay such royalties and secure such valid licenses as may be requisite for City, its officers, agents and employees, or any of them to use such invention, article, materials or appliances without being disturbed or in any way interfered with by any proceeding at law or equity on account thereof. Should Contractor neglect or refuse to make the substitution promptly or to pay such royalties and secure such licenses as may be necessary, then City shall have the right to make such substitution or City may pay such royalties and secure such licenses and charge the Contractor even though final payment under the contract may have been made.
16. **INDEMNIFY AND HOLD HARMLESS AGREEMENT:** Contractor shall indemnify, defend and hold harmless City and its employees, officials, and agents, from and against any liability, (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, interest, reasonable attorney's fees, defense costs, and expert witness fees), to the extent the same arises out of the negligent, reckless or willful misconduct during the performance of this Order by Contractor, its officers, employees, agents, or subcontractors excepting ~~only~~ that resulting from the negligence, recklessness or willful misconduct of City, its employees, officials, agents or any persons acting on behalf of or for the benefit of the City or under its direction or control. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for Contractor or its agents, under workers' compensation acts, disability benefits acts or other employees' benefits acts. Contractor shall be liable to City for any loss of or damage to City property arising from Contractor's negligence or willful misconduct.

17. RETENTION OF RECORDS:

- A. Contractor shall retain any and all records necessary to document the charges under this Order and make such records available for inspection for a period of not less than four (4) years.
- B. Contractor shall keep and maintain full and complete documentation and accounting records concerning all extra or special services performed by it that are compensable by other than an hourly or flat rate.
- C. Contractor shall maintain the records and any and all other records pertinent to this Order for a period of four (4) years after completion of all services or acceptance of goods hereunder.
- D. Contractor agrees to provide City, the State of California, the Federal Emergency Management Agency ("FEMA") Administrator, the Comptroller General of the United States, and any or all of their authorized representatives, access to any books, documents, papers, and records of Contractor which are pertinent to this Order for the purposes of making audits, examinations, excerpts, and transcriptions.
- E. Contractor agrees to permit all or any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- F. Contractor agrees to provide the FEMA Administrator or his authorized representatives access to work sites pertaining to the services being performed under this Order.

18. PERFORMANCE OF SERVICES: With respect to the performance of services under this Order, Contractor shall perform all services in a manner consistent with the level of competency and standard of care normally observed by a person practicing in Contractor's trade or profession. Contractor hereby warrants that all work will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state, and local laws, it being understood that acceptance of Contractor's work by City shall not operate as a waiver or release. Contractor shall assign only competent personnel to perform services hereunder. In the event that at any time the City, in its sole discretion, desires the removal of any person or persons assigned to perform services hereunder, Contractor shall remove such person or persons immediately upon written notice from City. Contractor shall perform the services described on the Order within the time or dates set forth therein.

19. INSURANCE REQUIREMENTS: Contractor shall maintain in full force and effect all of the insurance coverage described in, and in accordance with, General Services Agreement Attachment One, "Insurance Requirements", which is attached hereto and hereby incorporated and made part of the Order by this reference. Maintenance of the insurance coverage as set forth in Attachment One is a material element of this Order and a material part of the consideration provided by Contractor in exchange for City's agreement to make the payments prescribed hereunder. Failure by Contractor to (i) maintain or renew coverage, (ii) provide the City notice of any changes, modifications, or reductions in coverage, or (iii) provide evidence of renewal, may be treated by City as a material breach of the Order by Contractor, whereupon City shall be entitled to all rights and remedies at law or in equity, including but not limited to the immediate termination of

the Order. Notwithstanding the foregoing, any failure by Contractor to maintain required insurance coverage shall not excuse or alleviate Contractor from any of its other duties or obligations under the Order. In the event Contractor, with approval of City pursuant to Section 3 above, retains or utilizes any subcontractors or sub-consultants in the provision of any goods or services to City under the Order, Contractor shall assure that any such subcontractor has first obtained, and shall maintain, all of the insurance coverage requirements set forth in the Insurance Requirements in Attachment One.

20. INDEPENDENT CONTRACTOR: The parties intend that Contractor, in performing services herein specified, shall act as an independent contractor and shall have control of its work and the manner in which it is performed. It shall be free to contract for similar services to be performed for other employers while it is under contract with City. Contractor is not to be considered an agent or employee of City and is not entitled to participate in any pension plan, medical, or dental plans, or any other benefit provided by City for its employees.
21. BUSINESS TAX CERTIFICATE: Contractor shall hold a current City of Santa Rosa business tax certificate issued pursuant to Chapter 6.04 of the Santa Rosa City Code. For information regarding the business tax, contact Revenue and Collections at (707) 543-3170. City may deduct any delinquent business taxes, and any penalties and interest added to the delinquent taxes, from its payments to Contractor.
22. NON-DISCRIMINATION: With respect to the provision of goods or services under the Order, Contractor agrees not to discriminate against any person because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status of that person.
23. FORCE MAJEURE: Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Order, for any failure or delay in fulfilling or performing any term of this Order when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation, flood, fire, earthquake, explosion, war, invasion, hostilities, terrorist threats or acts, riot, other civil unrest, government order or law, action by any governmental authority, pandemic, epidemic, revolution, insurrection, lock-outs, strikes, or national or regional emergency. The affected party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligations under this Order. The party suffering a force majeure event shall give notice within five (5) days of the force majeure event to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.
24. FEDERAL PROVISIONS: Contractor shall comply with the following federal provisions. In the event of a conflict between any provision in this Section 24 and any other provision of this Order, the more stringent provision shall control and prevail.
 - A. For purposes of this Section 24, "Third Party Subcontract" means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.
 - B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Order, included but not limited to the requirements of 2 C.F.R. §§ 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Order.

2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount of this Order exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime

contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Clean Air Act and Federal Water Pollution Control Act

This Section D shall apply in the event the amount of this Order exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Suspension and Debarment

1. This Order is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Order with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a

requirement to comply with these regulations in any lower tier covered transaction it enters into.

4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. Procurement of Recovered Materials

1. In the performance under this Order, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—

a. Competitively within a timeframe providing for compliance with the Order performance schedule;

b. Meeting Order performance requirements; or

c. At a reasonable price.

2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

H. MBE/WBE Requirements

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps must include:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- f. Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

I. Miscellaneous Provisions

- 1. DHS Seal. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
- 2. FEMA Assistance. Contractor acknowledges that FEMA financial assistance will be used to fund this Order only. Contractor shall comply will all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.
- 3. Federal Government Not Party. The Federal Government is not a party to this Order and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Order.
- 4. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Order.

Exhibit C

FEDERAL PROVISIONS

A. Definitions

1. **Government** means the United States of America and any executive department or agency thereof.
2. **FEMA** means the Federal Emergency Management Agency.
3. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal Emergency Management Agency.

B. Federal Changes

1. Contractor shall at all times comply with all applicable regulations, policies, procedures, and FEMA Directives as they may be amended or promulgated from time to time during the term of this Agreement, included but not limited to those requirements of 2 C.F.R. §§ 200.317 through 200.326 and more fully set forth in Appendix II to Part 200 – Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which is included herein by this reference. Contractor's failure to so comply shall constitute a material breach of this Agreement.
2. Contractor agrees to include the above clause in each third-party subcontract financed in whole or in part with Federal assistance provided by FEMA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. Compliance with the Contract Work Hours and Safety Standards Act.

Pursuant to section 3701 of title 40 of the United States Code, this Section C shall apply to Contractor in the event the amount payable under this Agreement exceeds \$100,000 and may involve the employment of mechanics or laborers.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory,

to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

3. Withholding for unpaid wages and liquidated damages. City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
4. Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

D. Clean Air Act and Federal Water Pollution Control Act

This Section D shall apply in the event the amount payable under this Agreement exceeds \$150,000.

Clean Air Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*
2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. Contractor agrees to comply with all applicable standards, orders and regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

2. Contractor agrees to report each violation to City and understands and agrees that City will, in turn, report each violation as required to assure notification to the State of California, Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

E. Suspension and Debarment

1. This Agreement is a covered transaction for purposes of title 2 Code of Federal Regulations parts 180 and 3000. As such, Contractor is required to verify that none of Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
2. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third-party subcontractors shall enter into any third-party subcontracts for any of the work under this Agreement with a third-party subcontractor that is debarred, suspended, or otherwise excluded for or ineligible for participation in Federal assistance programs under executive Order 12549.
3. Contractor must comply with title 2 Code of Federal Regulations, part 180, subpart C and title 2 Code of Federal Regulations, part 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
4. This certification is a material representation of fact relied upon by City. If it is later determined that Contractor did not comply with title 2 Code of Federal Regulations, part 180, subpart C or title 2 Code of Federal Regulations, part 3000, subpart C, in addition to remedies available to the State of California and the City of Santa Rosa, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

F. Procurement of Recovered Materials

1. In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA- designated items unless the product cannot be acquired—
 - (a) Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - (b) Meeting Agreement performance requirements; or
 - (c) At a reasonable price.

2. Information about this requirement, along with the list of EPA- designate items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

G. Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by section 1352 of title 31 of the United States Code. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

H. MBE/WBE REQUIREMENTS

1. Contractor shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible through the "Good Faith Effort" process in 2 C.F.R. § 200.321. Contractor shall document and report its Good Faith Effort processes. Contractor shall also ensure that all of its subcontractors take the affirmative steps required under 2 C.F.R. § 200.321. Affirmative steps must include:
 - (a) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - (b) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - (c) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - (d) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - (e) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - (f) Requiring all subcontractors to take the affirmative steps listed in paragraphs (a) through (e) above.

I. MISCELLANEOUS PROVISIONS

1. DHS Seal. Contractor shall not use the Department of Homeland Security ("DHS") seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre- approval.
2. FEMA Assistance. Contractor acknowledges that FEMA financial assistance will be used to fund this Agreement only. Contractor shall comply will all applicable federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

3. Federal Government Not Party. The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to City, Contractor, or any other party pertaining to any matter resulting from this Agreement.
4. False Claims. Contractor acknowledges that Title 31 United States Code Chapter 38 (Administrative Remedies for False Claims and Statements) applies to Contractor's actions pertaining to this Agreement.

J. Equal Employment Opportunity

During the performance of this Agreement, Contractor agrees as follows:

1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
6. In the event of Contractor's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive

Order 11246 of September 24, 1965, and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

7. Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

K. Prohibition on Contracting for Covered Telecommunications Equipment or Services

1. Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
2. Prohibitions.
 - (a) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
 - (b) Unless an exception in paragraph (c) of this clause applies, the contractor and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:
 - (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
 - (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential

component of any system, or as critical technology as part of any system;
or

- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

3. Exceptions.

- (a) This clause does not prohibit contractors from providing—
 - (i) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
 - (ii) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- (b) By necessary implication and regulation, the prohibitions also do not apply to:
 - (i) Covered telecommunications equipment or services that:
 - (I) Are not used as a substantial or essential component of any system;
and
 - (II) Are not used as critical technology of any system.
 - (ii) Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

4. Reporting requirement.

- (a) In the event the contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the contractor is notified of such by a subcontractor at any tier or by any other source, the contractor shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- (b) The Contractor shall report the following information pursuant to paragraph (4)(a) of this clause:
 - (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
 - (ii) Within 10 business days of submitting the information in paragraph (4)(b)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the contractor shall

describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

5. Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (5), in all subcontracts and other contractual instruments.

L. Domestic Preference for Procurements

1. As appropriate, and to the extent consistent with law, the contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products.
2. For purposes of this clause:
 - (a) Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (b) Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.