

City and County of San Francisco  
PORT OF SAN FRANCISCO

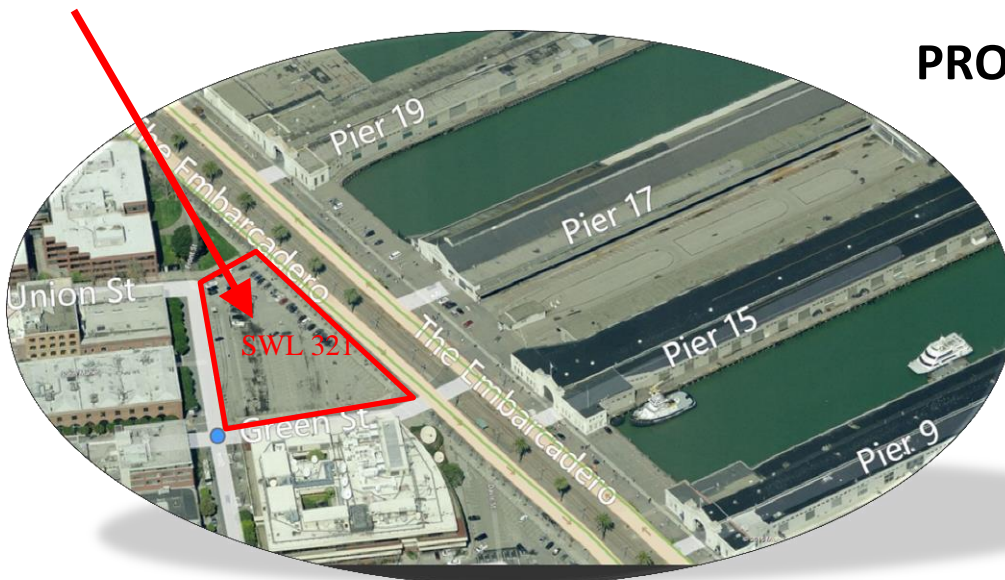
## SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT

CONTRACT NO. 2773

### PROJECT MANUAL

VOLUME 1 OF 1

11/2016



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Each Bid shall be enclosed in an envelope bearing the description:  
"BID FOR SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT (Port of San Francisco Contract No.  
2773)".

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*Vision: To Make San Francisco a beautiful, livable, vibrant and sustainable City.*



Printed on 30% post-consumer recycled stock

## **IMPORTANT SPECIAL NOTICE**

- **These Contract Documents include instructions regarding the new DIR SB 854 rules. Refer to the Advertisement for Bids for more details.**

SECTION 00 01 07

SEALS PAGE

The various portions of the specifications and other contract documents for project "SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT," Port of San Francisco Contract No. 2773, have been prepared under the direction of the following design professionals, licensed in the State of California.

ELECTRICAL ENGINEER

*Brandon Michael Yee*

*YEI Engineer, Inc.*

*Lic. #E-18384*

*Exp. 06/30/2018*



END OF SECTION



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## SECTION 00 11 13

## ADVERTISEMENT FOR BIDS

This Document includes a facsimile of the legal notice informing all qualified Bidders of the City's intent to solicit and receive Bids for the construction of the Project covered by the Bid Documents as defined herein for Contract No. 2773.

**INVITATION FOR BIDS**  
oFor

**Contract No. 2773**  
**SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT**

**Bid Opening Date: November 15, 2016 at 10:30 AM**  
**Port of San Francisco offices**  
**Pier 1, The Embarcadero**  
**San Francisco, CA 94111**

The Port of San Francisco (the "Port") announces an Invitation for Bids ("IFB") for construction of the SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT in San Francisco, CA. This project is to bring new electric service into Seawall Lot 321 (82 The Embarcadero, Lot 002). The project will include excavation across Front Street to the northwest corner of the Priority Public Parking Lot, installation of underground 3" conduit & wiring, constructing new curb ramps, and installation of new 10" x 20" electric service pedestal.

For more information, contact the Project Engineer, Arnel Prestosa at 415-274-0627.

Contract Estimate:	\$90,000
Time Allowed for Completion:	120 consecutive calendar days (Conditional, refer to Section 00 73 02)
Liquidated Damages:	Varies, refer to Section 00 73 02 for details
Contract Basis:	Lump Sum Bid Items
License Required:	Class "C-10" California Contractor's License
*CMD Subcontracting Goal:	N/A
Partnering Level:	N/A

\* CMD = Contract Monitoring Division of the City's General Services Agency

For contracts advertised on or after July 1, 2013, prime contractors and all subcontractors who are awarded contracts as a result of the bid process are required to use the Elation secure web-based Local Business Enterprise Utilization Tracking System (LBEUTS) to submit payment information including invoices and other related information. The Contract Monitoring Division (CMD) will use this information to monitor compliance with the City's 14B Local Business Enterprise Ordinance (San Francisco Administrative Code Chapter 14B).

Bidding Documents may be purchased directly at the Port's Engineering Division. Contact Tiffany Tatum at (415) 274-0411 to purchase Bidding Documents through the mail on a CD for an additional cost of \$20.

If necessary, the Port will issue bid date changes by addendum and will post current date for receiving bids on the Bids and Contracts page at the Port's website address: <http://sfport.com/rfps-rfps#Construcion>.

This notice is for information only. Please refer to the bid documents for specific requirements.

**Insurance Requirements:** Please refer to Section 00 73 16, and be prepared to submit requisite insurance documentation within ten (10) calendar days after the date on which the contract is awarded. The Port recommends that bidder consult with their insurance agents/brokers to ensure their timely capability to comply with the insurance requirements.

**Contractor Qualifications:** To be eligible for award of a contract for this project, each Bidder must be a certified Micro-LBE . In addition, each Bidder must have documented experience in performing a minimum of three (3) projects of similar scope/complexity during the last five (5) years.

**Bid security** in the form of a corporate surety bond or an irrevocable letter of credit (or certified check if required bid security is \$15,000 or less) for ten percent (10%) of the amount bid must accompany each bid. For information on the City's Surety Bond Program, call Nancy Owens at (415) 217-6578.

Pursuant to the Charter of the City and County of San Francisco §3.105(i), all contract awards are subject to certification by the Controller as to the availability of funds.

In accordance with the Port of San Francisco Commission Resolution No. 10-60, no bid will be accepted and no contract in excess of the Threshold Amount (set forth in Sections 6.3(A) and 6.1(M) of the Administrative Code) will be awarded by the City and County of San Francisco until such time as (a) the Port Commission approves the contract for award and (b) the Port Executive Director or designee then issues an order of award. Pursuant to the Charter of the City and County of San Francisco §3.105(i), all contract awards are subject to certification by the Controller as to the availability of funds.

In accordance with San Francisco Administrative Code Chapter 6, Sec. 6.4, Contractor shall use to the maximum extent possible, **recycled content materials**, rather than virgin materials.

On July 1, 2014, the registration program under section 1725.5 of the California Labor Code went into effect. The program requires that all contractors and subcontractors who bid or work on a public works project register and pay an annual fee to the California Department of Industrial Relations ("DIR").

Effective March 1, 2015, no contractor or subcontractor may be listed in a bid for a public works project unless registered with the DIR as required by Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

Effective April 1, 2015, no contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the DIR pursuant to Labor Code section 1725.5.

**Local Hire Policy:** This Project is **not** subject to the requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in Section 6.22(G) of the San Francisco Administrative Code. However, Bidders are hereby advised that compliance with the requirements of the Policy will be incorporated as a material term of any contract awarded for the Project. Refer to Contract Section 00 73 30 for more information.

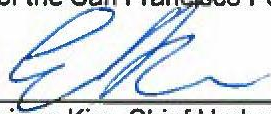
**Minimum wage rates** for this project must comply with the current General Prevailing Wage as determined by the State Department of Industrial Relations. Minimum wage rates other than applicable to General Prevailing Wage must comply with San Francisco Administrative Code, Chapter 12P, Minimum Compensation Ordinance.

Pursuant to San Francisco Administrative Code (SFAC) Section 6.25, "Clean Construction is required for the performance of all work unless a waiver of all or part of the requirements of that Chapter has been granted under Sections 25.5 or 25.7."

The Port reserves the right to reject any or all bids and waive any minor irregularities in any bid.



By Order of the San Francisco Port Commission,



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Eunejune Kim, Chief Harbor Engineer

END OF SECTION





## SECTION 00 21 13

## INSTRUCTIONS TO BIDDERS

## 1.1 BIDDING DEFINITIONS

- A. The Bid Documents consist of the Advertisement for Bids, Instructions to Bidders, the Bid and all accompanying Bid forms, Bid security or bond, Contract Monitoring Division employment requirements, the Drawings, the Project Manual, and all Addenda issued prior to receipt of Bids.
- B. Addenda are written or graphic instruments issued by the City prior to the receipt of Bids which modify or interpret the Bid Documents by additions, deletions or other changes.
- C. A Bid is a complete and properly executed offer, submitted in accordance with the Bidding requirements, to provide products and services and to perform the Work in accordance with the requirements of the Contract Documents, as defined under General Conditions § 1.01(21).
- D. The Total Bid Price is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bid Documents and it shall include the entire cost of all Work necessary for a complete and fully operational structure or facility in accordance with the requirements of the Contract Documents.
- E. A Bidder is a person or entity who submits a Bid.
- F. All definitions set forth in the General Conditions (Section 00 72 00) and in other Contract Documents are applicable to the Bid Documents.

## 1.2 DRAWING INDEX

- A. The Drawings, entitled "SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT" and dated November 2015, are incorporated as part of the Contract Documents. Refer to the Drawings for Index of Drawings.

## 1.3 BIDDING CONTACT INFORMATION

- A. For obtaining Bid Documents, and submittal of Bids and other required bidding and contract documents, contact Tiffany Tatum at:  
  
Port of San Francisco  
City and County of San Francisco  
ATTN: Tiffany Tatum  
Pier 1, The Embarcadero  
San Francisco, California 94111  
Telephone: 415-274-0411
- B. For technical questions on the Bid Documents, scheduling of special field visits, and submittal of Request for Product Substitutions, contact the following "Project Engineer":

Arnel Prestosa  
 Port of San Francisco  
 City and County of San Francisco  
 Pier 1, The Embarcadero  
 San Francisco, CA 94111  
 415-274-0400                      General Telephone No.  
 415-274-0627                      Direct Telephone No.  
 415-274-055                        Fax  
[Arnel.Prestosa@sfport.com](mailto:Arnel.Prestosa@sfport.com)                      Email

- C. For questions on CMD bid documents and submittal of required CMD Forms, contact the following “Contract Compliance Officer”:

Finbarr Jewell  
 Contract Monitoring Division  
 Pier 1, The Embarcadero  
 San Francisco, CA 94111  
 Telephone: 415-274-0511  
[FINBARR.JEWELL@SFGOV.ORG](mailto:FINBARR.JEWELL@SFGOV.ORG)

- D. For contracting or bid document questions, you may contact:

Tim Leung  
 Port of San Francisco  
 City and County of San Francisco  
 Pier 1, The Embarcadero  
 San Francisco, CA 94111  
 415-274-0400                      General Telephone No.  
 415-274-0551                      Fax  
[Tim.Y.Leung@Sfport.Com](mailto:Tim.Y.Leung@Sfport.Com)                      Email

#### 1.4 ISSUANCE OF BID DOCUMENTS

- A. Bid Documents may be obtained from Tiffany Tatum as described in §1.3, BIDDING CONTACT INFORMATION.
- B. Bid documents are available in electronic format on the Port of San Francisco Website at: <http://www.sfport.com/index.aspx?page=18>.

#### 1.5 EXAMINATION OF BID DOCUMENTS AND SITE

- A. If a Bidder objects on any grounds to any bid specification or legal requirement imposed by this Specification, the Bidder shall, not more than ten calendar days after this Contract is advertised, provide written notice to Engineer setting forth with specificity the grounds for the objection. The failure of a bidder to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.
- B. ***The Site is open to the public 24 hours/7 days per week.*** Before submitting a Bid, Bidder shall carefully examine the Bid Documents, visit the Site, and fully inform themselves of existing conditions and limitations, including all items described in the Bid Documents. No consideration will be granted for any alleged misunderstanding of the materials to be

furnished, Work to be performed or of actual conditions at the Site, it being understood that the tender of a Bid carries with it the agreement to complete all Work and comply with all conditions specified herein and indicated in the Bid Documents.

- C. The submission of a Bid will constitute an incontrovertible representation by Bidder of the following:
1. Bidder has complied with every requirement of this Article "Examination of Bid Documents and Site";
  2. the Total Bid price is premised upon performing and furnishing the Work required by the Contract Documents without exception;
  3. the Contract Documents are sufficient in scope and detail to accurately describe all terms and conditions for the performance of the Work; and
- D. Bidder shall include in its Total Bid Price the entire cost of all Work necessary for a complete and fully operational structure or facility in accordance with the requirements of the Contract Documents.

#### 1.6 QUESTIONS ON BID DOCUMENTS, ADDENDA, SUBSTITUTIONS

- A. Questions on Bid Documents: Prior to receipt of Bids, should a Bidder find discrepancies, ambiguities, or conflicts in the Bid Documents, or should there be doubt as to meaning of a provision or requirement, the Bidder shall notify at once the City in writing using the Questions on Bid Documents (QBD) form (Section 00 21 14), issued with the Bid Documents as a fillable Word file, and submit the same by email to the Project Engineer as specified on the form. Questions or requests for substitution received less than *three (3) business days (as defined by "Regular Working Hours" under Document 00700 § 1.01) prior to the date of receiving Bids* may not be answered.
- B. Addenda: Interpretations or clarifications considered necessary by the City in response to QBDs will be issued by written Addenda to all Bidders of record. Only questions answered by formal written Addenda will be binding; oral and other interpretations or clarifications will be without legal effect.
1. The City may also issue Addenda to modify the Bid and/or Contract Documents as deemed necessary or advisable by the City.
  2. Each Bidder shall be responsible for ascertaining, prior to submittal of its Bid, that it has received all issued Addenda. Bidders shall acknowledge Addenda by number and date received using Section 00 43 20 (Acknowledgement of Receipt of Addenda). Refer to Section 00 43 20 for additional instructions.
- C. Substitutions: The products specified in the Bid Documents establish a minimum standard of required type, function and quality that substitutions must meet to be considered acceptable to the City. To obtain acceptance of unspecified "or equal" products, systems, materials, or services, Bidders shall submit a completed QBD form accompanied by a Request for Substitution form (Section 00 49 18) and required supporting documentation. The City will consider properly-completed substitution requests submitted no later than 10 calendar days prior to the date for opening bids. After that date, the City will not accept substitution requests during the Bid period.
1. The burden of proof of the merit of the proposed substitute item is upon the Bidder. Insufficient information will be grounds for rejection of a proposed substitution.

2. The City's decision of approval or disapproval of a proposed substitute item will be final and conclusive as to all Bidders.
3. If the City approves a proposed substitute item, such approval will be set forth in an Addendum issued to all prospective Bidders.
4. Refer to Article "Information to be Submitted after Bid Opening" for requirements regarding requests for substitution submitted by the successful Bidder after award of the Contract.
5. Bidders must base their Bids on materials, products, services and systems specified in the Contract Documents or listed by name in Addenda.

## 1.7 BID SECURITY

- A. A Bid Security, in an amount equal to 10 percent of the total Bid Price, shall be submitted with each Bid. The City will reject as non-responsive any Bid submitted without the necessary Bid Security.
- B. The bid security may be in the form of a corporate surety bond, a certified check payable on sight to the City and County of San Francisco (for Bid Security amounts less than or equal to \$15,000), or an irrevocable letter of credit, on a bank or trust company doing business and having an office in the State of California, having a combined capital and surplus of at least \$50,000,000, and subject to supervision and examination by Federal or State authority, as provided for in San Francisco Administrative Code section 6.21(A)(4).
- C. If a Bidder uses a Bid Bond for its Bid Security, the Bidder must use a hardcopy version of the Bid Bond form provided by the City (Section 00 43 13) or an exact, true and correct photocopy of such form. The Bid Bond form may not be retyped, reformatted, transcribed onto another form, or altered in any manner except for the purpose of completing the form. A Bidder's failure to use the City's Bid Bond form may result in rejection of the Bidder's Bid.
- D. If a Bid Bond is submitted, the Bond must be duly executed on behalf of the surety in accordance with applicable law. If an attorney-in-fact executes the Bid Bond on behalf of the surety, a copy of the current power of attorney bearing the notarized signature of the appropriate corporate officer shall be included with the Bid Bond. Submitted Bid Bonds must contain ORIGINAL signatures of both surety and principal. Bid Bonds which do not contain original signatures (photocopies are not acceptable) will be rejected. In addition, the surety executing the Bid Bond must be legally authorized to engage in the business of furnishing surety bonds in the State of California, and must have either a current A.M. Best Rating of not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570).
- E. If an irrevocable letter of credit is submitted, Bidder must submit the letter on a form provided by the City. If Bidder intends to submit an irrevocable letter with its Bid, it must notify the Port at least 5 working days prior to the date of Bid opening.
- F. If the successful Bidder fails to execute the Contract and/or furnish all items required by the Bid Documents within the time limits specified, the City may reject such Bidder's Bid and select the next apparent lowest responsible Bidder until all Bids have been exhausted or the City may reject all Bids. The Bidder whose Bid is rejected for such failure(s) shall be liable for and forfeit to the City the amount of the difference, not to exceed the amount of the Bid

Security, between the amount of the Bid of the Bidder so rejected and the greater amount for which the City procures the Work.

## 1.8 STATUTORY BIDDING REQUIREMENTS

- A. Pursuant to section 6.21.A.9 of the San Francisco Administrative Code, Bidder must submit on the Proposed Subcontractors Form attached to the Bid forms (refer to Section 00 43 36) information regarding Subcontractors that Bidder intends to employ to perform Work in an amount in excess of one-half of one percent. Bidder shall list only one such Subcontractor for each portion of the Work. Bidder shall complete and submit the Proposed Subcontractors Form with its Bid.
- B. Pursuant to **California Assembly Bill 44**, (which amended Public Contract Code Section 4104), Bidder must provide the following information with its Bid for each listed subcontractor: i) the name of business; ii) the location of the place of business; iii) portion of work that will be performed by the subcontractor; and iv) the California contractor license number of each subcontractor who will perform work
1. An inadvertent error in listing the California contractor license number for each subcontractor listed number shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive if the corrected contractor's license number is submitted within 24 hours after the bid opening and provided the corrected contractor's license number corresponds to the submitted name and location for that subcontractor.
  2. Failure to complete the required forms as described above, e.g., if the box on the form is blank, the Bidders failure to provide the required information may result in a determination that the Bid is non-responsive.
- C. **For all Bids submitted on or after March 1, 2015, Bidder must submit proof that Bidder and all identified subcontractors are currently registered with the California Department of Industrial Relations under California Labor Code section 1725.5.**
- D. In conformance with Public Contract Code Section 7106, a Noncollusion Affidavit (Section 00 45 80) is included with the Bid Form. Signing the Bid Form shall also constitute signature of the Noncollusion Affidavit.
- E. Bidder shall complete and submit with its Bid a Highest Prevailing Wage Rate Certification form (Section 00 45 60) certifying its intention to comply with section A7.204 of the San Francisco Charter, section 6.22E of the San Francisco Administrative Code, and California Labor Code section 1770 *et. seq.*
- F. Pursuant to section 6.22(N) of the San Francisco Administrative Code Bidder shall complete and submit with its Bid a Certificate of Bidder Regarding Apprenticeship Training Program form (Section 00 45 65).
1. Pursuant to section 1777.5(o) of the California Labor Code the above apprenticeship program requirements shall not apply if Bidder's Total Bid Price is less than \$30,000.
- G. Contractor License: In accordance with the provisions of the California Business and Professions Code section 7028.15, a bid submitted to the City by a contractor who does not hold the license(s) required to perform the Work, issued in accordance with chapter 9 of the Business and Professions Code, shall be considered non-responsive and shall be rejected by the City. Failure of the Bidder to obtain proper and adequate licensing for award of the

Contract shall constitute a failure to execute the Contract and shall result in the forfeiture of the Bidder's Bid Security. Bidder must be properly licensed at all times during the performance of the Work. Bidder shall list on the Bid Form its current contractor license number

1. Refer to Section 00 11 13, titled: Advertisement for Bids, for Contractor's license requirements.
- H. Pursuant to chapter 12B and chapter 14B of the San Francisco Administrative Code, each Bidder shall execute and submit with its Bid the Certification of Bidder Regarding Nondiscrimination in Contracts and Benefits form attached to the Bid forms (refer to Section 00 45 70). If a Bidder fails to submit the form as required, then the Bidder may be deemed non-responsive and its Bid may be rejected.
1. Refer to Section 00 73 73 for nondiscrimination contracting requirements.
  2. As a condition precedent to award of the Contract, Bidder shall execute the Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits form (refer to CMD website) and submit the completed form and required documentation within 5 working days after the official date of Bid opening to the CMD for approval.
  3. If said form is not submitted timely or the CMD determines that Bidder is non-compliant, then Bidder may be deemed non-responsive and its Bid may be rejected.

#### 1.9 DEBARMENT AND SUSPENSION CERTIFICATION REQUIREMENTS

- A. Bidder shall complete and submit with its Bid the Certification of Bidder Regarding Debarment and Suspension form (Section 00 45 82).
- B. Bidder further agrees by submitting this Bid that it will require its subcontractors, lower-tier subcontractors and suppliers to complete and submit to the City within 10 working days after the date of the City's notification of the lowest Bidder the Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension form (Section 00 49 14) for lower tier covered transactions of \$25,000 or more.
- C. The inability of Bidder or its subcontractors, lower-tier subcontractors or suppliers to provide the above certifications will not necessarily result in denial of award of the Contract. In the event that Bidder or its subcontractor, lower-tier subcontractor or supplier is unable to provide such certification because it currently violates or has previously violated conditions of the certification, a description of each instance of violation and explanation shall be attached to its certification. The certification or explanation will be considered in connection with the City's determination whether to award the Contract. However, failure of Bidder or its subcontractors, lower-tier subcontractors or suppliers to furnish a certification or an explanation may disqualify such Bidder from eligibility for award of the Contract.
- D. Bidder agrees by submitting this Bid that, should the Contract be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this Contract, unless authorized by the City.
- E. The certifications (Sections 00 45 82 and 00 49 14) are a material representation of fact upon which reliance is placed when the City determines to enter into this Contract.



1. Contractor shall provide immediate written notice to the City if any time Contractor learns that its certification or the certification of a lower tier participant was erroneous when submitted or has become erroneous by reason of changed circumstances.
- F. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this Article "Debarment and Suspension Certification Requirements", shall have the meanings set forth in the "Definitions" and "Coverage" sections of rules implementing Federal Executive Order 12549.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this Article "Debarment and Suspension Certification Requirements". The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under Paragraph C of this Article "Debarment and Suspension Certification Requirements", if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this Contract, in addition to other remedies available, the City or other government agency may terminate this Contract for cause or default.

#### 1.10 CONTRACTOR BIDDER QUALIFICATIONS

- A. As a condition to the award of the Contract, apparent low Bidder, and any other Bidder so requested, shall, within 5 working days from the date of Bid opening, submit to the Port the information required by this Article "Contractor Bidder Qualifications" regarding the qualifications and experience of Bidder and certain proposed key team members and entities (i.e., Subcontractors and/or Suppliers) proposed to perform the Work. Failure to timely provide and furnish complete information prior to contract award may result in a determination that Bidder is not responsible and result in the rejection of Bidder's bid. No award will be made until a Bidder submits complete qualification information to the City.
1. Specifically, the Bidder shall submit with its Bid (i) a completed Bidder's Qualifications form (Section 00 45 13), as required by Subparagraph "Bidders' Qualification Statement" below; and (ii) a completed and executed Release and Waiver Agreement (Section 00 45 16).
  2. To evaluate Bidder's ability to perform the Work in accordance with the Contract Documents to the City's satisfaction, the City may conduct reasonable investigations and reference checks of Bidder, proposed Subcontractors, Suppliers, key personnel and other persons and organizations as City deems necessary to assist in its evaluation of Bidder's Bid and to establish Bidder's responsibility.

- B. Bidders' Qualification Statement. Submit sufficient information on the Bidder's Qualification form (Section 00 45 13), and additional sheets as necessary, to demonstrate to the satisfaction of the City that *the apparent low bidder is a licensed Class A or C-10 contractor who has: successfully completed three (3) projects of similar scope/complexity during the last five (5) years.*
- C. Experience Statements. The apparent low Bidder and any other Bidder so requested shall submit to the Contract Administration Division within five (5) working days after the Bid opening sufficient information on completed Experience Statement forms (Section 00 49 12), and additional sheets as necessary, to demonstrate to the satisfaction of the City the qualifications and experience as a licensed Class A or C-10 contractor to performs the work.

#### 1.11 LOCAL BUSINESS ENTERPRISE (LBE) PROGRAM

- A. Bidders' attention is directed to the City's Non-Discrimination requirements for this Contract as specified in **CMD Attachment 4** and in accordance with Chapter 14B. Refer to the following CMD website to download a copy of CMD Attachment 4: <http://sfgsa.org/index.aspx?page=5364>.
- B. Refer to Supplementary Instructions to Bidders: Local Business Enterprise (LBE) Program (Section 00 22 11) for required CMD bid forms.

#### 1.12 SUBMISSION AND OPENING OF BIDS

- A. Bids shall be submitted to Tim Leung, Port of San Francisco office, and at the place specified in the Advertisement for Bids, or as subsequently specified if changed by Addendum.
1. The deadline for submitting Bids will be the time stated in the Advertisement for Bids, exactly, the time to be determined per United States Official Time (Pacific), accessed at: [www.time.gov](http://www.time.gov).
  2. The City may decline to accept Bids received after the specified date and time.
- B. Bidder shall fill in all blanks as appropriate on the Bid Form (Section 00 41 00) and shall submit with its Bid all those forms listed in the Bidding Forms Checklist (Section 00 40 13), properly completed and executed as needed.
- C. The City reserves the right in its sole discretion to allow the successful Bidder a period of time reasonable under the circumstances after Bid opening, which shall be no more than 14 days unless extended in writing by the City, to submit additional forms or documents required by the City and to reject the Bid if such forms or documents are not properly submitted within the time allotted by the City.
- D. Envelopes containing Bids shall be sealed, addressed to San Francisco Port Commission, and designated as "Bid for SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT (Port of San Francisco Contract No. 2773)." Envelopes shall bear the name and address of the Bidder. Envelopes shall also bear the Project Engineer information as follows: "Project Engineer: Arnel Prestosa, 415-274-0627"; and the date and time of the bid opening as specified in the Advertisement for Bids, or as subsequently specified if changed by an Addendum.

- E. Bids that are mailed or sent by messenger service shall have the previously described envelope placed inside an envelope addressed as described in Paragraph A of this Article "Submission and Opening of Bids". It shall be Bidder's responsibility to see that Bids are sent in sufficient time to be received at that address and taken to the place of the Bid opening prior to the time specified in the Advertisement for Bids.
  - 1. Oral, telephonic, electronic mail (email), or facsimile Bids are invalid and will not be accepted.
- F. Bids which are in any way conditional or which make alterations, omissions, or qualifications to the terms of the Bid or Bid Documents may be rejected as incomplete or qualified.
- G. All Bid data, except signatures, shall be typed or printed legibly in non-erasable ink, with all strikeouts and corrections initialed by the person signing the Bid.
- H. Each Bid shall show the full business address of the Bidder and be executed with its usual signature. A Bid by a partnership shall furnish the full names of all partners and shall be signed in the partnership name by one member of the partnership or by an authorized representative, followed by the signature and title of the person signing. A Bid by a corporation, with corporate seal affixed, shall be executed with the legal name of the corporation, followed by the name of the state of incorporation, and the signature and title of the person executing. The name and title of the person executing shall also be typed or printed below the signature. When required by the City, satisfactory evidence of the authority of the officer executing on behalf of the corporation shall be furnished.
- I. **Bidder's Registration with State Department of Industrial Relations: For each Bid submitted on or after March 1, 2015, and when required by the City, satisfactory evidence that the Bidder is currently registered with the California Department of Industrial Relations as required by California Labor Code section 1725.5 shall be furnished.**
- J. The City reserves the right after opening Bids to reject any or all Bids, and to waive any minor irregularity in a Bid.
 

A bid may be rejected if the City determines that any of the bid item prices are materially unbalanced to the potential detriment of the City.
- K. Bids will be opened and read in public on the date and time specified for Bid Opening; subsequently, the City will furnish Bid tabulations to a Bidder who requests said information.
  - 1. Bidders requesting information on the Bid results shall make such requests in writing at least 24 hours after the receipt of Bids to the Port.

#### 1.13 INFORMATION TO BE SUBMITTED AFTER BID OPENING

- A. After the Bid Opening, required Bidders shall submit properly completed and executed Supplementary Bid Forms within the specified time and to the appropriate person as listed in the Supplementary Bidding Forms Checklist (Section 00 49 00) and as described below.
- B. Within 10 working days after the date of the City's notification of the lowest Bidder, the low Bidder, and any other Bidder so requested, shall submit the following:

1. Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension form (Section 00 49 14) completed by each subcontractor, lower-tier subcontractor and supplier for lower tier covered transactions of \$25,000 or more.
  2. Certificate of Subcontractor Regarding Apprenticeship Training Program form (Section 00 49 15) completed by each subcontractor who employs journeymen or apprentices in an apprenticeable craft or trade if Bidder's Total Bid Price is \$30,000 or more or if the Contract Time is 20 days or more. If the subcontractor's Work involves one or more apprenticeable trades which are declared on Section 00 49 15 to be a signatory to a recognized apprenticeship or training program, written proof of status must be submitted for each such trade.
- C. Refer to Supplementary Instructions to Bidders: Local Business Enterprise (LBE) Program (Section 00 22 11) for additional CMD submittal requirements after bid opening.
- D. Refer to Article "Bidder's Qualifications" of this Section 00 21 13 for additional qualifications submittal requirements after Bid opening.
- E. Requests For Product Substitution: If the successful Bidder wishes to propose an "or equal" or other product substitution after Bid opening, said Bidder must make such request within the time limit following the date of the Award as specified on the Request for Substitution form (Section 00 49 18). Requests shall be granted or denied at the City's sole discretion. Refer to Section 00 49 18.

#### 1.14 WITHDRAWAL OR REVISION OF BID

- A. Prior to the deadline for Bid opening, a submitted Bid may be revised or withdrawn by notice to Contract Administration Division. Such notice shall be in writing and signed by Bidder and, to be effective, must be received on or before the deadline for Bid opening.
1. A revised Bid shall be worded so as to not reveal the amount of the original Bid's Total Bid Price. Bid Security shall be in an amount sufficient for the Bid as revised or resubmitted.
  2. A withdrawn Bid may be submitted on or before the deadline for Bid opening.
- B. Those Bids not withdrawn prior to the scheduled time for receipt of Bids shall not be withdrawn or modified for a period of 90 days after Bid Opening.

#### 1.15 OBJECTIONS TO BID DOCUMENTS, BID PROTESTS

- A. Failure by a Bidder to comply with the procedures set forth in this Paragraph will render any Objection or Protest inadequate and may result in its rejection by the City.
- B. The City will accept and consider the following types of Objections and Protests if they are timely submitted and meet all other applicable requirements of this Paragraph:
1. Objections to any provision or legal requirement set forth in or imposed by the Bid Documents or Contract Documents that are apparent, or reasonably discoverable, must be submitted in writing by the prospective bidder prior to the submission of its Bid;
  2. Bid Protests submitted by a Bidder after Bid opening against another Bidder or Bidders; and

3. Protests submitted by a Bidder whose Bid has been rejected by the City based on a determination by the City that the Bid is non-responsive and/or the Bidder is not responsible.
- C. Objections Prior to Submission of Bids. Should a prospective Bidder object on any ground to any provision or legal requirement set forth in the Bid Documents or Contract Documents (including all Addenda), including but not limited to Objections based on allegations that: (i) the Bid Documents or Contract Documents are unlawful in whole or in part; (ii) one or more of the requirements of the Bid Documents or Contract Documents is onerous, unfair or unclear; (iii) the structure of the Bid Documents does not provide a correct or optimal process for the solicitation of the Work; (iv) the Bid Documents or Contract Documents contain one or more ambiguity, conflict, discrepancy or other error; or (v) the Bid Documents or Contract Documents unnecessarily precludes alternative solutions to the Work, the prospective Bidder must provide timely written notice of Objection as set forth below.
1. **An Objection must be in writing and must be received by the City no later than 10 calendar days prior to the date of Bid opening.** If an Objection is mailed, the prospective Bidder bears the risk of non-delivery within the required time period. Objections should be transmitted by Certified Mail-Return Receipt Requested or by other means that objectively establish the date of receipt by the City. Telephoned Objections will not be considered.
  2. Objections shall be transmitted to Chief Harbor Engineer.
  3. The Objection shall state the basis for the Objection, refer to the specific requirement or portion of the Bid Documents or Contract Documents at issue, and shall describe the modification to the Bid Documents or Contract Documents sought by the prospective Bidder. The Objection shall also include the name, address, telephone number, and email address of the person representing the prospective Bidder.
  4. The City, at its discretion, may make a determination regarding an Objection without requesting further documents or information from the prospective Bidder who submitted the Objection. Accordingly, the initial Objection must include all grounds of objection and all supporting documentation or evidence reasonably available to the prospective Bidder at the time the Objection is submitted. If the prospective Bidder later raises new grounds or evidence that were not included in the initial Objection, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.
  5. Upon receipt of a timely and proper Objection, the City will review the Objection and conduct an investigation as it deems appropriate. As part of its investigation, the City may consider information provided by sources other than prospective Bidder. At the completion of its investigation, the City will provide a written determination to the prospective Bidder who submitted the Objection. If required, the City may extend the Bid opening date to allow sufficient time to review and investigate the Objection, and issue Addenda to all Bidders incorporating any necessary changes to the Bid Documents or Contract Documents.
  6. Objections not received within the time and manner specified will not be considered. **A Bidder's failure to provide the City with a written Objection as specified above on or before the time specified above shall constitute a complete and irrevocable waiver of the ground(s) of objection and forfeit the Bidder's right to raise such ground(s) of objection later in the procurement process, in a Government Code Claim, or in other legal proceedings.**

7. A Bidder may not rely on an Objection submitted by another Bidder, but must timely pursue its own Objection.
- D. Bid Protest Against Another Bidder. A Bidder may file a protest with the City against another Bidder or Bidders subject to the provisions of this Paragraph. The procedures and time limits set forth in this Paragraph are mandatory and are a Bidder's sole and exclusive remedy in protesting other Bidders' Bids. **Failure to comply with these procedures shall constitute a waiver of any right to pursue the Bid Protest, including filing a Government Code claim or other legal proceedings.** Bid Protests shall be subject to the following time limitations, restrictions and procedures.
1. A Bid Protest shall be in writing and shall be received by the City no later than 5:00 p.m. on the 5th working day after the date of Bid opening. If a Bid Protest is mailed, the Bidder filing the Protest bears the risk of non-delivery within the required time period. Protests should be transmitted by Certified Mail-Return Receipt Requested or by other means that objectively establish the date of receipt by the City. Telephoned Protest will not be considered.
  2. The Bidder filing the Protest must concurrently transmit a copy of the initial Protest document and any attached documentation to the other Bidder(s) who may be adversely affected by the outcome of the Protest.
  3. The City will provide the protested Bidders with 5 working days from their receipt of a Bid Protest to respond to the Protest.
  4. Bid Protests, responses, and supplemental information, if any, shall be transmitted to Chief Harbor Engineer.
  5. The Bid Protest shall state the basis for the Protest and provide supporting evidence, refer to the specific portion(s) of the Bid that forms the basis of the Protest, and include the name, address, telephone number, and email address of the person representing the prospective Bidder.
  6. The City, at its discretion, may make a determination regarding a Protest without requesting further documents or information from the prospective Bidder who submitted the Protest. Accordingly, the initial Protest submittal must include all grounds of Protest and all supporting documentation or evidence reasonably available to the prospective Bidder at the time the Protest is submitted. If the prospective Bidder later raises new grounds or evidence that were not included in the initial Protest submittal, but which could have been raised at that time, then the City may not consider such new grounds or new evidence.
  7. Upon receipt of a timely and proper Protest, the City will review the Protest and conduct an investigation as it deems appropriate which, among other things, may include the review of information provided by or available from sources other than the protesting and protested Bidders. The City may also consider supplemental correspondence relating to the original ground(s) of Protest submitted by a protesting Bidder and/or a protested Bidder to the extent the City determines that such information will assist it in resolving the Protest. At the completion of its review and investigation, the City will provide a written determination to the Bidder who submitted the Protest, with a copy to the protested Bidder(s).
  8. Protests not received within the time and in the manner specified may not be considered.
  9. A Bidder may not rely on a Protest submitted by another Bidder, but must timely pursue its own Protest.
  10. If the City determines that a Protest is frivolous, the protesting Bidder may be determined to be non-responsible and that Bidder may be determined to be ineligible for future contract awards.

- E. Rejection of a Bid by the City. If the City determines that a Bidder's Bid is non-responsive or that a Bidder is not responsible, the City will issue a Notice of non-responsiveness and/or non-responsibility, as appropriate. Determination of the Notice will set forth the basis for the City's determination and rejection of the Bid.

#### 1.16 AWARD OF CONTRACT

- A. **Contractor's and Subcontractors' Registration with State Department of Industrial Relations:** In accordance with California Labor Code sections 1771.1 and 1725.5, no contract can be awarded to a Bidder on or after April 1, 2015 without proof that the Bidder and all identified subcontractors are currently registered with the California Department of Industrial Relations.
- B. In accordance with the Port of San Francisco Commission Resolution No. 10-60, the Port Executive Director is authorized to award public works contracts less than or equal to the threshold amount (as set forth in Sections 6.3(A) and 6.1(M) of the Administrative Code).
- C. Pursuant to Charter section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.
- D. The Contract, if awarded, will be awarded to the responsible Bidder who submits the lowest responsive Bid.
- E. The City will issue a written notification of award of the Contract to the successful Bidder.

#### 1.17 CONTRACT SECURITY

- A. Article 10 of the General Conditions (Section 00 72 00) sets forth the City's requirements as to performance and payment (labor and material) bonds.
- B. When the successful Bidder delivers the executed Agreement, it must be accompanied by the required performance and payment bonds.

#### 1.18 EXECUTION OF CONTRACT

- A. The successful Bidder shall deliver within one (1) week after the date of the City's written notification of award of the Contract the following properly completed and signed documents to the Port of San Francisco.
  - 1. Contract Agreement (Section 00 52 00), 2 original copies with the successful Bidder's signature affixed thereto.
    - a. If successful Bidder is "doing business as" company, attach a copy of "dba" certificate filed with and certified by the County Clerk.
  - 2. Performance bond and payment (labor and material) bond (Section 00 61 13), 2 original copies of each.
  - 3. Insurance certificates and endorsements, 2 original copies of each, including the following:
    - a. The Contract number "2773" and Project title "SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT", the agent names and telephone numbers, and name the certificate holder as follows:

**Engineering Division**  
**ATTN: Tim Leung**  
Port of San Francisco  
Pier 1, The Embarcadero  
San Francisco, CA 94111

- b. Name as additional insured the parties as specified in Section 00 73 16, Article "Insurance for Others".
  - c. Otherwise comply with applicable requirements as specified in Section 00 73 16.
4. Corporate authority in the form of resolution or certified extract from the minutes authorizing the signatory to sign on behalf of the corporation.
  5. Power of Attorney authorizing signatories to execute Performance and Payment Bonds.
  6. **For contracts to be awarded on or after April 1, 2015, proof that Bidder and all subcontractors are currently registered with the California Department of Industrial Relations under California Labor Code section 1725.5.**
  7. Proof of Status as Signatory to Apprenticeship Program or Proof of Payment if Bidder's Total Bid Price is \$30,000 or more:
    - a. If successful Bidder declared that it is a signatory to a recognized apprenticeship or training program on the Certificate of Bidder Regarding Apprenticeship Training Program form (Section 00 45 65), successful Bidder shall submit written proof of its status as a signatory.
    - b. For each subcontractor that declared it is a signatory to a recognized apprenticeship or training program on the Certificate of Subcontractor Regarding Apprenticeship Training Program form (Section 00 49 15), successful Bidder shall submit written proof of each such subcontractor's status as a signatory.
    - c. Contractor and all of its subcontractors that are not signatories to a recognized apprenticeship or training program as described herein shall be required after award of the Contract to submit with each progress payment request, beginning with the second such request, proof that successful Bidder (Contractor) or its subcontractor(s) contribute to a fund or funds to administer and conduct the apprenticeship program(s) in the area of the Site for each apprenticeable trade or craft that Contractor or its subcontractor(s) is providing labor to the Project. Such contributions shall be made on the same basis and in the same manner as the other contractors do, or, where the trust fund administrators are unable to accept such funds, Contractor and its subcontractor(s) must provide written proof of payment of a like amount to the California Apprenticeship Council.
- B. Additionally, if not included with the Bid, the successful Bidder shall deliver to the Port within the time limit set forth above, the required San Francisco business tax registration numbers and contractor license numbers as specified in Article "Statutory Bidding Requirements."
  - C. Failure to deliver to the Port of San Francisco one or more of the documents listed in this Article "Execution of Contract" shall constitute a refusal to enter into the Contract and may result in forfeiture of Bidder's bid security.



- D. The successful Bidder must be in compliance with the Equal Benefits Provisions of Chapter 12B of the City's Administrative Code either at the time of Contract Award, or within 2 weeks of the date of Contract Award. Bidder's failure to timely obtain Chapter 12B compliance certification from CMD may result in Award of the Contract to the next lowest responsible, responsive Bidder, or re-bidding of the Contract at the discretion of the City

1.20 LOCAL HIRING REQUIREMENTS

- A. The San Francisco Local Hiring Policy for Construction, San Francisco Administrative Code section 6.22(G), will not apply to this Contract.

END OF SECTION



DOCUMENT 00 21 14

QUESTIONS ON BID DOCUMENTS (QBD)

*Potential Bidders must complete this QBD Form and submit to the address below no later than three (3) business days (as defined by "Regular Working Hours" under Document 00700 § 1.01) before the bid opening date.*

Project: SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT

Contract No. 2773

To: Port of San Francisco  
 Pier 1, The Embarcadero  
 San Francisco, CA 94111  
 Tel: 415-274-0627 Fax: 415-274-0551  
 Attention: Arnel Prestosa  
 Email: [Arnel.Prestosa@sfport.com](mailto:Arnel.Prestosa@sfport.com)

City Use Only	
QBD No.	
Received by:	
Date Received:	
Addendum Issued?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Date Sent Response:	

CONTRACTOR'S QUESTIONS	
Company Name: _____	Date _____
Contact Name: _____	Tel: _____
Title: _____	Fax: _____
<i>Check One Only (Use separate form for each specifications and drawing question.)</i>	
<input type="checkbox"/> Spec. Section: _____	Paragraph(s): _____
<input type="checkbox"/> Drawing Sheet: _____	Detail(s): _____
Question:	

CITY'S REPLY	
<input type="checkbox"/> Mark this box if the QBD can be answered by Bidder's review of the documents. Reply with location(s) where the information can be obtained.	
Reply:	
By: _____	Bureau/Firm: _____
Date: _____	

The reply is an answer to a Bidder's question. The reply does not change the Bid Documents unless the information contained therein is issued in an Addendum. At the sole discretion of the City, the question and reply may be returned to the questioner and distributed to all bidding general contractors for informational purposes.



## SECTION 00 22 11

SUPPLEMENTARY INSTRUCTIONS TO BIDDERS: LOCAL BUSINESS ENTERPRISE (LBE)  
PROGRAM

## 1.1 CONTRACT MONITORING DIVISION (CMD) BIDDING REQUIREMENTS

- A. This Contract is subject to the applicable requirements of Chapter 14B of the San Francisco Administrative Code.
- B. Bidders' attention is directed to the City's Non-Discrimination requirements for this Contract as specified in CMD Attachment 4. A copy of Attachment 4 is attached to the end of this Section.
- C. All references to Section 14B in this Section shall mean the Sections in Chapter 14B of the San Francisco Administrative Code.
- D. Prime contractors and subcontractors who are awarded contracts as a result of the bid process are required to use the Elation secure web-based Local Business Utilization Tracking System (LBEUTS) to submit 14B prime contractor and subcontractor payment information, including monthly progress payment invoices. The LBEUTS replaces CMD Forms 7 and 9. Refer to CMD Attachment 4 for more details.
- E. Effective July 1, 2012, the Mayor transferred all of the duties and functions of the Human Rights Commission ("HRC") and the Director of the HRC under Administrative Code Chapter 14B, with the exception of the authority of the Director of the HRC set forth in Section 14B.9(D) and 14B.17(F), and administration of the Chapter 12B Equal Benefits Ordinance from the HRC to the Contract Monitoring Division of the Office of the City Administrator. Until Chapter 14B is amended to reflect the transfer, all references in the Ordinance and implementing Rules and Regulations to the "Director" shall refer to the Director of the CMD, and all references to the Human Rights Commission shall refer to the City Administrator.
- F. To be eligible for award of the Contract, each Bidder must be a certified Micro-LBE and comply with all applicable requirements of the San Francisco Contract Monitoring Division ("CMD").
- G. Contractor must be certified with CMD. A Bidder that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the Bid is due, is not eligible to bid on the Contract even if the firm is later certified or ultimately prevails in its appeal.

- H. Copies of the LBE certification applications and the listing of CMD-certified LBEs can be obtained from the CMD website, [www.sfgov.org/cmd](http://www.sfgov.org/cmd), or at:

Contract Monitoring Division  
30 Van Ness Avenue, 200  
San Francisco, CA 94102  
(415) 581-2310

## 1.2 LBE SUBCONTRACTOR PARTICIPATION

- A. The LBE subcontracting participation requirements under Section 14B.8 do not apply to this contract.
- B. Acceptance of Bids shall not constitute approval by the City of the list of subcontractors submitted with any Bid. To obtain such approval, each Bidder and its subcontractors shall satisfactorily complete, execute, and submit all required CMD forms in a timely manner, and be in compliance with all other applicable provisions of the Contract Documents.

## 1.3 BID DISCOUNTS

- A. The bid discount provisions apply to “San Francisco First” contracts.

## 1.4 GOOD FAITH EFFORTS REQUIREMENTS

- A. Good Faith Efforts do not apply to to this Contract.

## 1.5 CMD BIDDING FORMS

- A. No later than 5 working days after the date of the City's notification of the bid results, the apparent low Bidder, and any other Bidder so requested, shall submit completed and properly signed the following CMD Forms to CMD Compliance Officer:
1. FORM 3: CMD Non-Discrimination Affidavit.
  2. FORM 6: CMD LBE Subcontractor Participation Affidavit
- B. Failure to submit properly completed CMD Bid forms may render the Bidder non-responsive and may be cause for rejection of its Bid.

## 1.6 SURETY BOND PROGRAM

- A. Bidders are alerted to the City's surety bond program, which assists LBE contractors in obtaining bonding and financing for contracts awarded by the **San Francisco Port Commission**. For further information regarding enrollment eligibility and program services contact Jennifer Elmore at (415) 217-6578.

END OF SECTION

**CMD ATTACHMENT 4**

# CITY & COUNTY OF SAN FRANCISCO CONTRACT MONITORING DIVISION



## CMD ATTACHMENT 4

### *Requirements for Micro-LBE Set-Aside Construction Contracts*

For CONTRACTS \$600,000 & LESS THAT ARE ADVERTISED ON OR AFTER AUGUST 1, 2016

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#### **PART I. GENERAL**

##### **1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B**

- A. To be eligible for this contract award, bidders must agree to comply with the Local Business Enterprise (“LBE”) requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4, and Chapter 14B (where applicable), and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Contract Monitoring Division (“CMD”).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any bidder or contractor to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the CMD website at <http://www.sfgov.org/cmd>.
- C. Micro-LBE Set-Aside Program

Under Section 14B.7(K)(1) of the Ordinance, the City may set-aside for competitive award to Micro-LBEs any construction contract estimated by the Contract Awarding Authority to be \$440,000 or less (for contracts that are advertised on July 1, 2015 to July 31, 2015) and \$600,000 or less (for contracts that are advertised on or after August 1, 2015). The Certification application is available on the CMD website at <http://www.sfgov.org/cmd>.

The competitive award requirements of the Municipal Code shall otherwise apply to contracts for the set-aside program, except that if (a) fewer than two Micro-LBEs submit bids, or (b) the contract awarding authority determines that the contract would not be awarded at a fair market price, then the Contract Awarding Authority may reject all bids and remove the contract from the set-aside program.

*For assistance with this CMD Attachment  
and/or assistance with the Equal Benefits Program,  
please contact the CMD Main Office at (415) 581-2310*





Contracts that are set-aside for award to Micro-LBEs shall not be subject to the LBE subcontracting participation requirement under Section 14B.8. Micro-LBEs that subcontract any portion of a set-aside contract should subcontract to businesses certified as Micro-LBEs to the maximum extent possible. Micro-LBEs that subcontract any portion of a set-aside contract must serve a commercially useful function based on the contract's scope of work.

The Micro-LBE Prime must perform at least 25% of the contract work. Additionally, there should be no modifications to increase the contract amount unless there is an unforeseen situation—any such modification must have prior CMD approval.

**IMPORTANT NOTICE:** In this CMD Attachment 4, the term "LBE" refers to only San Francisco ("SF") CMD Certified Micro-LBEs/NPEs and, therefore, does not include SFPUC Micro-LBEs.

## 1.02 MICRO SET-ASIDE CONTRACT ELIGIBILITY

To be eligible for a micro set-aside contract the bidder must be a CMD Certified Micro-LBE in a certification category that corresponds with the contractor licensing requirements called out by the Contract Awarding Authority. A bidder that has a certification application pending, that has been denied certification, that has had its certification revoked or that is in the process of appealing a CMD denial or revocation at the date and time the bid is due is not a Micro-LBE and is not eligible to bid on the contract even if the firm is later certified or ultimately prevails in its appeal.

## 1.03 CMD LBEUTS AND CONTRACT PERFORMANCE FORMS:

Upon request from CMD, the Contractor must provide copies of certified payrolls for itself and all subcontractors. Failure to submit all required information in the LBEUTS or Contract Performance Forms as instructed may result in the withholding of progress payments and final payment pursuant to Chapter 14B.

### **NOTE 1:**

Failure to complete or submit any of the forms may cause the bidder to be deemed non-responsive and ineligible for contract award. For negotiated contracts: The schedule for the submission of forms will be established by the CMD in conjunction with the Contract Awarding Authority on a contract-by contract basis.

### **NOTE 2:**

**FORM 2A: CMD LBE Subcontractor Participation Form** is no longer in use. The information previously required under that form shall be included by the bidder as part of **DOCUMENT 00435 or Section 00 43 45 or Section 00 43 36** of the bid specifications.

- A. In addition to meeting the requirements of the "Subletting and Subcontracting Fair Practices Act," Bidder shall list on Document 00435 **or Section 00 43 45 or Section 00 43 36** the dollar amount and portion of work to be performed by the bidder and each subcontractor/supplier including first and lower tier subcontractors/suppliers or service contractors such as truckers.
- B. The apparent low bidder must submit the following forms by 5:00 p.m. on the fifth business day following Bid opening. If the CMD determines that the bidder is not acting in good faith in the timely and accurate submission of these forms, the bid may be determined non-responsive and rejected.



*Note:* No extensions of time to submit the forms are permitted except as specifically approved.

**FORM 3: CMD Compliance Affidavit:** The Micro-LBE Prime must perform at least 25% of the contract work or the bid will be deemed non-responsive. Micro-LBE Prime must specify on this form the dollar amount and portion of work to be self-performed. The bidder shall sign the Affidavit under penalty of perjury.

#### A. LBE Utilization Tracking System

Information regarding the LBE Utilization Tracking System (LBEUTS) can be found at <http://www.sfgov.org/LBEUTS>

1. **FORM 7: CMD Progress Payment Form:** Contractor shall submit online using the LBEUTS with each payment request. Failure to upload this information with each payment request may delay progress payment processing.
2. **FORM 9: CMD Payment Affidavit:** Following receipt of each progress payment from the Contract Awarding Authority, a Form 9 (or the information on Form 9) must be submitted online using the LBEUTS with the next progress payment request. Subcontractors are then required to acknowledge payment from Contractor online using the LBEUTS. Failure to submit required information may lead to partial withholding of progress payment, even if there are no subcontractor payments for the reporting period.

#### C. **FORM 8: CMD Exit Report and Affidavit: Submit with final Form 7. A separate Form 8 must be** completed for each LBE subcontractor and vendor (including lower tier subcontractors & suppliers).

Upon request from CMD, the contractor must provide copies of certified payrolls for itself and all subcontractors.

- D. **FORM 10: CMD Contract Modification Form:** No modification without prior CMD approval.
- E. Failure to submit any contract forms may result in sanctions under Chapter 14B, including but not limited to, withholding of progress and final payments.

### 1.04 NONCOMPLIANCE AND SANCTIONS

#### A. Non-Compliance with Chapter 14B

1. A complaint of non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing Rules and Regulations.
  - a. If the CMD Director determines that there is cause to believe that a contractor has failed to comply with any of the requirements of the Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, the CMD Director shall notify the Contract Awarding Authority and attempt to resolve the non-compliance through conference and conciliation.
  - b. If the non-compliance is not resolved through conference and conciliation, the CMD Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.



- c. The Director's finding shall indicate whether the contractor acted in good faith or whether noncompliance was based on bad faith noncompliance with the requirements of Chapter 14B, CMD Rules and Regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the contractor acted in good faith, after affording the contractor notice and an opportunity to be heard, the Director shall recommend that the Contract Awarding Authority take appropriate action. Where the Director finds bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, CMD Rules and Regulations, or contract provisions pertaining to LBE participation, which may include:
  - a. Issuing an Order of Debarment prohibiting the contractor and affiliates from participating in City Contracting for a period not to exceed five years and terminating any existing contracts or subcontracts with the debarred contractor, in accordance with the Administrative Debarment provisions and procedures set forth in Administrative Code Chapter 28.
  - b. Determining that the contractor has failed to comply with the provisions of Chapter 14B, sanctions are as follows:
    - i) suspend a contract;
    - ii) withhold funds;
    - iii) assess penalties;
    - iv) debarment;
    - v) revoke CMD certification; or
    - vi) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the contractor's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by CMD.
  - c. The Director's determination of non-compliance is subject to appeal the City Administrator pursuant to CMD Rules and Regulations.
  - d. An appeal by a contractor to the City Administrator shall not stay the Director's findings.
  - e. The CMD Director may require such reports, information and documentation from contractors, subcontractors, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.
- B. Procedure for the collection of penalties is as follows:
  1. The CMD Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the contractor that a determination of non-compliance has been made and that all payments due the contractor shall be withheld.
  2. The CMD Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

## **PART II. BID DISCOUNT**

### **2.01 The bid discount does not apply.**



**PART III. LBE SUBCONTRACTOR PARTICIPATION**

**3.01 The LBE subcontracting participation requirement does not apply.**

**3.02 Substitution, removal, or contract modification of LBE:** No listed subcontractor, supplier, trucker or other business listed on Document 00435 or **Section 00 43 45** or **Section 00 43 36** shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior CMD approval. In addition, any new subcontractors must have CMD's prior approval.



**FORM 3: CMD COMPLIANCE AFFIDAVIT**

1. Micro-LBE Prime should specify on the space below the dollar amount and portion of work to be self-performed  
  
\$ \_\_\_\_\_ and Scope of Work: \_\_\_\_\_
2. I will ensure that my firm complies fully with the provisions of Chapter 14B and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
3. Upon request, I will provide the CMD with copies of contracts, subcontract agreements, certified payroll records and other documents requested so the HRC and CMD (as applicable) may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
4. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the CMD shall be payable to the City and County upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
5. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

---

Signature of Owner/Authorized Representative: \_\_\_\_\_

Owner/Authorized Representative (Print): \_\_\_\_\_

Name of Firm (Print): \_\_\_\_\_

Title and Position: \_\_\_\_\_

Address, City, ZIP \_\_\_\_\_

Federal Employer Identification Number (FEIN): \_\_\_\_\_

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



**FORM 7: CMD PROGRESS PAYMENT FORM**

To be submitted electronically using the LBEUTS. For more information visit [www.sfgov.org/lbeuts](http://www.sfgov.org/lbeuts).

To be completed by contractor and submitted to the Contract Awarding Authority with its monthly progress payment request.

**TRANSMITTAL**

TO: Resident Engineer or Inspector  
FROM: \_\_\_\_\_  
COPY: CMD Contract Compliance Officer  
Date: \_\_\_\_\_

**SECTION 1. Fill in all the blanks**

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
Reporting Period From: \_\_\_\_\_ To: \_\_\_\_\_ Progress Payment No: \_\_\_\_\_

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be consistent. See next page for Section 2.

- |  |          |
|--|----------|
| 1. Original Contract Award Amount:   | \$ _____ |
| 2. Amount of Change Orders, Amendments, and Modifications to Date:                       | \$ _____ |
| 3. Total Contract to Date ( <i>Line 1 + Line 2</i> ):                                    | \$ _____ |
| 4. Gross Amount Invoiced this submittal period:  | \$ _____ |
| 5. All Previous Gross Amounts Invoiced:  | \$ _____ |
| 6. Total Gross Amounts of Progress Payments Invoiced to Date ( <i>Line 4 + Line 5</i> ): | \$ _____ |
| 7. Percent Complete ( <i>Line 6 ÷ Line 3</i> ):  | _____ %  |

**Contractor must sign this form**

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name and Title (Print)

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Fax

\_\_\_\_\_  
Date





**FORM 9: CMD PAYMENT AFFIDAVIT**

To be submitted electronically using the LBEUTS. For more information visit [www.sfgov.org/lbeuts](http://www.sfgov.org/lbeuts).

**TRANSMITTAL**

TO: Resident Engineer or Inspector  
 FROM (Contractor): \_\_\_\_\_

COPY: CMD Contract Compliance Officer  
 Date: \_\_\_\_\_

List the following information for each progress payment received from the Contracting Awarding Authority. Use additional sheets to include complete payment information for all LBE subcontractors (including lower tier subcontractors) and suppliers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress or final payment.

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
 Contract Awarding Department: \_\_\_\_\_  
 Progress Payment No.: \_\_\_\_\_ Period Ending: \_\_\_\_\_  
 Amount Received: \$ \_\_\_\_\_ Date: \_\_\_\_\_ Warrant/Check No.: \_\_\_\_\_

Check box and sign below if there is no sub payment for this reporting period.

Subcontractor/Supplier Name	Business Address	Amount Paid	Payment Date	Check Number

I declare, under penalty of perjury under the laws of the State of California, that the above information is complete and that the tabulated amounts paid to date are accurate and correct. Contractor must sign this form.

\_\_\_\_\_  
 Owner/Authorized Representative (Signature)

\_\_\_\_\_  
 Name and Title (Print)

\_\_\_\_\_  
 Firm Name

\_\_\_\_\_  
 Telephone \_\_\_\_\_ Date \_\_\_\_\_





**FORM 8: CMD EXIT REPORT AND AFFIDAVIT**

Prime Contractor must complete and sign this form (Sections 1 and 4) for each LBE subcontractor (incl. each lower-tier LBE subcontractor), supplier and trucker. **All** LBEs must complete and sign Sections 2 and 3 of this form. These forms should be submitted to the Contract Awarding Authority and CMD with the final progress payment request.

**TRANSMITTAL**

TO: Resident Engineer Inspector

COPY: CMD Contract Compliance Officer

FROM (Contractor): \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

**SECTION 1. Please check this box if there are no LBE subcontractors/suppliers for this contract:**

Reporting Date: \_\_\_\_\_ Contract Name: \_\_\_\_\_

Name of LBE: \_\_\_\_\_ Portion of Work (Trade): \_\_\_\_\_

Original LBE Contract Amount: \$ \_\_\_\_\_

Change Orders, Amendments, Modifications: \$ \_\_\_\_\_

Final LBE Contract Amount: \$ \_\_\_\_\_

Amount of Progress Payments Paid to Date: \$ \_\_\_\_\_

Amount Owing including all Change Orders, Amendments and Modifications \$ \_\_\_\_\_

Explanation by contractor if the final contract amount for this LBE is less than the original contract amount:

**SECTION 2. Please check one:**

I did NOT subcontract out ANY portion of our work to another subcontractor.

I DID subcontract out our work to:

Name of Firm: \_\_\_\_\_ Amount Subcontracted: \$ \_\_\_\_\_

Name of Firm: \_\_\_\_\_ Amount Subcontracted: \$ \_\_\_\_\_

**SECTION 3.**

To be signed by the LBE:

I agree  I disagree

Explanation by LBE if it is in disagreement with the above explanation or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment.

\_\_\_\_\_  
 Owner/Authorized Representative (Signature) Name and Title (Print)

\_\_\_\_\_  
 Firm Name Telephone Date



---

SECTION 4.

If this form is submitted without the LBE's signature, the Prime must enclose verification of delivery of this form to the subcontractor/supplier.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

---

Owner/Authorized Representative (Signature)

---

Name and Title (Print)

---

Firm Name

---

Telephone

Date



**FORM 10: CMD CONTRACT MODIFICATION FORM**

Contractor must submit this form with the required supporting documentation and obtain prior CMD approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CMD approved value by 20%. This form must be completed prior to the approval of such amendments, modifications or change orders.

Name of Project/Contract Title: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Contract Amount as Modified to Date: \_\_\_\_\_

Amount of Current Modification Request: \_\_\_\_\_

**REQUIRED ATTACHMENTS:**

1. A list reflecting the new overall contract amounts for the prime contractor, subcontractors, and vendors.
2. A list of all prior contract amendments, modifications, supplements, and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print) Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone Date



## SECTION 00 40 13

## BIDDING FORMS CHECKLIST

*To be submitted with Bid for:***SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)**

- A. Each Bidder shall submit with its Bid the following forms, properly completed and executed:
- Executed Bid Form (Section 00 41 00), with contractor's license number and expiration date.
  - Bid security equal to 10% of the Bid (Section 00 43 13).
  - Acknowledgment of Receipt of Addenda (Section 00 43 20).
  - Proposed Subcontractors Form (Section 00 43 36).
  - Bidder's Qualifications (Section 00 45 13).
  - Release and Waiver Agreement (Section 00 45 16).
  - Highest Prevailing Wage Rate Certification (Section 00 45 60).
  - Certificate of Bidder Regarding Apprenticeship Training Program (Section 00 45 65).
  - Certificate of Bidder Regarding Nondiscrimination in Contracts and Benefits (Section 00 45 70).
  - Non-collusion Affidavit (Section 00 45 80).
  - Certification of Bidder Regarding Debarment and Suspension (Section 00 45 82).
- B. Envelopes containing Bids shall be sealed, addressed to San Francisco Port Commission, and designated as "Bid for SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT (Port of San Francisco Contract No. 2773)". Envelopes shall bear the name and address of the Bidder.
- C. The Executive Director of the Port of San Francisco reserves the right after opening Bids to reject any or all Bids, and to waive any minor irregularity in a Bid.
- D. Bids must be submitted at the Port of San Francisco office, **Pier 1, The Embarcadero, San Francisco, California 94111**, no later than the date and time specified in the Advertisement for Bids, or as subsequently specified if changed by Addendum.

END OF SECTION



SECTION 00 41 00

BID FORM

Date of Bid: \_\_\_\_\_

TO THE SAN FRANCISCO PORT COMMISSION, CITY AND COUNTY OF SAN FRANCISCO

In response to the Advertisement for Bids for the following public work:

SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)

the undersigned Bidder hereby proposes and agrees to execute the required Contract, should it be awarded to said Bidder, and to do all the work and furnish all the materials therefor all in accordance with the Specifications and Drawings referred to in said Advertisement for Bids and at the prices named in the attached Schedule of Bid Prices.

The undersigned declares: That it is the Bidder (or by holding the position below indicated is authorized to execute this Bid Form on behalf of the Bidder); that said Bidder submits this Bid; that said Bidder has not, nor have any of its agents, officers, representatives or employees, been guilty of collusion with any officer or representative of the City and County of San Francisco, or with any other party or parties in the submission of this Bid; nor has said Bidder received any preferential treatment by any officer or employee of the City and County in the making or submitting of this Bid. The undersigned declares under penalty of perjury that all representations made on this Bid Form are true and correct.

The undersigned declares, under penalty of perjury under the laws of the State of California that the Bidder has read and agrees to the requirements of the San Francisco Administrative Code and applicable requirements of the California Labor Code for each of the attached list Sections:

<i>Section No.</i>	<i>Title</i>
00 43 20	Acknowledgment of Receipt of Addenda
00 43 36	Proposed Subcontractors Form
00 45 13	Bidder's Qualifications
00 45 60	Highest Prevailing Wage Rate Certification
00 45 65	Certificate of Bidder Regarding Apprenticeship Training Program
00 45 70	Certificate of Bidder Regarding Nondiscrimination in Contracts and Benefits
00 45 80	Non-collusion Affidavit
00 45 82	Certification of Bidder Regarding Debarment and Suspension

***The undersigned acknowledges that he or she has read and agrees to these documents (initial):*** \_\_\_\_\_



**INITIAL  
HERE**

**BUSINESS TAX REGISTRATION DECLARATION:** The undersigned further declares and understands that if I am awarded the Contract, each of my Subcontractors and I must maintain a current business tax registration number. If the Tax Collector of the City and County of San Francisco determines that any of my Subcontractors or I do not have or maintain a current business tax registration number, the City may either cancel the Contract or withhold payment.

**BOND OR CHECK REQUIRED:** There is herewith attached, as required by law, bid security in accordance with the Section 00 21 13 - Instructions to Bidders, Article "Bid Security".

**LOCAL BUSINESS ENTERPRISE PARTICIPATION AND NON-DISCRIMINATORY EMPLOYMENT PRACTICES:** Provisions of chapters 12B and 14B (including their implementing Rules and Regulations) of the San Francisco Administrative Code are incorporated herein and by reference made a part of the Bid Documents as though fully set forth. The Bidder and all subcontractors and suppliers shall comply with these provisions and shall submit all required documents in a timely manner. Note: Some Sections of 14B do not apply to this Contract, namely bid preferences and subcontracting goals.

The undersigned, having examined all referenced documents and the Drawings, understanding the terms and conditions of the Contract Documents and the local conditions affecting the performance and costs of the Work, and having fully inspected the Site in all particulars, hereby proposes and agrees to fully perform the Work as indicated on the Drawings and in accordance with the requirements of the Contract Documents within the time stated therein, and for the following price(s):

**SCHEDULE OF BID PRICES**

Bid Item No.	Bid Item Description	Quantity	Unit	Amount
1	LUMP SUM: Removal and installation covering existing concrete sidewalk, curb & gutter, asphalt, pavement base, 6-inch thick concrete sidewalk, combined 6-inch wide concrete curb and 1-foot wide concrete gutter @ SWL 321 NW corner of Green & Union Sts, Electrical Work, all as indicated in the Contract Documents (Refer to Section 00 42 00)	1	LS	\$ _____
2	LUMP SUM: Concrete curb ramp with detectable surface tiles at SW corner of Union and Front Streets	2	EA	\$ _____
3	Mobilization (Maximum 5% of the Sum of Bid Items 1 through 2)	1	LS	\$ _____
TOTAL BID PRICE (Summation of Bid items 1 through 3) =				\$ _____

The City reserves the right after opening Bids to reject any or all Bids, and to waive any minor irregularity in a Bid. In case of discrepancy between the sum of Bid item amounts and the Total Bid Price, the sum of said amounts shall prevail. In the case of discrepancy between words and figures, the words shall prevail. In case of discrepancy between unit prices Bid and extensions thereof, said unit prices shall prevail.

**MOBILIZATION BID ITEM.** Bidder agrees that (a) if the mobilization amount exceeds the limitation provided, the City will include the full line item amount in calculating the Total Bid Price, but will pay the excess amount over the course of the Contract based on the progress of the work, and (b) if the Bidder leaves the mobilization line item blank, the City will read the item as \$0 for purposes of calculating the Total Bid Price and the Bidder shall NOT be able to claim a clerical error on that basis.



Bidder acknowledges and agrees that this Bid, if not withdrawn prior to the scheduled time for receipt of Bids, shall not be withdrawn for a period of **90** days thereafter.

Department of Industrial Relations Registration: The undersigned further declares that the Bidder is compliant with the registration requirements of the California Department of Industrial Relations (“DIR”) under California Labor Code section 1725.5, and that its registration with the DIR will be current as of March 1, 2015 for any Bid submitted on or after March 1, 2015, and/or that its registration with the DIR will be current as of April 1, 2015, should the Contract be awarded on or after April 1, 2015, regardless of the Bid date.

Time allowed for completion of all Work shall be as specified in Section 00 73 02, beginning with and including the official date of Notice to Proceed as established by the Executive Director of the Port of San Francisco.

Executed on \_\_\_\_\_ 20 \_\_\_\_\_

\_\_\_\_\_  
Name of Firm, Corporation, Partnership or Joint Venture

\_\_\_\_\_  
E-mail Address

\_\_\_\_\_  
Signature of Bidder or Authorized Representative

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Print Name of Authorized Representative

\_\_\_\_\_  
Contractor's California License No.

\_\_\_\_\_  
Position in Firm or Corporation

\_\_\_\_\_  
License Expiration Date

\_\_\_\_\_  
Address of Firm or Corporation

\_\_\_\_\_  
S.F. Business Tax Registration  
Certificate Number

\_\_\_\_\_  
City State Zip Code

**Note:** If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

END OF SECTION



SECTION 00 43 13

BID SECURITY FORM

*Bidder shall have this Bid Bond form executed as indicated below unless Bid is accompanied by certified check.*

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned General Contractor as principal and the undersigned Surety as obligor, are held and firmly bound unto the City and County of San Francisco, a municipal corporation, as obligee, in the penal sum of \_\_\_\_\_ Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators and assigns, jointly and severally, firmly by these presents.

That the General Contractor as principal is submitting a Bid for certain work to be performed for the said City and County of San Francisco described as follows:

SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by said principal be accepted and the Contract be awarded to said principal and if said principal shall within a period of ten (10) days after such award enter into the Contract so awarded and file the required performance and payment corporate surety bonds certificates of insurance, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS THEREOF, the above bounden parties have executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Corporate Seal)

\_\_\_\_\_  
Name of Firm, Corporation, Partnership or Joint Venture

\_\_\_\_\_  
Principal

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

(Corporate Seal)

\_\_\_\_\_  
Surety

I declare under penalty of perjury, under the laws of the State of California, that I have executed the foregoing bond under an unrevoked power of attorney. Executed on [date]\_\_\_\_\_, in [City]\_\_\_\_\_, [State]\_\_\_\_\_, in conformance with the laws of the State of California.

\_\_\_\_\_  
Attorney-in-Fact

END OF SECTION



SECTION 00 43 20

ACKNOWLEDGMENT OF RECEIPT OF ADDENDA

If Addenda to the Bid Documents have been issued for this Contract, please indicate receipt thereof by filling in the appropriate Addendum number and filling in date received below. If there are any questions on any Addenda that may have been issued, please contact Arnel Prestosa, City and County of San Francisco, Port of San Francisco, Pier 1, The Embarcadero, San Francisco, CA 94111, telephone 415-274-0627.

Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____
Addendum No. _____	Date Received _____

A BID MAY BE RENDERED NONRESPONSIVE IF THE BIDDER DOES NOT ACKNOWLEDGE THE RECEIPT OF ALL ADDENDA WHICH MAY HAVE BEEN ISSUED FOR THIS CONTRACT.

*Note: The above form is part of the Bid. Signing the Bid Form (Section 00 41 00) shall also constitute signature of this form and Bidder acknowledges that information provided above is true and correct.*

END OF SECTION



SECTION 00 43 36  
(This form replaces CMD FORM 2A)

PROPOSED SUBCONTRACTORS FORM

---

Date

---

Name of Firm, Corporation, Partnership, or Joint Venture

This Document implements listing requirements for subcontractors who will perform work in excess of one-half of one percent of the Total Bid Price [Admin. Code § 6.21(A)(9) and California Public Contract Code §§ 4100 – 4114].

**Important Notice: No subcontractor may be listed in a bid for a public works project submitted on or after March 1, 2015 unless registered with the California Department of Industrial Relations (“DIR”) pursuant to Labor Code § 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code § 1771.1(a)]. An inadvertent listing of a subcontractor who is not registered under § 1725.5 will not be grounds for a bid protest or for determining a bid nonresponsive if the conditions set forth in Labor Code § 1771.1(c)(1) or (2) are met.**

A. Subcontractors Who Will Perform Work In Excess of ½ of 1% Of Total Bid Price

Bidder shall submit with its bid a subcontractor list using the form below. Bidder shall identify each subcontractor<sup>1</sup> who will perform work in an amount in excess of one-half of one percent of Bidder's Total Bid Price. If this project involves the construction of streets, highways, or bridges, Bidder shall submit with its bid a subcontractor list, using the form below, identifying each subcontractor who will perform work in excess of one-half of one percent of the Total Bid Price, or \$10,000, whichever is greater.

At a minimum, Bidder must provide the following information with its Bid for each listed subcontractor: (i) name and email [Box 2]; (ii) location of the place of business [Box 3]; (iii) portion of work that will be performed by the subcontractor [Box 4] and (iv) the current valid subcontractors license [Box 8]. In addition, for items or portions of work not fully subcontracted, e.g., indicated as "partial," Bidder must provide the amount of subcontract work [Box 10] either at the time of Bid or within 24 hours after Bid opening. Bidders may provide additional identifying information [e.g., Boxes 5, 6, 7 and/or 9] within 24 hours of Bid opening.

If the City cannot identify the intended subcontractor or portion of work based on the information provided by Bidder, or where Bidder provides conflicting information, the City may consider the subcontractor or portion of work unlisted for purposes of Public Contract Code § 4106. An "unlisted" determination may render a Bid non-responsive if the technical specifications require that the work in question be performed by a subcontractor. In addition, an "unlisted" determination may render a Bidder not responsible if Bidder is not qualified to self-perform the work in question.

B. LBE Subcontractors, Suppliers and Service Contractors

**NO LBE** Subcontracting goal **SHALL** apply to this Contract. LBE subcontractors, suppliers and service contracts are not required to be identified and listed, except as required under paragraph A above.

<sup>1</sup>For the purposes of Paragraph A, the term "subcontractor" shall mean a contractor as defined in California Public Contract Code § 4113.

*THIS SPACE WAS INTENTIONALLY LEFT BLANK*



*Copy this page as needed to provide a complete listing.*

Page \_\_\_\_ of \_\_\_\_

1. TYPE OF SUBCONTRACTOR: <input type="checkbox"/> First Tier; <input type="checkbox"/> Lower Tier; <input type="checkbox"/> Supplier; <input type="checkbox"/> Service Contractor (e.g. Trucker)		
2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
4. BID ITEMS/PORTION OF WORK		
5. DIR REGISTRATION NO.	6. VENDOR NO.	7. FEDERAL ID NO.
8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
11. CERTIFIED LBE? <input type="checkbox"/> Yes; <input type="checkbox"/> No	12. IF LBE, CHECK APPLICABLE: <input type="checkbox"/> MBE; <input type="checkbox"/> WBE; <input type="checkbox"/> OBE* <input type="checkbox"/> Small LBE; <input type="checkbox"/> Micro LBE; <input type="checkbox"/> SBA-LBE	

1. TYPE OF SUBCONTRACTOR: <input type="checkbox"/> First Tier; <input type="checkbox"/> Lower Tier; <input type="checkbox"/> Supplier; <input type="checkbox"/> Service Contractor (e.g. Trucker)		
2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
4. BID ITEMS/PORTION OF WORK		
5. DIR REGISTRATION NO.	6. VENDOR NO.	7. FEDERAL ID NO.
8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
11. CERTIFIED LBE? <input type="checkbox"/> Yes; <input type="checkbox"/> No	12. IF LBE, CHECK APPLICABLE: <input type="checkbox"/> MBE; <input type="checkbox"/> WBE; <input type="checkbox"/> OBE* <input type="checkbox"/> Small LBE; <input type="checkbox"/> Micro LBE; <input type="checkbox"/> SBA-LBE	

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2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
4. BID ITEMS/PORTION OF WORK		
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8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
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3. ADDRESS		PHONE NO.
4. BID ITEMS/PORTION OF WORK		
5. DIR REGISTRATION NO.	6. VENDOR NO.	7. FEDERAL ID NO.
8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
11. CERTIFIED LBE? <input type="checkbox"/> Yes; <input type="checkbox"/> No	12. IF LBE, CHECK APPLICABLE: <input type="checkbox"/> MBE; <input type="checkbox"/> WBE; <input type="checkbox"/> OBE* <input type="checkbox"/> Small LBE; <input type="checkbox"/> Micro LBE; <input type="checkbox"/> SBA-LBE	

\* MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise.

*Copy this page as needed to provide a complete listing.*

Page \_\_\_\_ of \_\_\_\_

1. TYPE OF SUBCONTRACTOR: <input type="checkbox"/> First Tier; <input type="checkbox"/> Lower Tier; <input type="checkbox"/> Supplier; <input type="checkbox"/> Service Contractor (e.g. Trucker)		
2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
4. BID ITEMS/PORCION OF WORK		
5. DIR REGISTRATION NO.	6. VENDOR NO.	7. FEDERAL ID NO.
8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
11. CERTIFIED LBE? <input type="checkbox"/> Yes; <input type="checkbox"/> No	12. IF LBE, CHECK APPLICABLE: <input type="checkbox"/> MBE; <input type="checkbox"/> WBE; <input type="checkbox"/> OBE* <input type="checkbox"/> Small LBE; <input type="checkbox"/> Micro LBE; <input type="checkbox"/> SBA-LBE	

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2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
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8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
11. CERTIFIED LBE? <input type="checkbox"/> Yes; <input type="checkbox"/> No	12. IF LBE, CHECK APPLICABLE: <input type="checkbox"/> MBE; <input type="checkbox"/> WBE; <input type="checkbox"/> OBE* <input type="checkbox"/> Small LBE; <input type="checkbox"/> Micro LBE; <input type="checkbox"/> SBA-LBE	

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2. SUBCONTRACTOR NAME		EMAIL
3. ADDRESS		PHONE NO.
4. BID ITEMS/PORCION OF WORK		
5. DIR REGISTRATION NO.	6. VENDOR NO.	7. FEDERAL ID NO.
8. LICENSE NO.	9. SF BUSINESS TAX REG. NO.	10. AMOUNT OF SUB-CONTRACT WORK: \$
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\* MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise.

END OF SECTION

SECTION 00 45 13

BIDDER'S QUALIFICATIONS

Refer to Section 00 21 13 (Instructions to Bidders – Contractor Bidder Qualifications) for instructions. Add additional sheets as necessary to demonstrate compliance with the requirements specified in Section 00 21 13.

1. BIDDER'S NAME:	
2. IS THIS A JOINT VENTURE? <input type="checkbox"/> Yes, <input type="checkbox"/> No; If "Yes," list name of each joint venture partner:	
3. FEDERAL ID NO.:	4. SF BUSINESS TAX REG. NO.:
5. NAME OF RESPONSIBLE MANAGEMENT OFFICER:	
6. DID BIDDER INSPECT THE PROJECT SITE? <input type="checkbox"/> Yes, <input type="checkbox"/> No; If "Yes," list name and phone of person who did the inspection:	
7. NAME:	8. PHONE NO:
9. NUMBER OF YEARS BIDDER'S ORGANIZATION HAS HAD EXPERIENCE IN WORK COMPARABLE WITH THAT REQUIRED UNDER THE PROPOSED CONTRACT: _____ Years as a General Contractor _____ Years as a Subcontractor	

10. RECENT WORK SIMILAR IN CHARACTER TO THAT REQUIRED IN THE PROPOSED CONTRACT, WHICH BIDDER HAS COMPLETED IN THE PAST 10 YEARS:

(a)

PROJECT TITLE:		
PROJECT DESCRIPTION / SCOPE OF WORK:		
LOCATION: <i>Address, City, State</i>		
START DATE:	PLANNED COMPLETION DATE:	ACTUAL COMPLETION DATE:
CONTRACT AMOUNT: \$	CHANGE ORDER AMOUNT: \$	
ROLE (Check One): <input type="checkbox"/> General Contractor <input type="checkbox"/> Subcontractor	IF GENERAL CONTRACTOR, LIST NAMES OF MAJOR SUBCONTRACTORS EMPLOYED:	
NAME OF OWNER'S REPRESENTATIVE:		
TITLE:	TELEPHONE:	
BUSINESS ADDRESS:		

(b)

PROJECT TITLE:		
PROJECT DESCRIPTION / SCOPE OF WORK:		
LOCATION: <i>Address, City, State</i>		
START DATE:	PLANNED COMPLETION DATE:	ACTUAL COMPLETION DATE:
CONTRACT AMOUNT: \$	CHANGE ORDER AMOUNT: \$	
ROLE (Check One):	IF GENERAL CONTRACTOR, LIST NAMES OF MAJOR SUBCONTRACTORS EMPLOYED:	
<input type="checkbox"/> General Contractor		
<input type="checkbox"/> Subcontractor		
NAME OF OWNER'S REPRESENTATIVE:		
TITLE:	TELEPHONE:	
BUSINESS ADDRESS:		

(c)

PROJECT TITLE:		
PROJECT DESCRIPTION / SCOPE OF WORK:		
LOCATION: <i>Address, City, State</i>		
START DATE:	PLANNED COMPLETION DATE:	ACTUAL COMPLETION DATE:
CONTRACT AMOUNT: \$	CHANGE ORDER AMOUNT: \$	
ROLE (Check One):	IF GENERAL CONTRACTOR, LIST NAMES OF MAJOR SUBCONTRACTORS EMPLOYED:	
<input type="checkbox"/> General Contractor		
<input type="checkbox"/> Subcontractor		
NAME OF OWNER'S REPRESENTATIVE:		
TITLE:	TELEPHONE:	
BUSINESS ADDRESS:		

(Add sheets if necessary.)

11. LIST ALL CONTRACTS DURING THE PAST 10 YEARS FOR WHICH THE BIDDER, OR A MEMBER OF THE BIDDER'S ORGANIZATION, RECEIVED AN UNSATISFACTORY PERFORMANCE RATING, WAS CITED FOR OSHA VIOLATIONS OR FAILED TO COMPLETE WORK.

(a)

PROJECT:	NAME OF OWNER:
LOCATION: <i>Address, City, State</i>	
EXPLAIN:	

(b)

PROJECT:	NAME OF OWNER:
LOCATION: <i>Address, City, State</i>	
EXPLAIN:	

*(Add sheets if necessary.)*

12. LIST MAJOR CONSTRUCTION EQUIPMENT, FACILITIES OR AIDS THAT BIDDER REPRESENTS IT POSSESSES OR CAN OBTAIN IN TIME TO PERFORM THE WORK; INDICATING WHETHER OWNED OR RENTED AND WHERE OBTAINED:

EQUIPMENT	OWNED	LEASED	RENTED	RENTAL AGENT NAME	TELEPHONE
(a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
(b)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
(c)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
(d)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
(e)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

13. BIDDER REFERS TO THE FOLLOWING BANK(S) AS TO FINANCIAL RESPONSIBILITY OF BIDDER:

(a)

NAME OF BANK:	
BUSINESS ADDRESS:	
CONTACT NAME:	TELEPHONE:

(b)

NAME OF BANK:	
BUSINESS ADDRESS:	
CONTACT NAME:	TELEPHONE:

14. INSURANCE AND SURETY COMPANIES AND AGENTS WHO WILL PROVIDE THE REQUIRED INSURANCE AND BONDS ON THIS CONTRACT:

(a)

NAME OF COMPANY:	TYPE OF INSURANCE OR BOND:
BUSINESS ADDRESS:	
AGENT'S NAME:	TELEPHONE:

(b)

NAME OF COMPANY:	TYPE OF INSURANCE OR BOND:
BUSINESS ADDRESS:	
AGENT'S NAME:	TELEPHONE:

*(Add sheets if necessary.)*

*Note: The above Bidder's Qualifications form is part of the Bid. Signing the Bid Form shall also constitute signature of this form.*

*By Signing the Bid Form, the Contractor permits the City to contact the Owner of each sample project submitted above.*

END OF SECTION

SECTION 00 45 16  
RELEASE AND WAIVER AGREEMENT

SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)

This Release and Waiver Of Liability (hereinafter the "Release") is entered into between the City and County of San Francisco through its Port of San Francisco and \_\_\_\_\_, a Bidder.

**RECITALS**

1. The City and County of San Francisco through its Port of San Francisco has issued Bid Documents for Contract No. 2773 with a requirement that Bidders submit certain information to demonstrate their qualifications to perform the Work for the SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT.
2. In accordance with the Bid Documents, Bidder has submitted information pertaining to its qualifications, including a list of projects and project owners/owner representatives as references for its qualifications.
3. The City seeks candid comments on the Bidder's performance on the listed projects from the project owners and the project owners' representatives.

**RELEASE AND WAIVER**

Bidder hereby fully and forever releases, exonerates, discharges, and covenants not to sue, the City, the Port of San Francisco, their commissions and boards, officers and employees, and all individuals and entities furnishing comments on Bidder's performance, from and for, and does hereby waive, any and all claims, causes of action, demands, damages and any and all other liabilities of any kind or description, in law, equity, or otherwise, arising out of information furnished about Bidder's performance on the projects that Bidder has identified pursuant to Recital number 2, above.

**INTENDED BENEFICIARIES**

The City, the Port of San Francisco, and their commissions and boards, officers and employees and all individuals and entities furnishing any information relating to Bidder's qualifications are intended beneficiaries of this Release and Waiver and are entitled to enforce its terms.

\_\_\_\_\_  
Signature of Bidder or Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Bidder's Name

\_\_\_\_\_  
Date

END OF SECTION





## SECTION 00 45 60

## HIGHEST PREVAILING WAGE RATE CERTIFICATION

Bidder, by submitting the attached Bid Form, hereby acknowledges that Bidder has read the San Francisco Charter section A7.204, San Francisco Administrative Code section 6.22(E), and California Labor Code section 1770 et. seq.

Bidder further acknowledges and certifies that, if awarded the Contract, Bidder will comply with the requirement that any person performing labor or rendering service under a contract for public work or improvement shall be paid not less than the highest general prevailing rate of wages in private employment for similar work. Bidder is aware that failure to comply with such wage provision shall result in a forfeiture of back wages due plus the penalties as set forth in Labor Code section 1775, but not less than \$50 per day per worker, and may result in disqualification as a contractor or subcontractor on any public work or improvement for the City and County of San Francisco for a period of up to five years.

Bidder further attests by submitting the attached Bid Form, that Bidder will require from all of its subcontractors that they acknowledge having read San Francisco Charter section A7.204, San Francisco Administrative Code section 6.22E, and California Labor Code section 1770 et. seq., and that they will comply with the same requirements under this Contract.

*Note: The above Certification is part of the Bid. Signing the Bid Form shall also constitute signature of this Certification.*

*Bidder must submit this certification with its Bid.*

END OF SECTION



SECTION 00 45 65  
CERTIFICATE OF BIDDER REGARDING APPRENTICESHIP TRAINING PROGRAM

I, the Bidder, by affixing my signature on the Bid Form, acknowledge that I have read San Francisco Administrative Code section 6.22(N) and I make the following declaration regarding each apprenticeable trade for which I will provide labor to the Project: *(Please **check** the appropriate box(es) and complete the listing of trade(s) in the space provided below)*

I am a signatory to a recognized apprenticeship or training program under chapter 4 of the California Labor Code as certified by the State of California Division of Apprenticeship Standards for the following apprenticeable trades for which I will provide labor on the Project, and I will provide written proof of my status as a signatory within 10 days after the date of the City's written notification of award of the Contract:  
*(List Trades Here)* \_\_\_\_\_

I have applied to become a signatory for the trades listed below but have not been accepted. Nevertheless, pursuant to San Francisco Administrative Code section 6.22(N) and California Labor Code section 1777.5, I will pay into the appropriate apprenticeship fund(s) an amount equal to that paid by signatories. I acknowledge that I will be required to submit written evidence of such payments with all progress payment requests for payment for Work on the Project starting with the second such progress payment request and that providing such evidence is a condition that I must meet in order for to qualify for payment by the City.  
*(List Trades Here)* \_\_\_\_\_

Additionally, I attest that I will require each of my subcontractors to submit in accordance with Section 00 21 13 a completed and signed Certificate of Subcontractor Regarding Apprenticeship Training Program form (Section 00 49 15). I acknowledge that, for subcontractor(s) who declare on said Section 00 49 15 that they have applied to become a signatory but have not been accepted and will pay into the appropriate apprenticeship fund(s) an amount equal to that paid by signatories, I must submit written evidence of such payments with all progress payment requests for payment for Work on the Project starting with the second such request and that providing such evidence is a condition I must meet in order to qualify for payment by the City.

I also attest that I and all of my subcontractors will comply, as a material term of the Contract, with the requirements of the State Apprenticeship Program as set forth in the California Labor Code, division 3, chapter 4 (commencing at section 3070) and section 1777.5 and San Francisco Administrative Code section 6.22(N) and all requests by the City to provide proof that I and all subcontractors are in compliance with those requirements.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually.

*If the Contract involves one or more trades with a recognized apprenticeship program for which you have declared that you are a signatory to a recognized apprenticeship or training program, written proof of status must be submitted for each trade within 10 working days after the date of the City's written notification of award of the Contract.*

*Note: The above Certification is part of the Bid. Signing the Bid Form shall also constitute signature of this Certification. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.*

*Bidder must submit this certification with its Bid.*

END OF SECTION



## SECTION 00 45 70

CERTIFICATE OF BIDDER REGARDING  
NONDISCRIMINATION IN CONTRACTS AND BENEFITS

Bidder, by submitting the attached Bid Form, hereby acknowledges that Bidder has read and will comply with chapter 12B "Nondiscrimination in Contracts" of the San Francisco Administrative Code and attests to the following (*please **check** the applicable box*):

- COMPLIES:** The San Francisco Contract Monitoring Division ("CMD") has certified that Bidder is in compliance with chapter 12B of the San Francisco Administrative Code, and all applicable related requirements as specified in the Contract Documents, and the certification is in effect on the date of Bid opening.
- COMPLIANCE PENDING:** Bidder has submitted Form CMD-12B-101 and all required documentation to the CMD seeking certification of compliance with chapter 12B, and determination of compliance is pending review by the CMD. Bidder agrees to resolve all non-compliance through conciliation with CMD as a condition precedent to award of the Contract. If the CMD determines that Bidder is non-compliant, Bidder's Bid shall be deemed non-responsive.
- NON-COMPLIANCE:** Bidder acknowledges that full compliance with chapter 12B of the San Francisco Administrative Code is a condition precedent for award of the Contract, and if determined to be the low Bidder, Bidder will submit Form CMD-12B-101 and all required documentation within 10 working days after the date of Bid opening. If the CMD determines that Bidder is non-compliant, Bidder's Bid shall be deemed non-responsive.

Note: The text chapter 12B of the San Francisco Administrative Code and Form CMD-12B-101 is available from the CMD, 30 Van Ness Avenue, Suite 200, San Francisco 94102, telephone (415) 581-2351 and posted on the Web at <http://sfgsa.org/index.aspx?page=6058>. Compliance with the requirements of Chapter 12B is a condition precedent to receiving a contract. Non-compliant Bidders are advised to submit Form CMD-12B-101 and accompanying documentation to the CMD at the earliest possible opportunity to avoid delays in obtaining certification with these requirements; waiting to file during the 10 day period after Bid opening could cause delays.

*Note: The above Certification is part of the Bid. Signing the Bid Form shall also constitute signature of this Certification.*

*Bidder must submit this completed form with its Bid.*

END OF SECTION



SECTION 00 45 80  
NONCOLLUSION AFFIDAVIT

TO THE SAN FRANCISCO PORT COMMISSION, CITY AND COUNTY OF SAN FRANCISCO

In accordance with California Public Contract Code section 7106 the Bidder declares that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham Bid, or that anyone shall refrain from Bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the Bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the Bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the Contract of anyone interested in the proposed Contract; that all statements contained in the Bid are true; and, further, that the Bidder has not, directly or indirectly, submitted his or her Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

*Note: The above Noncollusion Affidavit is part of the Bid. Signing the Bid Form shall also constitute signature of this Noncollusion Affidavit. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.*

*Bidder must submit this form with its Bid.*

END OF SECTION





SECTION 00 45 82

CERTIFICATION OF BIDDER REGARDING DEBARMENT AND SUSPENSION\*

The Bidder, by signing the attached Bid Form, under penalty of perjury, certifies that, except as noted below, the Bidder and its principals:

1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a government agency;
2. have not within a 3-year period preceding this Bid been convicted of or had a civil judgment rendered against us for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; (ii) violation of federal or state antitrust statutes; or (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in item 2 above; and
4. have not within a 3-year period preceding this Bid had one or more public transactions (federal, state or local) terminated for cause or default.
5. Where the Bidder is unable to certify to any of the statements in this certification because it currently violates or has previously violated the above conditions 1 to 4, such prospective participant shall provide a description of each instance of violation and attach an explanation to this Bid. The Bidder declares the following exceptions to the above representations: *(If there are exceptions to this Certification, insert the exceptions in the space provided below.)*

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Exceptions will not necessarily result in denial of award of the Contract, but will be considered in determining Bidder responsibility. For each exception noted above, Bidder shall indicate below to whom it applies, name of the government entity and dates of action:

<u>Exception</u>	<u>Person</u>	<u>Government Entity</u>	<u>Dates Inclusive</u>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>
<hr/>	<hr/>	<hr/>	<hr/>

*\*Fulfills requirements of Title 49, CFR, Part 29*

*Note: The above Certification is part of the Bid. Signing the Bid Form shall also constitute signature of this Certification. Providing false information may result in criminal prosecution or administrative sanctions.*

*Bidder must submit this completed form with its Bid.*

END OF SECTION



## SECTION 00 49 00

## SUPPLEMENTARY BIDDING FORMS CHECKLIST

***To be submitted after bid opening for:***

**SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)**

- A. No later than **5 working days** after the date of Bid opening the apparent low Bidder, and any other Bidder so requested, shall submit to the Contract Compliance Officer the following CMD forms, completed and properly signed:

- DOCUMENT 00 43 36: Proposed Subcontractors Form (CMD Form 2A)
- FORM 3: CMD Non-Discrimination Affidavit.
- FORM 6: CMD LBE Subcontractor Participation Affidavit.

Submit above forms to: *Finbarr Jewell, Contract Monitoring Division, Port of San Francisco, Pier 1, The Embarcadero, San Francisco, California 94111 with a copy to Tim Leung, Port of San Francisco, Pier 1, The Embarcadero, San Francisco, California 94111*

- B. Within **5 working days** after the date of the Bid opening the apparent low Bidder and any other Bidder so requested shall submit the following completed forms and additional sheets as necessary:

- Experience Statement (Section 00 49 12).
- Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension (Section 00 49 14), completed by each subcontractor, lower-tier subcontractor and supplier for lower tier covered transactions of \$25,000 or more.
- Certificate of Subcontractor Regarding Apprenticeship Training Program form (Section 00 49 15).

Submit above forms to: *Tim Leung, Port of San Francisco, Pier 1, The Embarcadero, San Francisco, California 94111*

END OF SECTION





**FORM 3: CMD NON-DISCRIMINATION AFFIDAVIT**

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
1. Upon request, I will provide the CMD with copies of contracts, subcontract agreements, certified payroll records and other documents requested so the CMD may investigate claims of discrimination or non-compliance with either Chapter 12B or Chapter 14B.
3. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the CMD shall be payable to the City and County upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
4. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

---

**Signature of Owner/Authorized  
Representative:** \_\_\_\_\_

**Owner/Authorized Representative (Print):** \_\_\_\_\_

**Name of Firm (Print):** \_\_\_\_\_

**Title and Position:** \_\_\_\_\_

**Address, City, ZIP** \_\_\_\_\_

**Federal Employer Identification Number  
(FEIN):** \_\_\_\_\_

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





**FORM 6: CMD LBE SUBCONTRACTOR PARTICIPATION AFFIDAVIT**

This affidavit is to be completed by each LBE subcontractor or supplier (including lower tier subcontractors) and submitted to the apparent low bidder. The apparent low bidder shall submit the completed affidavits and copies of the subcontractors' or suppliers' bid quotations to the CMD no later than 5:00 p.m. on the fifth business day following the Bid opening. Subcontractor may attach additional sheets if more space is needed to provide complete information.

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Name of LBE Sub or Supplier: \_\_\_\_\_

License #: \_\_\_\_\_ Scope of work: \_\_\_\_\_

1. \_\_\_\_\_ verify that \_\_\_\_\_ bid to  
Name of LBE Owner/Representative LBE Firm

the above referenced Bidder for subcontracting work in the amount of \$ \_\_\_\_\_ and have been offered a subcontract in that amount.

**2. Please list major vendors/suppliers of goods/services for this project:**

Name	Phone	Product(s)	\$ Amount
			\$
			\$
			\$

**3. Please describe scope(s) of work:**

**4. Check one:**

- We will NOT subcontract out ANY portion of our work to another subcontractor.
- We WILL subcontract out \_\_\_\_\_% of our work to:

\_\_\_\_\_ Firm

in the amount of \$\_\_\_\_\_. This business is:  LBE Certified  Not LBE Certified.

**5.  I have enclosed a copy of my Firm's Bid Quotation.**

I declare, under penalty of perjury, that the above information is true and correct and that our firm is a bona fide, certified LBE as defined under Chapter 14B of the San Francisco Administrative Code.

\_\_\_\_\_  
 LBE Owner/Authorized Representative (Signature)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name and Title (Print)

\_\_\_\_\_  
 Phone





SECTION 00 49 12

EXPERIENCE STATEMENT

Refer to Section 00 21 13 (Instructions to Bidders – Contractor Bidder Qualifications) for instructions. Add additional sheets, as necessary, to demonstrate compliance with the requirements specified in Section 00 21 13. RESUMES WILL NOT BE ACCEPTED IN LIEU OF COMPLETED EXPERIENCE STATEMENT FORMS.

1. EXPERIENCE FOR (CHECK ONE): <input type="checkbox"/> Key Team Member ; <input type="checkbox"/> Subcontractor	
2. PROJECT POSITION OR SUBCONTRACTOR WORK:	
3. NAME OF PROPOSED PERSON OR SUBCONTRACTOR:	4. TELEPHONE:
5. BUSINESS ADDRESS:	
6. NUMBER OF YEARS WITH BIDDING CONTRACTOR:	7. TOTAL NUMBER OF YEARS EXPERIENCE IN CONSTRUCTION INDUSTRY:
8. IS PROPOSED PERSON EMPLOYED BY BIDDER? <input type="checkbox"/> YES; <input type="checkbox"/> NO; IF "NO", LIST NAME AND PHONE OF EMPLOYER:	
9. NAME OF EMPLOYER:	10. TELEPHONE:

**Project Experience:**

(a)

PROJECT NAME:	
POSITION OR SCOPE OF WORK:	
DATES SPENT AT PROJECT:	PROJECT COST: \$
DESCRIPTION OF POSITION OR SCOPE OF WORK:	
NAME OF OWNER'S REPRESENTATIVE:	
TITLE:	TELEPHONE:
BUSINESS ADDRESS:	

(b)

PROJECT NAME:	
POSITION OR SCOPE OF WORK:	
DATES SPENT AT PROJECT:	PROJECT COST: \$
DESCRIPTION OF POSITION OR SCOPE OF WORK:	
NAME OF OWNER'S REPRESENTATIVE:	
TITLE:	TELEPHONE:
BUSINESS ADDRESS:	

(c)

PROJECT NAME:	
POSITION OR SCOPE OF WORK:	
DATES SPENT AT PROJECT:	PROJECT COST: \$
DESCRIPTION OF POSITION OR SCOPE OF WORK:	
NAME OF OWNER'S REPRESENTATIVE:	
TITLE:	TELEPHONE:
BUSINESS ADDRESS:	

(d)

PROJECT NAME:	
POSITION OR SCOPE OF WORK:	
DATES SPENT AT PROJECT:	PROJECT COST: \$
DESCRIPTION OF POSITION OR SCOPE OF WORK:	
NAME OF OWNER'S REPRESENTATIVE:	
TITLE:	TELEPHONE:
BUSINESS ADDRESS:	

(e)

PROJECT NAME:	
POSITION OR SCOPE OF WORK:	
DATES SPENT AT PROJECT:	PROJECT COST: \$
DESCRIPTION OF POSITION OR SCOPE OF WORK:	
NAME OF OWNER'S REPRESENTATIVE:	
TITLE:	TELEPHONE:
BUSINESS ADDRESS:	

*Copy this page as needed to provide a complete listing.*

END OF SECTION

SECTION 00 49 14

CERTIFICATION OF SUBCONTRACTOR, LOWER-TIER SUBCONTRACTOR OR SUPPLIER REGARDING DEBARMENT AND SUSPENSION\*

I, \_\_\_\_\_, by affixing my signature hereto, under penalty of perjury, hereby certify that, except as noted below, that my principals and I are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any government agency.

Where the subcontractor, lower-tier subcontractor or supplier is unable to certify to any of the statements in this certification because it currently violates or has previously violated the above conditions of the certification, such subcontractor, lower-tier subcontractor or supplier shall provide description of each instance of violation and attach an explanation to this Document. The subcontractor, lower-tier subcontractor or supplier declares the following exceptions to the above representations: *(If there are exceptions to this Certification, insert the exceptions in the space provided below.)*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Exceptions will not necessarily result in denial of award of the Contract, but will be considered in determining Bidder responsibility. For each exception noted above, indicate below to whom it applies, name of the government entity and dates of action:

<u>Exception</u>	<u>Person</u>	<u>Government Entity</u>	<u>Dates Inclusive</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\_\_\_\_\_  
Name of Firm, Corporation, Partnership or Joint Venture

\_\_\_\_\_  
Name and Title of Authorized Representative

\_\_\_\_\_  
Signature of Bidder or Authorized Representative

\_\_\_\_\_  
Date

**NOTICE:** Providing false information may result in criminal prosecution or administrative sanctions.

*\*Fulfills requirements of Title 49, CFR, Part 29 (applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more)*

Submit this completed form within 10 working days after date of the City's notification of the lowest Bidder to: Port of San Francisco, Pier 1, The Embarcadero, San Francisco, California 94111.

END OF SECTION



## SECTION 00 49 15

## CERTIFICATE OF SUBCONTRACTOR REGARDING APPRENTICESHIP TRAINING PROGRAM

I, \_\_\_\_\_, by affixing my signature hereto, acknowledge that I have read San Francisco Administrative Code section 6.22(N) and I make the following declaration regarding each apprenticeable trade for which I will provide labor to the Project: *(Please **check** the appropriate box(es) and complete the listing of trade(s) in the space provided below)*

- I am a signatory to a recognized apprenticeship or training program under chapter 4 of the California Labor Code as certified by the State of California Division of Apprenticeship Standards for the following apprenticeable trades for which I will provide labor on the Project, and I will provide written proof of my status as a signatory within 10 days after the date of the City's written notification of award of the Contract:

*(List Trades Here)*

- I have applied to become a signatory for the trades listed below but have not been accepted. Nevertheless, pursuant to San Francisco Administrative Code section 6.22(N) and California Labor Code section 1777.5, I will pay into the appropriate apprenticeship fund(s) an amount equal to that paid by signatories. I acknowledge that I will be required to submit written evidence of such payments for all progress payment requests for payment for Work on the Project submitted by the Bidder (General Contractor) to the City starting with the second such progress payment request. Further, I acknowledge that my providing such evidence for the Bidder (General Contractor) to submit to the City with its progress payment request(s) is a condition that I must meet in order for the Bidder (General Contractor) to qualify for payment by the City.

*(List Trades Here)*

I also attest that I will comply, as a material term of the Contract, with the requirements of the State Apprenticeship Program as set forth in the California Labor Code, division 3, chapter 4 (commencing at section 3070) and section 1777.5 and San Francisco Administrative Code section 6.22(N) and all requests by the City to provide proof that I am in compliance with those requirements.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually.

*Complete and deliver this declaration form as specified in Section 00 21 13 – Instructions to Bidders to the Port of San Francisco, Pier 1, The Embarcadero, San Francisco, CA 94111. If the subcontract involves one or more trades with a recognized apprenticeship program for which you have declared that you are a signatory to a recognized apprenticeship or training program, written proof of status must be submitted for each trade within 10 working days after the date of the City's written notification of award of the Contract.*

\_\_\_\_\_  
Bidder's Name

\_\_\_\_\_  
Name of Signer

\_\_\_\_\_  
Subcontractor's Name

\_\_\_\_\_  
Title of Signer

\_\_\_\_\_  
Subcontractor's Street Address

\_\_\_\_\_  
Signature of Subcontractor or Authorized  
Representative

\_\_\_\_\_  
Subcontractor's City, State, ZIP

\_\_\_\_\_  
Date

\_\_\_\_\_  
Subcontractor's Telephone No.

END OF SECTION

SECTION 00 49 18

REQUEST FOR SUBSTITUTION (RFS)

In accordance with California Public Contract Code Section 3400, Contractor will be provided a period of 10 calendar days after the date of Award for submission of data substantiating a request for a substitution with an "or equal" item. Refer to Division 1 for requirements for requesting substitutions. *Submit this completed form to Project Engineer.*

Contract No.: \_\_\_\_\_ RFS No. \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Spec. Section: \_\_\_\_\_ Paragraph(s): \_\_\_\_\_  
Drawing Sheet: \_\_\_\_\_ Detail(s): \_\_\_\_\_

**Proposed Substitution:** \_\_\_\_\_  
Manufacturer: \_\_\_\_\_  
Address/Phone: \_\_\_\_\_  
Trade Name/Model No.: \_\_\_\_\_  
On-Site Representative: \_\_\_\_\_  
Address/Phone: \_\_\_\_\_  
Installer: \_\_\_\_\_  
Address/Phone: \_\_\_\_\_

Product History:  New  2-5 years old  5-10 years old  More than 10 years old

(a) Differences between proposed substitution and specified product (Attach required point by point comparative data):  
\_\_\_\_\_

(b) Reason for not providing specified item: \_\_\_\_\_  
\_\_\_\_\_

(c) Similar installation where proposed substitution has been used (Project/Address/Owner/Date Installed):  
\_\_\_\_\_  
\_\_\_\_\_

(d) Proposed substitution affecting other parts of Work:  No  Yes: Explain \_\_\_\_\_  
\_\_\_\_\_

(e) Changes or modifications needed to coordinate other parts of the Work that will be necessary to accommodate the proposed substitution:  
\_\_\_\_\_  
\_\_\_\_\_

(f) Savings to City for accepting substitution: \_\_\_\_\_ (\$ \_\_\_\_\_)

(g) Proposed substitution changes Contract Time:  No  Yes:  
If "Yes"  Add  Deduct \_\_\_\_\_ calendar days.

(h) Supporting data attached:  Product Data  Drawings  Test Reports  Samples  
 Other: \_\_\_\_\_

The undersigned certifies that:

1. The proposed substitution has been fully investigated and determined to be equal or superior in all respects to specified product.
2. The proposed substitution conforms in all respects to the requirements of the Contract Documents and is appropriate for the applications intended.
3. The same warranty will be furnished for proposed substitution as for specified product.
4. The proposed substitution will not affect or delay progress schedule.
5. The cost data as stated above is complete. There shall be no claims to the City for additional costs related to an accepted substitution.
6. The proposed substitution does not affect dimensions and functional clearances.
7. Coordination, installation, and changes in the Work as necessary for accepted substitution will be complete in all respects.

Submitted by: \_\_\_\_\_ Signature: \_\_\_\_\_

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

Attachments \_\_\_\_\_

**CITY'S REVIEW AND ACTION**

- Substitution accepted - Make submittals in accordance with Division 1.
- Substitution accepted as noted - Make corrections and submit in accordance with Division 1.
- Substitution rejected - Use specified materials and equipment.
- Substitution Request received too late - Use specified materials.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Note: The City's acceptance of Contractor's submittal of shop drawings, product data, or samples supporting this Substitution Request shall not constitute approval of submittals which do not conform to the requirements of the Contract Documents.

Additional Comments: \_\_\_\_\_


END OF SECTION



## SECTION 00 52 00

## AGREEMENT FORM

THIS AGREEMENT dated for reference on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ by and between \_\_\_\_\_ whose principal place of business is \_\_\_\_\_ ("CONTRACTOR"), and the City and County of San Francisco, State of California (the "CITY"), acting through the Executive Director (the "EXECUTIVE DIRECTOR") of the Port of San Francisco, under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

WHEREAS, the San Francisco Port Commission (the "PORT") adopted Resolution No. 10-60 at the August 19, 2010 Port Commission meeting to increase the Executive Director's delegate authority to award public works contracts not to exceed the threshold amount, and

WHEREAS, the PORT EXECUTIVE DIRECTOR awarded this AGREEMENT to CONTRACTOR by PORT Memorandum dated \_\_\_\_\_, for the Project entitled:

**SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)**

NOW, THEREFORE, CONTRACTOR, in consideration of the mutual covenants set forth in this AGREEMENT, promises and agrees to provide all services to construct the Project in accordance with the requirements of the Contract Documents, to perform the Work in good and workmanlike manner to the satisfaction of the EXECUTIVE DIRECTOR, to prosecute the Work with diligence from day to day to Final Completion, to furnish all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of CONTRACTOR's obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the EXECUTIVE DIRECTOR.

CONTRACTOR's execution of this AGREEMENT signifies its acceptance of the Contract Time and Contract Sum as being sufficient for completion of the Work, as well as acceptance of the other terms and conditions of the Contract Documents.

**ARTICLE 1 - CONTRACT DOCUMENTS; CONTRACTOR'S GENERAL RESPONSIBILITIES**

- 1.01 Contract Documents. CONTRACTOR shall Provide all Work according to the Contract Documents, which are incorporated into and made a part of this AGREEMENT by this reference, and all labor and materials used in providing the Work shall comply with the Contract Documents. The Contract Documents, which comprise the entire agreement between CONTRACTOR and the CITY concerning the Provision of the Work, are defined in the General Conditions (Section 00 72 00). Any undefined term used in this AGREEMENT shall be given the definition set forth in the General Conditions (Section 00 72 00).
- 1.02 Contractor's General Responsibilities. CONTRACTOR shall provide a fully functional, complete and operational Project constructed in accordance with the Contract Documents, including but not limited to, all investigations, analyses, surveys, engineering, procurement, materials, labor, workmanship, construction and erection, commissioning, equipment, shipping, subcontractors, material suppliers, permits, insurance, bonds, fees, taxes, duties, documentation, spare parts, materials for initial operation, security, disposal,

startup, testing, training, warranties, guarantees, and all incidentals.

## ARTICLE 2 - CONTRACT TIME

- 2.01 Completion Dates. The Work shall be Substantially Complete within the contract time specified under Section 00 73 02, beginning with and including the official date of Notice to Proceed as established by the EXECUTIVE DIRECTOR, and Finally Complete, as specified under Section 00 73 02, all in accordance with Article 9 of the General Conditions (Section 00 72 00), within the number of consecutive calendar days specified after the date the CITY issues a Notice of Substantial Completion.
- 2.02 Critical Milestone Dates. Contractor shall complete all critical milestone Work during the periods specified in Section 00 73 02.
- 2.03 Liquidated Damages. It is understood and agreed by and between CONTRACTOR and the CITY that time is of the essence in all matters relating to the Contract Documents and that the CITY will suffer financial loss if the Work is not completed within the above-stated Contract Times, plus any extensions thereof allowed in accordance with Article 7 of the General Conditions (Section 00 72 00). The CITY and CONTRACTOR further understand and agree that the actual cost to CITY which would result from CONTRACTOR's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, CONTRACTOR and the CITY agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay the CITY the amounts set forth in Section 00 72 02 (Contract Time and Liquidated Damages) for each calendar day that expires after the above Contract Times and the Work remains incomplete.

## ARTICLE 3 – CONTRACT SUM

- 3.01 Contract Sum.
- A. CONTRACTOR and the CITY agree that, upon performance and fulfillment of the mutual covenants set forth herein, the CITY will, in the manner provided by law and as set forth in the Contract Documents, pay or cause to be paid to CONTRACTOR the following price(s), as indicated in the Schedule of Bid Prices on the Bid Form (Section 00 41 00):
1. Lump sums for specified portions of the Work.
- Total awarded contract amount: \$\_\_\_\_\_.
- The price(s) and amount set forth above shall be adjusted during performance or upon final completion of the Work in accordance with the Contract Documents.
- B. CONTRACTOR understands and agrees that the CONTRACTOR shall be solely responsible for providing all resources that may be necessary to provide the Work, and that the CITY shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of the Contract Documents.
- 3.02 Certification by Controller. This AGREEMENT is subject to the budget and fiscal provisions of the CITY's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the CITY's obligation hereunder shall not at

any time exceed the amount certified for the purpose and period stated in such advance authorization.

#### ARTICLE 4 – LABOR REQUIREMENTS

- 4.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this AGREEMENT shall be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code, including section 6.22(e).
- 4.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this AGREEMENT, shall be included in this AGREEMENT and are hereby incorporated by this reference. CONTRACTOR agrees that any person performing labor in the provision of the Work shall be paid not less than the highest general prevailing rate of wages as so determined. If federal funds are involved, where the minimum rate of pay for any classification differs among State, City and Federal wage rate determinations, the highest of the three rates of pay shall prevail. CONTRACTOR shall include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed. CONTRACTOR shall require any contractor to provide, and shall deliver to CITY every month during any construction period, certified payroll reports with respect to all persons performing labor in the Provision of the Work.
- A. Copies of the latest prevailing wage rates are on file at the Port of San Francisco, City and County of San Francisco, Pier 1, The Embarcadero, San Francisco, CA, 94111 and are also available on the Internet at <http://www.dir.ca.gov/opri/DPreWageDetermination.htm> .
- 4.03 Penalties. CONTRACTOR shall forfeit to the CITY back wages due plus fifty dollars (\$50.00) for:
- A. Each laborer, workman, or mechanic employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or
- B. Each laborer, mechanic or artisan employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

#### ARTICLE 5 – NOTICES TO PARTIES

- 5.01 Unless otherwise indicated in the Contract Documents, all written communications sent by the Parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To CITY: [Insert name or title of department contact person, name of department, mailing address, e-mail address and fax number.]

To CONTRACTOR: [Insert name of Contractor, mailing address, e-mail address and fax number]

5.02 From time to time, the parties may designate new address information by notice in writing, delivered to the other Party.

5.03 The delivery to CONTRACTOR at the legal address listed above, as it may be amended upon written notice, or the depositing in any post office or post office box regularly maintained by the United States Postal Service in a postage paid wrapper directed to CONTRACTOR at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon CONTRACTOR.

**ARTICLE 6 – TERMINATION AND SURVIVAL**

6.01 This AGREEMENT and the other Contract Documents shall terminate when all obligations required to be performed by CONTRACTOR and the CITY have been fulfilled, unless sooner terminated as set forth in Article 14 of the General Conditions (Section 00 72 00).

6.02 The provisions of the Contract Documents which by their nature survive termination of the Contract, including without limitation all warranties, indemnities, payment obligations, and the City’s right to audit Contractor’s books and records, shall remain in full force and effect after termination of the Contract.

THIS SPACE WAS INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the CONTRACTOR and the CITY have hereunto set their hands and seals, and have executed this AGREEMENT in duplicate, the day and year first above written.

CONTRACTOR:

By my signature hereunder, as CONTRACTOR, I certify that I have read and understand the section captioned MacBride Principles – Northern Ireland including in Section 00 73 73, the CITY's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

I further certify that I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Work of this Contract.

\_\_\_\_\_  
Principal  
BY: \_\_\_\_\_  
\_\_\_\_\_  
Title

CITY:

Recommended: \_\_\_\_\_  
Chief Harbor Engineer  
Title

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

BY: \_\_\_\_\_  
Executive Director, Port of San Francisco      DATE

By: \_\_\_\_\_  
Deputy City Attorney

ATTEST:  
Authorized by the  
SAN FRANCISCO PORT COMMISSION

By Port Memorandum Dated: \_\_\_\_\_,  
copy attached herewith and marked Exhibit \_\_\_\_\_.

\_\_\_\_\_  
Amy Quesada  
Secretary, San Francisco Port Commission

END OF SECTION



SECTION 00 61 13

PERFORMANCE BOND AND PAYMENT (LABOR & MATERIALS) BOND

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the San Francisco Port Commission of the City and County of San Francisco, State of California, has awarded to:

hereinafter designated as the "Principal", a Contract by COMMISSION RESOLUTION NO. \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_ for:

**SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT  
(Port of San Francisco Contract No. 2773)**

WHEREAS, said Principal is required under the terms of said Contract to furnish a Bond for the faithful performance of said Contract; and to furnish a separate Bond for the payment of any materials, provisions, or other supplies, used in, upon, for or about the performance of the Work contracted to be done;

NOW, THEREFORE, we the Principal and

as Surety, are firmly bound unto the City and County of San Francisco in the penal sum of

(PERFORMANCE BOND)

(PAYMENT BOND)

and

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for the penal sum for a performance bond and an equal and separate penal sum for a separate payment bond. The conditions of this obligation is such that if the said principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

(PERFORMANCE BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay (i) any of the persons named

in California Civil Code Section 9100 for any materials, provisions, or other supplies used in, upon, for or about the performance of work under the Contract, or for any work or labor performed under the Contract; or (ii) amounts due under the California Unemployment Insurance Code with respect to work or labor performed under the Contract; or (iii) for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code with respect to such work or labor, then Surety will pay for the same in an amount not exceeding the sum specified in this Bond. In the event that suit is brought upon this Payment Bond, the parties not prevailing in such suit shall pay reasonable attorney's fees and costs incurred by the prevailing parties in such suit.

This Payment Bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100 as to give a right of action to such persons or their assigns in any suit brought against this Bond.

Should the condition of this Payment Bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

Surety, for value received, hereby expressly agrees that no change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the work to be performed thereunder, or to the Specifications accompanying the same, and no inadvertent overpayment of progress payments, shall in any way affect its obligations on these Bonds; and it does hereby waive notice of any such change, extension of time, modification, alteration or addition to the undertakings, covenants, terms, conditions and agreements of the Contract, or to the Work to be performed thereunder, or to the Specifications, or of any inadvertent overpayment of progress payments.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Approved as to form:  
Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

Principal

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

Surety

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

END OF SECTION



## SECTION 00 63 30

ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, whose address is Pier 1, The Embarcadero, San Francisco, California 94111, hereinafter called "City",

\_\_\_\_\_ whose address is \_\_\_\_\_

\_\_\_\_\_, hereinafter called "Contractor"

and \_\_\_\_\_

whose address is \_\_\_\_\_, hereinafter called "Escrow Agent."

For the consideration hereinafter set forth, the City, Contractor, and Escrow Agent agree as follows:

1. Pursuant to section 22300 of the Public Contract Code of the State of California, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by the City pursuant to the construction contract entered into between the City and Contractor for SWL 321 PARKING LOT ELECTRICAL SERVICE PROJECT (Port of San Francisco Contract No. 2773) in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of substitution shall be equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and Contractor. Securities shall be held in the name of CITY AND COUNTY OF SAN FRANCISCO, and shall designate Contractor as the beneficial owner.
2. The City shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. When the City makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until such time as the escrow created under this Contract is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor, and Escrow Agent.
5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the City to

Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by Contractor.

- 7. The City shall have the right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice Escrow Agent from the City of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
- 8. Upon receipt of written notification from the City certifying that Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- 9. Escrow Agent shall rely on the written notifications from the City and Contractor pursuant to sections 5 to 8, inclusive, of this Escrow Agreement, and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
- 10. The names of the persons who are authorized to give written notice or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing are as follows:

a. On behalf of the City:

(Title)	(Address)
(Name)	(City, State, Zip Code)

b. On behalf of Contractor:

(Title)	(Address)
(Name)	(City, State, Zip Code)

c. On behalf of Escrow Agent:

(Title)	(Address)
(Name)	(City, State, Zip Code)

At the time the Escrow Account is opened, the City and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Escrow Agreement.

IN WITNESS WHEREOF, the parties have executed this Escrow Agreement by their proper officers on the date first set forth above.

CITY AND COUNTY OF  
SAN FRANCISCO:

Recommended: \_\_\_\_\_

\_\_\_\_\_  
Title

By: \_\_\_\_\_  
Executive Director

Approved as to form:  
Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

ESCROW AGENT:

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

CONTRACTOR:

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature)

**Note: Contractor shall submit 4 original executed copies of this document to the Awarding Agency.**

END OF SECTION



SECTION 00 72 00

GENERAL CONDITIONS

**SECTION 00 72 00**



**SECTION 00 72 00**  
**GENERAL CONDITIONS**  
**(August 2015)**

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## GENERAL CONDITIONS (August 2015)

*[Note: Paragraphs with major revisions are identified with a vertical bar on the right side.]*

### ARTICLE 1 - GENERAL

#### 1.01 DEFINITIONS

A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents (as defined in Paragraph 1.02), it shall have the meaning set forth in this Paragraph 1.01. References to related Paragraphs or Documents are provided for convenience but not to exclude other Paragraphs or Documents where such terms may be used. The colon (":") is employed in this Paragraph as a symbol for "shall mean". A colon also may be employed in these General Conditions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows.

1. **Accepted, Approved:** Accepted or approved, or satisfactory for the Work, as determined in writing by the City, unless otherwise specified. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Contractor, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Conditions. In no case shall the City's approval be interpreted as a release of Contractor from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the City's right under the Contract.

2. **Addenda:** Written or graphic instruments issued prior to the opening of Bids which make changes, additions or deletions to the Bid Documents. Refer to Section 00 21 13, Instructions to Bidders.

3. **Agreement:** The Agreement or Contract between the City and Contractor covering the Work to be performed; other Contract Documents are attached to the Agreement and made part thereof as provided herein. The Contract is fully executed upon certification by the Controller of the City and County of San Francisco as to the availability of construction funds. Refer to Section 00 52 00, Agreement Form.

4. **Alternate Bid Item:** A Bid item that may be added to or deducted from the Total Bid Price to meet Project construction budget requirements.

5. **Application for Payment:** Written request submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved schedule of values. Refer to Article 9, Payments and Completion.

6. **Approved Equal:** Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion

of the City Representative. The burden of proof of equality is the responsibility of Contractor. Refer to Division 01 for procedures for proposing substitutions.

7. **Bid, Bid Documents:** Refer to Section 00 21 13, Instructions to Bidders.

8. **Bidding Requirements:** The Sections listed in Section 00 01 10, Table of Contents, under the heading "Procurement Requirements."

9. **Bonds:** Bid, performance and payment (labor and materials) bonds and other instruments of security acceptable to the City. Refer to Paragraph 10.02, Performance Bond and Payment Bond, and Sections 00 43 13 and 00 61 13 for Bond forms.

10. **Bulletin:** Refer to "Field Order."

11. **By Others:** Work on this Project that is outside the scope of Work to be performed by Contractor under this Contract, but that will be performed by the City, other contractors, or other means and at other expense.

12. **Change Order:** A written instrument prepared by the City issued after the effective date of the Agreement and executed in writing by the City and Contractor, stating their agreement upon all of the following: (i) a change in the Work; (ii) the amount of the adjustment in the Contract Sum, if any; (iii) the extent of the adjustment in the Contract Time, if any; and (iv) an amendment to any other Contract term or condition. Refer to Article 6, Clarifications and Changes in the Work.

13. **Change Order Request (COR):** Refer to Paragraph 6.03, Change Order Requests and Proposed Change Orders.

14. **City:** The City and County of San Francisco, California, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. The term "Owner" means the City and its authorized agent or representative.

15. **City Representative:** The authorized on-Site representative of the City, as identified at the pre-construction conference convened by the City, in the performance of on-Site inspection and administration of the Contract. All liaisons between the City and Contractor shall be directed through the City Representative.

16. **Claim:** A written demand or assertion by Contractor seeking an adjustment or interpretation of the terms of the Contract Documents, an adjustment in the Contract Sum or Contract Time, or both, or other relief with respect to the Contract Documents, including a determination of disputes or matters in

question between the City and the Contractor arising out of or related to the Contract Documents of the performance of the Work, which is submitted in accordance with the requirements of the Contract Documents. Refer to Article 13.

**17. Clarification:** A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an extension of Contract Times unless requested by Contractor and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.

**18. Code:** The latest editions of the San Francisco Municipal Code, as well as any State of California, Federal, or local law, statute, ordinance, rule or regulation having jurisdiction or application to the Project.

**19. Commission:** Refers to the Contract awarding authority for City departments with boards or commissions (i.e., the San Francisco Public Utilities Commission, the San Francisco Recreation and Park Commission, the San Francisco Port Commission, the San Francisco Airport Commission, or the Board of Directors of the San Francisco Municipal Transportation Agency, as appropriate). Refer to Section 00 52 00, Agreement Form.

**20. Contract:** Refer to Paragraph 1.02, Contract Documents and Contracting Requirements.

**21. Contract Documents:** Refer to Paragraph 1.02, Contract Documents and Contracting Requirements.

**22. Contract Sum:** The sum stated in the Agreement and, including authorized adjustments, the total amount payable by the City to Contractor for the performance of the Work under the Contract Documents. Refer to Section 00 52 00, Agreement Form.

**23. Contract Time(s):** The number of consecutive days as stated in Section 00 73 02 to: (i) achieve Substantial Completion; (ii) complete the Work so that it is ready for final acceptance as evidenced by the City's issuance of written acceptance as required by section 6.22(k) of the San Francisco Administrative Code; and (iii) achieve any interim Milestones specified in the Contract Documents.

**24. Contracting Requirements:** The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 72 00) and the Sections as listed under Contracting Requirements in the Table of Contents (Section 00 01 10).

**25. Contractor:** The person or entity with whom the City has executed the Agreement and identified as such therein and referred to throughout the Contract Documents as if singular in number and

neuter in gender. The term "Contractor" means Contractor or its authorized representative.

**26. Critical Path:** A continuous chain of activities with zero float running from the start event to the finish event in the schedule.

**27. Critical Path Method (CPM):** Refers to the critical path method scheduling technique.

**28. Day:** Reference to "day" shall be construed to mean a calendar day of 24 hours, unless otherwise specified.

**29. Default:** Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.

**30. Delivery:** In reference to an item specified or indicated shall mean for the Contractor and/or Supplier to have delivered and to unload and store with proper protection at the Site. Refer to Paragraph 9.03, Progress Payments, for delivery to another (off-Site) location.

**31. Department Head:** The contracting officer for the Contract (i.e., the General Manager of the San Francisco Public Utilities Commission, the Director of San Francisco Public Works, the Executive Director of the Port of San Francisco, the General Manager of the San Francisco Recreation and Parks Department, the Director of Transportation of the San Francisco Municipal Transportation Agency, or the Director of the San Francisco International Airport, as appropriate), or his/her designee, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 52 00, Agreement Form.

**32. Designated, Determined, Directed:** Required by the City, unless otherwise specified. Refer to Paragraph 2.01, Administration of the Contract.

**33. Differing Conditions:** Refer to Paragraph 3.03, Unforeseen or Differing Conditions.

**34. Division:** A grouping of sections of the Specifications describing related construction products and activities. Refer to Section 00 01 10, Table of Contents, for a listing of Division and section numbers and titles.

**35. Drawings:** The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

**36. Effective Date of the Agreement:** The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed by the last of the two parties to sign, or when the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.

**37. Field Order:** A written order issued by the City which provides instructions or requires minor

changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Paragraph 6.02, Request for Information, Clarifications and Field Orders.

38. **Final Completion:** The date of written acceptance of the Work by the City, issued in accordance with section 6.22(k) of the San Francisco Administrative Code, when the Contract Work has been fully and satisfactorily completed in accordance with the Contract Documents.

39. **Force Account Work:** Change Order Work to be paid for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07, Force Account Work.

40. **Furnish:** Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to supply and deliver to the Site.

41. **General Requirements:** The General Requirements include all Documents in Division 1, and govern the execution of the Work of all sections of the Specifications.

42. **Guarantee To Repair Period:** The period specified in Paragraph 8.03 or Division 1 during which Contractor must correct Non-conforming Work.

43. **Indicated:** Shown or noted on the Drawings or written in the Specifications.

44. **Install:** Apply, connect or erect items for incorporation into the Project; Furnishing or Supplying is not included. The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.

45. **Installer:** A person engaged by Contractor, its Subcontractor or Lower-Tier Subcontractor for performance of a particular element of construction at the Site, including installation, erection, application and similar required operations.

46. **Item:** A separate, distinct portion of the whole Work, which may comprise material, equipment, article, or process.

47. **Lower-Tier Subcontractor or Supplier:** A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish materials or equipment to be incorporated in the Work by Contractor, Subcontractor or Lower-Tier Subcontractor, as applicable.

48. **Milestone:** A principal date or time specified in the Contract Documents relating to an intermediate event prior to Substantial Completion.

49. **Modification:** A document incorporating one or more Change Orders approved by the City to comply with the Certification by Controller require-

ments of the City's Charter as stated in Section 00 52 00.

50. **Non-conforming Work:** Work that is unsatisfactory, faulty, defective, omitted, incomplete or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referred to in the Contract Documents; or Work that has been damaged or disturbed by Contractor's operations contrary to the Contract Documents prior to Final Completion.

51. **Notice of Default:** Refer to Paragraph 14.01, Notice of Default; Termination by the City for Cause.

52. **Notice of Potential Claim:** Refer to Paragraph 13.02, Notice of Potential Claim.

53. **Notice of Substantial Completion:** The written notice issued by the City to Contractor acknowledging that the Work is Substantially Complete as determined by the City. Said Notice shall not be considered as final acceptance of any portion of the Work or relieve Contractor from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.

54. **Notice to Proceed or "NTP":** The written notice issued by the City to Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Contract Time. The Contract Documents may specify more than one NTP applicable to different phases of the Work.

55. **Owner:** Refer to "City."

56. **Paragraph:** A paragraph under an Article of these General Conditions. Refer to "General Conditions-Table of Contents" for a listing of Article and Paragraph numbers and titles.

57. **Partial Utilization:** Right of the City to use a portion of the Work prior to Substantial Completion of the Work.

58. **Project:** Refer to "Work".

59. **Project Manual:** The bound written portion of the Contract Documents prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which consists of the Procurement and Contracting Sections and Specification Sections and may include schedules, is contained in Section 00 01 10, Table of Contents.

60. **Proposed Change Order (PCO):** A document prepared by the City requesting a quotation of cost or time from Contractor for additions, deletions or revisions in the Work initiated by the City or Contractor.

61. **Provide:** Furnish and Install or Supply and Install complete in place at the Site.

**62. Punch List / Final Completion:** A punch list prepared by the City identifying deficient Items to be corrected by Contractor prior to Final Completion. Refer to Paragraph 9.09, Final Completion and Final Payment.

**63. Punch List / Substantial Completion:** The list provided by the City identifying Items that shall be corrected or completed before the City considers the Work Substantially Complete. Refer to Paragraph 9.08, Substantial Completion.

**64. Quality Assurance (QA):** All those planned and systematic actions necessary to provide adequate confidence that a Quality Control Program has been applied.

**65. Quality Control (QC):** Those actions that control and measure the characteristics of an item, process, or facility against established requirements to ensure that a product or service will satisfy given requirements for quality.

**66. Reference Documents:** Refer to Section 00 21 13, Instructions to Bidders, and Section 00 31 00 for identification of Reference Documents, if any.

**67. Regular Working Hours:** 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays.

**68. Request for Information (RFI):** A document prepared by Contractor requesting information from the City regarding the Project or Contract Documents.

**69. Request for Substitution (RFS):** A request from Contractor in accordance with the conditions specified in Division 01 to substitute a material, product, thing or service specified in the Contract Documents with an equal material, product, thing or service. Refer to Paragraph 3.11, Substitutions, and Section 00 49 18, Request for Substitution form.

**70. Required:** In accordance with the requirements of the Contract Documents.

**71. Resident Engineer:** See "City Representative."

**72. Samples:** Physical examples of materials, equipment, or workmanship that are submitted for adjudication of their compliance with the specification.

**73. Section:** Refer to Section 00 01 10, Table of Contents, for a listing of the Sections.

**74. Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data or information which are prepared or assembled by or for Contractor and submitted to City.

**75. Site:** Geographical location of the Project as indicated elsewhere in the Contract Documents.

**76. Special Provisions:** The part of the Contract Documents that amends, modifies, or supple-

ments these General Conditions. The Special Provisions include the 00 73 00-series Sections as listed in Section 00 01 10, Table of Contents.

**77. Specifications:** The portion of the Project Manual comprising Division 01 through Division 49 and listed in Section 00 01 10, Table of Contents, consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services.

**78. Specified:** Written or indicated in the Contract Documents.

**79. Subcontractor:** A person or entity who has a direct contract with Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Contractor if so provided in the Supplementary Conditions or specified in the General Requirements (Division 01).

**80. Substantial Completion:** The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, issued by the agency having jurisdiction over the Work so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.

**81. Supplementary Conditions:** The part of the Contract Documents that amends, deletes or modifies these General Conditions. The Supplementary Conditions are set forth in Section 00 73 00.

**82. Supplier:** A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.

**83. Supply:** Refer to "Furnish."

**84. Total Bid Price:** Refer to Section 00 21 13, Instructions to Bidders.

**85. Unavoidable Delay:** Refer to Paragraph 7.02, Delays and Extensions of Time.

**86. Unilateral Change Order:** A written Change Order to Contractor issued after the effective date of the Agreement in accordance with Paragraph 6.05.

**87. Unit Price Work:** Work to be paid for on the basis of unit prices and actual quantities of Work. Refer to Paragraph 6.08.

**88. Work:** The performance by Contractor of all its responsibilities and obligations set forth in the

Contract Documents. Work shall include, but not be limited to, providing all labor, services, and documentation required by the Contract Documents. References in the Contract Documents to "Work" may be to items of Work. Refer to Paragraph 1.03.

89. **Working Day:** Any day of the week except Saturdays, Sundays and statutory holidays.

## 1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

A. The Contract Documents form the entire Contract for the construction of the Work, and consist of the following:

1. the Drawings, Project Manual, and all Addenda thereto;
2. the Agreement and other documents listed in the Agreement;
3. Change Orders, Unilateral Change Orders, Clarifications, and Field Orders issued after execution of the Contract; and
4. all provisions of the Bid Documents, as defined in Section 00 21 13, Instructions to Bidders, not in conflict with the foregoing.

B. Nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier or a person or entity other than the City and Contractor.

C. The Contracting Requirements and the General Requirements contain information necessary for completion of every part of the Project and are applicable to each section of the Specifications. Where items of Work are performed under subcontracts, each item shall be subject to the Contracting Requirements and General Requirements.

## 1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS

A. The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents will be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the city and/or county where the Project is located.

B. The intent of the Contract Documents is to describe and provide for a functionally complete and operational Project (or part thereof) to be constructed in accordance with the Contract Documents. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be

provided by Contractor with no change in the Contract Sum or Contract Time.

C. Arrangement and titles of Drawings, and organization of the Specifications into Divisions, sections and articles in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by any trade. Contractor may arrange and delegate its Work in conformance with trade practices, but Contractor shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Specifications. The City assumes no responsibility to act as arbiter to establish subcontract limits between portions of the Work.

D. In interpreting the Contract Documents, words describing materials or Work with a well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.

E. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be submitted to the City for approval. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.

F. In the event of a conflict in the Contract Documents regarding the quality of a product, Contractor shall request Clarification from the City as provided in Paragraph 6.02 before procuring said product or proceeding with the Work affected thereby.

G. The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. If rerouting, i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences, results in a total linear footage which exceeds 125% of the indicated route if the structural interferences did not exist, then Contractor will be compensated for the amount in excess of 125% under the provisions for Change Orders of Article 6. Actual layout of the Work shall be carried out without affecting the architectural and structural integrity and limitations of the Work;

shall be performed in such sequence and manner as to avoid conflicts; shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.

H. Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, Contractor shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.

I. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

J. When there is a conflict between existing on-Site conditions and information indicated on the Drawings, other than Differing Conditions as defined in Paragraph 3.03, the existing condition shall govern. Contractor shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Contractor should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Bid in accordance with the requirements of Section 00 21 13.

K. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive.

#### **1.04 AMENDMENT OF CONTRACT DOCUMENTS**

A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways: (i) Change Order; (ii) Modification, or (iii) Unilateral Change Order.

B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order;

(ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 2.01.

#### **1.05 RESOLUTION OF CONFLICTING TERMS; PRECEDENCE OF CONTRACT DOCUMENTS**

A. The Contract Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract Documents shall not be deemed to be in conflict. It is expressly agreed by and between Contractor and the City that should there be any conflict between the terms of the Contract Documents and the Bid submitted by Contractor, the Contract Documents shall control and nothing herein shall be considered as an acceptance of any terms of the Bid which conflict with the Contract Documents.

B. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail (listed in order of highest to lowest precedence):

1. Modifications, Change Orders, and Unilateral Change Orders in inverse chronological order, and in same order as specific portions they are modifying.
2. Written Clarifications and Field Orders
3. Executed Agreement.
4. Addenda.
5. Supplementary Conditions.
6. These General Conditions.
7. General Requirements (Division 01).
8. Other Contracting Requirements.
9. Divisions 02 through 49 of the Specifications.
10. Drawings.
11. Bid Documents

C. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale Drawings over small-scale Drawings.
4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.



5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails.

#### **1.06 REUSE OF CONTRACT DOCUMENTS**

A. The Contract Documents were prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. Any unauthorized use of the Contract Documents is at the sole liability of the user.

### **ARTICLE 2 - CITY'S RESPONSIBILITIES AND RIGHTS**

#### **2.01 ADMINISTRATION OF THE CONTRACT**

A. The City shall administer the Contract as described in the Contract Documents. Reference is made to Division 01 for administrative requirements and procedures.

B. The Department Head will designate in writing an authorized representative with limited authority to act on behalf of the City. The City may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with the City's Charter and codes. These changes will be communicated to Contractor in writing. Contractor assumes all risks and consequences of performing work pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.

#### **2.02 INFORMATION AND SERVICES**

A. The City's survey information, such as monuments, property lines, and reports describing physical characteristics, legal limitations and utility locations for the Site are available as Reference Documents.

B. The City shall apply and pay for the building permit if required for the Work and shall pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Contractor in accordance with Paragraph 3.06.

1. The City's responsibility with respect to certain inspections, tests, and approvals is set forth in Article 8.

#### **2.03 RIGHT TO STOP THE WORK; CONTRACTOR'S FAILURE TO CARRY OUT THE WORK IN ACCORDANCE WITH CONTRACT**

A. The City may order Contractor to stop the Work, or a portion thereof, until the cause for such order has been eliminated. Any such order to stop the Work shall be in writing, provide Contractor with an effective date for stopping Work, and shall be signed by the City Representative. Unless otherwise agreed to by the City, Contractor shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of any such order to stop the Work.

B. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or other person or entity.

C. Reasons for ordering Contractor to stop the Work, or a portion thereof, include but are not limited to the following:

1. Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents; or
2. Contractor fails to carry out Work in accordance with the Contract Documents; or
3. Contractor disregards the authority of the authorized City Representative; or
4. Contractor disregards the laws and regulations of a public body having jurisdiction over the Project; or
5. Contractor violates in any substantial way any provisions of the Contract Documents; or
6. Contractor fails to maintain current certificates of insurance on file with the City; or
7. Original Contract Work is proceeding but will be modified by a pending Change Order.

D. In the event that Contractor (i) fails to maintain current certificates of insurance on file with the City; (ii) commits criminal or unlawful acts; (iii) creates safety hazards; or (iv) commits acts or creates conditions that would have an immediate adverse impact on the well-being of the Project, the City, the public, and/or Contractor's employees, the City shall have the right to order Contractor to stop the Work immediately, without prior notice.

#### **2.04 RIGHT TO CARRY OUT THE WORK**

A. In the event that Contractor fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents,

the City may, without prejudice to other remedies the City may have, correct such deficiencies.

B. In such case the City will deduct all costs of such corrections, including the costs of City staff and consultants, from amounts due Contractor. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Contractor shall reimburse the City.

## **2.05 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK**

A. By executing this Contract, Contractor agrees that the City has the right to do any or all of the following, which are reasonable and within the contemplation of the parties: (i) order changes, additions, deletions and extras to the Work after execution of the Contract and issued from time to time throughout the period of construction, regardless of their scope, number, cumulative value, or complexity, to correct errors, omissions, conflicts and ambiguities in the Contract Documents, or to implement discretionary changes to the scope of Work requested by the City; (ii) issue changes, additions, deletions and extras in a manner that is not in sequence with the as-built or as-planned progress of the Work; (iii) issue changes due to Unforeseen or Differing Conditions; (iv) suspend the Work, or parts thereof, or limit access to portions of or all of the Work, for the convenience of the City or in the interests of the Project; and (v) delay or disrupt the Work due to failure of the City to timely perform any contractual obligation.

## **2.06 AUDIT**

A. The City shall have the right to examine, copy and audit all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, estimates, records, contracts, escrow bid documents, bid cost data, schedules, subcontracts, job cost reports, correspondence, and other data, including computations and projections, of Contractor, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (i) a Change Order Request; (ii) Force Account Work; or (iii) a Contract Claim. In the event that Contractor is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.

B. Upon written notice by the City, Contractor immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05A for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five-days' notice of the examination and/or audit. The City may take possession of the records and materials noted in

subparagraph 2.05A by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Contractor shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.

C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.

D. The City may examine, audit, or reproduce the materials and records under this Paragraph from the date of award until three years after final payment under this Contract.

E. Failure by the Contractor to make available any of the records or materials noted in subparagraph 2.05A or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.

F. Contractor shall insert a clause containing all the provisions of this Paragraph in all subcontracts of Subcontractors and Lower-Tier Subcontractors and Suppliers for this Contract over \$10,000.

## **2.07 NO WAIVER OF RIGHTS**

A. None of the following shall operate as a waiver of any provision of this Contract or of any power herein reserved by the City or any right to damages herein provided:

1. inspection by the City or its authorized agents or representatives; or
2. any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
3. any extension of time; or
4. any position taken by the City or its authorized agents or representatives.

## **2.08 CITY NOT LIABLE FOR CONSEQUENTIAL DAMAGES**

A. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential or incidental damages arising out of or connected with Contractor's Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of the Work or this Contract, negli-

gence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.

### **ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES**

#### **3.01 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS**

A. The Contract Documents are not complete in every detail but show the purpose and intent only, and Contractor shall comply with their true intent and meaning, taken as a whole, and shall not avail itself of any manifest error, omission, discrepancy or ambiguity which appear in the Contract Documents, instructions or work performed by others.

B. Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Contractor shall be responsible for the accuracy of such dimensions and determinations.

C. Contractor shall carefully review the appropriate portions of the Contract Documents a minimum of 30 days in advance of the Work to be executed for the express purposes of checking for any manifest errors, omissions, discrepancies or ambiguities. Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Contractor's untimely review of the Contract Documents.

D. Contractor shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI reply as to the procedure to be followed. If Contractor proceeds with any such Work without receiving such Clarification or RFI reply, it shall be responsible for correcting all resulting damage and Non-conforming Work.

E. Contractor shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and field conditions and to implement and administer a Request for Information (RFI) system throughout the Contract Time in accordance with the requirements of Division 01. Contractor shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Contractor's RFIs where the answer could reasonably be found by reviewing the Contract Documents.

F. Prior to start of Work, Contractor and the City Representative shall visit the site and adjacent properties as necessary to document existing conditions including photographs. Contractor shall document these conditions and shall submit prior to the start of

Work a complete report of existing conditions determined by the site survey as indicated in Division 01.

#### **3.02 SUPERVISION OF THE WORK**

A. Unless there are specific provisions in the Contract Documents to the contrary, Contractor shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Contractor shall be solely responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Contractor, its Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Contractor is solely responsible for maintaining safe conditions on the site at all times, in accordance with Article 12.

B. Contractor shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation into the Work in the proper sequence and without delay of materials, devices, or provisions for future Work.

C. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or contractors, then Contractor shall require the Subcontractor to:

1. coordinate its Work with the dependent work;
2. provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
3. supply and install items to be built into dependent work of others;
4. make provisions for dependent work of others;
5. examine dependent drawings and specifications and submittals;
6. examine previously placed dependent work;
7. check and verify dependent dimensions of previously placed work;
8. notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
9. not proceed with its Work until the unsatisfactory dependent conditions have been corrected.

D. Contractor shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing herein contained shall be

taken to relieve Contractor of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision.

E. Contractor shall at all times permit the City, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; (ii) subject them to inspection at all such places; and (iii) reject if the Work does not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8.

F. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the City of such desire and request and obtain the City's written permission at least 3 working days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work so that the City may make the necessary arrangement for testing and inspection.

G. If Contractor receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.

H. During all disputes or disagreements with the City, Contractor shall carry on the Work and adhere to the progress schedule required to be submitted under the requirements of the Contract Documents. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing.

### **3.03 UNFORESEEN OR DIFFERING CONDITIONS**

A. Consistent with section 7104 of the California Public Contract Code, if any of the following conditions are encountered at the Site, Contractor shall promptly, and before such conditions are disturbed, notify the City in writing.

1. Material that Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing Law.

2. Subsurface or latent physical conditions at the Site differing materially from those indicated by information about the Site made available to bidders prior to the deadline for submitting bids.

3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in the work of the character provided for in the Contract Documents.

B. Contractor's written notice shall include the following information concerning such conditions: (i) location; (ii) nature and extent; (iii) a description of how such conditions affect the Work; (iv) recommended methods to overcome such conditions; (v) the baseline conditions described in the Contract Documents that formed the basis of Contractor's expectations regarding the conditions that would be encountered; and (vi) the results of any testing, sampling, or other investigation conducted by Contractor.

C. Differing Conditions shall not include:

1. All that is indicated in or reasonably interpreted from the Contract Documents or Reference Documents;

2. All that could be seen on Site;

3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Reference Documents.

4. Conditions where the location of a building component is in the proximity where indicated in or reasonably interpreted from the Contract Documents or Reference Documents.

D. The City will promptly investigate the conditions reported in Contractor's written notice, and will issue a written report of findings to Contractor.

E. Contractor shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

F. Only if the City determines, in its sole and reasonable discretion, that the conditions reported do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost or time required to perform all or part of the Work, will the City issue a Change Order as provided in Article 6 of these General Conditions. If the City determines that a differing condition exists, Contractor shall promptly submit a Cost Proposal and/or Time Adjustment Proposal, as appropriate, per Article 6 to facilitate the timely negotiation and execution of a Change Order.

G. If Contractor disagrees with the City's determination and wishes to pursue an adjustment to the Contract Sum and/or Contract Time, Contractor must timely submit a written Notice of Potential Claim to the City as provided in Paragraph 13.03 of these General Conditions. Contractor's Notice of Potential Claim must include the information required by Paragraph 13.02, and must also identify the Escrow Bid Docu-

ments that formed the basis of Contractor's Bid to perform the Work affected by the alleged differing condition. In the event of such disagreement, Contractor shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.

H. Failure by Contractor to comply with the requirements of this Paragraph concerning the timing and content of any notice of unforeseen or differing site conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged unforeseen or differing site conditions shall be deemed a waiver of any Contract Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Contractor for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

### **3.04 SUPERINTENDENTS AND OTHER KEY TEAM MEMBERS**

A. Contractor shall at all times be represented at the Site by Contractor's competent project manager or superintendent whom it has authorized in writing to make decisions and receive and carry out any instructions given by the City. Contractor will be held liable for the faithful compliance with such instructions. Prior to the issuance of Notice to Proceed, Contractor shall inform the City in writing of the names, addresses and telephone numbers of its key personnel whom it has authorized to act as its representatives at the Site and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Contractor is a joint venture, it shall designate only one such representative.

B. The City reserves the right to reject Contractor's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.05A. The City shall be given written notice of, and shall have the right to approve, replacement of Contractor's project manager, superintendents and foremen.

C. In the event that the Contractor proposes to substitute a key team member during the performance of the Contract, Contractor shall submit to the City Representative, at least seven days prior to engaging the person, an Experience Statement form (Section 00 49 12) for the City's review and acceptance. Any proposed substitution is subject to the approval of the City Representative based upon qualifying experience on similar projects as set forth in the bid documents for the project. Failure to obtain the City's acceptance shall not constitute a cause for delay. In addition, the City may issue an order to stop the work under Article 2.03 until such time as the Contractor engages persons possessing skills and qualifications acceptable to the City.

### **3.05 LABOR, MATERIALS AND EQUIPMENT**

A. Contractor shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification Contractor shall discharge from the Work and replace at no additional cost to the City an employee, Subcontractor or Supplier used on the Work who, in the City's sole judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent or member of the public; or (iii) is refusing to carry out the provisions of the Contract.

B. In order that the City can determine whether Contractor has complied or is complying with the requirements of the Contract which are not readily enforceable by inspection and test of the Work and materials, Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.

C. Before ordering materials, equipment, or performing Work, Contractor shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work as specified in Paragraph 3.01. If a discrepancy exists, Contractor shall notify the City immediately and request the City to clarify the intended design. Upon commencement of a particular item of Work, Contractor shall be responsible for dimensions related to such item of Work.

D. All materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged materials and equipment to the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Contractor shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.

E. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work in accordance with Division 01.

F. In the event that Division 01 does not require a field office for the City Representative, Contractor shall provide adequate separate sanitary facilities at the Site for the City Representative.

### 3.06 PERMITS, FEES AND NOTICES

A. Contractor shall pay all utility charges for temporary connections to the Work.

B. Unless otherwise provided in the Contract Documents, Contractor shall secure and pay for all permits (other than the building permit), governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work. See Section 00 73 01 Permits and Agreements.

1. Contractor shall coordinate and obtain all permits prior to starting Work for which permits are required.

2. The City will reimburse Contractor for reasonable costs incurred for obtaining permits that are not specified in the Bid Documents to be obtained at Contractor's expense.

C. Pursuant to section 832 of the California Civil Code, Contractor shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work.

D. Contractor shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Contractor shall timely deliver, post and maintain all notices required by such permits. Contractor shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Contractor's failure to coordinate or comply with the conditions of such excavation permits, Contractor shall pay all costs, assessments, fines, and penalties resulting therefrom.

E. If Contractor observes that portions of the Contract Documents are at variance with the Code or other applicable laws, statutes, ordinances, rules and regulations, Contractor shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with such laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate amendment.

F. If Contractor performs Work it knows, or reasonably should have known, to be contrary to the Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Contractor shall assume responsibility for such Work and shall bear all costs of correction.

G. Contractor shall keep the permits, an approved set of Drawings and Specifications, and a copy of the

Code at the Site readily available for inspection during regular working hours throughout the Contract Time.

H. Contractor shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. Contractor shall notify the City Representative in accordance with Article 8, so that the appropriate City representatives and inspectors will be present at these inspections.

I. Contractor shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.

J. Contractor shall submit to the City Representative as a condition precedent to Final Completion signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

### 3.07 RECORD DOCUMENTS

A. Contractor shall maintain at the Site a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, Field Orders, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed, all in accordance with the Specifications. Additionally, record documents shall conform to the requirements specified in Division 01.

B. Contractor shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.07A. The City shall have the right to withhold 25 percent of progress payments due Contractor until Contractor has complied with this Paragraph 3.07.

C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to Substantial Completion.

### 3.08 CONTRACTOR'S DAILY REPORT

A. Contractor shall complete, and submit to the City on the next day, consecutively numbered daily construction reports in accordance with Division 01.

B. In addition, whenever Force Account Work is in progress, Contractor shall complete and submit to the City detailed written daily Force Account Work reports as provided under Paragraph 6.07.

### 3.09 PROGRESS AND SUBMITTAL SCHEDULES

A. At the Pre-Construction Conference, Contractor shall submit to the City for review a 60 day bar chart type Plan of Operation as required by Division 01.

B. Prior to commencing Work, Contractor shall submit to the City for review the following schedules:

1. a cost-and-resource-loaded Base Line Construction Schedule for the Work which shall use, unless otherwise specified in Division 01, the critical path method (CPM), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various stages of the Work, including all milestones and special constraints specified in the Contract Documents; and

2. a submittal log, coordinated with the progress schedule in accordance with the requirements of Division 01, listing all submittals required by the Contract, their cognizant specification reference, and indicating the times for submitting such submittals.

C. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Contractor shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.09A. Contractor shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.

D. No progress payments will be made to Contractor unless and until the Baseline Schedule is submitted and accepted by the City.

E. Contractor shall adhere to the Base Line Construction Schedule accepted by the City in accordance with subparagraph 3.09C and as may be adjusted during the performance of the Work in accordance with the Contract Documents. Contractor shall submit to the City for acceptance proposed revisions or adjustments in the base line construction schedule. Proposed adjustments in the base line construction schedule that will change the Contract Times shall be submitted to the City in accordance with Paragraph 7.02.

F. Acceptance of base line construction and submittal schedules by the City will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Contractor from its full responsibility therefor.

G. Contractor shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03 and Division 01. All updates shall be submitted to the City for the City's acceptance; if rejected, Contractor shall correct and resubmit updates to the satis-

faction of the City before a pending application for payment is approved.

1. Each progress schedule update shall continue to show all Work activities including those already completed and those of changed Work.

2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates activities were actually started and completed and the actual percent complete of activities.

3. Contractor's submission of progress schedule updates, reports, curves or narratives, or the City's acceptance of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or milestone dates or modify or limit, in any way, Contractor's obligations under this Contract.

4. Contractor waives its rights to time extensions based on changed Work if Contractor has failed to meet its obligations to provide monthly schedule updates as specified herein.

H. Early Completion Schedule: If Contractor submits a base line schedule that shows a completion time that is earlier than the Contract Time, the "float" shall belong to the Project. Contractor shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float."

### 3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

A. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Contractor shall review, approve, stamp, and submit to the City as specified in Division 01 shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Contractor that are not required by the Contract Documents may be returned without action.

C. By approving and submitting shop drawings, product data, samples and other submittals, Contractor represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

D. Contractor shall not perform any portion of the Work requiring submittal and review of shop drawings, product data, samples and other submittals until the respective submittal has been received, reviewed and approved or received, reviewed and accepted by the City and returned to Contractor. Such Work shall be in accordance with approved/accepted submittals. Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.

E. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Contractor.

F. The review, acceptance, approval, or other action taken by the City upon Contractor's submittals such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Contractor from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.01, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City's action will be taken with such reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Division 1, to permit adequate review. Approval/acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Contractor's obligation. Contractor shall be responsible to provide engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of such approvals/acceptances, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

G. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Contractor has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.

1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.

2. For resubmitted shop drawings, product data, samples and other submittals, Contractor shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.

H. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

### **3.11 SUBSTITUTIONS**

A. Pursuant to section 3400 of the California Public Contract Code, Contractor shall submit for approval to the City a properly completed Request for Substitution (refer to Section 00 49 18) for each material, product, thing, or service that it proposes to substitute in place of, and as the equal, of a material, product, thing, or service specified in the Contract Documents by trade name or by the names of any particular patentee, manufacturer or dealer. Failure to submit said Request for Substitution form within the period specified in Section 00 49 18 will be deemed adequate and reasonable grounds for refusal by the City to consider any subsequent proposed substitutions.

B. The requirements for obtaining approval of substitutions shall be as specified in Division 01.

### **3.12 USE OF SITE**

A. Contractor shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

B. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. Contractor shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with section 832 of the California Civil Code. Contractor shall obtain all such permits, rights-of-way and easements at no cost to the City.

C. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated materials at the Site.

D. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part



of the Work or adjacent property to stresses or pressures that will endanger it.

E. Contractor shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.

### **3.13 ACCESS TO WORK**

A. During the performance of the Work, the City and its authorized representatives, including City consultants performing necessary project-related functions on behalf of the City (e.g., construction management personnel and design professionals), or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any materials for use in the Work are being, or are to be, manufactured. Contractor shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or similar agreements requiring the signatory to defend, hold harmless and/or indemnify Contractor for claims arising out of or relating to the Work, the Project, or the Site.

### **3.14 CUTTING AND PATCHING**

A. Contractor shall be responsible for performing, in accordance with the requirements of the Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.

B. Contractor shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Contractor shall not withhold from the City Contractor's consent to cut or otherwise alter the Work.

### **3.15 CLEANING UP AND REMOVING DEBRIS**

A. Contractor shall keep the Site and surrounding area, including public areas immediately adjacent to the Site such as temporary pedestrian walkways and sidewalks, free from accumulation of excess materials, rubbish, graffiti, and debris.

1. Contractor shall perform such clean up and removal in accordance with the requirements of the Specifications.

2. Prior to Substantial Completion Contractor shall remove from and about the Site excess materials, rubbish, Contractor's tools, construction equipment, and machinery and shall perform final cleaning as specified in accordance with the requirements of the Specifications.

3. Removal and disposal of such excess materials, rubbish, and other debris shall conform to applicable laws and regulations.

B. If Contractor fails to comply with Article 3.15 or to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Contractor under the Contract.

C. Contractor shall salvage and deliver to the City removed equipment, appurtenances and other materials that are not reused in the Work and indicated by the City to be salvaged. Contractor shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

### **3.16 INTELLECTUAL PROPERTY; ROYALTIES AND INDEMNIFICATION**

A. Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.

B. Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, material, article or arrangement which is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.

C. To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the City and all its officers and employees connected with the Project, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees,

authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Contractor is not the patentee or assignee or does not have the lawful right to sell the same.

1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Paragraph 3.19 shall apply to this intellectual property indemnity.

D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at Contractor's sole expense and at no cost to the City, (1) modify the Work, consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right, or (2) replace said Work with work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

E. Subparagraphs 3.16C and 3.16D, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) arising from any unauthorized modifications to the Work by the City or its agents; or (ii) arising from the combination of Work with any products or services not provided or recommended by Contractor where the combination is the basis for infringement.

### **3.17 WARRANTY**

A. Contractor warrants and guarantees to the City that materials and equipment provided under the Contract shall be at least of the quality specified and new unless otherwise required or permitted by the Contract Documents and if no quality is specified, then the materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity; that the Work will be free from defects, and that the Work will conform to the requirements of the Contract Documents.

1. Contractor additionally warrants manufacturers' product warranties.

B. Contractor's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Contractor, improper or insufficient maintenance, improper operation, or nor-

mal wear and tear. Testing shall not be construed as operation.

C. Contractor shall deliver product warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Final Completion.

D. The warranty provisions of this Paragraph 3.17 are separate and additional to the provisions for correction of Non-conforming Work as specified in Article 8.

### **3.18 TAXES**

A. Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening.

### **3.19 INDEMNIFICATION**

A. Consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct of any person indemnified herein. Contractor's obligations under this Paragraph apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between Contractor and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City..

1. Contractor's defense, indemnity and hold harmless obligations shall extend to City Consultants (e.g., design professionals and construction managers) providing services under separate written agreement with the City covering any portion of the Project and designated as additional insureds in Article "Insurance for Others" of Section 00 73 16.

2. Contractor's defense, indemnity and hold harmless obligations shall not extend to the liability of a City Consultant designated as additional insured in Article "Insurance for Others" of Section 00 73 16 or its agents, employees or subconsultants arising out of, connected with or resulting from such indemnitee's own active negligence, errors or omissions or from (1) such indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) such indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

B. Contractor acknowledges that any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work performed under this Contract are expressly within the scope of this indemnity, and that the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity.

C. The City and other indemnified parties specified in subparagraph 3.19A shall provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other indemnified party, provided, however, that no delay on the part of the City or other indemnified party shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other indemnified parties' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other indemnified party conflict and counsel chosen by Contractor cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Contractor, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Contractor's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Contractor in the defense of the claim by providing cooperation, infor-

mation and witnesses, as needed to the extent there is no material conflict of interest.

1. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding subparagraph, (i) Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other indemnified party, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and/or other indemnified party in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other indemnified parties; and (ii) City and/or other indemnified parties will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.

2. If Contractor does not assume and conduct the defense of claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Paragraph 3.19.

D. Contractor's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.

E. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

F. The defense and indemnity obligations of this Paragraph shall survive Final Completion and termination of this Contract. Contractor's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during the course of the Work.

### **3.20 COMPLIANCE WITH LAWS; INDEMNIFICATION**

A. Contractor shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.

B. All construction and materials provided under the Contract Documents shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of the Code specified in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA, the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same, and they shall be observed and complied with by Contractor and any and all persons, firms and corporations employed by or under it.

C. As required by and in accordance with the procedures specified in Paragraph 3.19, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of law, regulation, order or decree by Contractor or its Subcontractors or Suppliers of all tiers in connection with or resulting from performance of the Work.

D. If the City incurs any fines or penalties because of Contractor's (or a Subcontractor's or Supplier's) failure to comply with a law, regulation, order or decree, the City may deduct the amount of the fine or penalty from the Contract Sum.

E. Authorized persons may at any time enter upon any part of the Work to ascertain whether applicable laws, regulations, orders or decrees are being complied with. Contractor shall promptly notify the City Representative if a regulatory agency requests access to the job site or to records. Contractor shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Contractor.

F. No additional costs will be paid or extensions of time granted as a result of Contractor's compliance with this Paragraph 3.20.

### **3.21 LIABILITY OF CONTRACTOR – CONSEQUENTIAL DAMAGES**

A. Contractor shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Contractor's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude: (i) Contractor's obligation to pay Liquidated Damages as set forth in the Contract Documents; (ii) damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (iii) Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in this General Conditions; (iv) Contractor's liability for any type of damage, including but not limited to, business interruption and extra expense, to the extent such damage is required to be covered by insurance as specified in the Contract Documents; (v) wrongful death caused by Contractor; (vi) punitive or treble damages; (vii) Contractor's liability for damages expressly provided for in the Contract Documents, including without limitation statutory damages imposed by the City upon Contractor under the City Ordinances and Municipal Codes specified in the Contract Documents; and (viii) Contractor's warranties and guarantees under the Contract Documents.

## **ARTICLE 4 - SUBCONTRACTORS**

### **4.01 SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

A. Under section 1725.5 of the California Labor Code, all Subcontractors who bid or work on a public works project must register and pay an annual fee to the California Department of Industrial Relations. No unregistered Subcontractor, regardless of the dollar amount of subcontract work, may be awarded a contract for public work on a public works project. Contractor shall not employ a Subcontractor who does not maintain a current registration with the California Department of Industrial Relations.

B. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with the governing regulations regarding subcontracts, section 6.21 of the San Francisco Administrative Code, and section 1771.1 of the California Labor Code. Section 6.21 and section 1771.1

shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.

C. Contractor shall not employ a Subcontractor, Supplier or other person or entity that the City has determined unqualified or non-responsible. The City may give written notice of such determination prior to award of the Contract or at any time during the Contract Time, and upon receipt thereof Contractor shall provide replacement with a qualified person or entity. The City shall have the right of approval and shall not be responsible for added costs to Contractor, if any, of employing such replacement person or entity.

#### **4.02 SUBCONTRACTUAL RELATIONS**

A. Contractor shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Contractor by the applicable terms and conditions of the Contract Documents, in the same manner Contractor is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractor and Lower-Tier Suppliers. All Subcontractors and Suppliers shall be given copies of the contract documents to which the Subcontractor or Supplier will be bound, and upon written request of the Subcontractor or Supplier, shall have identified written terms and conditions of their proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

#### **4.03 ASSIGNABILITY OF SUBCONTRACTS**

A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under the following conditions:

1. the City terminates the Contract for cause under provisions of Article 14;
2. the City requests such assignment; and
3. the surety providing the performance bond for the Project fails to timely fulfill its obligations under the performance bond.

B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

#### **4.04 SUCCESSORS AND ASSIGNS**

A. Contractor shall constantly give its personal attention to the faithful prosecution of the Work. Contractor shall keep the Work under its personal control and shall not assign by power of attorney or other-

wise, nor subcontract the whole or any part thereof, except as herein provided.

B. All transactions with Subcontractors will be made through Contractor, and no Subcontractor shall relieve Contractor of any of its liabilities or obligations under the Contract.

C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Contractor shall remove such Subcontractor immediately upon written request of the City, and shall request approval of a replacement Subcontractor to perform the Work in accordance with Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, Cal. Public Contract Code section 4100 et seq., at no added cost to the City.

D. The Contract shall not be assigned except upon the approval of the City in accordance with Administrative Code section 6.22(d).

### **ARTICLE 5 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS**

#### **5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as included in Contractor's Bid price and no direct or additional payment will be made therefor.

B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work not indicated in the Contract Documents or underway at the time of advertising for Bids materially increases Contractor's costs, then Contractor may submit a Change Order Request therefor in accordance with Paragraph 6.03.

C. If the City gives Contractor written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Contractor is already performing Work, Contractor shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Contractor shall provide the City Representative written notice when cleanup and demobiliza-

tion has been completed. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Contractor shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.

D. If Contractor requires access to a location where another contractor is performing work, Contractor shall request such access in writing from the City Representative. The City Representative will provide written notice to Contractor when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Contractor shall have full access and shall commence or resume its operations in that location.

E. If Contractor believes it is entitled to a time extension caused by its obligations under subparagraphs 5.01C or 5.01D above, it shall comply with the notification requirements of Paragraph 7.02.

F. When it is necessary for Contractor and another contractor or utility owner to work in the same location at the Site, each party shall assume the following mutual responsibilities for the benefit of the other party at no additional cost to the City:

1. both parties shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location;
2. both parties shall add the other party as an additional insured under their respective liability policies;
3. the party seeking to use portions of the construction Site of the other party to perform its work shall pay all direct costs incurred by the other party to accommodate its operations; and
4. if Contractor contends that delay or additional cost is involved because of such action by the City, Contractor shall make such Claim by the procedures as provided in Article 13.

G. The City shall not be a party to any of the agreements between multiple contractors and shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Contractor agrees to indemnify and hold the City harmless for all claims or losses that Contractor or the other contractors may incur as a result of their inability to successfully obtain work areas under the control of one of the parties.

## 5.02 COORDINATION

A. Contractor shall afford other contractors and the City reasonable opportunity for storage of materi-

als at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.

B. Notice of Conflicting Conditions: Where Contractor's Work is adjacent to or placed on top of that of another contractor, Contractor shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Contractor proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist.

1. The foregoing does not apply to latent defects. Contractor shall report to the City latent defects in another contractor's work promptly upon discovery.

C. Contractor shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract as directed.

D. Any difference or conflict that may arise between Contractor and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.

E. If so directed by the City, Contractor shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Contractor may submit a Change Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

F. At any time during the progress of the Work, the City may, by providing reasonable notice, require Contractor to attend any conference of any or all of contractors engaged in the Work.

G. If the City determines that Contractor is failing to coordinate its Work with the work of other contractors as directed, the City may upon 72 hour written notice:

1. withhold any payment otherwise owed under the Contract until Contractor complies with the City's directions; or
2. direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or

3. terminate any and all portions of the Contract for Contractor's failure to perform in accordance with the Contract.

### **5.03 CLEAN UP RESPONSIBILITIES**

A. Contractor and other contractors shall each bear responsibility for maintaining their respective work areas on the premises and adjoining areas free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.

B. In the event of conflicts the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct from the amount due Contractor under the Contract the cost of said clean up as the City determines equitable.

## **ARTICLE 6 - CLARIFICATIONS AND CHANGES IN THE WORK**

### **6.01 GENERALLY**

A. The City may, at any time between the Notice to Proceed and Final Completion and without notice to Contractor's surety, order additions, deletions, or revisions in the Work by Change Order, Unilateral Change Order, or Field Order. Contractor shall promptly comply with such orders and proceed with the Work, which shall be performed under the applicable requirements of the Contract Documents.

B. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Contractor performs work that is not required by the Contract Documents as amended, modified, or supplemented in writing.

C. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Contractor provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Contractor of additional, undisputed amounts.

D. Failure by the Contractor to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Contractor arising out of such Clarification or Change Order.

### **6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS**

A. Should there appear to Contractor to be a discrepancy in the Contract Documents, should questions arise as to the meaning or intent of the Contract Documents, or should the City's comments on submittals returned to Contractor appear to Contractor to change the requirements or scope of the Contract Documents, Contractor shall submit a Request for Information ("RFI") to the City promptly in accordance with Division 01. Contractor shall coordinate and schedule its Work to provide the City sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.

B. The City shall issue a reply to the RFI within 10 working days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work. If additional time is needed to issue the reply, the City will, within the 10 working-day reply period, notify the Contractor of the longer reply period.

C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Contractor and shall be promptly executed by Contractor. The City's right to clarify any element of the Contract Documents shall not be construed to entitle Contractor to a modification of the Contract Sum or a change in the Contract Time.

### **6.03 CHANGE ORDER REQUESTS (COR) AND PROPOSED CHANGE ORDERS (PCO)**

A. COR Initiation: Should the City's Clarification or other written directive or determination, in the opinion of Contractor, materially exceed or change the requirements of the Contract Documents, Contractor shall submit to the City a written Change Order Request (COR) within 5 working days of receipt of the Clarification or other written directive or determination. A COR shall reference the Clarification or other written directive or determination and the relevant Specification and Drawings. A COR shall also include a cost proposal and/or a time adjustment proposal, as a good faith estimate of any additional compensation or time associated with the affected Work, documented in accordance with subparagraphs 6.03E and 6.03F, below, and a narrative describing the scope of the COR including means and methods, sequence of Work, and other information necessary to fully understand the scope of the COR. The COR shall also include, as a minimum standard, quantity take offs and extensions identifying equipment and material against a specific Work task within the scope. Failure to submit a timely, fully documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work.

B. COR Review: The City will review the COR. Within 10 working days after receipt of the COR and

all required supporting documentation, the City will issue a written determination accepting or rejecting the COR in whole or in part. If the City requires additional time to issue a determination, it will notify the Contractor of the same in writing, within the initial 10 working-day period. A final determination is any determination on a COR which states that it is final. If the City issues a final determination denying a COR in whole or in part, Contractor may contest the decision by filing a timely Notice of Potential Claim per Article 13 of these General Conditions. If the City does not issue a determination within the 10 working-day period, or such other period as set forth in a written notice, then the COR is deemed rejected, and the City's failure to issue a determination shall be treated as the issuance, on the last day of the applicable period, of a final decision denying the COR in its entirety.

C. PCO Initiation: The City may initiate a change in the Work by issuing a Proposed Change Order (PCO). A PCO will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Specifications, and will request from Contractor a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Contractor shall not submit a COR for the same Work addressed in the City's PCO.

D. PCO Quotation Time Period: Contractor shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within 10 working days after receipt of a PCO. If Contractor fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the 10 working-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Contractor to proceed with the Work on a Force Account basis or a Unilateral Change Order instructing Contractor to proceed with the PCO Work based on the City's estimate of the cost and/or time adjustment.

E. COR and PCO Cost Proposal Requirements: The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for Contractor.

1. At a minimum, Contractor shall provide the following documentation to the City in support of Contractor and Subcontractor cost proposals:

- a. material quantities and type of products;
- b. labor breakdown by trade classification, wage rates, and estimated hours;
- c. equipment breakdown by make, type, size, rental rates, and equipment hours; and

F. COR and PCO Time Adjustment Proposal Requirements: If Contractor asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Contractor shall provide the following documentation to the City in support of any Contractor and Subcontractor time adjustment proposals:

1. Contractor shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and most current City-accepted progress schedule network, with appropriate logic so that a true analysis of critical path can be made.

2. Failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.

#### **6.04 CHANGE ORDERS**

A. Execution of Change Orders; Modifications: When the City and Contractor agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a Change Order to implement the changed Work. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Change Orders that result in an increase to the amount certified by the Controller for the Project are subject to the Certification by Controller requirements of the City's Charter (see Article 3 of Section 00 52 00) and are effective upon incorporation into an approved Modification.

B. Release of Claims: The parties agree to make good faith efforts to settle all Change Orders full and final at the time of Change Order execution. Accordingly, City and Contractor acknowledge and agree that Change Orders shall contain the following provision, unless and only if the City determines that good cause exists to use different release language for a specific change order:

"The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Contractor, all Subcontractors and all Suppliers, for the Work or change defined in the Change Order, including impact on unchanged Work. By executing this Change Order, Contractor acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for the interruption of schedules, extend-



ed field and home overhead costs (if any), delay, and all impact, ripple effect or cumulative impact on all other Work under this Contract. The execution of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Contractor, all Subcontractors, and all Suppliers as a result of the change. The Contractor, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type for any reasonably foreseeable cause shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

C. Change Orders issued under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Contractor under the provisions of the Contract Documents, nor shall they relieve or release Contractor's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Contractor shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Times that is required to be given to its sureties by the provisions of any bond.

## 6.05 UNILATERAL CHANGE ORDERS

A. General: When time does not allow for a Change Order to be negotiated, or when the City and Contractor are unable to agree on the cost or time required to complete the change in the Work, the City may issue a Unilateral Change Order instructing Contractor to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Contractor shall proceed with the ordered Work.

B. Protest: If time did not allow for Contractor to submit a complete Cost and/or Time Adjustment Proposal prior to the issuance of a Unilateral Change Order, and Contractor disagrees with any terms or conditions set forth in a Unilateral Change Order and wishes to protest the Unilateral Change Order, Contractor shall submit, within 5 working days of receipt of the Unilateral Change Order, a complete Change Order Request (COR) in accordance with the requirements of Paragraph 6.03 (including a complete Cost and/or time Adjustment Proposal, as applicable). If a COR is not timely submitted as required, Contractor waives all rights to additional compensation for said Work, and payment, which shall constitute full

compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order. The City will review the COR and issue a determination per Paragraph 6.03. If the City denies the COR in whole or in part, Contractor may contest the decision by filing a timely Notice of Potential Claim per subparagraph 6.056C, below. As a point of clarification, the protest procedures specified in this subparagraph do not apply to circumstances where Contractor submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Change Order at issue, and the City subsequently issued a Unilateral Change Order because the parties were unable to timely agree on the cost and/or time to complete the change in the work. In such circumstances, if Contractor disagrees with any terms or conditions set forth in the Unilateral Change Order and wishes to pursue the dispute, Contractor must submit a timely Notice of Potential Claim per subparagraph 6.05(C), below (but does not have to submit a revised/new COR).

C. Claim Notification: Contractor waives all costs exceeding the City's estimate for the Unilateral Change Order Work unless Contractor submits a written Notice of Potential Claim in accordance with the requirements of Article 13. Said Notice shall be submitted no later than 10 working days after occurrence of one of the following potential claim events, whichever occurs first:

1. Contractor submits an invoice for completion of the Unilateral Change Order Work; or
2. upon Contractor's receipt of written notice from the City that the City considers the Unilateral Change Order Work completed.

## 6.06 COST OF CHANGE ORDER WORK

A. For Change Order Work and Change Order Work proposal pricing, Contractor will be paid the sum of the direct costs for labor, materials and equipment used in performing the Work as determined by the procedures set forth in this subparagraph 6.06A.

1. Labor: Contractor will be paid the cost of labor for the workers used in the actual and direct performance of the Change Order Work. Working foremen will be considered a direct cost of the Change Order Work only if the individual is on Site physically installing the Work. The costs for all supervision, including general superintendents and foremen, will not be considered a direct cost and shall be included the markup defined in subparagraph 6.06B, below. The cost of labor, whether the employer is Contractor, a subcontractor, or other forces, will be the sum of the following:

- a. Actual Wages. The actual wages paid shall include any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.

b. Labor Surcharge. To the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth in full. That labor surcharge shall constitute full compensation to Contractor for all of its costs for worker's compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. No other fixed labor burdens will be considered, unless approved in writing by the City.

c. Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.

2. Materials: The City will pay Contractor on Change Orders only for those materials furnished by Contractor and directly required for performing the Change Order Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Contractor, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Contractor, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Contractor, payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

3. Equipment: Payment for equipment costs on Change Orders will be made at the lesser of the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of: (i) the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>; or (ii) "Rental Rate Blue Book," published by EquipmentWatch, a unit of Penton Media, Inc., 181 Metro Drive, Suite 410, San Jose, California 95110, phone (800) 669-3282 (see [www.equipmentwatch.com](http://www.equipmentwatch.com) and click on the link "Rental Rate Blue Book" for information).

a. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Contractor's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, Contractor will be reimbursed at the actual rental or leased invoice rates when such rates are reasonably

in line with the applicable rates specified in the publications identified above as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Contractor has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Contractor shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each PCO cost proposal.

b. For equipment that is not listed in the publications identified above, payment for equipment costs or the City' assessment of the reasonableness of rates in arm's length rental or lease transactions will be based on the lowest quote obtained by the City from either Caltrans or EquipmentWatch. Contractor shall provide all necessary equipment ownership and other information as requested by the City so that the City may obtain a quote. Caltrans will quote rental rates at no cost to the City; however, EquipmentWatch charges for its quote service (a charge that will be paid by the City if the City seeks a quote from EquipmentWatch). Accordingly, if Caltrans provides a quote for a rental rate, then the City, at its sole discretion, may elect not to seek a quote from EquipmentWatch and will use only the Caltrans quote.

c. Daily, weekly, or monthly rates shall be used, whichever are lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.

d. The actual time to be paid for equipment shall be the time the equipment is in productive operation on the Work under the Change Order. No payment will be made for time while equipment is inoperative due to breakdown or for non-work days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. No mobilization or demobilization will be allowed for equipment already on the Site. Equipment that is idle, non-operating or in standby mode shall be reimbursed at the lesser of Caltrans' rates, as adjusted by Caltrans' Delay Factor, or EquipmentWatch's rates, as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

e. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools

and equipment are included as part of Contractor's markup for overhead and profit as defined in subparagraph 6.06B.

f. Payment to Contractor for the use of equipment as set forth herein shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Contractor incidental to the use of the equipment.

B. Costs Included as Part of Markup for Overhead and Profit: To the total of the direct costs computed as provided in subparagraph 6.06A there will be added a markup for overhead and profit as specified in subparagraph 6.06C. The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in subparagraph 6.06A as direct costs. No separate allowance or itemization for overhead costs shall be allowed. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:

1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service at the Site, long-distance telephone calls, fax machines, computers and software, internet and e-mail services, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1,000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to all regulatory requirements including compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs.

3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.

4. Bond and insurance costs.

5. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.

C. Contractor's Markup for Overhead and Profit: The following maximum percentage markups shall be applied to the total direct costs for each direct cost category. These markups provide for all indirect and overhead costs and profit:

Changed/Extra Work –Direct Costs	Markup Percentage
Contractor direct labor	35%
Contractor direct materials	15%
Contractor direct equipment	15%
Subcontractor (of any tier) direct labor	35%
Subcontractor/Supplier (of any tier) direct materials	15%
Subcontractor/Supplier (of any tier) direct equipment	15%

1. For Work performed by a Subcontractor or Supplier, Contractor shall receive a maximum 10 percent markup on the Subcontractor's total cost (total cost includes Subcontractor's direct costs plus applicable markups specified above). Such additional 10 percent markup shall reimburse Contractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Subcontractor or Supplier.

2. For Work performed by a Lower-Tier Subcontractor or Supplier, Contractor and Subcontractor shall each receive a maximum 10 percent markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 10 percent markup shall reimburse Contractor and Subcontractor for all additional indirect, administrative and overhead costs associated with Change Order Work performed by the Lower Subcontractor or Supplier.

3. In no case shall the sum of the individual markups specified in subparagraphs 6.06C(1) and 6.06C(2), above, exceed 25 percent, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

D. For Work to be deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (i) Unit Prices stated in the Contract Documents; (ii) where Unit Prices are not applicable, a lump sum based upon the costs which would have been incurred in performing the deleted portions of the Work as calculated in accordance with Paragraph 6.06, supported by a Cost Proposal as required by Paragraph 6.03. Neither Contractor nor the Subcontractor shall receive a markup on their respective Lower-Tier Subcontractors to administer the credit Change Order.

1. When both additions and credits are involved in any one Change Order, Contractor's markup shall be computed on the basis of its direct costs and

labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2. If the City issues written notice of deletion of a portion of Work after the commencement of such Work or after Contractor has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Contractor because it is unnecessary due to actual Site conditions, payment will be made to Contractor for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.

3. Contractor shall not be compensated for costs incurred after receipt of the City's written notice deleting the portion of Work.

4. Materials ordered by Contractor prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, the material shall be returned and Contractor will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

E. Costs Not Included in the Work: Contractor shall be solely responsible for determining which of its subcontractors receive Change Orders. No additional compensation will be provided Contractor for the cost of its subcontractors to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such subcontractors. Such costs shall be considered normal business costs, which are contractually determined between Contractor and its subcontractors prior to Bid, and such costs shall be included in Contractor's Total Bid Price.

F. Records: Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Contractor.

## **6.07 FORCE ACCOUNT WORK**

A. General: When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs itemized in subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.

1. The City will direct Contractor to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.

2. All requirements regarding direct costs and markup for overhead and profit provided in Paragraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.

3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.

B. Notification and Verification: Contractor shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the day that the Work is performed. Contractor will not be compensated for Force Account Work if Contractor fails to provide timely notice to the City before commencing the Force Account Work. In addition, Contractor shall notify the City when the cumulative costs incurred by Contractor for the Force Account Work equal 80 percent of the budget pre-established by the City. Contractor will not be compensated for Force Account Work exceeding the "not to exceed" budget amount if Contractor fails to provide the required notice before exceeding 80 percent of the Force Account budget.

C. Reports: Contractor shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Contractor's authorized representative shall complete and sign the report. Contractor will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.

D. Records: Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.

E. Agreement: If Contractor and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor's signed written reports shall be discontinued and all previously signed reports shall become invalid.

## 6.08 UNIT PRICE WORK

A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Division 01, and the Contract Sum will be adjusted based on the actual quantities of Work performed.

1. Each unit price on the Schedule of Bid Prices shall include an amount considered by Contractor to cover Contractor's markup for overhead and profit as defined in Paragraph 6.06.

B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25 percent, the Work in excess of 125 percent of such estimated quantity will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. The actual unit cost will be determined based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Contractor with the payments made for 125 percent of the quantity indicated on the Schedule of Bid Prices, and markup for overhead and profit as provided in Paragraph 6.06.

2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125 percent of the quantity as indicated on the Schedule of Bid Price is less than \$5,000 at the unit price Bid therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that an adjustment will be made if Contractor submits a Change Order Request (COR) in accordance with the requirements of Paragraph 6.03.

3. At the City's option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.

C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75 percent of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless Contractor submits a COR in accordance with Paragraph 6.03. If Contractor

for so requests, the quantity of said Item performed will be paid for by adjusting the unit price Bid therefor as follows:

1. The unit price will be adjusted by the difference between the unit price Bid for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price Bid therefor.

2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75 percent of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price Bid therefor.

3. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

## ARTICLE 7 - TIME

### 7.01 PROGRESS AND COMPLETION

A. Contractor shall commence the Work of the Contract within 5 days from the start date established in the Notice to Proceed issued by the City and shall diligently and continuously prosecute the Work to its completion.

B. No demolition, removal, or reconstruction Work at the Site shall be started until Contractor has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and a Notice to Proceed has been issued by the City for Work to start.

C. The continuous prosecution of the Work by Contractor shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.

D. The Work of this Contract shall be brought to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in Section 00 73 02, from and after the official start date established in the written Notice to Proceed.

1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.

2. During the time between Substantial Completion and Final Completion, Contractor shall complete the punch list work, but Contractor shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.

3. Final Completion is a condition precedent to final payment. The City will issue final payment to Contractor acknowledging that the Project is complete and the Work is acceptable to the City.

4. The limits of Contract Time as specified in Section 00 73 02 shall not be affected by the acceptance of any of the Alternate Bid Items included in the Contract Documents provided that said Alternate Bid Items were incorporated into the Contract within the number of months after the date of the Order of Award of the Contract specified on Section 00 41 00.

5. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.03.

E. Contractor shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Contractor shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.

F. Contractor shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.

G. If, in the opinion of the City, Contractor has fallen behind schedule according to Contractor's most current and City-approved update of the progress schedule submitted as set forth in Paragraph 3.09, or if Contractor delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Contractor shall take some or all of the steps as follows to improve its progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:

1. increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;

2. increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;

3. reschedule activities to achieve maximum practical concurrence of accomplishment of activities;

4. expedite delivery of materials and equipment such as by airfreight;

5. accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and

6. any other means deemed appropriate by the City.

H. The City may direct Contractor to take steps enumerated in subparagraph 7.01G for the convenience of the City and if Contractor is not at fault. Should the City Representative direct Contractor to take measures previously described, the City will reimburse Contractor for reasonable costs of complying.

I. Should Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default and terminate the Contract for cause as set forth in Paragraph 14.01.

## 7.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays: Pursuant to section 6.22(h)(2)(C) of the San Francisco Administrative Code and for the purposes of the Contract Documents the term Unavoidable Delay shall mean an interruption of the Work beyond the control of Contractor that could not have been avoided by Contractor's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.09, Contractor shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor (i.e., Avoidable Delays).

1. Non-compensable Delay/Time Extension. Contractor will be entitled to a non-compensable time extension only for the following types of Unavoidable Delay: Acts of God (as used herein, includes only

earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in Paragraph 7.02C or the Supplementary Conditions); fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slow-downs; other labor trouble; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Project; the prevention by the City of Contractor from commencing or prosecuting the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's Subcontractors and Suppliers of all tiers; the prevention of Contractor from commencing or prosecuting the Work because of failure of the City to furnish the necessary materials, when required by the Contract Documents and when requested by Contractor in the manner provided in the Contract Documents; and inability to procure or failure of public utility service.

a. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.

b. In addition, Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Contractor-caused delay under any and all applicable provisions of the Contract Documents.

2. Compensable Delay/Time Extension. Contractor shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by

(i) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (ii) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents where such failure is not the result of any default or misconduct of Contractor; (iii) the failure of the City to perform some other contract obligation where such failure is not the result of any default or misconduct of Contractor; (iv) the suspension of the Work by the City for its own convenience or benefit where such decision is not the result of any default or misconduct of Contractor; or (v) a materially differing site condition per Paragraph 3.03, provided such City-caused Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Contractor-caused delay (Avoidable Delay) or other type of Unavoidable Delay as previously defined (not caused by the City). If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Contractor to a compensable time extension. Refer to Paragraph 7.03 for more information regarding compensable delay.

3. Concurrent Delay. Contractor shall be entitled to a non-compensable time extension only in the event that a City-caused (otherwise compensable) delay is concurrent with either a Contractor-caused delay or a non-compensable Unavoidable Delay.

B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:

1. any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor or its Subcontractors or Suppliers of any tier; or

2. any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or

3. any delay caused by the untimely review by Contractor of the Contract Drawings and Specifications pursuant to subparagraph 3.01C; or

4. any delay resulting from the City responding to Contractor-generated RFIs in accordance with subparagraph 6.02B; or

5. any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.

6. Contractor shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs or damages for delay, disruptions, hindrances or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Contractor shall make every effort to continue work under prevailing conditions. Such efforts by Contractor shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.

2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Contractor made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Contractor is prevented by adverse weather or conditions from proceeding with at least 75 percent of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and Contractor will be granted a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, Contractor shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.

4. Adverse weather shall mean rain, wind-storm, flood, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Contractor to be detrimental to the progress of the Work. Contractor shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

<u>Month</u>	<u>Rain Days</u>	<u>Month</u>	<u>Rain Days</u>
January	3	July	0
February	3	August	0
March	3	September	0
April	1	October	1
May	0	November	3
June	0	December	3

a. Contractor's progress schedule shall incorporate prudent allowance for the anticipated number of days of inclement weather specified herein.

b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Section 00 73 02) is predicated on the anticipated number of days of inclement weather specified herein.

c. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.

d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Contractor has requested a time extension because of adverse weather.

e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Contractor has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22(h)(2).(D) of the San Francisco Administrative Code, Contractor shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. The City may take steps to prevent the occurrence or continuance of the delay, and the City may determine to what extent Substantial Completion is delayed thereby.

2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if the notice requests such time extension, specifies whether Contractor believes the time extension is compensable or non-compensable, sets forth Contractor's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Article 13, including the requirement that such Notice be submitted to the City within 10 days of the event which the Contractor contends affected the performance of the Work.



3. The City's determination of whether an extension of time will be granted and whether the extension is compensable or non-compensable will be based on Contractor's demonstration to the City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.

4. If Contractor does not submit a notice as set forth in subparagraph 7.02D.2, above, Contractor thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Contractor understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the City.

**E. Extensions of Time:**

1. In the event it is deemed necessary by the City to extend the time for completion of the Work to be performed under these Contract Documents beyond the specified limits of Contract Time specified in the Contract Documents, such extensions shall in no way release any guarantees or warranties given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provision.

2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.

3. The length of any extension of time shall be limited to the extent that the commencement, prosecution and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22(h)(2)(D) of the San Francisco Administrative Code.

4. Adjustments to the Contract Sum for compensable time extensions shall be per Paragraph 7.03.

5. Extensions of time that cumulatively extend the Contract Time in excess of 10 percent of the original contract duration as specified in Section 00 73 02 shall be subject to the approval of the Mayor (or the Mayor's designee) or the Commission (or the Commission's designee), as appropriate.

6. In no event shall such extensions of time be granted subsequent to the date of Final Completion.

7. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests which the City is entitled.

8. Should Contractor, any subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the pro-

visions of this Paragraph 7.02, Contractor and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.

9. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.

**7.03 ADJUSTMENTS TO THE CONTRACT SUM FOR COMPENSABLE DELAY/COMPENSABLE TIME EXTENSION**

A. The Contract Sum will be adjusted for a compensable delay as specified in subparagraph 7.03C, below, if, and only if, Contractor demonstrates that it is entitled to a compensable time extension per subparagraph 7.02A.2 and timely complies with the Notice of Delay requirements of these General Conditions.

B. The provisions of this Paragraph 7.03 and subparagraph 7.02A.2 do not apply to Change Order Work paid under Paragraphs 6.06 (Cost of Change Order Work) or 6.08 (Unit Price Work), or to Force Account Work performed under Paragraph 6.07. Contractor's right to recovery of compensation, costs, expenses and damages for delay, disruption, hindrance and interference (including without limitation interruption of schedules, extended, excess or extraordinary field and home office overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of extras, changes, additions or deletions in the Work shall be limited to the adjustment of the Contract Sum (including without limitation the mark-ups specified) as set forth in Paragraphs 6.06 or 6.08 of these General Conditions. Those Paragraphs include markups to cover field and home office overhead costs. Overhead claims in excess of the markups specified are not allowed for Change Order Work or Force Account Work.

1. The Contract Sum adjustment provisions set forth in Paragraphs 6.06 and 6.08 constitute the sole, exclusive and complete compensation that the City is obligated to pay Contractor for all costs, expenses and damages incurred by Contractor and its Subcontractors and Suppliers of all tiers associated with Change Order Work or Force Account Work.

2. If Contractor perform Change Order Work or Force Account Work during a compensable delay

period and seeks additional compensation for the compensable delay (i.e., above the markups specified in Paragraph 6.06), then the City will deduct the field and home office overhead costs paid under Paragraph 6.06 from the compensation owed under subparagraph 7.03C, below, for the same time period as follows. For field office overhead paid under Paragraph 6.06, the City will deduct 5-1/2 percent of the value of the added Work (added through Change Order or Force Account). For home office overhead paid under Paragraph 6.06, the City will deduct 5 percent of the value of added Work.

C. Field Office Overhead – Daily Rate: If Contractor meets the conditions for a compensable time extension specified in subparagraph 7.03A, above, then the City shall pay Contractor such amount as the City may find to be fair and reasonable compensation for such part of Contractor's actual loss that was unavoidable. Fair and reasonable compensation shall be calculated as follows:

1. Within the time and in the format specified by the City, Contractor shall submit a detailed listing of daily field office overhead cost components which are time related. The individual cost components shall represent costs which have been or will be incurred or increased as a sole or direct result of the compensable time extension. This listing may include without limitation onsite project management, supervision, engineering, and clerical salaries; onsite office utilities and rent; onsite company vehicles and their operating expenses; site maintenance, safety and security expenses.

2. The listing of the daily field office overhead cost components described above must be based on the Contractor's actual field office overhead costs. This listing must be submitted with the first Notice of Delay that includes a request for a compensable time extension. If Contractor's time-related daily field office overhead cost changes for subsequent compensable delays, then the Contractor shall submit a new overhead rate based on the Contractor's overhead costs at the time of the subsequent delay.

3. The daily field office overhead rate shall be multiplied by the number of days the Contract is to be extended. No markup for overhead costs and no profit allowance shall be allowed on the extended daily field office overhead cost.

4. The information submitted as required above shall be submitted in sufficient detail to allow review, and shall be prepared in accordance with generally accepted accounting principles. The City shall have the right to audit Contractor's costs under Paragraph 2.05 of these General Conditions if the City Representative considers the submitted costs to be excessive, questionable, or unsupported.

D. Absent extraordinary circumstances, extended home office overhead is not allowable. Extended home office overhead and its application to a com-

pensable time extension will not be allowed unless Contractor demonstrates to the satisfaction of the City that each and every of the following conditions apply to the delay period: (i) the delay was caused by the City and meets the conditions of Paragraph 7.02A.2; (ii) such City-caused delay was of an indefinite (unknown) duration; (iii) the City-caused delay suspended most, if not all, project Work; (iv) the City caused delay resulted in a substantial disruption or decrease in the income stream from the project; (v) during the City-caused delay, Contractor was required to remain ready to resume Contract Work immediately; and (vi) Contractor was unable to secure comparable replacement work during the impacted period to replace the reduced cash flow from this project. If Contractor believes that it may be entitled to extended home office overhead, it must notify the City through the Notice of Delay process specified in subparagraph 7.02D, above. Within the time and in the format specified by the City, Contractor shall submit detailed evidence of entitlement and the requested rate, including all supporting evidence from which the City may make a determination. Supporting evidence shall be prepared in accordance with generally accepted accounting principles, and the City shall have the right to audit Contractor's submittal under Paragraph 2.05 of these General Conditions. If the City determines that extended home office overhead is available, then the City shall have the discretion to determine the methodology for calculation of the rate.

#### 7.04 LIQUIDATED DAMAGES

##### A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.

2. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

B. Agreed Amount of Damages: It is understood and agreed by Contractor and City that if all the Work specified or indicated in the Contract Documents is not completed within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, actual damages will

be sustained by the City in the event of and by reason of such delay.

1. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for Substantial Completion, as such date may be modified in accordance with the Contract Documents.

2. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for completing the punch list of remedial Work and achieving Final Completion, as such date may be modified in accordance with the Contract Documents.

3. Contractor and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day (or other measure) of delay beyond the number of days (or other measure) specified in Section 00 73 02 for completing the specified critical, independent milestone Work (e.g., shutdown Work), if any, as such date may be modified in accordance with the Contract Documents.

4. It is therefore agreed that Contractor shall pay such amount of liquidated damages as specified in Section 00 73 02, and in case such amount is not paid, Contractor agrees that the City may deduct the amount therefor from any money due or that may become due Contractor under the Contract.

**C. Payment of Damages:**

1. Should Contractor become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained percentages of payments as provided in Paragraph 9.06 which would otherwise be due or become due Contractor until the liability of Contractor has finally been determined.

2. The City shall have the right to use and apply such retained percentages, in whole or in part, to reimburse the City for all liquidated damages due or to become due to the City. Any remaining balance of such retained percentages shall be paid to Contractor only after discharge in full of all liability incurred by Contractor.

3. If the retained percentage is not sufficient to discharge all such liabilities of Contractor, Contractor and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full.

4. Should the retention of moneys due or to become due to Contractor be insufficient to cover

such damages, Contractor shall pay forthwith the remainder to the City.

**ARTICLE 8 - INSPECTION AND CORRECTION OF WORK**

**8.01 UNCOVERING OF WORK**

A. No Work or portion of Work shall be covered until inspected by the City or other public authorities having jurisdiction as required by the Contract Documents.

B. If any part of the Work is covered contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Contractor must, upon written request, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this subparagraph shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

C. Should the City or other public authorities having jurisdiction wish to either (i) re-inspect a portion of the Work that has been covered by Contractor in compliance with subparagraph 8.01A, above, or (ii) inspect a portion of the Work that has been covered by Contractor which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Contractor shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Contractor shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

**8.02 TESTS AND INSPECTIONS**

A. All testing and inspection of the Work required by the Contract Documents (other than special in-

spections as set forth in subparagraph 8.02B below) shall be arranged and paid for by Contractor through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or other agency having jurisdiction shall be performed at the City's expense. Contractor shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 working days notice, excluding weekends and City holidays, of when and where such special inspections are required so the City may arrange for the appropriate City representatives and inspectors, and representatives from other public authorities having jurisdiction, to be present to perform the necessary inspections or tests.

1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.

C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.

D. If such testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Contractor shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.

1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.

2. Contractor shall bear all costs thereof, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither

the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Contractor, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.

E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Contractor from Contractor's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.

F. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:

1. to imply acceptance of such Non-conforming Work or materials; or

2. as barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or

3. to relieve Contractor from the responsibility of correcting Non-conforming Work or materials.

G. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Contractor and furnished to the City in accordance with the Specifications.

H. Contractor shall provide promptly all facilities, labor, equipment, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay in the Work.

1. The City reserves the right to charge to Contractor any additional cost of inspection, including travel, transportation, lodging, etc., or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.

### **8.03 CORRECTION OF NON-CONFORMING WORK AND GUARANTEE TO REPAIR PERIOD**

A. Contractor shall (i) correct Non-conforming Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of Non-conforming Work or correction of Non-conforming Work. Contractor shall promptly commence such correction, replacement, repair, or

restoration upon notice from the City Representative, but in no case later than 10 days after receipt of such notice; and Contractor shall diligently and continuously prosecute such correction to completion. Contractor shall bear all costs of such correction, replacement, repair, or restoration, and all damages resulting from such Non-conforming Work, including without limitation additional testing, inspection, and compensation for City Representative's services and expenses (including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services).

B. The term "Guarantee to Repair Period" means a period of one (1) year, unless a longer period of time is specified in the General Requirements or other Contract Documents or prescribed by applicable laws and regulations, commencing as follows:

1. For any Work not described as incomplete in the Punch List / Final Completion, on the date of Substantial Completion.
2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion per Paragraph 9.07 (Partial Utilization), as established in a Notice of Partial Utilization.
3. For all Work other than B.1 and B.2, above, from the date of Final Completion.

C. The requirement to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced items, or such longer period as may be specified in the Contract Documents or mutually agreed to by Contractor and City.

D. If Contractor fails to commence correction of Non-conforming Work or fails to diligently prosecute such correction within 10 working days of the date of written notification from the City, the City may correct the Non-conforming Work in accordance with Paragraph 2.04 or may remove it and store the salvageable materials or equipment at Contractor's expense. If Contractor does not pay the costs of such removal and storage within 5 working days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Contractor's account for the excess proceeds of such sale, if any. The City will deduct from Contractor's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Contractor shall reimburse the City.

E. If immediate correction of Non-conforming Work is required for life safety or the protection of property and is performed by City or a separate contractor, Contractor shall pay to the City all reasonable

costs of correcting such Non-conforming Work. Contractor shall replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property which is damaged or destroyed as a result of such Non-conforming Work or the correction of such Non-conforming Work.

F. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.

G. Contractor's obligations under this Paragraph 8.03 are in addition to and not in limitation of its warranty obligations under Paragraph 3.17 or any other obligation of Contractor under the Contract Documents. Enforcement of Contractor's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Non-conforming Work. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of Contractor under the Contract Documents. Establishment of correction periods for Non-conforming Work relate only to the specific obligations of Contractor to correct the Work and in no way limits either Contractor's liability for Non-conforming Work or the time within which proceedings may be commenced to enforce Contractor's obligations under the Contract Documents.

#### **8.04 ACCEPTANCE OF NON-CONFORMING WORK**

A. If, in the sole and unfettered judgment of the City, it is undesirable or impractical to repair or replace any Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Contractor shall rebate moneys previously paid by the City.

### **ARTICLE 9 - PAYMENTS AND COMPLETION**

#### **9.01 CONTRACT SUM**

A. Payment to Contractor at the Contract Sum shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Contractor for any purpose incidental to performing and completing the Work.

B. Whenever the Contract Documents specify that Contractor is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such materials is included in Contractor's Total Bid Price.

## **9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK**

A. Within 30 days after receipt of the Notice to Proceed, or as otherwise specified in Division 01, Contractor shall submit a detailed cost breakdown of each of the lump sum Items in the Schedule of Bid Prices, including Alternate Bid Items selected by the City, coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum Items. No progress payments will be made on account of lump sum Items until the City has reviewed and accepted Contractor's schedule of values.

1. The specific format, detail and submittal requirements for the schedule of values shall be as specified in Division 01 or as directed by the City to facilitate and clarify progress payments to Contractor for completed Work.

2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the lump sum price Bid therefor under the Bid Item named in Section 00 41 00.

3. Unless otherwise provided in the Contract Documents, Contractor's overhead, profit, insurance, bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal Contractor's Total Bid Price.

B. The City will review and return Contractor's schedule of values with comments. Contractor shall make all corrections requested by the City and re-submit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Contractor's schedule of values.

2. Contractor's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Contractor's Bid amount to component parts of the Work.

C. Upon concurrence by the City, a written formal approval of Contractor's schedule of values will be issued. If the City later determines that the schedule of values is insufficient or incorrect, an adjustment shall be made as specified in subparagraph 9.02B.

## **9.03 PROGRESS PAYMENTS**

A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Contractor and pursuant to the Contract Documents as follows.

B. On the 25th day of each month, Contractor shall submit to the City for review an Application for Payment, on a form approved by the City and signed by Contractor, covering the Work completed by Contractor as of the date of the Application and accompanied by such supporting documentation as specified in Division 01.

1. The monthly value of lump sum Work shall be estimated by Contractor pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Contractor's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.

2. Progress payments on account of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices Bid by Contractor, adjusted as specified in Paragraph 6.08 for the actual quantities of Work performed.

3. Progress payments on account of allowances named in Section 00 41 00 shall be made for such sums as may be acceptable to the City. Prior to final payment, an appropriate Change Order will be issued as directed by the City Representative to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Sum will be adjusted accordingly.

C. The Application for Payment shall identify the amount of Contractor's total earnings to date.

D. Monthly progress payment amounts to Contractor shall be based upon completed Work or percentages of Work completed prior to the end of the payment period. Except as provided in subparagraph 9.10, no allowance will be made for materials or equipment not incorporated into the Work.

E. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Contractor as specified in Division 01. Submission of approved monthly progress schedule updates for same period as the Application for Payment shall be a condition precedent to making progress payment Applications. No partial progress payment shall be made to Contractor until all cost information requested by the City is submitted and reviewed.

F. In addition to other requirements specified in Division 1, consistent with Executive Directive 12-01, Contractor shall include its Subcontractors' acceptable invoices with the Monthly Application for Payment that it submits no later than 30 days after receipt of such invoices from its Subcontractors.

G. As soon as practical after estimating the progress of the Work, the City will pay to Contractor in a manner provided by law an amount based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.06.

1. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls, and Contract Monitoring Division program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in San Francisco Administrative Code section 6.22(j)(7).

H. No inaccuracy or error in said monthly estimates shall operate to release Contractor or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.

I. In accordance with the provisions of section 22300 of the California Public Contract Code, Contractor will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract under the following conditions:

1. At the request and expense of Contractor, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Contractor which are equivalent to the amount withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Contractor. Upon satisfactory completion of the Project and all Work under the Contract, the securities shall be returned to Contractor.

2. Contractor shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.

3. Contractor shall enter into an escrow agreement with the City Controller according to Section 00 63 30, Escrow Agreement for Security Deposits in Lieu of Retention, specifying the amount of

securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of the Contract.

J. The granting of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.

K. It is mutually understood and agreed that the City may withhold from any payment otherwise due Contractor such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

1. If any payment or portion of payment is withheld by the City, Contractor will be notified in writing of the cause(s) of such action.

L. Only Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Contractor shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.

M. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the City for the applicable time period. Certified payrolls shall be prepared pursuant to Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.

N. No monthly progress payments will be processed until Contractor has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

O. Effective January 1, 2016, no monthly progress payments will be processed until Contractor has also submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period.

1. Contractor shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor

tor and Supplier will be assigned a log-on identification and password to access the PRS.

2. Contractor shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.

3. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

4. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

5. Contractor shall comply with the requirements of subparagraphs 9.03M, N and O at no additional cost to the City.

6. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.

P. Contractor Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of Section 6.22(q) of the Administrative Code, Contractor shall pay its Subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Contractor and the Subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Contractor to a Subcontractor, the Contractor may withhold the disputed amount but shall pay the undisputed amount. If Contractor violates the provisions of Section 6.22(q), then Contractor shall pay to the Subcontractor directly the penalty specified in Section 6.22(q).

#### **9.04 RETENTION**

A. As required by and in conformance with the procedures set forth in section 6.22(j) of the Administrative Code, the City shall hold five (5) percent in retention from each progress payment.

B. When the City determines that the Work is 98 percent or more complete, the City may reduce retention funds to an amount equal to 200 percent of the estimated value of work yet to be completed, plus any amounts necessary to cover offsets by the City for liquidated damages, defective Work, stop notices, forfeitures, and other charges.

C. The City shall release the balance of retention only upon the following conditions: (i) the Contractor has reached Final Completion as provided in Paragraph 9.09, below, and (ii) the Contract is free of offsets by the City for liquidated damages and defective work and is free of stop notices, forfeitures, and other charges.

D. The Contractor may apply for early release of retention for Work performed by (1) any subcontractor certified by the City as an LBE or (2) any subcontractor under a Contract with a construction duration of more than two years. The Contractor shall make such application in writing and shall certify the following:

1. That the Work by the subcontractor is completed and satisfactory in accordance with the Contract Documents;

2. The total amount paid to the subcontractor by Contractor as of the date of the written request; and

3. The amount of retention associated with the Work performed by the subcontractor.

4. Contractor acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of the Contractor or its surety(ies) under the Contract or applicable law.

#### **9.05 PAYMENT AUTHORIZATION**

A. The City will, after receipt of Contractor's Application for Payment, approve such amount as the City determines is properly due.

B. Payment will be issued by the City based on the City's determination that the Work has progressed satisfactorily to the point stated in the application for payment. Payment will not be a representation that the City has:

1. inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or

2. reviewed Contractor's means, methods, techniques, sequences or procedures of construction; or

3. ascertained how or for what purpose Contractor has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.

#### **9.06 WITHHOLDING PAYMENT**

A. The City may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure,



if, in the City's judgment, the determination required by subparagraph 9.05B cannot be made. If the City does not authorize payment in the amount of the application, the City will notify Contractor of the reasons for withholding payment. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Contractor's failure, for one or more of the following reasons:

1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.
2. Third party claims have been filed, or there is reasonable evidence indicating probable filing of such claims.
3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
4. The Contract Sum has been reduced by Change Orders.
5. Damage has occurred to the City or another contractor.
6. The City determines that the Work will not be completed within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.
7. The City determines that Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01A).
8. The City determines that Contractor fails to submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.
9. The City determines that Contractor fails to comply with any other requirements of the Contract Documents.

### **9.07 PARTIAL UTILIZATION**

A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, the City may make a written request for Contractor to permit the City to take possession of and use the Work, or a part thereof, at no additional cost to the City. When so used, maintenance and repair due to ordinary wear and tear caused by the City will be made at the City's expense. The use by the City of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall

neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.

B. Such Partial Utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.

C. If, in response to the City's written request(s) to take possession of and use part of the Work, Contractor believes that a specified part of the Work is Substantially Complete and ready for Partial Utilization, Contractor shall notify the City in writing and request a joint inspection of that part of the Work per the procedures described in Paragraph 9.08. When the City determines that the Work is ready for Partial Utilization, the City will issue a Notice of Partial Utilization, which shall establish the Partial Utilization date. The City will also issue a Punch List for the Work identifying deficient items to be corrected by Contractor prior to Final Completion.

D. Partial utilization of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

E. Contractor shall perform final cleaning of such partially utilized Work as specified in the Division 01 when directed to do so by the City.

F. The Guarantee to Repair Period, as defined in Paragraph 8.03, will commence upon the date specified in the Notice of Partial Utilization except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which the City has not taken Partial Utilization or issued a Notice of Partial Utilization shall not commence until the City has taken Partial Utilization for that portion of the Work or has issued a Notice of Substantial Completion for the entire project.

G. Except as provided in this Paragraph 9.07, there shall be no additional cost to the City due to Partial Utilization.

### **9.08 SUBSTANTIAL COMPLETION**

A. Contractor shall notify the City in writing when Contractor considers that the Work is Substantially Complete and request that the City inspect the Work and prepare a Notice of Substantial Completion. Attached to Contractor's request for a Substantial Completion inspection shall be a preliminary list of items to be completed or corrected before Final Completion.

B. Within 14 working days from receipt of Contractor's written notification, the City will make an inspection to determine whether the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Contractor with a Punch List / Substantial Completion that

lists all Items that shall be corrected or completed before the City considers the Work Substantially Complete.

C. Once Contractor has completed all items on the Punch List / Substantial Completion, Contractor shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in subparagraph 9.08B. Contractor shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.

D. As a condition precedent to Substantial Completion, Contractor shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other equivalent agency having jurisdiction over the Work in the event that such temporary occupancy permit or equivalent permit is necessary for the City to utilize the Work for the purposes for which it is intended.

E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.

F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Contractor (i) a Punch List / Final Completion identifying deficient items to be corrected by Contractor prior to Final Completion; and (ii) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.

#### **9.09 FINAL COMPLETION AND FINAL PAYMENT**

A. When Contractor considers all Work complete, including all items of Work on the Punch List / Final Completion and all closeout requirements, Contractor shall notify the City in writing and request that the City issue a certificate of acceptance.

B. Within 5 working days of receipt of Contractor's written notice, the City will verify whether all Punch List / Final Completion items are completed. If the City finds that any of the Punch List / Final Completion items are not complete, the City will notify Contractor in writing. Contractor shall promptly take actions necessary to complete such Punch List / Final Completion items.

C. Once Contractor considers all deficient Punch List / Final Completion items complete, Contractor shall notify the City in writing and request a second inspection. If the City finds the Punch List / Final Completion items are still not complete, Contractor shall be responsible for all costs for conducting such

additional inspections incurred by the City and its consultants before Final Completion. The cost of such inspections shall not be considered a delay cost and shall be charged in addition to any liquidated damages which may become due as a result of Contractor's failure to achieve Final Completion within the time prescribed in Section 00 73 02. All such costs of the City and its consultants shall be deducted from amounts which are due or become due to Contractor.

D. While deficient Punch List / Final Completion Work is outstanding, the City may, at its option, pay Contractor any earned Contract funds, including retention, subject to offset for the following: (i) funds subject to a certification of forfeiture by the Office of Labor Standards Enforcement and/or stop notice claims and/or funds to be withheld as otherwise required by law or court order; (ii) an amount not to exceed 200 percent of the total estimated cost of labor and materials to correct any Non-conforming, unacceptable, or incomplete Work; and (iii) amounts assessed for liquidated damages.

E. After Contractor has completed to the satisfaction of the City all Punch List / Final Completion items and close-out requirements in accordance with the Contract Documents, the City will issue a written certificate of acceptance as required by section 6.22(k) of the San Francisco Administrative Code stating that the Work is acceptable, and Contractor may submit the final application for payment.

F. Contractor and each assignee under any assignment in effect at the time of final payment shall, if required by the City, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in the form specified in Division 01 and containing such exemptions as may be found appropriate by the City, discharging the City and the City's consultants, and their directors, officers, members, employees, agents and authorized representatives of all liabilities, obligations and Claims arising under this Contract.

#### **9.10 PAYMENT FOR UNDELIVERED LONG LEAD ITEMS; PAYMENT FOR ITEMS DELIVERED AND STORED ON OR OFF THE SITE**

A. Long Lead Items Not Delivered to Contractor. In general, the City will not make payments for undelivered equipment or materials. Notwithstanding that general rule, the Contract Documents may, in limited circumstances, authorize partial payment for undelivered equipment or materials which require lengthy fabrication periods. Payment will be made accordingly to and limited to the specific authorization and process set forth in the Agreement (Section 00 52 00). The City will not make partial payment for undelivered Items unless the Agreement specifically authorizes such payment.

B. Items Delivered and Stored On or Off the Site. In general, the City will not make partial payment to

Contractor for material or equipment procured by Contractor but stored on or off the Site and not incorporated into the Project. Notwithstanding that general rule, the following exception applies in limited circumstances:

1. The City will, upon written request by Contractor, make partial payment for material or equipment procured by Contractor and not incorporated into the Project subject to the following conditions:

a. Partial payment will not be made for any materials or equipment unless each individual piece of the material or equipment will become a permanent part of the Work, the materials and/or equipment are required by the Contract Documents, and the materials and/or equipment are specially manufactured for the Project and could not readily be used for or diverted to another job.

b. No partial payment will be made for living or perishable plant material, or for degradable materials such as rock, sand, cement, or for reinforcing steel, miscellaneous piping, off the shelf and catalog items, or similar items, until they are incorporated into the Work.

c. Applicable materials and/or equipment are either stored on the Site or at an off-Site location approved in advance and in writing by the City and in compliance with the requirements set forth in this subparagraph.

d. Partial payment for materials or equipment stored off the Site shall be limited to the lesser of 75 percent of the invoice cost or the Bid Item amount less an estimate by the City for installation. Partial payment for materials or equipment stored on the Site shall be limited to the lesser of 95 percent of the invoice cost or the Bid Item amount less an estimate by the City for installation. Contractor shall provide all documentation necessary to establish the cost of the materials or equipment. The City will be the sole judge of installation costs. The actual percentage paid (subject to the 75% or 95% limit, as applicable) shall be at the discretion of the City.

e. The General Requirements may set forth additional conditions applicable to partial payment for materials and equipment.

2. The City will not approve a request for partial payment for material or equipment not incorporated into the Project unless Contractor complies with each of the applicable requirements set forth below. No partial payment will be made until Contractor submits sufficient and satisfactory documentation to the City as required below.

a. Contractor shall submit to the City Representative proof of off-Site material or equipment purchases, including bills of sale, invoices, unconditional releases and/or other documentation as requested by the City warranting that Contractor has received the material or equipment free and clear of

all liens, charges, security interests, and encumbrances.

b. Contractor shall submit to the City Representative proof that title to stored Items vested in the City at time of delivery to the Site or off-Site warehouse. Contractor shall be responsible for all costs associated with storage of the Items.

c. Contractor shall obtain a negotiable warehouse receipt, endorsed over to the City, for Items stored in an off-Site warehouse, and shall submit such receipt to the City Representative.

d. Contractor shall store the materials and/or equipment in a bonded warehouse or facility approved by the City Representative. The materials and equipment shall be physically segregated from all other materials or equipment within the facility and shall be identified as being the "PROPERTY OF THE CITY AND COUNTY OF SAN FRANCISCO". Contractor shall exercise all measures necessary to ensure preservation of the quality, quantity, and fitness of such materials or equipment and shall perform the manufacturers' recommended maintenance of the materials or equipment. Contractor shall inspect the materials and equipment, and shall submit regular reports to the City Representative as specified in the General Requirements, listing all of the equipment stored, results of its inspection, and the maintenance performed.

e. Contractor, at no additional cost to the City, shall insure stored material and/or equipment against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the City Representative naming the City as additional insured. Insurance shall not be cancelable for at least 30 days and cancellation shall not be effective until certificate thereof is provided to the City. The insurance shall cover the material or equipment while stored at the approved location, while in transit to the Site, while being off-loaded at the Site and until the material or equipment is incorporated into the Work and the Work is accepted by the City.

f. Contractor shall submit to the City Representative written consent from Contractor's sureties approving the partial payment for Items stored on or off Site. The written consent must include a statement confirming that remittance of the advance payment will not relieve the sureties of any of their obligations under the Bonds.

g. Stored material or equipment shall be available for inspection by the City at all times. Contractor shall, upon request, assist the City Representative in conducting a full view, piece-by-piece, inventory or all such material or equipment.

h. Contractor shall protect stored material and equipment from damage. Damaged material and/or equipment, even though paid for, shall not be incorporated into the Work. In the event of loss or

damage to paid material and/or equipment, Contractor shall be responsible for replacing such lost or damaged material and/or equipment at its own cost and shall be responsible for all delays incurred to the Project as a result of such loss or damage. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Contractor fails to replace lost or damaged material and/or equipment at its own cost.

i. Contractor shall deliver stored material and equipment to the Site. After delivery, if any inherent or acquired defects are discovered in such material and/or equipment, Contractor shall remove and replace any defective Items with suitable Items at no additional cost to the City. Contractor shall be responsible for all delays incurred to the Project resulting from the removal and replacement of defective material and/or equipment. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Contractor fails to remove and replace defective Items.

3. Nothing in this Paragraph 9.10 shall relieve Contractor of its responsibility for incorporating material and equipment into the Work that conform to the requirements of the Contract Documents.

4. Contractor shall absorb any and all costs incurred to meet the requirements of this Paragraph 9.10 without modification to the Contract Sum.

## **ARTICLE 10 - INSURANCE AND BONDS**

### **10.01 INSURANCE REQUIREMENTS**

A. Contractor shall purchase and maintain in force throughout the Contract Time such liability and other insurance as provided in Section 00 73 16.

### **10.02 PERFORMANCE BOND AND PAYMENT BOND**

A. At the time of execution of the Contract, Contractor shall file with the City the following bonds using the form provided in Section 00 61 13:

1. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and

2. a corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").

B. Said Performance Bond shall cover all corrective Work required during the Guarantee to Repair

Period, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.

C. Corporate sureties issuing these bonds and Bid bonds as specified in Section 00 21 13 shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have either a current A.M. Best Rating not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570), and shall be satisfactory to the City.

## **ARTICLE 11 - LABOR STANDARDS**

### **11.01 PREVAILING WAGES**

A. It is hereby understood and agreed that all provisions of section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.

B. It is hereby understood and agreed that all provisions of sections 6.22(e) and 6.22(f) of the San Francisco Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:

1. Contractor shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

2. Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

3. Contractor shall keep or cause to be kept complete and accurate payroll records for all persons performing labor in or about the Work. Such records shall include the name, address and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available

for inspection of and examination by the City and its authorized representatives and the California Department of Industrial Relations.

4. Should Contractor, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Contractor and the Subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Labor Code Section 1775, but not less than \$50 per worker per day.

5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five days (Monday-Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Contractor or any Subcontractor who violates this provision shall forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per worker per day.

C. The most current highest prevailing wage rate determinations made at the time of the advertisement for Bids are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

D. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations and the San Francisco Office of Labor Standards Enforcement.

E. Contractor shall post job site notices prescribed by the California Department of Industrial

Relations at all job sites where Work is to be performed.

## 11.02 PAYROLLS

A. Certification of Payroll Records: Contractor shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the preparation, keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

1. The payroll records shall be certified under penalty of perjury and shall be submitted electronically to the City and, where required, to the California Department of Industrial Relations, as set forth in Paragraph 9.03M, N and O. In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job site office of Contractor on the following basis:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.

b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.

c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job site office of Contractor.

d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.

2. In providing copies of payroll records to any requestor, the City shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.

3. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.

4. In the event that Contractor receives a written notification of noncompliance with section 1776, Contractor shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Contractor shall forfeit the penalties set forth in Administrative Code section 6.22(e) and (f) and/or Labor Code section 1776. Upon the request of the Division of Appren-

ticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the Contract Sum.

5. Contractor is solely responsible for compliance with section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

### 11.03 APPRENTICES

A. Contractor and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and San Francisco Administrative Code, section 6.22(n). Contractor shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.

1. Contractor shall comply with all requests by the City to provide proof that Contractor and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.

2. Contractor shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.

3. Section 1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

B. Should Contractor fail to comply with the apprenticeship requirements of section 1777.5, Contractor shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

C. Contractor, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

### 11.04 LABOR STANDARDS ENFORCEMENT

A. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations

("DIR") and the San Francisco Office of Labor Standards Enforcement.

B. In accordance with Administrative Code section 6.22(e) and section 6.24 and the applicable sections of the California Labor Code, Contractor further acknowledges and agrees as follows:

1. Contractor will cooperate fully with the DIR and the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter, Chapter 6 of the San Francisco Administrative Code, and the applicable sections of the California Labor Code.

2. Contractor agrees that the DIR and the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.

3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.

4. Contractor shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

5. The DIR and the Labor Standards Enforcement Officer may audit such records of Contractor as is deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter, Chapter 6 of the San Francisco Administrative Code, and the applicable sections of the California Labor Code.

C. Under California Public Contract Code section 6109, Contractor or Subcontractors who are ineligible to bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

1. Any contract for the Project entered into between Contractor and a debarred subcontractor is void as a matter of law.

2. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred subcontractor by Contractor.

3. Contractor shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to work on the Project.

## ARTICLE 12 - SAFETY

### 12.01 PRECAUTIONS AND PROGRAMS

A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties or damages which result from Contractor's failure to comply with applicable health and safety laws and regulations during performance of the Work.

B. Contractor shall designate in writing a responsible competent person of Contractor's organization at the Site as Project safety representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a day, 7 days a week by telephone or other approved means.

C. Contractor shall perform all Work relating to hazardous materials as required by the Contract Documents. Contractor and its Subcontractors shall comply with all federal, state and local statutes and regulations on training, handling, storage, public notification and disposal of hazardous materials and hazardous wastes. In the event that Contractor or its Subcontractors introduces and/or discharges, spills or releases a hazardous material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a hazardous material identified in the Contract Documents or Reference Documents, the Contractor shall immediately notify the City Representative and any required agencies of the spill, release or discharge and Contractor shall stop the Work, and cordon off the affected area to secure entry. Removal and disposal of the hazardous material, if deemed necessary by the City, will, at the discretion of the City, be performed either by the City at Contractor's expense or by Contractor, through a qualified remediation Subcontractor, at Contractor's expense. Under no circumstance shall the Contractor perform remediation Work for which it is not qualified.

D. Should Contractor or any of its Subcontractors, while performing Work on the Site, unexpectedly encounter any hazardous material not show in the Contract Documents or Reference Documents, or have reason to believe that any other material encountered may be a hazard to human health and safety and/or the environment, Contractor shall stop the Work, cordon off the affected area to secure entry, and shall immediately notify the City Representative. Removal and disposal of the hazardous material not shown in the Contract Documents or Reference Documents, if deemed necessary by the City, will be performed as directed by the City at the City's expense. In the event that Contractor is delayed in the completion of the Contract Work solely because of

such hazardous materials or conditions not previously identified in the Contract Documents or Reference Documents, the Contractor shall be entitled to an extension of time in accordance with Article 7 of these General Conditions.

### 12.02 PERSONS AND PROPERTY

A. Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:

1. all persons on the Site or others who may be affected by the Work;

2. the Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site; and

3. other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.

B. Contractor shall give notices pursuant to California Civil Code section 832 and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

C. Contractor shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, AT&T, Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.

D. Contractor shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.

E. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, such as posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying owners and users of adjacent sites, underground facilities and utilities of Contractor's operations.

F. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.

G. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.

H. In the event of damage or loss to property referred to in the previous subparagraphs, whether caused by Contractor, its Subcontractors or Lower-Tier Subcontractors, Contractor shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Contractor are in addition to Contractor's obligations under Paragraph 3.19 of these General Conditions.

I. Pursuant to section 6705 of the California Labor Code, excavation for trenches 5 feet or more in depth shall not begin until Contractor has received acceptance from the City of Contractor's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Contractor's shoring plan shall be submitted in accordance with the requirements of the Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If Contractor's shoring plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and sealed by an engineer retained by Contractor who is registered as a civil or structural engineer in the State of California. The City's acceptance of Contractor's shoring plan shall not be construed to relieve Contractor of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.

J. Contractor shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect its Work and materials and fully or partially completed work of the City or separate contractors from damage due to construction operations, the action of the elements, the carelessness of its subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Completion of the Work. Should improper Work of any trade be covered by another contractor and damage or defects result, Contractor shall make the whole Work affected good to the satisfaction of the City and without expense to the City.

### **12.03 SAFETY PERMITS**

A. A California industrial safety permit shall be obtained and paid for by Contractor if the following occurs:

1. the construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
2. the demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
3. the excavation of a trench 5 feet deep or deeper into which a person must descend.

B. Contractor shall obtain and pay for all other required safety permits.

### **12.04 EMERGENCIES**

A. In emergencies affecting the safety or protection of persons or property at the Site, Contractor shall act promptly to prevent threatened damage, injury or loss. Contractor shall give prompt written notice to the City if Contractor believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations in the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Contractor in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

## **ARTICLE 13 - CONTRACT AND GOVERNMENT CODE CLAIMS**

### **13.01 CLAIMS GENERALLY**

A. The City and Contractor acknowledge and agree that early identification and resolution of potential claims or disputes benefits all parties and advances the success of the Project.

B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential claims prior to the Contractor performing disputed Work and having documentation from the Contractor concerning a dispute as Work is being performed is critical for the City to make informed decisions which could impact the budget and schedule for the Project.

C. Compliance with the Notice of Potential Claim, and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10. As set forth in subparagraph 13.05, Contractor's submittal of timely and proper Notices of Potential Claims and Contract Claims may, in some circumstances, toll Contractor's compliance with the Government Code



Claim requirements until the Contract Claim process is finally completed. Refer to subparagraph 13.05, below. The timely submittal of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract and not expressly excluded from the Contract Claim process per subparagraph 13.01(D), below. Disputed issues not timely raised and properly documented in conformance with this Article shall be deemed waived by the Contractor and may not be asserted in a Government Code Claim, subsequent litigation, or legal action. Furthermore, by executing this Contract, Contractor waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.

D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (1) claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (2) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury of death; (3) claims by the City; or (4) claims respecting stop notices.

E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

### **13.02 NOTICE OF POTENTIAL CLAIM**

A. If, during the course of the Project, the Contractor seeks an adjustment of the terms of the Contract Documents, an adjustment to the Contract Sum and/or Contract Time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Contractor arising out of or related to the Contract Documents or the performance of Work (including without limitation determination of delay, assessment of liquidated damages, Proposed Change Orders, Unilateral Change Order, denial of Change Order Requests, payment, nonpayment, termination for cause, termination for convenience, or other act by the City impacting or potentially impacting payment, nonpayment, withholding, or the performance of the Work), then the Contractor must submit to the City a timely Notice of Potential Claim to preserve its right to seek such additional compensation and/or time.

B. Contractor must submit a Notice of Potential Claim to the City within 7 days of the event, activity, occurrence, or other cause giving rise to the potential Claim.

C. A Notice of Potential Claim shall describe the nature and circumstances of the potential claim event, set forth the reason(s) for which Contractor believes additional compensation and/or time will or may be due, and provide a good faith estimate of the cost and/or time impact to which Contractor believes it

may be entitled. Notices of Potential Claims submitted per Paragraph 3.03 (Unforeseen or Differing Conditions) must also identify the Escrow Bid Documents that formed the basis of Contractor's Bid to perform the Work affected by the alleged unforeseen or differing condition.

D. The Notice of Potential Claim provides early notice to the City of a disputed issue and provides the City with the opportunity to mitigate associated costs, allowing for early resolution. Failure by Contractor to submit a timely Notice of Potential Claim shall constitute a waiver of any claim arising out of the event, activity, occurrence, or other cause giving rise to the potential Claim.

E. The requirements of subparagraph 13.02A, above, apply regardless of whether or not the disputed issue underlying a potential claim event has been or will be submitted to an issue resolution/escalation ladder, Dispute Review Board or similar dispute resolution process that may be required by the Contract Documents.

### **13.03 CONTRACT CLAIM**

A. General Contract Claim Requirements. If the disputed issue(s) underlying a Notice of Potential Claim remains unresolved after 45 days from the submittal of a Notice of Potential Claim, and Contractor wishes to pursue the disputed issue(s), Contractor must submit a Contract Claim that provides a complete and final justification for additional compensation and time adjustments. Contractor must submit a Contract Claim to the City within 45 days of submitting the Notice of Potential Claim. The Contract Claim shall be the Contractor's sole and exclusive administrative remedy for additional compensation or time associated with its performance of the Work under the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Contractor as to any claims relating to its performance of the Work under the Contract and a failure to exhaust its administrative remedies.

1. The time requirement for submitting a Contract Claim set forth in subparagraph 13.03A, above, shall be extended in accordance with the applicable Contract Documents if the Contract Documents require the establishment of an issue resolution/escalation ladder, Dispute Review Board or similar supplemental dispute resolution process(es) and Contractor timely refers a disputed issue to the applicable process. Contractor's timely referral of a disputed issue to any mandatory supplemental dispute resolution process(es) set forth in the Contract Documents is a prerequisite to filing a Contract Claim under this Article. By failing to timely refer a disputed issue to the applicable mandatory supplemental dispute resolution process specified in the Contract Documents, Contractor waives future Contract Claims relating to the disputed issue.

**B. Contract Claim Certification Requirement:**

1. Contractor, under penalty of perjury, shall submit with the Contract Claim certification by Contractor and its Subcontractor(s), as applicable, that:

- a. the Claim is made in good faith;
- b. supporting data are accurate and complete to the best of Contractor's and/or Subcontractor's knowledge and belief; and
- c. the amount requested accurately reflects the Contract adjustment for which Contractor believes the City is liable.

2. An individual or officer who is authorized to act on Contractor's behalf shall execute the certification. Failure to certify a claim under penalty of perjury shall render the Contract Claim a nullity and the underlying claim waived by the Contractor.

3. In regard to a Claim or portion of a Claim by a Subcontractor, Contractor shall fully review the Subcontractor's Claim and shall certify the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Claim, under penalty of perjury, in the same manner the Contractor would certify its own claim under the foregoing subparagraph 13.03B.1. The City will not consider a direct claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.

4. Contractor hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Contractor as to the subject Claim.

5. Contractor further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Contractor may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

**C. Format of a Contract Claim:**

1. The Contractor shall document its Contract Claim in the following format:

- a. Cover letter and certification.
- b. Narrative Summary of Claim merit and amount, and clause under which the Claim is made.
- c. List of documents relating to Claim:
  - 1) Specifications
  - 2) Drawings
  - 3) Clarifications/RFIs
  - 4) Correspondence
  - 5) Schedules
  - 6) Other

d. Chronology of events and correspondence.

e. Analysis of Claim merit.

f. Analysis of Claim cost (money and time).

g. Attachments:

- 1) Specifications
- 2) Drawings
- 3) Clarifications/RFIs
- 4) Correspondence
- 5) Schedules
- 6) Other

**D. Additional Requirements for Contract Claims Regarding Time Extensions:**

1. All Contract Claims regarding time extensions or assessments of delay and/or liquidated damages shall include, in addition to all other applicable requirements of this Article 13, an analysis of the delays impacting the as-built critical path. The as-built critical path shall be determined by (1) comparing the late dates for schedule activities indicated within the Contractor's "as-planned" CPM schedule (as approved by the City) with the actual dates for the same activities, and then (2) determining the longest path through the as-built schedule using the Contractor's originally-approved as-planned activity to activity logic. The "as-built" CPM shall reflect the exact manner in which the Project was actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic).

2. The City will not review or consider any Contract Claim regarding time extensions based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project.

**E. Procedure For Review of a Contract Claim:**

1. The City shall review only a timely, certified, and properly documented Contract Claim.

2. The City shall respond to a Contract Claim in writing, within 45 days of receipt of such Claim. In its response, the City shall either grant or deny the Claim in whole or in part. If the City does not respond to a Claim within the 45-day period, the Claim is deemed denied in its entirety.

3. Within 10 days of the date of the City's response or expiration of the 45-day period, whichever is earlier, the Contractor may request review of the Contract Claim and the City's response by the Department Head. The request must be in writing, directed to the Department Head and copied to the City Representative. Failure by the Contractor to make a

timely request to the Department Head, copied to the City Representative, shall constitute acceptance by the Contractor of the City's original response.

4. Upon a timely and proper request, the Department Head, or his/her designee (other than personnel assigned to the Project), shall review the relevant documents, meet with the Contractor and City personnel assigned to the Project, and confirm or revise the City's response to the Contract Claim. The Department Head, or his/her designee, shall issue such determination within 60 days of the date of the request for review. The determination by the Department Head, or his/her designee, shall constitute the final administrative determination of the City. If the Department Head takes no action on a request for review within the 60-day period, the City's original response shall constitute the final administrative determination by the City.

#### **13.04 GOVERNMENT CODE CLAIM**

A. For the purposes of this Contract, the City and the Contractor hereby agree that any action at law against the City arising out of or relating to Contractor's performance of the Work shall accrue either on the effective date of termination (under Article 14 of these General Conditions) or on the date of Substantial Completion, whichever is earlier. Notwithstanding the foregoing, the timely submittal of a complete and proper Notice of Potential Claim and Contract Claim under the administrative procedure specified in this Article 13 shall operate to toll Contractor's compliance with the Government Code Claim requirements under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10 until the City issues a final administrative determination per subparagraph 13.03E.4.

### **ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **14.01 NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE**

A. Grounds for Default. Contractor is in Default of the Contract if Contractor:

1. refuses or fails to supply enough properly skilled workers, adequate and proper materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
2. is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
3. refuses or fails in a material way to replace or correct Work not in conformance with the Contract Documents; or

4. repeatedly fails to make prompt payment due to Subcontractors or for labor; or

5. materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any public authority having jurisdiction; or

6. intimidates or sexually harasses a City employee, agent, or member of the public; or

7. is otherwise in material breach of any provision of the Contract Documents.

B. Notice of Default. When any of the above grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Contractor. The City shall provide a copy of any Notice of Default to the Contractor's surety.

1. The Notice of Default shall identify the ground(s) for Default and provide the Contractor with a 14-day cure period to complete necessary corrective Work and/or actions.

2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Contractor or its subcontractors/suppliers, Contractor shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently the corrective Work and/or actions. The City, after accepting Contractor's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Contractor's surety.

C. Termination for Cause. If Contractor fails to completely cure the Default either (i) within the 14-day cure period set forth in the Notice of Default; or (ii) within the agreed-upon cure period set forth in an amended Notice of Default, the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Contractor and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:

1. take possession of the Site and use any materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to complete the Project;

2. accept assignment of subcontracts and agreements pursuant to Paragraph 4.03; and

3. finish the Work by whatever reasonable method the City may deem expedient.

D. When the City terminates the Contract for one of the grounds set forth in subparagraph 14.01A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finish-

ing the Work, including all liquidated damages for delays, such excess shall be paid to Contractor. If such costs exceed the unpaid balance, Contractor shall pay the difference to the City. The amount to be paid to Contractor or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.

1. Upon completion of all Work, Contractor shall be entitled to the return of all its materials which have not been used in the Work, its plant, tools, equipment and other property provided, however, that Contractor shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

E. If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, will be the same as if the termination had been issued for the convenience of the City, as provided under Paragraph 14.03.

#### **14.02 SUSPENSION BY THE CITY FOR CONVENIENCE**

A. The City may, without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

B. An adjustment shall be made as specified in subparagraph 7.02A for increases in the cost of performance of the Contract caused by suspension, delay or interruption. No adjustment shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
2. that an equitable adjustment is denied under another provision of this Contract.

#### **14.03 TERMINATION BY THE CITY FOR CONVENIENCE**

A. Pursuant to section 6.22I of the San Francisco Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Paragraph 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the City, Contractor shall comply with all of the following requirements.

1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.

2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.

3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.

4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts.

5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Paragraph 14.03.

6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.

7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.

8. Complete performance of such part of the Work as shall not have been terminated by the notice of termination.

9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of Contractor and in which the City has or may acquire an interest.

C. After receipt of a notice of termination, Contractor shall submit to the City its termination claim, in the form and with the certification the City prescribes.

Such termination claim shall be submitted promptly, but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Contractor within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Claim at any time after such 3-month period or extension period. If Contractor fails to submit its termination Claim within the time allowed, the City may determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination. The City shall then pay to Contractor the amount so determined.

D. Subject to the previous provisions of this Paragraph 14.03, Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to Contractor because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The Contract shall be amended accordingly, and Contractor shall be paid the agreed amount. Nothing following, prescribing the amount to be paid to Contractor in the event of failure of Contractor and the City to agree upon the whole amount to be paid to Contractor because of the termination of Work under this Paragraph 14.03, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to Contractor pursuant to this subparagraph 14.03D.

E. If Contractor and the City fail to agree, as subparagraph 14.03D provides, on the whole amount to be paid to Contractor because of the termination of Work under Paragraph 14.03, the City shall determine, on the basis of information available to the City, the amount, if any, due to Contractor by reason of the termination and shall pay to Contractor the amounts determined as follows:

1. For all Contract Work performed before effective date of the notice of termination, the total (without duplication of any items) of the following items:

a. The cost of such Work.

b. The cost of settling and paying Claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Contractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.

c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable. But, if it appears that Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.

2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to Contractor shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor the fair value, as determined by the City, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the City, or to a buyer as previously provided.

F. Contractor shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the City makes under subparagraph 14.03E. But, if Contractor has failed to submit its termination Claim within the time provided and has failed to request extension of such time, it shall have no such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Contractor the following:

1. if there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or

2. if a proceeding is initiated in a court of competent jurisdiction within the State of California, the amount finally determined in said proceeding.

G. In arriving at the amount due Contractor under this clause there shall be deducted:

1. all unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Contract;

2. any Claim which the City may have against Contractor in connection with this Contract; and

3. the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by Contractor or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the City.

H. If the termination hereunder be partial, before the settlement of the terminated portion of this Contract, Contractor may file with the City a request in writing for an equitable adjustment of the price or prices specified in the Contract relating to the contin-

ued portion of the Contract (the portion not terminated by the notice of termination). Such equitable adjustment as may be agreed upon shall be made in the specified price or prices. Nothing contained herein shall limit the right of the City and Contractor to agree upon the amount or amounts to be paid to the continued portion of the Contract when the Contract does not contain an established Contract price for the continued portion.

I. Contractor understands and agrees that the foregoing termination of Contract for convenience provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

## **ARTICLE 15 - MISCELLANEOUS PROVISIONS**

### **15.01 GOVERNING LAW AND VENUE**

A. The Contract Documents shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the San Francisco Administrative Code, which is incorporated by this reference as if set forth herein in full.

B. Venue for all litigation relative to the formation, interpretation and performance of the Contract Documents shall be in San Francisco.

### **15.02 RIGHTS AND REMEDIES**

A. All of City's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of

City under the Contract Documents or otherwise available at law or in equity.

B. No action or failure to act by the City or the City Representative will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by City or the City Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

### **15.03 COMPLETE AGREEMENT**

A. The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified or amended only as specified in Paragraph 1.04 of these General Conditions.

### **15.04 SEVERABILITY OF PROVISIONS**

A. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**END OF SECTION**

## SECTION 00 73 00

## SUPPLEMENTARY CONDITIONS

## 1.1 SUMMARY

- A. This Document includes supplements that amend, delete, or modify provisions of Section 00 72 00, the General Conditions of the City and County of San Francisco, as required for the Work of this Contract.
- B. All provisions that are not so modified shall remain in full force and effect.

## 1.2 ARTICLE 2

- A. Amend Paragraph 2.02 with the following new subparagraph 2.02C:
  - "C. Contractor will be responsible for printing and maintaining an updated copy of the Plans and Specifications, at no additional cost to the Port. Contractor shall pay the reproduction costs of any additional sets required."

## 1.3 ARTICLE 3

- A. Amend Subparagraph 3.06B with the following new sub-subparagraphs:
  - "3. Permits to be secured and paid for by Contractor that may be required to perform the Work included, but are not limited to, the following:
    - a. Encroachment, night noise, and street improvement permits. For additional information, contact Port of San Francisco Permit Services, San Francisco, telephone (415) 274-0554. Refer to Document 00813 - Specific Project Requirements for excavation code requirements."
- B. ADD paragraph 3.06K as follows:
  - "K. At the time that the Port transfers the Encroachment Permit, the Contractor assumes the roles and responsibilities of the Applicant."

END OF SECTION





SECTION 00 73 02

CONTRACT TIME AND LIQUIDATED DAMAGES

1.1 SUMMARY

- A. This Document specifies the limits of Contract Time and amounts of liquidated damages agreed to be assessed should the Work be incomplete after the limits of Contract Time.

1.2 CONTRACT TIME

- A. The Work shall be commenced within 5 calendar days from issuance of the Notice to Proceed by the City, prosecuted diligently thereafter, and brought to Substantial Completion within the time limit of 120 consecutive calendar days.
- B. Final Completion shall occur no later than 60 consecutive calendar days after the date of Notice of Substantial Completion.

1.3 LIQUIDATED DAMAGES

- A. The CITY and CONTRACTOR agree that the CITY will sustain actual damages from CONTRACTOR'S delayed performance of the Work but the amount and extent of such damages cannot be reasonably determined at this time or at execution of the Agreement for the Work. Therefore, the CITY and CONTRACTOR agree that the CONTRACTOR shall pay the CITY for each calendar day that transpires with the Work not Substantially Completed after the time limit for achieving Substantial Completion, specified in Paragraph 1.2A (above), liquidated damages (but not as a penalty) according to the following schedule:

Day 1 through 14: .....	\$167/day
Day 15 through 28: .....	\$200/day
Day 29 on: .....	\$400/day

- B. In addition, CONTRACTOR shall pay the sum of one hundred dollars (\$ 100.00) for each calendar day that transpires with the Project not Finally Completed after the time limit for achieving Final Completion specified in Paragraph 1.2B.

1.4 CONSTRUCTION SCHEDULE LIQUIDATED DAMAGES

- A. CONTRACTOR'S failure to submit the required Construction Schedule shall result in the assessment of liquidated damages in the amount of two hundred dollars (\$200) per day which the Construction Schedule is delayed for each day beyond the period as specified in Section 01310.

END OF SECTION



## SECTION 00 73 16

## INSURANCE REQUIREMENTS

## 1.1 SUMMARY

- A. This Document includes insurance requirements, which amend Article 11 of the General Conditions.

## 1.2 CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor shall maintain in full force and effect, for the period covered by the Contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness.
  2. Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence, and \$2,000,000 general aggregate, combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, and completed operations.
  3. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

## 1.3 INSURANCE FOR OTHERS

- A. For general liability and automobile liability insurance, Contractor shall furnish policy endorsements that designate as additional insured, the City and County of San Francisco, the Port of San Francisco, their board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them. To satisfy this requirement, Contractor shall furnish policy endorsements in the form of ISO 2010 (11 85) or its equivalent. Other parties to be designated as additional insured on Contractor's liability insurance endorsements shall be as follows:
1. City's consultants and/or subconsultants: YEI Engineers, Inc.
  2. Non-City Agencies: None.

## 1.4 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Contractor's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of

policies to be furnished to the City promptly upon request. Contractor will be allowed a maximum of 10 working days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.

- B. Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Contractor shall be responsible for all losses not covered by the policy, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.
- C. The Contractor and its subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- F. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 4 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- G. Each such policy shall be endorsed to provide 30 days advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages for any reason. All notices shall be made to:

Engineering Division  
Port of San Francisco  
City and County of San Francisco  
Pier 1, The Embarcadero  
San Francisco, CA 94111.

- H. All policies shall be endorsed to provide waivers of subrogation against City.
- I. Contractor, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the effective date of such cancellation, change or expiration, with a complete copy of the new or renewed policy.
- J. If, at any time during the life of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Subparagraph "H" that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
- K. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

#### 1.5 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

END OF SECTION



## SECTION 00 73 20

## EXISTING UTILITY FACILITIES

## 1.1 SUMMARY

- A. This Section includes special requirements for existing utilities and underground facilities owned or controlled by any person or entity, private or governmental, referred to herein as "Utility Operators," which may be encountered by Contractor performing the Work.

## 1.2 EXISTING UTILITIES INDICATED

- A. The Contract Documents may identify or include utility occupancy drawings or utility reference drawings, hereinafter called "reference drawings," showing the approximate locations and other details, of pipes, conduits, structures and other utility facilities which are based on information and data furnished the City by the Utility Operators.
  - 1. Reference drawings do not form part of the Contract Documents. It is understood that the City makes no representation as to the completeness or accuracy of said reference drawings or other information available to Contractor and assumes no responsibility therefor.
- B. With respect to existing utility facilities, the Contractor shall assume the cost and responsibility for the following:
  - 1. Reviewing and checking all such reference drawings or information.
  - 2. Locating all underground facilities indicated in the reference drawings or other information available to Contractor.
  - 3. Coordinating the Work with the Utility Operators and construct the Work to clear existing utility facilities.
  - 4. The safety and protection of all such utility facilities as provided in Article 12 of the General Conditions (Section 00 72 00) and repairing damage thereto which may result from the Work.
  - 5. Removing, adjusting, and relocating existing utility facilities located in, over or around the location of the Work as necessary to allow the prosecution of the Work, when such work to the existing utility facilities is indicated in the Contract Documents.

## 1.3 EXISTING UTILITIES NOT INDICATED

- A. Consistent with the provisions of section 4215 of the California Government Code, the City will assume the responsibility for the timely removal, relocation, or protection of existing main or trunk line utilities located on the site of the Work, if such utilities are not identified in the Contract Documents, reference drawings or other information available to Contractor.
- B. Contractor shall notify promptly the City and the Utility Operators in writing, and before further disturbing conditions affected thereby, of such unforeseen or differing utilities it discovers while performing the Work.

- C. Contractor shall negotiate with the Utility Operator, who shall have the sole discretion to perform repairs or relocation work or permit Contractor to do such repairs or relocation work at a reasonable price.
- D. For Work which physically conflicts with existing non-City owned utilities that were not indicated in the Contract Documents, the Contractor shall seek reimbursement for additional cost incurred from the non-City Utility Operator.
- E. For Work which physically conflicts with existing City owned utilities that were not indicated in the Contract Documents, the Contractor will be compensated per Subsection 1.4
- F. Contractor will be granted a non-compensable time extension and shall not be assessed liquidated damages for delay in completion of the Work if the delay was caused by such existing main or trunk line utilities in direct conflict with the Work and not indicated in the Contract Documents, reference drawings or other information available to Contractor.
- G. Contractor shall not be entitled to any adjustment in the Contract Sum or Time if the extra work could have been avoided by:
  - 1. reasonable examination, investigation, exploration, test or study of the site and contiguous areas as required by the Contractor to locate all underground utility facilities and coordinate such existing utilities with the work prior to commencing the Work; or
  - 2. reasonable inference from the presence of other visible facilities, such as buildings, meter, utility castings, junction boxes, vaults, and etc., to locate all underground utility facilities and coordinate such existing utilities with the Work prior to commencing the Work.

#### 1.4 GOVERNMENTAL FACILITIES IN THE CITY OF SAN FRANCISCO

- A. Contractor shall satisfactorily support, work around, and protect, as approved by the City, all facilities, whether shown on the Drawings or not, which exist within any excavation and which are owned or controlled, and maintained, by a City department or other authority in the exercise of a governmental function, including, but not limited to, traffic control, lighting, police communication and fire alarm systems, and all conduits, wiring and related appurtenances for such systems; sewers and sewer structures; Water Enterprise facilities; pipes and facilities of the Auxiliary Water Supply System for Fire Protection; the Municipal Railway and Hetch Hetchy Water and Power overhead lines and power feeder systems serving the Municipal Railway; and other Hetch Hetchy Water and Power facilities.
  - 1. Municipal Railway facilities, Hetch Hetchy Water and Power facilities serving the Municipal Railway, and other Hetch Hetchy Water and Power facilities, if encountered, shall be supported in a manner satisfactory to the City.
  - 2. Auxiliary Water Supply for Fire Protection facilities, if encountered, shall be supported by a minimum of one cable with turnbuckle, a strongback, and a beam spanning the trench; however, where a joint falls within the trench area, a cable with turnbuckle shall be placed on each side of the joint. All such support work shall be subject to the approval of the City before commencement thereof. After supports are removed and the pipe is sufficiently supported by partial backfill, but with the joints exposed, the pipe



- shall be subjected to a hydrostatic field test of 350 psi pressure in accordance with section 908.22 of the DPW Standard Specifications (refer to Division 1 for reference standards) before final backfill is placed. If a joint is visibly wet, Contractor shall repair the joint in accordance with section 910 of the DPW Standard Specifications.
3. If vitrified clay pipe side sewers or culverts are encountered, Contractor may elect, in lieu of supporting such side sewers and culverts, to cut and restore those portions of the side sewers and culverts which obstruct the prosecution of the Work, provided that it complies with the provision of section 301 of the DPW Standard Specifications regarding the handling and disposal of seepage, storm water and sewage.
  4. Water Enterprise facilities, if encountered, shall be supported as follows:
    - a. Push-on joint pipes: Pipes shall be supported by a minimum of one cable with turnbuckle, a pipe clamp and a beam spanning the trench; however, where a joint falls within a trench area, a cable with turnbuckle and pipe clamp shall be placed on each side of the joint.
    - b. Copper tubing and plastic pipes (service pipes 2 inches or smaller in diameter): If the trench is less than 8-foot wide, no support is required. For trenches wider than 8 feet, one support is required for every additional 8 feet or part thereof.
    - c. Steel welded pipes: Pipes shall be supported in a manner satisfactory to the General Manager of the Public Utilities Commission of the City and County of San Francisco.
    - d. Contractor shall submit support designs for approval and start work only with approved support designs.
  5. The adjustment of manhole castings and other castings of governmental facilities, and the paving adjacent thereto, shall be done in accordance with the requirements of section 217 of the DPW Standard Specifications.
- B. Supporting, working around, and protecting existing governmental facilities indicated in the Contract Documents, reference drawings or other information available to Contractor shall be considered incidental work and no direct or additional payment will be made therefor.
- C. Governmental facilities not shown on the Contract Documents, reference drawings or other information available to Contractor that require removal, adjustment or relocation to avoid direct physical conflict with the facilities to be constructed under the Contract shall:
1. be removed or adjusted by Contractor in accordance with the provisions of the Contract Documents; or
  2. in the absence of such provisions, be removed or adjusted by Contractor on a force account basis as set forth in Paragraph 6.07 of General Conditions (Section 00 72 00); or
  3. be removed or adjusted by other suitable procedure at the City's expense.

END OF SECTION



## SECTION 00 73 30

## STATUTORY REQUIREMENTS

## CITYBUILD/FIRST SOURCE REFERRAL PROGRAM

## 1.1 SUMMARY

- A. This Section 00 73 30 incorporates applicable requirements of the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83), which generally requires contractors, when hiring, to provide hiring opportunities to economically disadvantaged persons as defined in Chapter 83.
- B. The CITYBUILD Referral Program promotes employment opportunities for economically disadvantaged individuals of all ethnic backgrounds and genders in the construction work force. The Office of Economic and Workforce Development ("OEWD") administers the CITYBUILD Referral Program by working with education programs to train construction workers and by working with construction contractors to identify hiring opportunities. The goal of the CITYBUILD Referral Program is to fill every hiring opportunity with a CITYBUILD Referral who is trained and prepared to enter the construction industry workforce.
- C. Contractor agrees to participate in the CITYBUILD Referral Program.
- D. The CITYBUILD workforce goals, and the program requirements for achieving such goals, are set forth below.
- E. As part of its participation, Contractor shall incorporate the provisions of this Section 00 73 30 into any subcontract on this Project (regardless of tier) in excess of \$250,000, and shall require its subcontractors to do the same.
- F. For any Contract subject to a Project Labor Agreement ("PLA"), this Section 00 73 30 shall remain in effect. In the event of a conflict between this Section 00 73 30 and a PLA, the terms and conditions of the PLA shall control.

## 1.2 DEFINITIONS

For the purposes of this Section 00 73 30 only, the following definitions shall apply:

- A. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- B. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as determined by OEWD or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.
- C. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created. For example, if the carpentry subcontractor has an existing crew of five

carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

- D. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.
- E. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.
- F. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.
- G. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

### 1.3 CITYBUILD WORKFORCE GOAL

- A. The workforce participation goal for this Contract is 50% of the new hires for the Work in each trade.
- B. Contractor and subcontractors may achieve the goal in any of the following ways:
  - 1. On-site credit: Employment of CITYBUILD referrals to perform work on this Project.
  - 2. Off-site credit: Employment of a CITYBUILD referral on a construction project other than this Project, during the course of or contemporaneously with this Project, so long as for such individual, the Contractor complies with the prevailing wage and payroll documentation requirements of San Francisco Administrative Code Chapter 6, section 6.22(E). Contractor or subcontractor must have prior written approval from CITYBUILD to claim "off-site" credit.

### 1.4 CITYBUILD REFERRAL PROGRAM REQUIREMENTS

- A. Contractor shall make good faith efforts to achieve the CITYBUILD workforce participation goal, as follows:
  - 1. Within 30 days of award of the Contract, provide written notification to CITYBUILD staff as to the number of hiring opportunities the Contractor and its subcontractors have available for new hires, by completing CITYBUILD **Form 1 Workforce Projections** (attached to this Section 00 73 30).
  - 2. Upon receiving a completed Form 1, CITYBUILD representatives will work with Contractor and its subcontractor(s) to complete a **Form 2 Workforce Hiring Plan** (attached to this Section 00 73 30).
  - 3. Instruct all foremen, superintendents, and other on-site supervisory personnel as to the CITYBUILD program and the program requirements.
  - 4. Attend and notify all subcontractors as to the mandatory pre-construction meeting as described in paragraph 1.5 below.
  - 5. Ensure that all CITYBUILD referrals engage in meaningful work that will provide advancement in the person's specific trade.

6. Designate a responsible official to monitor all employment-related activity, and to work with CITYBUILD staff.
  7. Comply with the documentation requirements as set forth in paragraph 1.6 below.
  8. In the event of the termination of any CITYBUILD referral, contractor must submit notice to CITYBUILD and reserve the position for another referral through the CITYBUILD system.
- B. The final decision to hire a CITYBUILD referral shall be made by the hiring Contractor or subcontractor.
  - C. If the Contractor or a Subcontractor is signatory to a collective bargaining agreement with a trade union, the Contractor and/or Subcontractor shall notify the appropriate union(s) of the Contractor's/Subcontractor's good faith obligations under this Section 00 73 30 and shall request assistance from the union(s) in providing hiring opportunities for qualified CITYBUILD referrals. If a collective bargaining agreement allows for "name call" opportunities, then the Contractor or Subcontractor should reserve a requisite number of its "name call" opportunities to meet its good faith efforts obligations for participation in the CITYBUILD referral program. This Section 00 73 30 is not intended to interfere or conflict with any collective bargaining agreement or union membership, but rather to promote hiring opportunities to the extent such goals may be met consistent with the requirements of such agreements.
  - D. Contractor or its Subcontractors may decline to hire a referral if the Contractor/Subcontractor considers the referral in good faith but deems the referral not qualified. Once a referral is hired, Contractor/Subcontractor may refer-back a referral to the CITYBUILD program within eight working days of the date of employment. Contractor/Subcontractor may decline or refer-back a referral only upon a written statement as to why the referral was unsuitable to Contractor. CITYBUILD will endeavor to replace the referral as soon as possible.
  - E. In the employment of CITYBUILD referrals who are or who become registered apprentices, Contractor must maintain the proper ratio of apprentices to journeymen for each trade on the job site. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, the Contractor must employ such apprentices and trainees during the training period, and the Contractor must commit to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or the California Department of Industrial Relations, Division of Apprenticeship Standards. Courses offered by City College of San Francisco and other community college districts or comparable institutions will also be considered.
  - F. Contractor shall comply with its obligations under this program, and shall make a good faith effort to achieve each goal in each trade in which it has employees performing work for the Project. The overall good faith performance by other

contractors or subcontractors toward the goal does not excuse any covered contractor's failure to make good faith efforts to achieve the goals.

#### 1.5 PRECONSTRUCTION MEETING

- A. Prior to commencement of construction, Contractor shall attend a preconstruction meeting convened by CITYBUILD staff. Representatives from the Contractor/Subcontractor(s) must have hiring authority.
- B. Any Subcontractor at any tier whose contract is subject to CITYBUILD participation, who does not attend such a meeting, shall not be permitted on the job site, and any resulting delay to the work under this Contract shall be considered the Contractor's avoidable delay. CITYBUILD staff shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the City ordering a suspension of work by the Contractor until the breach has been cured; any delay resulting from such suspension shall be considered the fault of the Contractor and an avoidable delay.

#### 1.6 DOCUMENTATION AND RECORDS

- A. Upon request by CITYBUILD program staff, Contractor shall promptly make available all payroll documentation and records required under San Francisco Administrative Code Chapter 6.
- B. Contractor shall permit representatives of CITYBUILD staff to interview employees during working hours on the Project site.
- C. Upon request by CITYBUILD program staff, Contractor shall provide documentation of its good faith efforts as required under this Section 00 73 30. To facilitate review by CITYBUILD staff, the Contractor shall maintain a CITYBUILD compliance binder on the project site which shall include copies of the Contractor's and Subcontractors' Form 1s and 2s, referrals received, and any other relevant information supporting good faith efforts under this Section 00 73 30.

#### 1.7 PROGRESS PAYMENTS

- A. Failure to demonstrate good faith efforts in conformance with the provisions of this Section 00 73 30 may result in the withholding of progress payments under this Contract.

#### 1.8 LIQUIDATED DAMAGES

- A. The Contractor and its subcontractors acknowledge and agree that their commitment to comply with the CITYBUILD referral program is a material element of the City's consideration for this Contract; that the failure of the Contractor or its subcontractors to comply with the terms and conditions of this Specification Section 00 73 30 will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not

only the financial cost of funding public assistance programs but also the insidious but impossible-to-quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Contractor or its subcontractors from the CITYBUILD referral process, as determined by the CITYBUILD Director during his/her first investigation of the Contract or any subcontractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the failure by the Contractor or any subcontractor subject to this Specification to comply with its CITYBUILD referral contractual obligations.

- B. The Contractor and its subcontractors further acknowledge and agree that the continued failure to comply with its CITYBUILD referral obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000.00 for each entry level position improperly withheld from the CITYBUILD referral program, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's or its subcontractor's continued failure to comply with the CITYBUILD referral program.

#### 1.9 TERM

- A. The obligations of the Contractor and its subcontractors with respect to their construction work forces, as set forth in this Program, shall remain in effect until Substantial Completion of all work to be performed by the Contractor under the terms and conditions of this Contract.

END OF DOCUMENT







**FORM 1: LOCAL HIRING WORKFORCE PROJECTION**

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) within 15 calendar days from notice award of the contract. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount. Notice to Proceed (NTP) will not be issued until the City receives a completed Form 1 from Contractor. The Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by Contractor's failure to submit an accurate and complete Form 1 for its workforce and the workforce of its Subcontractors in a timely manner.

**Will you be able to meet the mandatory Local Hiring Requirements?**

- YES** (Please provide information for all contractors performing construction work in Table 1 below.)
- NO** (Please complete Table 1 below and Form 4: Conditional Waivers.)

**INSTRUCTIONS FOR COMPLETING TABLE 1:**

1. Please organize the contractors' information based on their Trade Craft work.
2. For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.)
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by San Francisco residents.
4. Additional blank form is available at our Website: [www.oewd.org](http://www.oewd.org). For assistance or questions in completing this form, contact the CityBuild (415) 581-2363 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>		Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %
<i>Example:</i> Laborer	Contractor X	Journey	800	100	12.5%
		Apprentice	200	100	50%
<i>Example:</i> Laborer	Contractor Y	Journey	500	100	20%
		Apprentice	0	0	0
<i>Example:</i>	<b>TOTAL LABORER</b>	Journey	1300	200	15%
		Apprentice	200	100	50%
<i>Example:</i>	<b>TOTAL</b>		<b>1500</b>	<b>300</b>	<b>20%</b>
		Journey			
		Apprentice			
		Journey			
		Apprentice			
		Journey			
		Apprentice			

\_\_\_\_\_  
Name of Authorized Representative      Signature      Date      Phone      Email



**FORM 2: LOCAL HIRING PLAN**

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

If the Engineer's Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. NTP will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan must be approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

**COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.**

**INSTRUCTIONS:**

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by San Francisco residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: [www.owd.org](http://www.owd.org). For assistance or questions in completing this form, contact the CityBuild (415) 581-2363 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.**

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	300	20%	200	100	50%

**List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft**

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	100	100	200	3/25/11	60	Joe Smith
Contractor Y Michael Lee	100	0	100	5/25/11	30	Michael Lee

**\*We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**

City Use Only	
OEWD Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	



## SECTION 00 73 73

## STATUTORY REQUIREMENTS

## 1.1 GENERAL

- A. All requirements in this Section are incidental work, unless specified otherwise.
- B. Contractor shall be solely responsible and fully liable for any and all failures to comply with the requirements specified herein, and shall unconditionally and fully indemnify the City for any damages resulting therefrom. If Contractor fails to comply with the requirements specified herein, or fails to promptly take all required remedial actions to the City's satisfaction, the City may withhold progress payments to Contractor until satisfactory compliance has been accomplished and/or may assess statutory liquidated damages or penalties, as applicable.
- C. The full text of the City Requirements provided below are incorporated by reference in the Contract Documents, and are available at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca)

## 1.2 CONFLICT OF INTEREST

- A. By executing the Agreement (Section 00 52 00), Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; or Section 87100 *et seq.* or Section 1090 *et seq.* of the California Government Code of the State of California, and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Contract. All requirements in this Section are incidental work, unless specified otherwise.

## 1.3 NONDISCRIMINATION REQUIREMENTS

- A. **Incorporation of Administrative Code Chapters 12B and 12C.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated herein by this reference. Contractor shall comply with any and all of the provisions that apply to this Agreement under such Chapters, and be bound by the remedies provided in such Chapters. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions.
- B. **Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where Work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code §12B.2.

#### 1.4 REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

- A. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein:

#### 1.5 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

- A. Contractor shall choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and shall otherwise comply with the HCAO as set forth in San Francisco Administrative Code Chapter 12Q. The provisions of Chapter 12Q, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

#### 1.6 MACBRIDE PRINCIPLES - NORTHERN IRELAND

- A. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement as though fully set forth. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride.

#### 1.7 PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY

- A. In performing the Work, Contractor shall comply with San Francisco Administrative Code Chapter 12.G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The provisions of Chapter 12.G, including but not limited to the penalties for noncompliance provided therein are incorporated by reference and made a part of this Agreement as though fully set forth herein.

#### 1.8 LIMITATIONS ON CONTRIBUTIONS

- A. By executing the Agreement (Section 00 52 00), Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of

Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor.

Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

#### 1.9 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. If the Contract Documents require City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor shall use such information only in accordance with the restrictions stated in this Agreement and as necessary in performing the Services. The provisions of Chapter 12M, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.
- B. In the performance of Work, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

#### 1.10 UNFAIR BUSINESS PRACTICES CLAIMS; ASSIGNMENT TO AWARDING BODY

- A. Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:
  - 1. In entering into the Agreement or subcontract to supply goods, services, or materials under this Agreement, Contractor or its Subcontractors offer and agree to assign the City all rights, title, and interest in and to all causes of action they may have under section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2, commencing with section 16700, of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the Agreement or subcontract.
  - 2. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.
  - 3. Contractor shall include the provisions of this Article in its subcontracts and purchase agreements to supply goods, services, or materials pursuant to the Agreement.

#### 1.11 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

- A. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. The City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical

hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.

#### 1.12 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

- A. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### 1.13 FOOD SERVICE WASTE REDUCTION REQUIREMENTS

- A. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein.

#### 1.14 NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS

- A. Pursuant to chapter 14B of the San Francisco Administrative Code the following requirements are made part of the Contract:
1. Chapters 12B and 14B of the San Francisco Administrative Code, their implementing Rules and Regulations, and CMD Attachment 4 – Requirements for Construction Contracts, are incorporated by reference herein as though fully set forth. These documents are available to be viewed and downloaded on the Contract Monitoring Division's website: <http://sfgsa.org/index.aspx?page=5365>  
Alternatively, contact the CMD Contract Compliance Officer assigned to this Contract for assistance in obtaining any of these documents.
  2. The willful failure of Contractor or its subcontractors to comply with any of the requirements of chapter 14B shall be deemed a material breach of contract.
  3. In the event that the Director of Contract Monitoring Division finds that Contractor or any of its subcontractors willfully fails to comply with any of the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, Contractor or its subcontractor shall be liable for liquidated damages as specified in CMD Attachment 4, article 1.05 "Noncompliance and Sanctions," which shall be payable to the City upon demand and may be set off against moneys due to Contractor or its subcontractor for any contract with the City. Contractor agrees that progress payments shall be withheld, and Contractor's liability for liquidated damages assessed will be subject to the collection

procedures specified in CMD Attachment 4, article 1.05 "Noncompliance and Sanctions."

4. Contractor shall maintain, and shall require its subcontractors to maintain, records including such information requested by CMD necessary for monitoring their compliance with Chapter 14B. Such records shall be maintained for 3 years after the date of Final Completion.
5. Contractor shall pay its subcontractors within 3 working days after receiving payment from the City unless Contractor notifies the Director of the CMD in writing prior to receiving payment from the City that there is a bona fide dispute between Contractor and the subcontractor. The Director of the CMD may, upon making a determination that a bona fide dispute exists between Contractor and the subcontractor, waive this 3-day payment requirement.
6. Contractor shall submit CMD Contract Performance Forms (CMD Forms 7, 8, 9, and 10) as set forth in CMD Attachment 4, article 1.03.
7. Contractor shall comply with the Non-Discrimination provisions as set forth in Part IV of CMD Attachment 4.

#### 1.15 SUNSHINE ORDINANCE

- A. Contractor acknowledges that the Contract Documents and all records related to their formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

#### 1.16 SUBMITTING FALSE CLAIMS; REMEDIES

- A. Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. A contractor, subcontractor, supplier, consultant or subconsultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### 1.17 CLEAN CONSTRUCTION

- A. Contractor agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San Francisco Administrative Code. The provisions of Section 6.25 are incorporated herein by reference and made a part of this Agreement as though fully set forth.



- B. Contractor may seek waivers from the Clean Construction requirements as set forth in Section 6.25(b)(3) of the Administrative Code.
- C. By entering into the Agreement, Contractor and City agree that if Contractor uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Contractor and the City agree that Contractor shall pay the City the amount of \$100.00 per day per each piece of off-road equipment and each off-road engine used to complete Work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with the Clean Construction requirements.

#### 1.18 CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS

- A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Paragraph. Capitalized terms used in this Paragraph and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.
- B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.
- C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

- E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subparagraph D, above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.
- F. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.
- G. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.
- H. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

END OF SECTION