

## SECTION 00 52 00

## AGREEMENT FORM (REV. 1)

THIS AGREEMENT is made for the convenience of the parties this 15th day of March, 2021 by and between All Commercial Fence, Inc., located at 650 Armstrong Way, Oakdale, CA 95361 (“CONTRACTOR”), and the City and County of San Francisco, State of California (the “CITY”), acting through the General Manager (the “GENERAL MANAGER”) of the San Francisco Public Utilities Commission (the “SFPUC”), under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

WHEREAS, on the 19<sup>th</sup> day of October, 2020, the San Francisco Public Utilities Commission’s General Manager issued a Declaration of Emergency because numerous lightning strikes ignited what was eventually labeled the SCU Lightning Complex Fire (SCU Fire), which burned approximately 10,500 acres of SFPUC Alameda watershed property. The SCU Fire destroyed approximately 50 miles of security and grazing operation fencing. This fencing needs to be repaired and/or replaced immediately to reestablish the security barrier to protect SFPUC Alameda watershed lands and regional water system infrastructure from trespass, vandalism, and contamination of drinking water sources; and

WHEREAS, the President of the San Francisco Public Utilities Commission approved the Declaration of Emergency, a copy of which is attached hereto; and

WHEREAS, on February 2, 2021, as set forth in Resolution No. 210008, the San Francisco Board of Supervisors approved the emergency declaration by the San Francisco Public Utilities Commission on October 19, 2020 to resolve the emergency situation; and

WHEREAS, the CITY has retained two Contractors to repair and replace the 50 miles of fence; and

WHEREAS, The Work will be issued on a Task Order basis and payment will be issued based on actual material quantities installed; and

WHEREAS, the CITY has retained the CONTRACTOR to replace and repair fences on SFPUC watershed land in Alameda watershed damaged by the SCU Lightning Complex Fires.

**2020 SCU LIGHTNING COMPLEX FIRE IMPACTED FENCING REPLACEMENT AND  
REPAIR  
Contract No. WD-2881(E).B**

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 GENERAL MANAGER, 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 GENERAL MANAGER.

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. As set forth in Section 00 73 02, the Work shall be Substantially Complete within 365 consecutive calendar days, beginning with and including the official date of Notice to Proceed as established by the MANAGER, Construction Management Bureau, and Finally Complete in accordance with Article 9 of the General Conditions (Section 00 72 00) within 90 consecutive calendar days after the date the CITY issues a Notice of Substantial Completion.
- 2.02 FEMA Emergency & Exigency Contracts Requirements. CONTRACTOR is hereby notified that a portion of the Work may be eligible for funds under the Federal Emergency Management Agency (FEMA). For CITY to be eligible for the FEMA Emergency & Exigency Contracts Requirements, which is attached to this AGREEMENT as Appendix – 1, and complete the Certification Regarding Lobbying, included therein.

## **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 Contractor's Quote, dated December 29, 2020.

For all Work, CONTRACTOR guarantees that the maximum cost payable by the City, based on direct costs for actual quantities of labor, materials, equipment and Contractor's fees for indirect costs as set forth in Paragraph 6.06 of the General Conditions (Section 00 72 00), all subject to increases or decreases for changes in the Work, shall not exceed One Million Eight Hundred Ninety-Seven Thousand Dollars and 0/100 cents (\$1,897,000).

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 Administrative Code, including section 6.22(e). In addition, this Project is subject to the requirements of the San Francisco Local Hiring Policy for Construction, Administrative Code Section 6.22(g) and Chapter 82. Refer to Section 00 73 30 for further information.

- 4.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts 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 San Francisco Public Utilities Commission, City and County of San Francisco, Contract Administration Bureau, 525 Golden Gate Avenue, 8<sup>th</sup> Floor, San Francisco, CA 94102.

- 4.03 Penalties. CONTRACTOR shall forfeit to the CITY back wages due plus not less than 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: *Contact the designated City Representative*

To CONTRACTOR: Noel Stamper  
 (Contractor’s name)

P.O. Box 658, Waterford, CA 95386  
 (Contractor’s mailing address)

Noel@allcommercialfence.com  
 (Contractor’s e-mail address)

2098458428  
 (Contractor’s fax no.)

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.

**[Emergency Contracts Only]**

Executed on March 18, 2021

209-845-8400

Telephone Number 1120288

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

All Commercial Fence, Inc

Name of Firm or Corporation

DocuSigned by:  
*Noel Stamper*  
E798390AF9A7424...

(signed) Bidder or Authorized Representative

Secretary/Treasurer

Position in Firm or Corporation

P.O. Box 658, Waterford, 95385386

Address of Firm or Corporation Zip Code

823030

Contractor's California License No.

02/28/23

License Expiration Date

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 California Labor Code 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.

CITY

By: Michael Carlin  
General Manager, San Francisco Public Utilities Commission

ALL COMMERCIAL FENCE, INC.

Principal By: Noel Stamper  
Secretary/Treasurer  
Title Noel Stamper  
Print Name

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

DocuSigned by:  
By: Randy Parent  
Deputy City Attorney  
Randy Parent

Print Name

END OF SECTION

**00 52 00 AGREEMENT APPENDIX 1**  
**FEMA EMERGENCY & EXIGENCY CONTRACTS REQUIREMENTS**

- 1. Contract Requirements.** This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. The Parties must comply with these provisions as a minimum. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.
- 2. Remedies for Breach.** In addition to all other remedies included in this contract, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.
- 3. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.
- 4. Termination for Cause.** On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this contract for cause or to seek specific performance of all or any part of this contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this contract or any other contract.
- 5. Equal Employment Opportunity.** If this contract constitutes a "federally assisted construction contract" as defined in 41 C.F.R. §60-1.3, during the performance of this contract, Contractor agrees as follows:

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national

origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

C. The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

D. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and



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

H. The Contractor will include the provisions of this section 5 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The City further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the City is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The City agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The City further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the City agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**6. Davis-Bacon Act.** If this contract is a construction contract in excess of \$2,000, Contractor agrees as follows:

A. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The Contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.

B. Contractor is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. A copy of the current prevailing wage determination issued by the Department of Labor will be made available upon request. The City will report all suspected or reported violations to FEMA.

C. Additionally, Contractor is required to pay wages not less than once a week.

**7. Copeland Anti-Kickback Act.** If this contract is a construction contract in excess of \$2,000, Contractor agrees as follows:

A. **Contractor.** The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

B. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

C. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

**8. Work Hours and Safety Standards.** If this contract is for a price in excess of \$100,000, and involves the employment of mechanics or laborers, Contractor agrees as follows:

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

B. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (A) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

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

D. **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (A) through (D) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (A) through (D) of this section.

E. This Section 8 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**9. Rights to Inventions.** If FEMA's funding for this contract meets the definition of "funding agreement," and if this contract constitutes a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment, or performance of experimental, developmental, or research work, the City agrees to comply with the requirements of 37 C.F.R. Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements, and any implementing regulations issued by FEMA.

**10. Clean Air Act.** If this contract is for a price in excess of \$150,000, Contractor agrees as follows:

A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

B. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**11. Federal Water Pollution Act.** If this contract is for a price in excess of \$150,000, Contractor agrees as follows:

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

B. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

C. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

**12. Debarment and Suspension.** If this contract is for a price in excess of \$25,000, Contractor agrees as follows:

A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

B. The Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

C. This certification is a material representation of fact relied upon by the City. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**13. Procurement of Recovered Materials**

A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- i. Competitively within a timeframe providing for compliance with the contract performance schedule;
- ii. Meeting contract performance requirements; or
- iii. At a reasonable price.

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

C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.”

**14. Time and Material Contracts.** To the extent this contract includes work that is paid on a time and material basis, such work must have a guaranteed maximum price (GMP). The GMP is set forth in the body of this contract. The GMP constitutes a ceiling price that Contractor exceeds at its own risk.

**15. Bonding Requirements.** To the extent this is a contract for construction or facility improvement, Contractor agrees as follows:

A. Contractor provided with its bid for this contract a bid guarantee of no less than 5% of the bid price, or greater if otherwise required in this contract or the San Francisco Administrative Code.

B. Contractor has obtained a performance bond in favor of the City, securing fulfillment of all its obligations under the contract, in an amount no less than 100% of the contract price.

C. Contractor has obtained a payment bond, assuring payment as required by law to all persons supplying labor and material in the execution of the work provided for in the contract, in an amount no less than 100% of the contract price.

**16. Access to Records.** The following access to records requirements apply to this contract:

A. The Contractor agrees to provide City, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.

D. In compliance with the Disaster Recovery Act of 2018, the City and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

**17. Department of Homeland Security Seal, Logo, and Flags.** The Contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

**18. Compliance with Federal Law, Regulations, and Executive Orders.** This is an acknowledgement that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

**19. No Obligation by Federal Government.** The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

**20. Program Fraud and False or Fraudulent Statements or Related Acts.** The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

**21. Byrd Anti-Lobbying Certification.**

A. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification pursuant to the Byrd Anti-Lobbying Amendment, 31 U.S.C. §1352, as amended. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

B. If this contract is for a price of \$100,000 or more, Contractor, and its lower tiers, must sign and submit to the City the following certification:

**APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING**

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor, **All Commercial Fence, Inc.** certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

DocuSigned by:  
*Noel Stamper*  
E798390AF9A7424  
\_\_\_\_\_  
Signature of Contractor's Authorized Official

Noel Stamper                      Secretary/Treasurer  
\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

03/18/2021 | 12:00:41 PM PDT  
\_\_\_\_\_  
Date