

**SECTION 00520 (Rev. 1)**

**AGREEMENT FORM**

THIS AGREEMENT is made for the convenience of the parties this 13<sup>th</sup> day of May, 2014 by and between Flatiron West, Inc., located at 2100 Goodyear Road, Benicia, CA 94510 (“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 February 21, 2014, the San Francisco Public Utilities Commission issued a Declaration of Emergency in response to California’s most extreme drought since hydrologic recordkeeping began; and

WHEREAS, the Declaration of Emergency was approved by the President of the San Francisco Public Utilities Commission on February 21, 2014, a copy of the Declaration is attached hereto; and

WHEREAS, the CITY retained the CONTRACTOR to perform the work described in Articles 1, 2 and 3 of this Agreement; and

WHEREAS, the San Francisco Public Utilities Commission issued a Notice to Proceed for Pre-Construction Services to CONTRACTOR on the 30<sup>th</sup> day of April, 2014.

**LOWER CHERRY AQUEDUCT EMERGENCY REHABILITATION  
Contract No. HH-974(E)**

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 – WORK**

1.01 The Project. As set forth in Document 01010, the Lower Cherry Aqueduct (LCA) System consists of a low head, gated inlet structure with four 2-foot x 4-foot manually operated head gates, a diversion dam with two 2-foot x 4-foot hydraulically operated sluice gates in Cherry Creek, seven tunnels totaling 9,500 linear feet, 5,500 linear feet of open aqueduct and 4,700 linear feet of enclosed pipes varying in diameter from 36-inches to 75-inches. The primary purpose of the LCA is to convey a water supply from Cherry Creek that can

supplement the primary Hetchy Reservoir supply during a drought year. Due to its age and the damage caused by the Rim Fire, the LCA is currently unable to reliably convey the supplemental water supply from Cherry Creek to the primary water delivery system.

In response to the current drought condition, the SFPUC must be prepared to divert water from Cherry Lake or Lake Eleanor storage to Mountain Tunnel through the Lower Cherry Aqueduct. Currently the SFPUC/HHWP is considering a 2-phased approach for completing the construction of the LCA Rehabilitation Project; however, based on input from the designer and the successful Contractor, SFPUC/HHWP may elect to complete the project in a single phase.

- 1.02 Contract Documents. The CM/GC shall provide all Work in conformance with the Contract Documents, which are incorporated into and made a part of this AGREEMENT by this reference as if set forth here in full, 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 CM/GC and the CITY concerning the provision of the Work, are defined in the General Conditions (Document 00700). Any undefined term used in this AGREEMENT shall be given the definition set forth in the General Conditions (Document 00700).
- 1.03 CM/GC's General Responsibilities. The CM/GC 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, pre-construction work, 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.
- 1.04 Integrated Project Delivery. Integrated Project Delivery provides a mechanism to enable the early engagement of the CM/GC so that the CM/GC can work with the CITY and its Project designers to provide a better designed and constructed Project. Early engagement of the CM/GC also allows for early starts in the construction sequence, as the design is proceeding. Under the Integrated Project Delivery method, the CM/GC will provide Pre-Construction Services in coordination with the CITY and its Project designers and Design Consultants, will select trade subcontractors through competitive quote, and will coordinate, manage, and oversee construction of the Project through Final Completion

The CITY's Design Consultant will provide the engineering services. The CM/GC's services will commence as soon as the CITY issues the Notice to Proceed.

Under this approach, the CM/GC will provide Pre-Construction Services (Article 2) and Construction Services (Article 3) as set forth below. The CM/GC acknowledges and agrees, however, that the specific scope of work for both Pre-Construction and Construction Services for this Project is currently undefined and will be developed and finalized incrementally as the Project progresses. The services outlined below are intended as summary descriptions of the types of services that the CM/GC may perform as part of this scope of work. Scopes of work shall be incorporated into this AGREEMENT in an incremental fashion as the Project progresses, at which time the CITY will authorize the CM/GC to proceed with such services.

- 1.05 Personnel. The CM/GC team members shall at all times have the requisite expertise and experience to provide the Pre-Construction and Construction Services as required by the Contract Documents. See General Conditions (Document 00700), Article 3.

The CM/GC guarantees that the key personnel identified in its Proposal will provide the required Pre-Construction Services for the duration of such services for the Project. The CM/GC will not make any substitutions to these key personnel without the CITY's written approval. At a minimum, the CM/GC will demonstrate that any proposed substitution meets all of the applicable qualification requirements as set forth in the CITY's RFP.

## **ARTICLE 2 – PRE-CONSTRUCTION SERVICES**

- 2.01 General. The CM/GC shall perform its Pre-Construction Services with a commitment to assist the CITY and its design teams in their efforts to meet the Project budgets and schedules. The CM/GC shall respect the CITY's budget and shall perform all reviews, estimates, and other Pre-Construction Services in conformance with the Project budgets and general timelines set by the CITY at its sole discretion.
- 2.02 Work Plan. Upon Notice to Proceed for Pre-Construction Services, the CM/GC shall prepare a work plan for CITY approval outlining the scope of services in conformance with the provisions of this Article and the Engineer's design schedule. The CM/GC shall submit the work plan for the CITY's written approval within 5 business days of the NTP for Pre-Construction Services.
- 2.03 The CM/GC will work with the Design Consultant in reviewing Design Development (DD) Documents taking into account quality of materials and equipment, to ensure an efficient design and minimum life cycle cost. The CM/GC will participate in design decisions by providing information, estimates, schemes, and recommendations regarding construction materials, methods, systems, phasing, and costs that will provide the highest quality, energy conserving and efficient facility within the budget and aggressive schedule for the Project.

The CM/GC shall provide all Pre-Construction Services in conformance with the Design Consultant's Design Schedule and shall provide timely comment, input, reports, or responses as appropriate. Failure by the CM/GC to provide timely services may result in termination of this AGREEMENT for cause.

During the Pre-Construction Services Phase, the CM/GC will work closely with the CITY and its Design Consultant. The CM/GC's scope of services associated with the Design Consultant's preparation of the Design Development and the Construction Documents shall include, but are not limited to, the following tasks:

1. Perform periodic reviews of design in progress and make suggestions with regard to means and methods of construction including, but not limited to, construction staging management and crane and heavy equipment placement.
2. Review site conditions, site surveys, hazardous materials and soils reports and advise the CITY as to anticipated site challenges (other than those that would properly be addressed through CM/GC means and methods) and recommended mitigation measures.
3. Provide constructability recommendations and guidance.
4. Perform construction operations planning.
5. Perform final review of Design Development and Construction Documents.
6. Develop and provide cost estimates for various trade packages and overall project for Cost Control to the CITY Representative and Engineer.
7. Prepare a Critical Path schedule for construction activities.
8. Employ detailed constructability reviews and workshops including trade sequencing optimization and recognition of and development of pre-fabrication/pre-assembly economies.

9. Participate in collaboration and coordination efforts including performance evaluation, life cycle cost analysis and scheduling/coordination impacts at core subcontractor level with respect to:
    - a. Pipe Installation and Replacement
    - b. Tunnels: Removal of Debris and Rehabilitation
    - d. Connection to Primary Water Supply System
    - e. Cherry Creek Diversion Dam Facility: Rehabilitation and Replacement
    - f. Forebay: Rehabilitation or Replacement
    - g. General Site Work
  10. Monitor market conditions for Project with subcontractors and material suppliers and (a) determine workloads, bonding capacity availability, and worker/mechanic availability; (b) develop interest in the Project and in bidding on the Work; and (c) fine tune the Project schedule.
  11. Assist the CITY in management of overall project costs.
  12. Provide cost estimate validation of the Design Consultant's Bridging Documents. In addition, prepare cost estimates in CSI/MasterFormat 2012 edition and according to the CSI Division classifications at the following phases of design: 65% and 95% Design Development, 65% and 95% Construction Documents. Estimates prepared during the construction document phase shall reflect the sequential trade packages in conformance with the bidding strategy to be adopted. Coordinate and work with the Design Consultant and the CITY to reconcile contemporaneous cost estimates developed by the CM/GC when compared to those prepared by the Design Consultant and the CITY.
  13. Prepare cash flow analyses for both the design and construction phases. Analyses to include "cost to cancel" trade packages if the CITY were to stop the project.
  14. Submit a site use study to be used for allocation of space for storage, parking, and temporary facilities throughout construction.
  15. Develop, review, and update a detailed CPM construction schedule.
- 2.04 Trade Subcontractors – Trade Work Packages. The CM/GC, in consultation with the Design Consultant and the CITY shall prepare a Trade Work Package plan outlining the logical and distinct Trade Work Packages for all scopes of work. The Trade Work Package plan shall at a minimum present the number of packages, a description of the scope of work for each package, the sequence and schedule for procurement, the Estimate for each Trade Work package, and an outreach plan. The Trade Work Package plan shall be subject to the CITY's written approval. The CM/GC shall be responsible for the cost of any scope of Work which the CM/GC neglects or fails to include in the Trade Work Packages; the CM/GC, however, may apply CM/GC Contingency funds to such costs (see Article 6 below).

The CM/GC shall develop and manage the master Project CPM schedule for inclusion in every Trade Work Package and shall develop and include in the Trade Work Package that portion or subset of the master Project schedule that applies to that trade.

The CM/GC shall include the CITY's standard Contract Documents and General Conditions in the Trade Packages, and will consult with the CITY to incorporate applicable CITY requirements into the Trade Packages, including but not limited to the Public Record Act and Sunshine Ordinance. The CM/GC shall develop Supplementary General Conditions (with the CITY's participation and approval) that address the trade subcontracts, schedule for trade subcontracts, and the responsibilities of all other parties under the CM/GC with the agreed-upon procurement method. Awarded trade subcontracts shall not include any CM/GC construction contingency, allowances, or other items which are included in the CM/GC Fee or General Conditions (see Article 5 below).

The CM/GC shall assure that the procurement of subcontractors shall be without regard to

race, gender, religion, affiliation, or sexual orientation.

2.05 Trade Subcontractors – Competitive Procurement and Award.

1. Qualification of Trade Subcontractors: The CM/GC and the CITY will jointly develop qualification standards for all trade contracts. The CM/GC will establish a pool of no fewer than three qualified trade subcontractors for each trade package, subject to the approval of the CITY. Only qualified Trade Subcontractors will be allowed to bid. The CITY, with the assistance of the CM/GC, will resolve any protests or disputes relating to the qualification process.
2. Trade Subcontractor Bid Packages: Contractor's responsibilities include, but are not limited to, the following activities:
  - Obtaining not fewer than three quotes and awarding Construction Trade Packages to the responsible Proposer offering the lowest quotation. If the Contractor is unable to obtain three quotes, Construction Trade Packages may be awarded based on the quote or quotes received.
  - Maintaining records as to whom the requests for quotations were directed and the quotations received.
  - Evaluating and determining whether subcontractors are responsible and qualified to perform the various scopes of work for Construction Trade Packages.
  - Maintaining supporting documentation for the subcontractor selection process for Construction Trade Packages.

The bid security provisions of San Francisco Administrative Code section 6.21 will not apply. The CM/GC will consult the CITY before rejecting any quotes.

The CM/GC will award a Trade Work Package subcontract to the responsible bidder submitting the lowest responsive quote, except with prior approval from the CITY and as provided in Article 2.06, below.

2.06 Trade Subcontractors – Limited Noncompetitive Procurement. The CM/GC, with the approval of the CITY, may negotiate subcontracts for Trade Work when the normal quote process would be infeasible.

2.07 Trade Subcontractors – Reprocurement. In the event that any bid or negotiated Trade Package results in a procurement in an amount in excess of 5% of the budget estimate for such Trade Work, the CITY in its sole discretion may direct the CM/GC to cooperate with the CITY and, its consultants to value engineer, re-package, and/or re-bid any Trade Work at no additional cost to the CITY. This right reserved by the CITY is not exclusive or preclusive of any right the CITY may have under this Contract or under any other instrument. The CITY also reserves the right, in its sole discretion, to terminate this Contract for convenience under General Conditions Article 14 in the event that the Trade Work Packages do not substantially conform to budget.

### **ARTICLE 3 – CONSTRUCTION SERVICES**

3.01 General Conditions. The CITY and the CM/GC intend that the CITY will issue the NTP for Construction during the course of the CM/GC's Pre-Construction Services. The CM/GC and all Subcontractors contracted for the construction of the Project will provide construction services from mobilization through project completion. The CM/GC will furnish construction administration and management services and will perform the Project in an expeditious and economical manner consistent with the requirements of the Contract Documents (see General Conditions, Document 00700).

At a minimum, the CM/GC will perform construction services congruent with those of a general contractor who submits a competitive bid with its own list of subcontractors to perform all of the construction work under a contract, including, but not limited to, construction integration services, construction management, contract administration, cost control, subcontractor procurement, scheduling, coordination, testing, processing/review, and distribution of product warranties/related documentation, commissioning and startup, and project closeout.

Representative activities and responsibilities include, but are not limited to:

1. CM/GC to suggest a Site Logistics Plan that will include available areas for trailers for the CM/GC, City Staff and subcontractors, material storage, site fencing, etc. CM/GC to use this Plan as a basis for determining efficient utilization of available site area.
2. Coordinate the termination or installation of utility work during construction, including the timely notification to responsible parties, relative to the construction schedule, where the utility work is not a contracted responsibility of the CM/GC or its Trade Subcontractors.
3. Conduct, jointly with the CITY, a pre-construction conference for the Trade Subcontractors and the Engineer. The CM/GC's responsibilities will include (a) preparing a conference agenda; (b) preparing job procedures for clarifications, change orders, shop drawings, progress payments, field-testing and inspections, and safety; and (c) preparing and distributing pre-construction conference minutes notes.
4. Update the master Project schedule, and review and approve the Trade Subcontractors' schedules for compliance with the individual requirement of each trade subcontract and the overall master Project schedule. The CM/GC will also review and approve Trade Subcontractors' proposed construction schedule for logic, reasonableness, and conformance to the requirements of the Contract Documents, and will review and maintain a daily log of the Trade Subcontractors' progress, personnel and conformance with monthly updated construction schedules.
5. Review and approve Trade Subcontractors' monthly progress payment request. The CM/GC will (a) compare the requested payments to actual work completed in accordance with the pre-approved schedule of values presented by the Trade Subcontractors at the beginning of construction; (b) combine invoices and prepare the CM/GC payment request; (c) prepare a current overall schedule of values; and (d) submit to the CITY one invoice in a format and process approved by CITY for approval and payment.
6. Provide monthly updated cash flow requirement projections for each month of construction.
7. Act as liaison between Trade Subcontractors, inspectors, and the CITY and its Design Consultant.
8. Review, assess and make best efforts to resolve Requests for Information (RFIs) from Trade Subcontractors before submitting RFIs to the CITY. The CM/GC will be responsible for tracking RFIs through the field office. The Design Consultant will be responsible for interpretations and clarifications of the plans and specifications, and will prepare sketches for clarification when necessary. The CM/GC will manage the

distribution to its Trade Subcontractors of clarifications and interpretations prepared by the Design Consultant and any other communication or direction by the CITY.

9. Review submittals from Trade Subcontractors to identify any coordination conflicts between trade work to ensure appropriateness and conformance with the Contract Documents before forwarding submittals to the Design Consultant.
  10. Prepare bi-weekly construction progress reports, summarizing the progress of construction and key issues currently pending. The report will indicate the progress of each Trade Subcontractor, and will also summarize the current cash flow projections. The CM/GC will submit the bi-weekly construction progress reports to the CITY.
  11. Provide direct supervision, scheduling and problem resolution for Trade Subcontractors throughout construction.
  12. Provide all necessary on-site construction management, supervisory, safety and clerical staff for the proper management of the construction.
  13. Ensure and confirm that the Trade Subcontractors are maintaining Cal-OSHA mandated safety requirements and are conducting regular tailgating safety meetings.
  14. Ensure and confirm that the Trade Subcontractors are maintaining as-built drawings in conformance with the requirements of the Contract Documents. The CM/GC shall participate in a regular, bi-weekly meeting with designated representatives of the CITY, and its consultants, to review the as-built drawings in detail, The CM/GC will compile the as-built drawings and submit them at the end of the project to the CITY for review and approval.
  15. Coordinate the training of City personnel on the operations and maintenance of the conveyance system/facilities.
  16. Prepare a recommendation for final acceptance of the Project after the Trade Subcontractors have corrected deficient work and satisfied all Contract conditions. The CM/GC will prepare a final payment request and final report. The CM/GC will provide a complete set of contract files to the Project Manager and necessary closeout documents including, but not limited to as-built drawings, operation and maintenance manuals, warranties and additional materials.
  17. CM/GC will provide guidance to trade subcontractors for turnover of the conveyance facilities for as-builts, warranties, commissioning, and training.
- 3.02 Working Requirements. The CM/GC and its Trade Subcontractors must have the ability to prepare documents using the following software applications during all phases of the Work.
1. All drawings on Autodesk AutoCAD 2010 or later, minimum file compatibility of DWG files with Autodesk AutoCAD R17.1.
  2. Text documents on Microsoft Word TM 2010.
  3. Spreadsheets on Microsoft Excel TM 2010.
  4. Database information on Microsoft Access TM 2010.
  5. Schedules on Oracle 6.0.
  6. Audio/Visual presentations in Microsoft PowerPoint TM 2010.
  7. Graphics on Adobe Creative Suite 3 TM.

The CM/GC shall propose for the CITY's consideration a web based collaboration tool to connect the Project team members, to provide access to project documents, and to facilitate project development tasks. The CM/GC will provide licenses and training in the use of the collaboration tool for the project. As a minimum, the collaboration tool will be used to document the following program elements:

- Project Contact List
- Drawings
- Meetings
- Information Bulletins
- Correspondence
- Submittals
- RFIs
- Daily Reports
- Punch Lists
- Contract Change Orders
- Payment Applications

- 3.03 Permit Documents. The United States Forest Service is the permitting authority and has jurisdiction over the Project. See Documents 00800/APA and 00800/APB for required permits.

#### **ARTICLE 4 – CONTRACT TIME AND LIQUIDATED DAMAGES**

- 4.01 The Pre-Construction work will begin as soon as the CM/GC contract has been certified by the Controller's Office. This is anticipated to occur by March 28, 2014. A copy of the Project milestone schedule is attached in Appendix E.
- 4.02 Punch list items shall be completed no later than 30 consecutive calendar days after the date of Notice of Substantial Completion.
- 4.03 The following additional milestones and key dates shall apply and have liquidated damages associated with the dates as described in Article 4.04.

##### Completion Dates

CM/GC Contract Certified	March 28, 2014
NTP for Pre-Construction Services	April 7, 2014
End of Pre-Construction Services	June 1, 2014
NTP for Construction	June 2, 2014
Substantial Completion	October 1, 2014

- 4.04 Liquidated Damages. The CITY and the CM/GC understand and agree that time is of the essence in all matters relating to the Contract Documents and that the CITY will suffer financial and other, intangible but significant losses if the Work is not completed within the above-stated Contract Time, as may be extended in accordance with Article 7 of the General Conditions (Document 00700). The CITY and the CM/GC further understand and agree that the actual cost to the CITY which would result from CM/GC's failure to complete the Work within the Contract Time is extremely difficult, if not impossible, to determine. Accordingly, the CITY and the CM/GC agree that as liquidated damages for delay (but not as penalty), the CM/GC will pay the CITY as set forth in the follow tables:



Delay Period	Liquidated Damages Account
For the first 90 calendar days (days 1-90) that transpire with the Work not Substantially Complete after the time limit for achieving Substantial Completion specified in Article 4:	\$12,150.00 per calendar day
For more than 90 calendar days (days 91 and later) that transpire with the Work not Substantially Complete after the time limit for achieving Substantial Completion specified in Article 4:	\$37,360.00 per calendar day
If the Work is not Finally Complete after the time limit for completing Punch List Work as specified in Article 4:	\$3,500.00 per calendar day

**ARTICLE 5 – CONTRACT SUM**

5.01 Contract Sum. The final anticipated contract amount to be paid to the CM/GC for all Work performed under this AGREEMENT shall not exceed **\$9,901,351**. The Contract Sum is comprised of the following: (A) the Pre-Construction Services Fee, (B) the Construction Services costs of (1) the aggregate value of the awarded Trade Work subcontracts and General Requirements (Direct Costs) and (2) the CM/GC Construction Services Fee (the “CM/GC Fee”); (C) the General Conditions payment, (D) Reimbursable Expenses, and (E) Bond Premium. This not-to-exceed amount does not include any payments made to the CM/GC for allowed and approved expenditures from the CM/GC Contingency, described in Article 6 of this AGREEMENT. In the event that during the bidding of Trade Work Packages, the CITY determines that the budgeted amount for the Trade Packages will, or most likely will, be exceeded, the CITY shall have the right to direct the re-bid of certain Trade Packages to reduce the cost and shall, if necessary, have the right to terminate the Contract for its convenience. If, upon Final Completion payments of the Work, the final Contract Sum (less the Pre-Construction Services Fee and Contingency Payments) is less than the budgeted amount, the difference between the final Contract Sum and the not-to-exceed amount will accrue to the benefit of the CITY.

The CITY will adjust the value of the Contract Sum during the course of the Project to reflect the amount of: (a) the cost of the Pre-Construction Services, (b) awarded the Trade Work Subcontracts plus CM/GC Fee, and (c) any other changes in the Work that affects the value of the Contract.

A. Pre-Construction Services. The CM/GC will be paid for Pre-Construction Services based on the rates as set forth in the CM/GC’s Bid Form (attached as Appendix A to this AGREEMENT), up to a maximum of 1,200 hours. The hourly rates include all of the CM/GC’s profit for Pre-Construction Services, and all costs incurred by the CM/GC, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, incidents, and any other fees or expenses incurred by CM/GC in providing Pre-Construction Services.

1. The CITY, at its sole discretion, will assign Pre-Construction phase Work to CM/GC. The CITY makes no representation that all 1,200 hours will be required for Pre-Construction Services during the course of the Project.
  2. The hourly rates shall apply to all members of the CM/GC's team who provide Pre-Construction Services. Payment for Pre-Construction Services will be subject to CM/GC providing the CITY with sufficient back-up documentation demonstrating to the CITY's reasonable satisfaction that services were performed justifying payment at the agreed-upon hourly rates.
- B. Construction Services. CM/GC will be paid for Construction Services on the cost of the Work, as described in subparagraph B.1 below, plus the CM/GC Fee and General Conditions, as described in subparagraphs B.2 and B.4 below.
1. Direct Costs of the Work, which is the total costs for awarded bid and negotiated Trade Packages and, with the prior written approval by the CITY, additional work to be performed by the CM/GC as required to support the trades. Refer to Attachment 1 to this AGREEMENT for categories of Work included under General Requirements / Direct Costs.
  2. CM/GC Fee will be **4%**, the percentage included in Table B1 of the Bid Form (attached as Appendix A to this AGREEMENT) which is applied to Direct Costs. The CM/GC Fee percentage shall remain in effect throughout the term of this Contract.
  3. Fee for construction services apply to general requirements, trade packages and change order work up to \$8,850,000. For general requirements, trade packages and change order work in excess of \$8,850,000 the CM/GC Fee shall apply as provided in Document 00700, Paragraph 6.06.
  4. General Conditions will be **\$385,640**, the amount included in Table B2 of the Bid Form (attached as Appendix A to this AGREEMENT).

The CM/GC Fee and General Conditions payment includes all of CM/GC's overhead profit, and general conditions fee for administering and coordinating Construction Services. Attachment 1 allocates to the CM/GC and to the CITY certain anticipated costs. Other general condition costs which may or may not be specifically identified in Attachment 1 and which fall under the following categories of costs shall be the responsibility of the CM/GC and included in General conditions: (i) all field and home/regional office personnel including but not limited to principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, drafts persons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries; (ii) all field and home/regional office expenses including but not limited to field trailers, parking, storage sheds, office equipment and supplies, telephone service, 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 cost under \$1,000 each, portable scaffolding, blocking, shoring equipment, job vehicles, security and fencing, conformance to all regulatory requirements including safety equipment and compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs; (iii) 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, carting, cleaning, protecting the Work, and other incidental Work; and (iv) cost of insurance (including all premiums).

The CM/GC will perform all categories of Work included in the CM/GC General Conditions and will not include any of this Work in any of the Trade Packages. The CM/GC will not include any allowances in the work of any Trade Packages.

- C. Reimbursable Expenses. The CITY will reimburse the CM/GC for the actual, approved costs of copying and binding the Trade Packages, for permits and specified fees (see Attachment 1 of this AGREEMENT). To be eligible for reimbursement, such costs must have the prior written approval of the CITY. The CM/GC shall not be entitled to any CM/GC Fee on Reimbursable Expenses. Reimbursable Expenses shall not exceed **\$100,000**.
- D. Bond Premiums. For the Performance and Payment Bonds (each in the amount of **\$8,850,000**, see paragraph 9.03), the CITY shall reimburse the CM/GC's actual Performance and Payment Bond premium costs up to **\$78,765**, the amount stated by the CM/GC in its Cost Proposal. The CITY will not pay for any CM/GC Fee on any bond premium costs.
- 5.02 Progress Payments. The CM/GC shall submit separate payment requests for Pre-Construction and Construction Services, in an invoicing procedure to be approved by the CITY. The CITY will endeavor to make progress payments for undisputed amounts within fifteen (15) days, but no later than thirty (30) days, of receiving a payment request and the required documentation including, without limitation, certified payrolls. Under no circumstances, however, shall the CITY be liable for interest or late fees for failure to issue timely any progress payments. Progress payments involving the work of the Trade Subcontractors shall include a retention as provided in the General Conditions for Construction (Document 00700), Article 9.
- 5.03 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 CITY Controller, and the amount of the CITY's obligation under this AGREEMENT shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.
- A. Charter Section 3.105, the award of this contract is subject to certification by the Controller as to availability of funds. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the CITY's obligations will not at any time exceed the amount certified for the purpose and period stated in such advance authorization. The CITY will not certify funds for the entire project, but will do so on an incremental basis as the funds are needed. Once funds are certified for a particular scope of work by a trade subcontractor, the CITY acknowledges it will be obligated to pay the CM/GC the amount of funds certified by the Controller for conforming work actually performed, provided there is no offset by the CITY for liquidated damages, non-conforming work, or other circumstances preventing payment. The CITY acknowledges that the CM/GC and its trade subcontractors are not obligated to perform any work related to awarded trade packages to the extent such work is not covered by funds certified by the Controller for the project. In the event of delays in the availability of additional funding, the CITY reserves all rights to suspend or terminate the Contract for convenience as set forth in the General Conditions, Document 00700, Article 14.

- 5.04 Change Orders. Any changes in the Work, Contract Time, Contract Sum, and changes to any other Contract term or condition shall be effectuated through a Change Order.
- 5.05 Task Orders. All work must be authorized through the issuance of Task Orders. All Task Orders shall specify the scope and cost of the work and will include all required forms.
- A. The CM/GC shall prepare the Task Order for review and approval by the CITY. The Task Order shall include the following: (i) scope of work, (ii) cost, (iii) subcontractor qualifications (when applicable), and (iv) the action needed by CITY in order for the CM/GC to proceed with the Work. Task Orders may include Work from different trade packages.
  - B. A Task Order must only contain Work for which funds have already been encumbered. The sum of approved WRLs may not exceed the Certified Contract Sum.
  - C. The CM/GC submits the Task Order to the CITY for review and approval. Once approved, the CITY will release the Task Order to the CM/GC authorizing the Work in the Task Order to be performed.
  - D. The CITY will work with the CM/GC to determine an acceptable schedule to release work. Both the CM/GC and the CITY will maintain a schedule of proposed and approved Task Orders to ensure work is released appropriately.

#### **ARTICLE 6 – CM/GC CONTINGENCY**

- 6.01 The CITY Project budget includes a CM/GC Contingency equal to four percent (4%) of the Direct Costs of the Work. The CM/GC Contingency is not a design contingency, and is not to be used for changes in the scope of the Work or for upgrades in the quality of the Work as reflected in the Contract Documents. In general, it is to be used for coordination of items necessary to complete the Work, i.e. the cost to complete Work that was inadvertently omitted from trade package(s), but the cost of which would have been a cost to the Project had it been included originally. The CM/GC Contingency is also intended to cover the following categories of costs in connection with the Work:
- A. Coordination issues or other disputes by and between Trade Subcontractors arising from conflicts in the Contract Documents requiring revisions and/or reorganization of the Work in the field;
  - B. Additional costs, not covered by bonds, attributable to the insolvency of a subcontractor or supplier.
- 6.02 The Costs of the Work identified in Paragraph 6.01, above, will be paid for exclusively from the CM/GC Contingency, to the extent where funds are available. The CM/GC may apply for use of the CM/GC Contingency by written requests to the CITY. The CITY will confirm that the Contingency is being used for the purposes set forth in this Article and may issue approval in writing, which approval will not be unreasonably withheld. CM/GC will not be entitled to a CM/GC Fee on any expenditure from the CM/GC Contingency.
- 6.03 Any and all costs identified in Paragraph 6.01, above, that exceed the CM/GC Contingency amounts set forth above will be the responsibility of CM/GC and will not be chargeable to the CITY. CM/GC will continue to perform the Work at no additional cost to the CITY until the Work is complete.
- 6.04 As an incentive for CM/GC to perform in the best interest of the contracting parties and for

the overall success of the Project, the CITY shall pay the CM/GC 50% of the unspent amount of the CM/GC Contingency once the Project is accepted as Finally Complete and provided within 90 days of issuing a Notice of Substantial Completion. The CITY will receive CM/GC's written release, releasing the City from all claims by the CM/GC and the CM/GC's written agreement to subcontractor/supplier relating to the Project.

## **ARTICLE 7 – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

### **7.01 DBE Subcontracting Requirements.**

- A. Each Contractor, subcontractor and supplier working on this project shall take all necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have an opportunity to compete for, and participate in performance on project contracts and subcontracts. To that end, the City has established a DBE subcontracting goal of **10%** of the total value of the entire contract for this project. This goal may be met with federally-certified DBEs. The SFPUC encourages each Contractor, subcontractor and supplier working on this project to outreach to San Francisco Contract Monitoring Division (CMD)-certified LBEs and SFPUC LBEs. In no event shall local geographical preferences be used in the evaluation of bids or proposals submitted in response to this RFP or in the selection of trade subcontractors.
- B. In the bidding documents, the Contractor must expressly state their commitment to meet the project's **10%** contracting goal. In the event the Contractor fails to meet that commitment, the Contractor must demonstrate that good faith efforts were made to satisfy the DBE contract goal as proposed by SFPUC. Evidence of good faith efforts to meet the DBE contract goal may include, but are not limited to, the following:
- i. Attending a pre-bid meeting, if any, scheduled by the department and later informing DBEs, of contracting and subcontracting opportunities;
  - ii. Advertising in general circulation trade association and socially and economically disadvantaged business directed media concerning subcontracting opportunities;
  - iii. Providing written notice to a reasonable number of specific DBEs, so that interested firms are solicited in sufficient time to allow the firm to participate effectively;
  - iv. Following-up on initial written notice or solicitations of interest by contacting DBEs, to determine with certainty whether they were interested;
  - v. Maintaining documentation of responses received in the effort to solicit DBE, participation;
  - vi. Selecting portions of work to be performed by DBEs, to increase the likelihood of meeting the contracting goal, including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE, participation;
  - vii. Providing interested DBEs, adequate information about plans, specifications and requirements of the contract;
  - viii. Negotiating in good faith with interested DBEs, and not rejecting their bids as unqualified without sound business reasons based on a thorough investigation of their respective capabilities;

- ix. Making efforts to assist interested DBEs, in obtaining bonding, lines of credit or insurance required by the Local Agency or by the Proposer; and
- x. Making effective use of available disadvantaged business organizations, minority Proposers' groups, local, state and federal disadvantaged business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs.

## **ARTICLE 8 – LABOR REQUIREMENTS**

8.01 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 and the San Francisco Charter.

8.02 Prevailing Wages. The latest Wage Rates for Private Employment on Public Contracts as determined by the Director of the California Department of Industrial Relations, as same may be changed during the term of this AGREEMENT, will be included in this AGREEMENT and are hereby incorporated by this reference. The CM/GC 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.

The CM/GC will include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract will be paid not less than the highest prevailing rate of wages for the labor so performed. The CM/GC will require any contractor to provide, and will 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.

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.

8.03 Penalties. CM/GC will 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 9 – INDEMNITY, INSURANCE, BONDS, AND DAMAGES

- 9.01 Indemnification. To the fullest extent permitted by law, and consistent with California Civil Code section 2782 and Contract General Conditions (Document 00700), Article 3, the CM/GC will assume the defense of, indemnify and hold harmless the CITY, its Board, Commissions, officers, employees, and 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, damages, actions, losses and liabilities 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 or nonperformance of the Work.
- A. The liability of the CM/GC will not be limited to the amount of insurance coverage required under the Contract Documents.
- B. This indemnification will not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.
- 9.02 Insurance. The CM/GC shall at all times under this AGREEMENT maintain the insurance coverage as required under Contract Document 00700, Article 10 and Document 00805. The CITY will not fund or participate in any owner-controlled (OCIP) or contractor-controlled (CCIP) insurance program.
- 9.03 Bonds. The CM/GC shall furnish and maintain (1) a corporate surety bond to guarantee the faithful performance of the Contract (“Performance Bond”) and (2) a corporate surety bond to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract (“Payment Bond”), each in an amount not to exceed **\$8,850,000**, with the CM/GC as Principal and the CITY as sole obligee, in the form provided by the CITY (Document 00610), in conformance with the bond requirements under the General Conditions (Document 00700, Article 10). Performance and Payment Bonds are required for the Construction Phase only. The CM/GC shall furnish the Performance and Payment Bonds no later than 10 days prior to the Notice to Proceed for Construction.

## ARTICLE 10 – RIGHTS AND REMEDIES

- 10.01 General. The provisions of the Contract Documents shall not limit the duties, obligations, rights and remedies otherwise imposed or available by law or in equity. No action or failure to act shall in any way abridge the rights and obligations of the Parties to the Contract Documents, or condone a breach thereunder, unless expressly agreed to by the parties in writing. All remedies provided in the Contract Documents shall be taken and construed as cumulative; that is, in addition to each and every other remedy herein provided, the CITY shall have any and all equitable and legal remedies that it would in any case have.
- 10.02 No Waiver. No waiver of any breach of any provision of the Contract Documents shall be held to be a waiver of any other subsequent breach. The only waiver by the CITY shall be a waiver in writing that explicitly states the item or right being waived.
- 10.03 CITY’s Remedies for False Claims and Other Violations. Under San Francisco Administrative Code section 6.22M, the CM/GC or any Subcontractor or Supplier who fails to comply with the terms of the this AGREEMENT, who violates any provision of San Francisco Administrative Code Chapter 6, who submits false claims, or who violates against any governmental entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of the AGREEMENT, may be declared an

irresponsible bidder and debarred according to the procedures set forth in San Francisco Administrative Code section 6.80, et seq.

A. Additionally, the CM/GC or its Subcontractor or Supplier who submits a false claim may be subject to monetary penalties, investigation, and prosecution as set forth in San Francisco Administrative Code section 6.80, et seq., and Chapter 28, and California Government Code section 12650, et seq.

B. CM/GC shall include in each subcontract and purchase order for Work a clause incorporating the provisions of this Article 10.03.

#### **ARTICLE 11 – COMPLETE AGREEMENT; MODIFICATIONS IN WRITING**

11.01 This AGREEMENT and the Contract Documents as set forth in General Conditions (Document 00700) constitute the complete agreement between the CITY and the CM/GC. This AGREEMENT supersedes and shall control over any other agreement written or oral as between the CITY and CM/GC.

11.02 This AGREEMENT and all of the terms and conditions of the Contract Documents shall remain in full force and effect through expiration unless modified in writing and approved by the CITY.

#### **ARTICLE 12 – RESOLUTION OF CONFLICTING TERMS**

12.01 The Contract Documents and any other agreements between the Parties relating to the Project are intended to be read together and integrated as a whole, and will be construed and interpreted in a manner so as to avoid any conflicts to the extent possible. Supplementary provisions in the Contract Documents will not be deemed to be in conflict between the terms of this AGREEMENT and the CM/GC's Proposal, then this AGREEMENT will control and nothing herein will be considered as an acceptance of any terms of the Proposal which conflict with this AGREEMENT.

#### **ARTICLE 13 – GOVERNING LAW AND VENUE**

13.01 Governing Law. The Contract Documents shall be interpreted in accordance with the laws of the City and County of San Francisco Charter and Municipal Code and the laws of the State of California, as applicable.

13.02 Venue. All Claims, counter-claims, disputes and other matters in question between the CITY and the CM/GC arising out of or relating to this AGREEMENT or its breach will be decided by a court of competent jurisdiction within the State of California.

#### **ARTICLE 14 – NOTICES TO PARTIES**

14.01 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 CM/GC: \_\_\_\_\_  
(CM/GC's name)



---

(CM/GC's mailing address)

---

(CM/GC's e-mail address)

---

(CM/GC's fax no.)

- 14.02 From time to time, the parties may designate new address information by notice in writing, delivered to the other Party.
- 14.03 The delivery to CM/GC 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 CM/GC at such address, of any drawing, notice, letter or other communication shall be deemed legal and sufficient service thereof upon CM/GC.

#### **ARTICLE 15 – PROPRIETARY OR CONFIDENTIAL INFORMATION OF THE CITY**

- 15.01 CM/GC understands and agrees that, in the performance of the Work under this AGREEMENT or in contemplation thereof, CM/GC may have access to private or confidential information which may be owned or controlled by the CITY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the CITY. The CM/GC agrees that all information disclosed by the CITY to CM/GC and marked or otherwise identified as “confidential” shall be held in confidence and used only in performance of the AGREEMENT. CM/GC shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.
- 15.02 CM/GC shall retain all confidential information and maintain such confidentiality for a period of not less than four years from the date of Final Completion. The CITY at its sole option and discretion may, within the four-year period, notify the CM/GC in writing that it must preserve the information and its confidentiality for longer than four years. At the expiration of the confidentiality period, CM/GC shall request direction from the CITY as to whether the CM/GC should return or destroy the confidential information. Shipment to a CITY-designated storage facility shall be made at CITY's sole expense.

#### **ARTICLE 16 – TERMINATION**

- 16.01 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 (Document 00700).

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 Document 00822, 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  
Awarded:

Approved as to form:  
DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
General Manager, San Francisco Public Utilities  
Commission

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

END OF SECTION

