

SECTION 00 52 00

AGREEMENT FORM

THIS AGREEMENT made for the convenience of the parties this 23 day of October 20 14 by and between McGuire and Hester located at 9009 Railroad Avenue, Oakland, CA 94603 ("CONTRACTOR"), and the City and County of San Francisco, State of California (the "CITY"), acting through the Director (the "DIRECTOR") of the Department of Public Works, under and by virtue of the Charter and Administrative Code of the City and County of San Francisco.

WHEREAS, the DIRECTOR awarded this AGREEMENT to CONTRACTOR on the 23 day of October, 2014, under AWARD OF EMERGENCY CONSTRUCTION CONTRACT ORDER NO. 183,031, as more fully appears in the formal record of the DIRECTOR:

DPW Contract No. 7848A
7848A TREASURE ISLAND

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 DIRECTOR, to prosecute the Work with diligence from day to day to Final Completion, to furnish all construction work, labor and materials to be used in the execution and completion of the Work in accordance with the Contract Documents, and to otherwise fulfill all of CONTRACTOR's obligations under the Contract Documents, as and when required under the Contract Documents to the satisfaction of the DIRECTOR.

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

ARTICLE 1 - WORK

- 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.
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.
1.03 Compliance with Laws.
A. CONTRACTOR shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the CITY and other local agencies having jurisdiction over the Work, and all federal and state laws and regulations in any manner affecting the Contract Documents, the performance of the Work, or those persons engaged therein.
B. All construction and materials provided under the Contract Documents shall be in full

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

- C. Authorized persons may at any time enter upon any part of the Work to ascertain whether such laws, ordinances, regulations or orders are being complied with.
- D. No additional costs will be paid or extensions of time granted as a result of such compliance.

ARTICLE 2 - CONTRACT TIME

- 2.01 Completion Dates. The Work shall be Substantially Completed within 108 consecutive calendar days, beginning with and including the official date of Notice to Proceed as established by the DIRECTOR.

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 Estimate/Proposal dated November 6, 2014 attached hereto as part of the Scope of Work of the Agreement, Attachment "A":

- 1. Lump sum for specified portion(s) of the work.

Total awarded contract amount: \$ 259,892.00

The price(s) and amount set forth above shall be adjusted during performance or upon final completion of the Work in accordance with the Contract Documents.

- B. CONTRACTOR understands and agrees that the CONTRACTOR shall be solely responsible for providing all resources that may be necessary to provide the Work, and that the CITY shall have no obligation whatsoever to finance any part of such costs except with respect to those amounts which become due under the terms and conditions of the Contract Documents.
- 3.02 Certification by Controller. This AGREEMENT is subject to the budget and fiscal provisions of the CITY's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the CITY's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

ARTICLE 4 – LABOR REQUIREMENTS

- 4.01 Applicable Laws and Agreements. Compensation and working conditions for labor performed or services rendered under this AGREEMENT shall be in accordance with the Contract Documents, the San Francisco Charter, and applicable sections of the San Francisco Administrative Code,

including section 6.22(E).

4.02 **Prevailing Wages.** The latest Wage Rates for Private Employment on Public Contracts in the City and County of San Francisco, as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, and, when federal funds are involved, the current General Wage Determination Decisions, as determined by the U.S. Secretary of Labor, as same may be changed during the term of this AGREEMENT, shall be included in this AGREEMENT and are hereby incorporated by this reference. CONTRACTOR agrees that any person performing labor in the provision of the Work shall be paid not less than the highest general prevailing rate of wages as so determined. If federal funds are involved, where the minimum rate of pay for any classification differs among State, City and Federal wage rate determinations, the highest of the three rates of pay shall prevail. CONTRACTOR shall include, in any contract or subcontract relating to the Work, a requirement that all persons performing labor under such contract or subcontract shall be paid not less than the highest prevailing rate of wages for the labor so performed. CONTRACTOR shall require any contractor to provide, and shall deliver to CITY every month during any construction period, certified payroll reports with respect to all persons performing labor in the Provision of the Work.

A. Copies of the latest prevailing wage rates are on file at the Department of Public Works, City and County of San Francisco, Project Controls and Services Manager, 1680 Mission Street, 4th Floor, San Francisco, CA, 94103.

4.03 **Penalties.** CONTRACTOR shall forfeit to the CITY back wages due plus fifty dollars (\$50.00) for:

A. Each laborer, workman, or mechanic employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, workman, or mechanic is not paid the highest general prevailing rate of wage for the work performed; or

B. Each laborer, mechanic or artisan employed in the provision of the Work, for each calendar day or portion thereof during which such laborer, mechanic or artisan is compelled or permitted to work for a longer period than five days (Monday-Friday) per calendar week of eight hours each, and not compensated in accordance with the prevailing overtime standard and rate.

ARTICLE 5 – INDEMNITY

5.01 To the fullest extent permitted by law, and consistent with California Civil Code section 2782, the CONTRACTOR shall assume the defense of, indemnify and hold harmless the CITY, its boards and commissions, other parties designated in the insurance requirements of this AGREEMENT, attached hereto as Attachment "B", and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims, suits, 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. The liability of CONTRACTOR shall not be limited to the amount of insurance coverages required under the insurance requirements of this AGREEMENT, attached hereto as Attachment "B". This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or intentional tort of any person indemnified herein.

ARTICLE 6 – RIGHTS AND REMEDIES

6.01 **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

To CONTRACTOR: McGuire and Hester
 9009 Railroad Avenue
 Oakland, CA 94603
 cthome@mcguireandhester.com

- 10.02 From time to time, the parties may designate new address information by notice in writing, delivered to the other Party.
- 10.03 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 11 – PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

- 11.01 CONTRACTOR understands and agrees that, in the performance of the Work under this AGREEMENT or in contemplation thereof, CONTRACTOR may have access to private or confidential information which may be owned or controlled by CITY and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to CITY. CONTRACTOR agrees that all information disclosed by CITY to CONTRACTOR shall be held in confidence and used only in performance of the AGREEMENT. CONTRACTOR shall exercise the same standard or care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

ARTICLE 12 – TERMINATION

- 12.01 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.

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 (section 00 73 73 Statutory Requirements attached hereto as Attachment C).

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

Principal

By: _____

Title

CITY:

Recommended

Approved as to form:
DENNIS J. HERRERA
City Attorney

By: _____
Project Manager

By: _____
Deputy City Attorney

By: _____
Division Manager

By: _____
Deputy Director

Approved:

By: _____
Director of Public Works

Attachments:

- A: Scope of Work
- B: Insurance Requirements
- C: Statutory Requirements

END OF SECTION

The logo for McQuire Hester is an oval shape with the company name inside. The name is split into two lines: "MCQUIRE" on the top line and "HESTER" on the bottom line. The letters are in a serif font and are all in uppercase. The oval has a dark border and a lighter interior.

Since 1926

**Contract Exhibit
San Francisco Fire Department #48 Infrastructure
November 6, 2014**

Inclusions: Plans dated through November 4th, 2014 revision 14:38

Underground Utilities:

- 1. Perform potholing to confirm location and depth of existing utilities shown on plans**
- 2. Storm Drain:**
 - a. 90 lf of 6" Class 53 DIP storm drain pipe
 - b. 1 ea storm drain junction box at connection to trench drain
 - c. 96 lf Zurn model 882 trench drain with ADA grate
 - d. 1 ea storm water bubble-up
- 3. Sanitary Sewer:**
 - a. 120 lf of 6" VCP sanitary sewer pipe
 - b. 4 ea sanitary sewer cleanouts
 - c. 1 ea sanitary sewer manholes
 - d. Air test new sanitary sewer system
 - e. 1 ea connection to existing sanitary sewer system at new manhole
 - f. Adjust to grade new utility castings
- 4. Fire line relocate:**
 - a. 162 lf of 8" class 53 DIP fire water main
 - b. 1 ea install new fire hydrant assembly
 - c. 1 ea remove existing fire hydrant assembly
 - d. 3 ea 8" water valves
 - e. Support PUC's Hydrostatic test and chlorination of new fire line by handling trench plates
 - f. Support PUC's tie ins to existing fire water mains by handling trench plates
 - g. Adjust to grade new utility castings
- 5. Domestic and Fire Water Services:**
 - a. 54 lf of 4" class 53 DIP fire water service
 - b. 54 lf 1 ½" type K soft copper tubing domestic service
 - c. 1 ea 4" fire back flow preventer with enclosure
 - d. 1 ea 1 ½" domestic back flow preventer with enclosure
 - e. 1 ea 1 ½" domestic water meter assembly installation. Water meter and fees by others
 - f. Support PUC's hydro test and chlorination of domestic & fire water systems by handling plates
 - g. Support PUC's tie in to existing domestic water main by handling plates
 - h. Raise to grade new utility castings
- 6. Natural Gas System:**
 - a. 250 lf of HDPE natural gas main (to within 5' of building)

All of the above shall be performed at the Lump Sum Price of \$259,892.00

11/06/2014
140396CITY OF SF - SFFD #48 - TREASURE ISLAND
BID TOTALS

<u>Biditem</u>	<u>Description</u>	<u>Quantity</u>	<u>Units</u>	<u>Bid Total</u>
1100	EQUIPMENT MOVES	1.000	LS	
1510	POTHOLE FOR EXISTING UTILITIES	1.000	LS	
6500	STORM DRAIN PIPING	90.000	LF	
6560	TRENCH DRAIN	96.000	LF	
6570	STORM TESTING & INSPECTION	90.000	LF	
6580	STORM DRAIN CONNECTION	1.000	LS	
* SUBTOTAL STORM *				\$70,320.00
6600	SANITARY SEWER PIPING	120.000	LF	
6650	SANITARY SEWER MANHOLE	1.000	EA	
6660	SANITARY SEWER CLEAN-OUTS	4.000	EA	
6670	SANITARY TESTING & INSPECTION	120.000	LF	
6680	SANITARY SEWER CONNECTION	1.000	LS	
* SUBTOTAL SANITARY *				\$38,720.00
6720	REMOVE EXISTING HYDRANT	1.000	LS	
6740	ABANDON EXISTING WATER MAIN	154.000	LF	
6750	8" WATER MAIN RELOCATION	162.000	LF	
6770	6" & 8" WATER VALVES	4.000	EA	
6775	FIRE HYDRANT	1.000	EA	
6780	SUPPORT PUC'S TESTING	162.000	LF	
6790	SUPPORT PUC'S CONNECTIONS	1.000	LS	
* SUBTOTAL WATER RELOCATION *				\$74,978.00
6800	DOM/FIRE WATER PIPING	108.000	LF	
6870	DOM/FIRE SYSTEM APPURTENANCES	3.000	EA	
6880	SUPPORT PUC'S TESTING	108.000	LF	
6890	UPOORT PUC'S CONNECTIONS	1.000	LS	
* SUBTOTAL DOM/FIRE *				\$42,624.00
6900	GAS PIPING	250.000	LF	
* SUBTOTAL GAS *				\$33,250.00

ATTACHMENT B

SECTION 00 73 16

INSURANCE REQUIREMENTS

1.1 SUMMARY

- A. This Document includes insurance requirements, which amend Article 11 of the General Conditions.

1.2 CONTRACTOR'S LIABILITY INSURANCE

- A. Contractor shall maintain in full force and effect, for the period covered by the Contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
 - 1. Worker's Compensation in statutory amount, including Employers' Liability coverage with limits not less than \$1,000,000.00 each accident, injury, or illness.
 - 2. Commercial General Liability insurance with limits not less than \$1,000,000.00 each occurrence, and \$2,000,000 general aggregate, combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, and completed operations.
 - 3. Commercial Automobile Liability insurance with limits not less than \$1,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

1.4 INSURANCE FOR OTHERS

- A. For general liability, environmental pollution liability and automobile liability insurance, Contractor shall include as additional insured, the City, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
- B. Other parties to be protected by Contractors liability insurance shall be as follows:
 - 1. City's consultants and/or subconsultants: None.
 - 2. Non-City Agencies: None.

1.5 FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

- A. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Contractor's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. Contractor will be allowed a maximum of 10 working days, after the date on which the Contract is awarded, in which to deliver appropriate bond and insurance certificates and endorsements.
- B. Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Contractor shall be responsible for all losses not covered by the policy, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

- C. The Contractor and its subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurers limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.
- F. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Contract, and without lapse, for a period 4 years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
- G. Each such policy shall be endorsed to provide 30 days advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages for any reason. All notices shall be made to:

Manager, Contract Administration Division
City and County of San Francisco
1155 Market Street, 4th Floor
San Francisco, CA 94103.
- H. All policies shall be endorsed to provide waivers of subrogation against City.
- I. Contractor, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the effective date of such cancellation, change or expiration, with a complete copy of the new or renewed policy.
- J. If, at any time during the life of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Subparagraph "H" that such insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City.

- K. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default of this Contract.

1.6 QUALIFICATIONS

- A. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-VIII" and shall be satisfactory to the City.

END OF SECTION

ATTACHMENT C

SECTION 00 73 73

STATUTORY REQUIREMENTS

1.1 GENERAL

- A. All requirements in this Section are incidental work, unless specified otherwise.
- B. Contractor shall be solely responsible and fully liable for any and all failures to comply with the requirements specified herein, and shall unconditionally and fully indemnify the City for any damages resulting therefrom. If Contractor fails to comply with the requirements specified herein, or fails to promptly take all required remedial actions to the City's satisfaction, the City may withhold progress payments to Contractor until satisfactory compliance has been accomplished and/or may assess statutory liquidated damages or penalties, as applicable.
- C. The full text of the City Requirements provided below are incorporated by reference in the Contract Documents, and are available at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

1.2 CONFLICT OF INTEREST

- A. By executing the Agreement (Section 00 52 00), Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; or Section 87100 *et seq.* or Section 1090 *et seq.* of the California Government Code of the State of California, and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Contract. All requirements in this Section are incidental work, unless specified otherwise.

1.3 NONDISCRIMINATION REQUIREMENTS

- A. **Incorporation of Administrative Code Chapters 12B and 12C.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated herein by this reference. Contractor shall comply with any and all of the provisions that apply to this Agreement under such Chapters, and be bound by the remedies provided in such Chapters. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions.
- B. **Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where Work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code §12B.2.
- C. **Title VI Requirements.** During the performance of this Contract, the Contractor, for itself, its assigns and successors in interest (hereinafter referred to as the "Contractor") agrees as follows:

- (1) **Compliance with Regulations:** The Contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** in all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.
- (4) **Information and Reports:** The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City and County of San Francisco ("City") or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information the Contractor shall so certify to the City, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Contract, the City shall impose such Contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a) withholding of payments to the Contractor under the Contract until the Contractor complies, and/or
 - (b) cancellation, termination or suspension of the Contract, in whole or in part.
- (6) **Incorporation of Provisions:** The Contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that, in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interests of the City, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

1.4 REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

- A. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

1.5 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

- A. Contractor shall choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and shall otherwise comply with the HCAO as set forth in San Francisco Administrative Code Chapter 12Q. The provisions of Chapter 12Q, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

1.6 MACBRIDE PRINCIPLES - NORTHERN IRELAND

- A. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement as though fully set forth. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride.

1.7 PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY

- A. In performing the Work, Contractor shall comply with San Francisco Administrative Code Chapter 12.G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The provisions of Chapter 12.G, including but not limited to the penalties for noncompliance provided therein are incorporated by reference and made a part of this Agreement as though fully set forth herein.

1.8 LIMITATIONS ON CONTRIBUTIONS

- A. By executing the Agreement (Section 00 52 00), Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

1.9 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. If the Contract Documents require City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor shall use such information only in accordance with the restrictions stated in this Agreement and as necessary in performing the Services. The provisions of Chapter 12M, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.
- B. In the performance of Work, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

1.10 UNFAIR BUSINESS PRACTICES CLAIMS; ASSIGNMENT TO AWARDDING BODY

- A. Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:
 1. In entering into the Agreement or subcontract to supply goods, services, or materials under this Agreement, Contractor or its Subcontractors offer and agree to assign the City all rights, title, and interest in and to all causes of action they may have under section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2, commencing with section 16700, of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the Agreement or subcontract.
 2. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.
 3. Contractor shall include the provisions of this Article in its subcontracts and purchase agreements to supply goods, services, or materials pursuant to the Agreement.

1.11 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

- A. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. The City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.

1.12 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

- A. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

1.13 FOOD SERVICE WASTE REDUCTION REQUIREMENTS

- A. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein.

1.14 LOCAL BUSINESS ENTERPRISE AND NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS

- A. Pursuant to chapter 14B of the San Francisco Administrative Code the following requirements are made part of the Contract:
1. Chapters 12B and 14B of the San Francisco Administrative Code, their implementing Rules and Regulations, and CMD Attachment 1 – Requirements for Construction Contracts, are incorporated by reference herein as though fully set forth. These documents are available to be viewed and downloaded on the Contract Monitoring Division's website: <http://sfcsa.org/index.aspx?page=5365> Alternatively, contact the CMD Contract Compliance Officer assigned to this Contract for assistance in obtaining any of these documents.
 2. The willful failure of Contractor or its subcontractors to comply with any of the requirements of chapter 14B or to comply with the level of LBE subcontractor participation specified herein shall be deemed a material breach of contract.
 3. In the event that the Director of Contract Monitoring Division finds that Contractor or any of its subcontractors willfully fails to comply with any of the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, or Contract provisions pertaining to LBE participation, Contractor or its subcontractor shall be liable for liquidated damages as specified in CMD Attachment 1, article 1.05 "Noncompliance and Sanctions," which shall be payable to the City upon demand and may be set off against moneys due to Contractor or its subcontractor for any contract with the City. Contractor agrees that progress payments shall be withheld, and Contractor's liability for liquidated damages assessed will be subject to the collection procedures specified in CMD Attachment 1, article 1.05 "Noncompliance and Sanctions."
 4. Contractor shall maintain, and shall require its subcontractors to maintain, records including such information requested by CMD necessary for monitoring their compliance with Chapter 14B. Such records shall be maintained for 3 years after the date of Final Completion.
 5. During the term of the Contract, Contractor shall fulfill its LBE participation commitments submitted with its Bid. In the event that Contractor must request a substitution of an LBE subcontractor under Public Contract Code section 4107, Contractor shall make a good faith effort to retain a replacement who is also a certified LBE. For a substitution of a non-LBE subcontractor, Contractor agrees to make a good faith effort to retain an LBE as the replacement subcontractor.
 6. Contractor shall compensate a LBE subcontractor if Contractor does not fulfill its commitment during the term of the Contract to utilize the LBE subcontractor. Contractor shall include a contract provision in all LBE subcontracts requiring Contractor to compensate a LBE subcontractor if Contractor fails to comply with its commitment to utilize LBE subcontractors. The forgoing provisions shall be enforceable in a court of competent jurisdiction.
 7. Whenever Change Orders are made which cumulatively increase the Contract Sum by more than 20 percent, Contractor shall comply with all LBE subcontracting provisions of this Contract with respect to the Change Order.
 8. Back-contracting to Contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, or Contract provisions pertaining to LBE participation shall be prohibited.

9. Contractor shall pay its subcontractors within 3 working days after receiving payment from the City unless Contractor notifies the Director of the CMD in writing prior to receiving payment from the City that there is a bona fide dispute between Contractor and the subcontractor. The Director of the CMD may, upon making a determination that a bona fide dispute exists between Contractor and the subcontractor, waive this 3-day payment requirement.
10. Contractor shall submit CMD Contract Performance Forms (CMD Forms 7, 8, 9, and 10) as set forth in CMD Attachment 1, article 1.03.
11. Contractor shall comply with the Non-Discrimination provisions as set forth in Part IV of CMD Attachment 1.

1.15 SUNSHINE ORDINANCE

- A. Contractor acknowledges that the Contract Documents and all records related to their formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §8250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

1.16 SUBMITTING FALSE CLAIMS; REMEDIES

- A. Pursuant to Article V of Chapter 6 of the San Francisco Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible bidder or an unqualified consultant and debarred as set forth in that Article. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. CLEAN CONSTRUCTION

- A. Contractor agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San Francisco Administrative Code. The provisions of Section 6.25 are incorporated herein by reference and made a part of this Agreement as though fully set forth.
- B. Contractor may seek waivers from the Clean Construction requirements as set forth in Section 6.25(b)(3) of the Administrative Code.
- C. By entering into the Agreement, Contractor and City agree that if Contractor uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Contractor and the City agree that Contractor shall pay the City the amount of \$100.00 per day per each piece of off-road equipment and each off-road engine used to complete Work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with the Clean Construction requirements.

1.18 CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS

- A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/clsa/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Paragraph. Capitalized terms used in this Paragraph and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.
- B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, and shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement.
- C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.
- E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subparagraph D, above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.
- F. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.
- G. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

- H. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

END OF SECTION

McGuire & Hester

Principal: *[Signature]*

Robert C. Doud, Exec VP/CFO

Title

Date

1/15/15