

File No. 200396

Committee Item No. 2

Board Item No. 2

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date June 3, 2020

Board of Supervisors Meeting

Date June 9, 2020

Cmte Board

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>FEMA Appendix - Chapter 21 Grants (New Contracts and Amendments)</u> |
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Completed by: Linda Wong

Date May 29, 2020

Completed by: Linda Wong

Date June 4, 2020

1 [Emergency Ordinance - Delegation of Authority to Amend Certain Agreements]

2

3 **Emergency ordinance to delegate Board of Supervisors approval authority under**
4 **Charter, Section 9.118, to City departments to amend certain existing agreements to**
5 **comply with recommendations and requirements for potential reimbursement of funds**
6 **from the Federal Emergency Management Agency or the California Governor’s Office**
7 **of Emergency Services for expenditures in response to the public health emergency**
8 **related to COVID-19.**

9

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman*;
12 **Deletions to Codes** are in *strikethrough italics Times New Roman*.
13 **Board amendment additions** are in double underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 Asterisks (* * * *) indicate the omission of unchanged Code
16 subsections or parts of tables.

14

15 Be it ordained by the People of the City and County of San Francisco:

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18 Section 1. Declaration of Emergency Pursuant to Charter Section 2.107.

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21 (a) Section 2.107 of the Charter authorizes passage of an emergency ordinance in
22 cases of public emergency affecting life, health, or property, or for the uninterrupted operation
23 of any City or County department or office required to comply with time limitations established
24 by law. The Board of Supervisors hereby finds and declares that an actual emergency exists
25 that requires the passage of this emergency ordinance.

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28 (b) On February 25, 2020, Mayor London Breed proclaimed a state of emergency in
29 response to the spread of the novel coronavirus COVID-19. On March 3, 2020, the Board of

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1 Supervisors concurred in the February 25 Proclamation and in the actions taken by the Mayor
2 to meet the emergency.

3 (c) To mitigate the spread of COVID-19, on March 16, 2020, the Local Health Officer
4 issued Order No. C19-07, replaced by Order No. C19-07b on March 31, 2020, directing San
5 Franciscans to stay safe in their homes. These Orders generally require individuals to stay in
6 their homes through May 3, and require businesses to cease all non-essential operations at
7 physical locations in the City.

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9 Section 2. Findings and Purpose.

10 (a) Following major disasters and emergencies declared by the President, the Federal
11 Emergency Management Agency (“FEMA”) provides supplemental assistance to states,
12 territories, tribes, and local governmental entities, as well as certain private non-profit
13 organizations. Additionally, the California Governor’s Office of Emergency Services (“OES”)
14 may provide matching fund assistance for cost-sharing required under FEMA’s public
15 assistance programs. Through these assistance programs of FEMA and OES, the City may
16 be eligible to receive reimbursement for certain expenditures made in response to the COVID-
17 19 emergency, including payments made by departments under City contracts.

18 (b) Federal law and regulations require local agencies such as the City to implement
19 certain procurement procedures and use certain contract clauses to qualify for FEMA
20 reimbursement in some circumstances. These requirements are set forth in part at 2 Code of
21 Federal Regulations sections 200.318 et seq. Since the COVID-19 emergency began, City
22 departments have entered into several contracts necessitated by the emergency, and have
23 endeavored to comply with all FEMA requirements and recommendations to maximize
24 potential federal and state reimbursement. City departments may also seek to amend some

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1 existing contracts to modify, remove, or add terms to comply with these requirements and
2 recommendations.

3 (c) Charter Section 9.118 requires the Board of Supervisors by resolution to review
4 and approve certain types of significant contracts and some amendments to those contracts.
5 With some limitations, the Board may delegate authority to departments in certain specific
6 circumstances to enter into contracts or amendments that would otherwise require approval
7 under Section 9.118.

8 (d) This emergency ordinance is necessary to enable departments to amend existing
9 contracts immediately to ensure compliance with FEMA requirements as soon as possible,
10 without the potential delay that could be caused by seeking Board of Supervisors approval for
11 individual amendments. In this respect, the emergency ordinance will ensure the
12 uninterrupted and effective operation of City departments and maximize the City's ability to
13 protect the life, health, and property of residents and workers in San Francisco.

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15 Section 3. Delegation of Authority to Amend Existing Agreements.

16 Notwithstanding the requirements of Charter Section 9.118, City departments may
17 amend existing agreements without seeking approval by the Board of Supervisors for the
18 amendment, provided that all the following conditions are met:

19 (a) The agreement that the department intends to amend has already been approved
20 by the Board of Supervisors under Section 9.118;

21 (b) The department head, or the department head's designee, determines that the City
22 may be eligible for financial reimbursement from the federal or state government for funds
23 expended under the agreement to address the COVID-19 emergency;

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1 (c) The department head, or the department head’s designee, in consultation with the
2 City Attorney, determines that the existing agreement may not fully comply with the
3 requirements and recommendations to obtain federal or state reimbursement;

4 (d) The amendment modifies the agreement solely to add, change, or remove terms to
5 maximize the ability of the City to obtain federal or state reimbursement; and

6 (e) The amendment does not increase the cost to the City under the agreement,
7 change the duration of the contract, or impose any obligations on the City other than those
8 required or recommended to obtain federal or state reimbursement.

9
10 Section 4. Transmittal to the Clerk of the Board.

11 The department shall submit a copy of any agreement executed under the delegated
12 authority of Section 3 of this ordinance to the Clerk of the Board of Supervisors within 30 days
13 of execution of the agreement.

14
15 Section 5. Effective Date; Expiration.

16 Consistent with Charter Section 2.107, this emergency ordinance shall become
17 effective immediately upon enactment, and shall expire on the 61st day following enactment
18 unless reenacted as provided by Section 2.107. Enactment occurs when the Mayor signs the
19 ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within
20 ten days of receiving it, or the Board of Supervisors overrides the Mayor’s veto of the
21 ordinance.

1 Section 6. Supermajority Vote Required.

2 In accordance with Charter Section 2.107, passage of this emergency ordinance by the
3 Board of Supervisors requires an affirmative vote of two-thirds of the Board of Supervisors.

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5 APPROVED AS TO FORM:
6 DENNIS J. HERRERA, City Attorney

7 By: /s/
8 JON GIVNER
9 Deputy City Attorney

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LEGISLATIVE DIGEST

[Emergency Ordinance - Delegation of Authority to Amend Certain Agreements]

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, to City departments to amend certain existing agreements to comply with recommendations and requirements for potential reimbursement of funds from the Federal Emergency Management Agency or the California Governor’s Office of Emergency Services for expenditures in response to the public health emergency related to COVID-19.

Existing Law

Following major disasters and emergencies declared by the President, the Federal Emergency Management Agency (“FEMA”) provides supplemental assistance to state and local governments. Additionally, the California Governor’s Office of Emergency Services (“OES”) may provide matching fund assistance to local governments in California. Through these assistance programs of FEMA and OES, the City may be eligible to receive reimbursement for certain expenditures made in response to the COVID-19 emergency, including payments made by departments under City contracts.

Federal law and regulations require local agencies such as the City to implement specific procurement procedures and use certain contract clauses to qualify for FEMA reimbursement in some circumstances.

Charter Section 9.118 requires the Board of Supervisors to review and approve certain types of significant contracts and some amendments to those contracts. With some limitations, the Board may delegate authority to departments in certain specific circumstances to enter into contracts or amendments that would otherwise require approval under Section 9.118.

Amendments to Current Law

The proposed emergency ordinance would authorize City departments to amend existing agreements without seeking approval by the Board of Supervisors for the amendment under Section 9.118, as long as the Board has previously approved the contract; the amendments only add, change, or remove terms to maximize the ability of the City to obtain federal or state reimbursement; the amendments don’t increase the cost or duration of the contract; and the amendments meet other conditions in the ordinance.

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Liaison to the Board of Supervisors, Mayor's Office

FROM: Linda Wong, Assistant Clerk
Budget and Finance Committee

DATE: May 7, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following proposed legislation, introduced by Mayor London N. Breed on April 21, 2020:

File No. 200396

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, to City departments to amend certain existing agreements to comply with recommendations and requirements for potential reimbursement of funds from the Federal Emergency Management Agency or the California Governor's Office of Emergency Services for expenditures in response to the public health emergency related to COVID-19.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: linda.wong@sfgov.org




OFFICE OF THE CITY ADMINISTRATOR



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

MEMORANDUM

TO: Department Heads

FROM: City Administrator Naomi M. Kelly 

RE: Guidance for Departments on Procurement and Reimbursement from the Federal Emergency Management Agency (“FEMA”)

DATE: April 22, 2020

This memorandum provides guidance on the Federal Emergency Management Agency (“FEMA”) requirements for qualifying an emergency contract or purchase for reimbursement by FEMA. Please consult with your Deputy City Attorney if you require advice about a particular contract.

I. FEMA Contract and Purchase Order Appendices

The City Attorney’s Office has prepared three appendices that contain FEMA required clauses for emergency contracts and purchases for which FEMA reimbursement may be sought. Instructions for each Appendix is set forth below:

- 1) Purchase Order Appendix:** This appendix should be attached to all non-negotiable purchase orders not associated with any contract **or** purchase orders issued against existing contracts that do not contain the stated FEMA requirements.
- 2) Ch. 21 and Grants Contract Appendix:** This appendix should be attached all newly negotiated contracts and grants or as amendments to existing contracts.
- 3) Chapter 6 Contract and Purchase Order Appendix:** This appendix should be attached to all contracts and purchase orders for construction or construction services.

The three versions of the appendix are included with this memorandum and can also be located at <https://sfgov.org/oca/resources>. The appendices can be modified to a certain extent but must include the essential FEMA terms unless already fully covered in the contract. Please consult with your Deputy City Attorney before agreeing to any modifications.

The contractor/vendor should sign the anti-lobbying certification at the end of each appendix.

**FEMA APPENDIX
FEMA EMERGENCY & EXIGENCY CONTRACTS REQUIREMENTS**

- 1. FEMA Requirements.** The Purchase Order (“PO”) to which this FEMA Appendix is attached may be eligible for FEMA funding. FEMA requires inclusion of the following provisions for procurement under exigent or emergency circumstances. The City and County of San Francisco (“City”) and the entity to whom this PO is issued (“Contractor”) must comply with these provisions. In the event of a conflict with other provisions in this FEMA Appendix that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply. If this PO is being issued against an existing contract between City and Contractor, the terms of this FEMA Appendix are deemed to be incorporated into said contract as though fully set forth therein.
- 2. Remedies for Breach.** In addition to all other remedies included in this FEMA Appendix, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor’s services and/or the additional expenses to complete Contractor’s services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.
- 3. Termination for Convenience.** City shall have the option, in its sole discretion, to terminate this PO, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.
- 4. Termination for Cause.** On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this PO for cause or to seek specific performance of all or any part of this PO. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this PO or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this PO or any other contract.
- 5. Work Hours and Safety Standards.** If this PO is for a price in excess of \$100,000, and involves the employment of mechanics or laborers, Contractor agrees as follows:

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

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

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

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

E. This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Procurement of Recovered Materials

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

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

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

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

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

12. Access to Records. The following access to records requirements apply to this PO:

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

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

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

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

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

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

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

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

17. Byrd Anti-Lobbying Certification.

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

II. FEMA Procurement Procedures & Considerations

The following is summary of the essential procurement considerations identified by FEMA. The City may be unable to adhere perfectly to these criteria during the emergency, but should endeavor to follow them as closely as possible. Please consult with your Deputy City Attorney for a more detailed analysis of the required procedures.

- 1) Verify the emergency or exigency. Non-competitive procurement (including sole-sourcing) is generally only permitted to respond to an emergency or exigency.
- 2) Only contract for what is necessary (services, quantities and/or term of the agreement) to address the emergency or exigency.
- 3) Compare the price of the goods or services to an independent estimate.
- 4) Confirm contractor/vendor not suspended; check www.sam.gov.
- 5) Maintain oversight of contractor/vendor performance.
- 6) Only use Time & Material contracts if no other method suitable; and must include ceiling price if used.
- 7) Cost plus percentage of cost contracts are strictly prohibited.
- 8) Document these steps and save in PeopleSoft notes; save records for FEMA audit.

III. Revenue Agreements

Contracts anticipated to generate revenue to the City of one million dollars or more, or the modification of such a contract, must be approved by the Board of Supervisors under Charter Section 9.118. My office has introduced legislation to delegate that authority to departments. If you are considering modifying a revenue agreement, please contact your Deputy City Attorney.

During this emergency, please direct any questions about this memorandum to Assistant Director of the Office of Contract Administration Taraneh Moayed at taraneh.moayed@sfgov.org.

APPENDIX _____
FEMA EMERGENCY & EXIGENCY CONTRACTS REQUIREMENTS

1. Contract Requirements. This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. The Parties must comply with these provisions as a minimum. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.

2. Remedies for Breach. In addition to all other remedies included in this contract, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

3. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.

4. Termination for Cause. On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this contract for cause or to seek specific performance of all or any part of this contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this contract or any other contract.

5. Equal Employment Opportunity. If this contract constitutes a "federally assisted construction contract" as defined in 41 C.F.R. §60-1.3, during the performance of this contract, Contractor agrees as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Procurement of Recovered Materials

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21. Byrd Anti-Lobbying Certification.

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date

APPENDIX _____
FEMA EMERGENCY & EXIGENCY CONTRACTS REQUIREMENTS

1. Contract Requirements. This contract may be eligible for FEMA funding. FEMA requires inclusion of the following contract provisions for procurement under exigent or emergency circumstances. The Parties must comply with these provisions as a minimum. In the event of a conflict with other provisions in this contract that address the same or a similar requirement, the provisions that are stricter and impose the greater duties upon Contractor shall apply.

2. Remedies for Breach. In addition to all other remedies included in this contract, Contractor shall, at a minimum, be liable to the City for all foreseeable damages it incurs as a result of Contractor violation or breach of the terms of this contract. This includes without limitation any costs incurred to remediate defects in Contractor's services and/or the additional expenses to complete Contractor's services beyond the amounts agreed to in this contract, after Contractor has had a reasonable opportunity to remediate and/or complete its services as otherwise set for in this contract. All remedies provided for in this contract may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

3. Termination for Convenience. City shall have the option, in its sole discretion, to terminate this Contract, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs reasonably necessary to effectuate demobilization from the work.

4. Termination for Cause. On and after any event of default, City shall have the right to exercise its legal and equitable remedies, including without limitation, the right to terminate this contract for cause or to seek specific performance of all or any part of this contract. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any event of default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this contract or any other contract between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such event of default and any liquidated damages due from Contractor pursuant to the terms of this contract or any other contract.

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

A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed

on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, Contractor and subcontractor(s) shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this section.

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

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

E. This Section 5 does not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of

any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10. Procurement of Recovered Materials

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Byrd Anti-Lobbying Certification.

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

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

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

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any

agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

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

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date



TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Sophia Kittler
RE: Emergency Ordinance - Delegation of Authority to Amend Certain
Agreements
DATE: Tuesday, April 21, 2020

Emergency ordinance to delegate Board of Supervisors approval authority under Charter, Section 9.118, to City departments to amend certain existing agreements to comply with recommendations and requirements for potential reimbursement of funds from the Federal Emergency Management Agency or the California Governor's Office of Emergency Services for expenditures in response to the public health emergency related to COVID-19.

Should you have any questions, please contact Sophia Kittler at 415-554-6153.