



San Francisco  
**Water  
Power  
Sewer**

Services of the San Francisco Public Utilities Commission

**CITY AND COUNTY OF SAN FRANCISCO  
PUBLIC UTILITIES COMMISSION  
WATER ENTERPRISE**



**HARLAN L. KELLY, JR.  
GENERAL MANAGER**

**KATHRYN HOW  
ASSISTANT GENERAL MANAGER  
INFRASTRUCTURE**

**MOCCASIN POWERHOUSE GENERATOR  
REHABILITATION  
CONTRACT NO. DB-121R2  
OCTOBER 2020**

**SPECIFICATIONS**

**COPY NO. \_\_\_\_\_**

**PROJECT Number/ID: CUH10114**

Each bid is to be enclosed in an envelope bearing the superscription:

"Bid for Moccasin Powerhouse Generator Rehabilitation,  
Contract No. DB-121R2"

**FOR THE SOLE USE OF THE DOCUMENT RECIPIENT – DO NOT CITE, COPY, OR  
CIRCULATE WITHOUT THE EXPRESSED PERMISSION OF THE SFPUC.**

## KEY CONTACTS AND DETAILS

## 1.01 SUMMARY

- A. This Section identifies the designated individuals to be contacted for assistance with any questions.
- B. Questions pertaining to all aspects of bidding shall be referred to the SFPUC Contract Administration Bureau Contact identified in Article 1.02 using *Questions on Bid Documents* Section No. 00 21 14.
- C. Questions pertaining to compliance with the requirements of the San Francisco Contract Monitoring Division shall be referred to the Contract Compliance Officer identified in Article 1.03.

## 1.02 SFPUC - CONTRACT ADMINISTRATION BUREAU CONTACT

Derek Wong  
c/o SFPUC Contract Administration Bureau  
525 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102  
Email: [CAB@sfgwater.org](mailto:CAB@sfgwater.org)  
Direct: 415-551-4549

- A. Prospective Bidders shall familiarize themselves with the intended use of *Questions on Bid Documents* (Section 00 21 14) as specified in the *Request for Bids*, prior to contacting the SFPUC Contract Administration Bureau Contact.

## 1.03 SAN FRANCISCO CONTRACT MONITORING DIVISION (CMD) – CONTRACT COMPLIANCE OFFICER

Jason Chow  
Contract Monitoring Division  
1 S. Van Ness Ave, 5th Floor  
San Francisco, CA 94103  
Direct: (415) 554-3103

## 1.04 OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT (OEWD) – FIRST SOURCE / PROFESSIONAL SERVICES CONTRACT COMPLIANCE OFFICER

Alana Toliver  
Office of Economic and Workforce Development  
1 South Van Ness Ave., 5th Floor  
San Francisco, CA 94103  
[alana.toliver@sfgov.org](mailto:alana.toliver@sfgov.org)  
415-701-4886

- 1.05 OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT (OEWD) – WORK  
FORCE CONTRACT COMPLIANCE OFFICER  
Christopher J. Vergara  
Office of Economic and Workforce Development  
1 South Van Ness Ave., 5<sup>th</sup> Floor  
San Francisco, CA 94103  
<http://www.workforcedevelopmentsf.org/>  
415-701-4848
- 1.06 PROJECT LABOR AGREEMENT – SFPUC’S WORKFORCE AND ECONOMIC  
PROGRAM SERVICES – PLA ADMINSTRATOR  
Todd Kyger  
Workforce and Economic Program Services  
525 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
<http://sfwater.org/pla>
- 1.07 WEBSITE ADDRESSES
- A. ONLINE SECTION 00 21 14  
<http://sfwater.org/QBD>
- B. SFPUC CONTRACTS & BIDS  
<http://sfwater.org/contracts>
- C. SFPUC BIDDER PRE-QUALIFICATION  
<http://sfwater.org/pre-qualify> or <http://sfwater.org/prequalify>
- D. S.F. CONTRACT MONITORING DIVISION (CMD)  
<http://www.sfgov.org/cmd>  
S.F OFFICE OF LABOR STANDARDS ENFORCEMENT – MINIMUM  
COMPENSATION ORDINANCE  
<http://sfgsa.org/index.aspx?page=391>
- E. S.F. HEALTH CARE ACCOUNTABILITY ORDINANCE  
<http://sfgsa.org/index.aspx?page=407>
- F. S.F. BUSINESS REGISTRATION CERTIFICATE  
<http://sfgov.org/tax>
- G. OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT (LOCAL  
HIRING)  
[www.oewd.org](http://www.oewd.org)

END OF SECTION

SEALS PAGE

The various portions of the specifications and other contract documents for “Moccasin Powerhouse Generator Rehabilitation, Contract No. DB-121R2” have been prepared under the direction of the following design professionals, licensed in the State of California.

PROJECT MANAGER

*Jen Yoon Leong  
Project Management Bureau  
San Francisco Public Utilities Commission  
City and County of San Francisco*

*Responsible for the following sections:  
Division 00*



PROJECT ENGINEER

*Photi Christofas  
Engineering Management Bureau  
San Francisco Public Utilities Commission  
City and County of San Francisco*

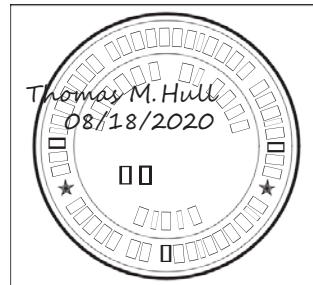
*Responsible for the following sections:  
Division 01 except for sections  
01 35 43.13 and 01 73 25*



CIVIL ENGINEER

*Thomas Hull  
Engineering Management Bureau  
San Francisco Public Utilities Commission  
City and County of San Francisco*

*Responsible for the following sections:  
Section 01 73 25*



END OF SECTION

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END OF SECTION

## LIST OF DRAWING SHEETS

## DRAWINGS

The following Drawings are incorporated as Contract Documents: *Design-Builder shall update the Drawings below to a 100% Design level for the Construction Phase and, as needed, update Drawings during the Construction Phase. Design Builder shall also add new Drawings necessary to meet the requirements of Criteria Package, in both the Design Phase and, as needed, the Construction Phase.*

## General Drawings

G-0000 Cover Sheet

G-0001 Drawing Index

## General Electrical Drawings

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ED-6002 Main Three-Line Diagram (Demo)

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E-6020 Generator 2 Relaying &amp; Control Scheme

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E-6024 Generator 1 Back-up Protection Three-Line Diagram

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END OF SECTION



SECTION 00 21 14

QUESTIONS ON BID DOCUMENTS (“QBD”)

*Potential Bidders must complete this QBD Form and submit to the fax no. or e-mail address below no later than deadline for “Questions Due” listed in the Request for Bids.*

Project: Moccasin Powerhouse Generator Rehabilitation

Contract No. DB-121R2

To: SFPUC Contract Administration

Fax: 415-553-4896

Email: QBD@sfgwater.org

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

**CONTRACTOR’S QUESTIONS**

Company Name: \_\_\_\_\_ Date \_\_\_\_\_

Contact Name: \_\_\_\_\_ Tel: \_\_\_\_\_

Title: \_\_\_\_\_ Fax: \_\_\_\_\_

*Check One Only (Use separate form for each specifications and drawing question.)*

Spec. Section: \_\_\_\_\_ Paragraph(s): \_\_\_\_\_

Drawing Sheet: \_\_\_\_\_ Detail(s): \_\_\_\_\_

Question: \_\_\_\_\_

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**CITY’S REPLY**

Mark this box if the QBD can be answered by Bidder's review of the documents. Reply with location(s) where the information can be obtained.

Reply: \_\_\_\_\_

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By: \_\_\_\_\_ Bureau/Firm: \_\_\_\_\_ Date: \_\_\_\_\_

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

END OF SECTION

## SECTION 00 31 00

## AVAILABLE PROJECT INFORMATION

## 1.01 SUMMARY

- A. This Section describes Available Project Information and the use of data resulting from the various investigations or from available information, including existing geotechnical data and soils engineering reports, as-builts, hazardous materials survey reports, underground facilities plans, and environmental assessment information.

## 1.02 EXISTING SITE AND BUILDING CONSTRUCTION DOCUMENTS

- A. Bidders' attention is directed to construction or record drawings for the original construction and subsequent alterations that were utilized in the preparation of the Contract Documents as follows:

	<u>TITLE</u>	<u>FILE NOS.</u>	<u>REVISION DATE</u>
--	--------------	------------------	----------------------

- |    |  |  |  |
|----|--|--|--|
| 1. | MPH Station Construction Record Drawings<br><a href="https://sfpuc.sharefile.com/d-s87d6c058b5d4c4ea">https://sfpuc.sharefile.com/d-s87d6c058b5d4c4ea</a>        |  |  |
| 2. | HH-382 Moccasin Powerhouse Replacement Drawings<br><a href="https://sfpuc.sharefile.com/d-s508b616467548daa">https://sfpuc.sharefile.com/d-s508b616467548daa</a> |  |  |
| 3. | Moccasin Generator Shop Drawings<br><a href="https://sfpuc.sharefile.com/d-s3bbcc325f0745daa">https://sfpuc.sharefile.com/d-s3bbcc325f0745daa</a>                |  |  |

- B. Copies of the above referenced documents are available for inspection by prospective Bidders via the weblink(s) above and the SFPUC Contract Administration Bureau from the point of contact identified in Section 00 01 03.

## 1.03 ENVIRONMENTAL REPORTS

- A. An CEQA CATEGORICAL EXEMPTION FORM: 2014.1184E, dated August 4, 2014, has been prepared for the City.

<https://sfpuc.sharefile.com/d-s5a73ed031724e1b8>

- B. Environmental assessment information was obtained only for the use of the City and its consultants for planning and design. Said information is not part of the Contract Documents, but the technical data or mandatory mitigation requirements contained therein on which Bidder is entitled to rely are incorporated in the Contract Documents by reference.

- C. Copies of the above referenced reports are available for inspection by prospective Bidders via the weblink(s) above and at the SFPUC Contract Administration Bureau from the point of contact identified in Section 00 01 03.

#### 1.04 HAZARDOUS MATERIALS REPORTS

- A. The City's environmental consultant has **conducted a limited** survey of the facility for the presence of various hazardous materials. Materials investigated may include asbestos, lead, PCB ballasts, mercury containing lamps, contaminated soils, underground storage tanks, other hazardous materials. The survey findings are documented in the following:
1. Moccasin Powerhouse Generator No.1 Lead and Asbestos Assessment , Report, August 7, 2020  
<https://sfpuc.sharefile.com/d-s0678df639d6466f8>
- B. Hazardous materials surveys and reports were obtained only for the use of the City and its consultants for planning and design. Such documentation is not part of the Contract Documents, but the technical data contained in the referenced reports on which the Bidder is entitled to rely are incorporated in the Contract Documents by reference. The City's hazardous materials survey is not comprehensive. The Design-Builder shall hire a qualified environmental consultant to conduct a comprehensive hazardous materials survey as indicated in Section 01 35 43.13.
- C. Some of the materials and items found at the Site either contain or may contain materials known to the State of California to be either hazardous, carcinogenic or reproductive toxins.
- D. Copies of the above referenced reports are available for inspection by prospective Bidders via the weblink(s) above and at the SFPUC Contract Administration Bureau from the point of contact identified in Section 00 01 03.

#### 1.05 USE OF AVAILABLE PROJECT INFORMATION

- A. The foregoing Available Project Information is not part of the Contract Documents unless otherwise specified. The City does not warrant the completeness of the Available Project Information.
- B. The City makes no representation, either express or implied, that the conditions indicated in the drawings or records are representative of those existing at the Site, or that different conditions may not occur or materials other than or in proportions different from those indicated may not be encountered. Refer to Article 3.03 of General Conditions (Section 00 72 00.22).

#### 1.06 PRE-BID VISIT TO WORK SITE

- A. Prior to bidding, Bidders may make their own investigations to satisfy themselves as to actual Site conditions, but such investigations shall be performed only under the provisions of the *Request for Bids*.

END OF SECTION

## SECTION 00 40 13.10

## POST BID FORMS CHECKLIST

- A. **No later than 5 p.m. on the fifth business day after the date of Bid opening**, the Apparent Low Bidder, and any other Bidder so requested, shall deliver the forms listed below to the attention of the CMD Contract Compliance Officer identified in Key Contracts and Details, Section 00 01 03.

- S.F. Administrative Code Chapters 12B & 12C – Declaration: Nondiscrimination in Contracts and Benefits

- B. Deliver the forms listed below to the attention of the SFPUC Contract Administration Bureau identified in Key Contracts and Details Section 00 01 03. Timely delivery of these forms is required.

7 calendar days following Bid Opening, submit:

- Certificate of Subcontractor Regarding Apprenticeship Training Program (Section 00 45 88) completed by each subcontractor who employs journeymen or apprentices in an apprenticeable craft or trade.
- Certification of Subcontractor, Lower-Tier Subcontractor or Supplier Regarding Debarment and Suspension (Section 00 49 14), completed by each subcontractor, lower-tier subcontractor and supplier expected to have subcontracts of \$25,000 or more.

Within 10 working days following City's written notification of Award, submit:

- Escrow Bid Documents Declaration (Section 00 67 00/A) including a set of Escrow Bid Documents (Section 00 67 00) in a sealed container in accordance with Escrow Bid Documents.

Immediately following execution of the Contract, submit:

- Initial Employment Projection (Section 00 45 58)
- Agreement to Hire Apprentices From Participating Referrals Agencies (Section 00 45 59)

Within 15 calendar days of notice of award, submit to SFPUC Contract Administration Bureau **and** OEWD (see contact information in Section 00 01 03):

- Local Hiring Workforce Projection (Section 00 73 30: Form 1)
- Local Hiring Plan (Section 00 73 30: Form 2)
- Conditional Waiver (Section 00 73 30: Form 4): to be completed by Contractor and Subcontractors with subcontracts in excess of \$400,000 in the event that Contractor and/or Subcontractor(s) believe that they cannot meet applicable local hiring requirements.

Within 60 calendar days of Design Notice to Proceed, submit to SFPUC Contract Administration Bureau:

- Experience Statement (Section 00 49 12)

- D. Email the form listed below to the contact listed in the form. Timely delivery of this form is required.  
5 working days following Bid Opening, submit:  
 Department of Industrial Relations Requirements (Section 00 49 16)
- E. The SFPUC General Manager reserves the right after opening Bids to reject any or all Bids, and to waive any minor irregularity in a Bid.

END OF SECTION

SECTION 00 45 58

INITIAL EMPLOYMENT PROJECTION

Successful Bidder shall submit a completed Employment Projection and Plan for the Project which shall include:

1. The TOTAL estimated number of Journey Level Positions and Entry Level/Apprentices Positions needed to perform the Work including whether the contractor intends to fill the position with a “core” employee as defined in the WSIP Project Labor Agreement, Article III; and
2. The approximate dates and duration of employment.

Contractor	Prevailing Wage Classification	Journey or Apprentice (J/A)	Number of Positions	Est. Start Date (mo./day/yr.)	Duration	Core Employee? (Yes/No)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Contractor Name

\_\_\_\_\_  
Date

END OF SECTION







**S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C**  
**DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS**

(CMD-12B-101)

► **Section 1. Vendor Information**

DATE & TIME RECEIVED BY CMD  
(FOR CMD USE ONLY)

Name of Company: \_\_\_\_\_

Name of Company Contact Person: \_\_\_\_\_

Phone: \_\_\_\_\_ Ext.: \_\_\_\_\_ Fax: \_\_\_\_\_

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

Vendor Number (if known): \_\_\_\_\_

Federal ID or Social Security Number: \_\_\_\_\_

Approximate Number of Employees in the U.S.: \_\_\_\_\_

Are any of your employees covered by a collective bargaining agreement or union trust fund?  Yes  No

Union name(s): \_\_\_\_\_

► **Section 2. Compliance Questions**

**Question 1. Nondiscrimination – Protected Classes**

A. Does your company agree it will not discriminate against its employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? **Please note:** a "YES" answer is required for compliance. Please answer yes or no to each category.

- |                   |                              |                             |  |                              |                             |
|-------------------|------------------------------|-----------------------------|--|------------------------------|-----------------------------|
| • Race            | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sex                                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Color           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sexual orientation                   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Gender identity (transgender status) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Domestic partner status              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • National origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Marital status                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Ancestry        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Disability                           | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age             | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • AIDS/HIV status                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Height          | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Weight                               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

Yes  No

**Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners**

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes  No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners\* or to domestic partners of employees?

Yes  No

Questions 2A and 2B should be answered YES even if your employees pay some or all of the cost of spousal or domestic partner benefits.

\*The term "Domestic Partner" includes both same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry. See S.F. Admin. Code Ch. 12B.1(c).

**If you answered "NO" to both** Questions 2A and 2B, go to Section 4, complete and sign the form, filling in all items requested.

**If you answered "YES" to either** or both Questions 2A and 2B, please continue to Question 2C.

**(OVER)**

**Question 2. (continued)**

C. Please check all benefits that apply to your answers above and list in the “other” section any additional benefits not already specified. Note: some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dependent Life Insurance	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Note:** If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (CMD-12B-102) with all necessary attachments, and have your application approved by the Contract Monitoring Division. For more information, see Rules of Procedure section II B or contact the CMD.

➤ **Section 3. Required Documentation**

**YOU MUST SUBMIT SUPPORTING DOCUMENTATION**

**to verify each benefit marked in Question 2C.** Without proper documentation, your company cannot be certified as complying with Chapters 12B & 12C. For example, to document medical insurance submit a letter from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information see the Equal Benefits Documentation Guide at <http://sfgsa.org/modules/showdocument.aspx?documentid=9560> or contact the CMD.

Have you submitted supporting documentation for each benefit offered?     Yes     No

➤ **Section 4. Executing the Document**

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Name of Signatory (please print)

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

\_\_\_\_\_  
Title

➔ **Submit this form and supporting documentation to:** Contract Monitoring Division, 30 Van Ness Ave., Suite 200, San Francisco, CA 94102-6020, or to [CMD.EqualBenefits@sfgov.org](mailto:CMD.EqualBenefits@sfgov.org) or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: [www.sfgov.org/CMD](http://www.sfgov.org/CMD).

☎ **For assistance** please contact the Contract Monitoring Division at 415-581-2310.



**EQUAL BENEFITS DOCUMENTATION GUIDE**

Benefit Type	Guidelines	Standard Documentation
Health Dental Vision Dependent Life Long-term Disability Long-term Care Accidental Death & Dismemberment Business Travel Accident Personal Travel Accident	<p>In a confirmation from an insurance carrier, "Domestic Partners" must be defined as: <b>"same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry."</b></p> <p>In addition, it must be confirmed that there are <b>no requirements for proof of relationship (such as an affidavit) or waiting periods that are not also applied to married couples.</b></p> <p>For insurance policies where continuation coverage is available to spouses and step-children, the insurer must confirm that <b>COBRA-like continuation coverage is available to domestic partners and their children.</b></p>	<p>Acceptable: the cover page, eligibility section, and other relevant sections (such as the COBRA section) of the Basic Plan Document, or you may submit a letter or email message from the insurance carrier (contact us for an example).</p> <p>Unacceptable: letters from brokers, enrollment forms, invoices, Summary Plan Descriptions.</p>
Retirement (Pension, 401(k), etc.)	<p>Confirmation is needed that the distribution options are the same for spouse and non-spouse beneficiaries. (We already know that anyone may be designated as a beneficiary.)</p>	<p>A copy of the cover page and the distribution section of the Summary Plan Description or Basic Plan Document of your 401(k) or pension or savings plan(s). If you have a prototype plan, please include the Adoption Agreement.</p>
Bereavement Leave Family Leave (including FMLA) Parental Leave Relocation and Travel Discounts, Facilities & Events	<p>Where the term "spouse" is used, the term "domestic partner" must be included.</p> <p>The definition of "immediate family" must be defined in the bereavement policy and if it includes in-laws, the equivalent members of a domestic partner's family must be explicitly included. <i>An example of a compliant definition is: the employee's spouse or domestic partner; a parent, child, or sibling of the employee, spouse or domestic partner; and the spouse or domestic partner of the employee's parents, children, or siblings.</i></p>	<p>A copy of your Employee handbook policies.</p> <p>When the term "Domestic Partners" is defined in an employee handbook, the following definition must be used: "same-sex and opposite-sex couples who have registered with any state or local government domestic partnership registry." Domestic partners must not be required to prove their relationship (such as with an affidavit) or subject to waiting periods unless a company provides proof that spouses are subject to the same requirements.</p>
Employee Assistance Program Credit Union	<p>References to spouses must include references to domestic partners or household members.</p>	<p>A brochure or letter from the provider or policy from the employee handbook.</p>
Child care	<p>References to spouses must include references domestic partners.</p>	<p>A brochure or letter from the provider.</p>
Union	<p>Separate documentation must be submitted for union benefits.</p>	<p>Unions that recognize domestic partners have usually prepared a 1-page statement that is available upon request. If a union doesn't recognize domestic partners, call 415-581-2310 for assistance.</p>
Other	<p>If your firm offers other benefits, please specify what they are on the 12B Declaration and provide documentation.</p>	<p>Varies; call 415-581-2310 for assistance.</p>

SECTION 00 45 88

CERTIFICATE OF SUBCONTRACTOR REGARDING APPRENTICESHIP TRAINING PROGRAM

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

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

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

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

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

*Complete and deliver this declaration form as specified in Section 00 40 13.10 to the SFPUC Contract Administration Bureau, 525 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102. If the subcontract involves one or more trades with a recognized apprenticeship program for which you have declared that you are a signatory to a recognized apprenticeship or training program, written proof of status must be submitted for each trade within 5 working days after the date of the City’s written notification of award of the Contract.*

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

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

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

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

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

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

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

\_\_\_\_\_  
Date

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

END OF SECTION



## SECTION 00 49 06

CMD ATTACHMENT 6 – REQUIREMENTS FOR CONTRACT MONITORING DIVISION  
REQUIREMENTS FOR CONSTRUCTION CONTRACTS (REFERENCE)

Contract Monitoring Division (“CMD”) Attachment 6, dated August 1, 2016, is hereby incorporated by reference. Refer to the internet link:

<https://sfgov.org/cmd/sites/default/files/Documents/CMD%20Attachment%206%20-%208.01.16.pdf>

CMD Attachment 6 consists of 25 pages and contains:

Instructions

Form 2B: CMD “Good Faith Outreach Requirements” Form

Form 3: CMD Compliance Affidavit (also in Appendix A)

Form 6: CMD LBE Subcontractor Participation Affidavit

Form 6A: CMD LBE Trucking Form

Form 7: CMD Progress Payment Form

Form 8: CMD Exit Report and Affidavit

Form 9: CMD Payment Affidavit

Form 10: CMD Contract Modification Form

*(For questions, the contact person is listed Section 00 01 03, Paragraph 1.03. Design-Builder shall provide the complete Forms, not links to the Forms, as required in a timely manner. Forms 7, 8, 9, and 10 shall be submitted during the Construction Phase)*

END OF REFERENCE

## SECTION 00 49 06A

CMD ATTACHMENT 6A – REQUIREMENTS FOR CONTRACT MONITORING DIVISION  
REQUIREMENTS FOR ARCHITECTURE, ENGINEERING, AND PROFESSIONAL SERVICES  
CONTRACTS (REFERENCE)

Contract Monitoring Division (“CMD”) Attachment 6A, dated August 1, 2016, is hereby incorporated by reference. Refer to the internet link:

<https://sfgov.org/cmd/sites/default/files/Documents/CMD%20Attachment%206A%20-%208.01.16.pdf>

CMD Attachment 6A consists of 24 pages and contains:

Instructions

Form 2A: CMD Contract Participation Form (also in Appendix A)

Form 2B: CMD “Good Faith Outreach Requirements” Form

Form 3: CMD Compliance Affidavit (also in Appendix A)

Form 4: CMD Joint Venture Form

Form 5: CMD Employment Form (also in Appendix A)

Form 7: CMD Progress Payment Form

Form 8: CMD Exit Report and Affidavit

Form 9: CMD Payment Affidavit

Form 10: CMD Contract Modification Form

*(For questions, the contact person is listed Section 00 01 03, Paragraph 1.03. Design-Builder shall provide the complete Forms, not links to the Forms, as required in a timely manner. Forms 7, 8, 9, and 10 shall be submitted during the Design Phase)*

END OF REFERENCE

SECTION 00 49 12

EXPERIENCE STATEMENT

Refer to Section 01 11 00 (Summary of Work, Project Specific Minimum Qualifications for instructions). Design-Build shall submit documentation within 60 days of Design NTP demonstrating that the Design-Build team will include personnel with the following qualifications. Add additional sheets, as necessary, to demonstrate compliance with the requirements. RESUMES WILL NOT BE ACCEPTED IN LIEU OF COMPLETED EXPERIENCE STATEMENT FORMS.

EXPERIENCE FOR (CHECK ONE):		<input type="checkbox"/> Key Team Member
		<input type="checkbox"/> Subcontractor
PROJECT POSITION OR SUBCONTRACTOR WORK:		
NAME OF PROPOSED PERSON OR SUBCONTRACTOR:		
BUSINESS ADDRESS:		TELEPHONE:
NUMBER OF YEARS WITH BIDDING CONTRACTOR:	TOTAL NUMBER OF YEARS EXPERIENCE IN CONSTRUCTION INDUSTRY:	
IS PROPOSED PERSON EMPLOYED BY BIDDER? <input type="checkbox"/> Yes; <input type="checkbox"/> No; IF "NO", LIST NAME AND PHONE OF EMPLOYER:		
NAME OF EMPLOYER:		TELEPHONE:

Project Experience:

(a)

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

(b)

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



(c)

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

(d)

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

(e)

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

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

END OF SECTION

SECTION 00 49 14

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

I, \_\_\_\_\_, by affixing my signature hereto, under penalty of perjury, hereby certify, except as noted below, that the subcontractor, lower-tier subcontractor or supplier and/or its principals:

- 1. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any government agency;
- 2. have not within a 3-year period preceding this Bid entered a guilty plea, been convicted of, or had a civil judgment rendered against any of us for: (i) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction; (ii) violation of federal or state antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging; (iii) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; and/or (iv) commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the entity's present responsibility;
- 3. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in item 2 above; and
- 4. have not within a 3-year period preceding this Bid had one or more public transactions (federal, state or local) terminated for cause or default.

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

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

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

Subcontractor/Supplier's Name

---

Name and Title of Signer

---

Subcontractor/Supplier Street Address

---

Subcontractor/Supplier City, State, ZIP

---

Subcontractor/Supplier Telephone No.

---

Signature of Subcontractor/Supplier or  
Authorized Representative

---

Date

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

*\* Applicable to all subcontracts, purchase orders and other lower tier transactions of \$25,000 or more.*

END OF SECTION

SECTION 00 49 16

DEPARTMENT OF INDUSTRIAL RELATIONS REQUIREMENTS

No contractor may bid and no subcontractor may be listed in a bid for a public works project unless registered with the California Department of Industrial Relations (“DIR”) pursuant to Labor Code §1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code §1771.1(a)]. **Complete this Section and email it to the Workforce & Economic Program Services Bureau ([pwc100@sfgov.org](mailto:pwc100@sfgov.org)) no more than five (5) business days after Bid opening.**

**PRIME CONTRACTOR:** \_\_\_\_\_  
 Name of Firm or Corporation

\_\_\_\_\_  
 Department of Industrial Relations No. Contractor’s California License No.

\_\_\_\_\_  
 Principal Point of Contact Name Principal Point of Contact E-Mail Address

Classification of Types of Work to be Performed by Prime Contractor Under the Contract (check all that apply):

<input type="checkbox"/> Asbestos	<input type="checkbox"/> Boilermaker	<input type="checkbox"/> Bricklayers	<input type="checkbox"/> Carpenters	<input type="checkbox"/> Carpet/Linoleum
<input type="checkbox"/> Cement Masons	<input type="checkbox"/> Drywall Finisher	<input type="checkbox"/> Drywall/Lathers	<input type="checkbox"/> Electricians	<input type="checkbox"/> Elevator Mechanic
<input type="checkbox"/> Glaziers	<input type="checkbox"/> Iron Workers	<input type="checkbox"/> Laborers	<input type="checkbox"/> Millwrights	<input type="checkbox"/> Operating Engineers
<input type="checkbox"/> Painters	<input type="checkbox"/> Pile Drivers	<input type="checkbox"/> Pipe Trades	<input type="checkbox"/> Plasterers	<input type="checkbox"/> Roofers
<input type="checkbox"/> Sheet Metal	<input type="checkbox"/> Sound/Comm	<input type="checkbox"/> Surveyors	<input type="checkbox"/> Teamster	<input type="checkbox"/> Tile Workers
<input type="checkbox"/> Other(s): _____				

**SUBCONTRACTOR:** \_\_\_\_\_  
 Name of Firm or Corporation

\_\_\_\_\_  
 Department of Industrial Relations No. Contractor’s California License No.

\_\_\_\_\_  
 Principal Point of Contact Name Principal Point of Contact E-Mail Address

Classification of Types of Work to be Performed by Subcontractor Under the Contract (check all that apply):

<input type="checkbox"/> Asbestos	<input type="checkbox"/> Boilermaker	<input type="checkbox"/> Bricklayers	<input type="checkbox"/> Carpenters	<input type="checkbox"/> Carpet/Linoleum
<input type="checkbox"/> Cement Masons	<input type="checkbox"/> Drywall Finisher	<input type="checkbox"/> Drywall/Lathers	<input type="checkbox"/> Electricians	<input type="checkbox"/> Elevator Mechanic
<input type="checkbox"/> Glaziers	<input type="checkbox"/> Iron Workers	<input type="checkbox"/> Laborers	<input type="checkbox"/> Millwrights	<input type="checkbox"/> Operating Engineers
<input type="checkbox"/> Painters	<input type="checkbox"/> Pile Drivers	<input type="checkbox"/> Pipe Trades	<input type="checkbox"/> Plasterers	<input type="checkbox"/> Roofers
<input type="checkbox"/> Sheet Metal	<input type="checkbox"/> Sound/Comm	<input type="checkbox"/> Surveyors	<input type="checkbox"/> Teamster	<input type="checkbox"/> Tile Workers
<input type="checkbox"/> Other(s): _____				

**SUBCONTRACTOR:** \_\_\_\_\_  
 Name of Firm or Corporation

\_\_\_\_\_  
 Department of Industrial Relations No. Contractor's California License No.

\_\_\_\_\_  
 Principal Point of Contact Name Principal Point of Contact E-Mail Address

Classification of Types of Work to be Performed by Subcontractor Under the Contract (check all that apply):

<input type="checkbox"/> Asbestos	<input type="checkbox"/> Boilermaker	<input type="checkbox"/> Bricklayers	<input type="checkbox"/> Carpenters	<input type="checkbox"/> Carpet/Linoleum
<input type="checkbox"/> Cement Masons	<input type="checkbox"/> Drywall Finisher	<input type="checkbox"/> Drywall/Lathers	<input type="checkbox"/> Electricians	<input type="checkbox"/> Elevator Mechanic
<input type="checkbox"/> Glaziers	<input type="checkbox"/> Iron Workers	<input type="checkbox"/> Laborers	<input type="checkbox"/> Millwrights	<input type="checkbox"/> Operating Engineers
<input type="checkbox"/> Painters	<input type="checkbox"/> Pile Drivers	<input type="checkbox"/> Pipe Trades	<input type="checkbox"/> Plasterers	<input type="checkbox"/> Roofers
<input type="checkbox"/> Sheet Metal	<input type="checkbox"/> Sound/Comm	<input type="checkbox"/> Surveyors	<input type="checkbox"/> Teamster	<input type="checkbox"/> Tile Workers
<input type="checkbox"/> Other(s): _____				

**SUBCONTRACTOR:** \_\_\_\_\_  
 Name of Firm or Corporation

\_\_\_\_\_  
 Department of Industrial Relations No. Contractor's California License No.

\_\_\_\_\_  
 Principal Point of Contact Name Principal Point of Contact E-Mail Address

Classification of Types of Work to be Performed by Subcontractor Under the Contract (check all that apply):

<input type="checkbox"/> Asbestos	<input type="checkbox"/> Boilermaker	<input type="checkbox"/> Bricklayers	<input type="checkbox"/> Carpenters	<input type="checkbox"/> Carpet/Linoleum
<input type="checkbox"/> Cement Masons	<input type="checkbox"/> Drywall Finisher	<input type="checkbox"/> Drywall/Lathers	<input type="checkbox"/> Electricians	<input type="checkbox"/> Elevator Mechanic
<input type="checkbox"/> Glaziers	<input type="checkbox"/> Iron Workers	<input type="checkbox"/> Laborers	<input type="checkbox"/> Millwrights	<input type="checkbox"/> Operating Engineers
<input type="checkbox"/> Painters	<input type="checkbox"/> Pile Drivers	<input type="checkbox"/> Pipe Trades	<input type="checkbox"/> Plasterers	<input type="checkbox"/> Roofers
<input type="checkbox"/> Sheet Metal	<input type="checkbox"/> Sound/Comm	<input type="checkbox"/> Surveyors	<input type="checkbox"/> Teamster	<input type="checkbox"/> Tile Workers
<input type="checkbox"/> Other(s): _____				

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

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

END OF SECTION

SECTION 00 49 18

REQUEST FOR PRODUCT SUBSTITUTION (“RFPS”)

In accordance with California Public Contract Code Section 3400, Contractor will be provided a period of 35 days after the date of Award for submission of data substantiating a request for a substitution with an "or equal" item. Refer to Division 01 for requirements for requesting substitutions. Any cost saving resulting from the substitution shall be split equally between the Contractor and the City. Should the City not approve the substitution, the Contractor has no claim for anticipated savings or profits.

Contract No.: DB-121R2 RFPS No. \_\_\_\_\_  
Project Name: Moccasin Powerhouse Generator Rehabilitation  
Submitted By: \_\_\_\_\_ Date: \_\_\_\_\_  
Spec. Section: \_\_\_\_\_ Paragraph(s): \_\_\_\_\_  
Drawing Sheet: \_\_\_\_\_ Detail(s): \_\_\_\_\_

Proposed Substitution: \_\_\_\_\_  
Manufacturer/Address/Phone: \_\_\_\_\_

Trade Name/Model No.: \_\_\_\_\_  
On-Site Representative/Address/Phone: \_\_\_\_\_

Installer/Address/Phone: \_\_\_\_\_

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

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

Reason for not providing specified item: \_\_\_\_\_

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

Proposed substitution affecting other parts of Work: \_\_\_ No \_\_\_ Yes: explain \_\_\_\_\_

Changes or modifications needed to coordinate other parts of the Work that will be necessary to accommodate the proposed substitution:

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

Proposed substitution changes Contract Time: \_\_\_ No \_\_\_ Yes:  
Add/Deduct \_\_\_\_\_ calendar days.

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

The undersigned certifies that:

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

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

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

Attachments \_\_\_\_\_

**CITY’S REVIEW AND ACTION**

- Substitution accepted - Make submittals in accordance with Division 01.
- Substitution accepted as noted - Make corrections and submit in accordance with Division 01.
- Substitution rejected - Use specified materials and equipment.
- Substitution Request received too late - Use specified materials.

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

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

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


END OF SECTION

Ivy Fine, Director  
Project Administration Bureau  
San Francisco Public Utilities Commission  
525 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102

Re: DB-121R2 Moccasin Powerhouse Generator Rehabilitation  
Project Labor Agreement – Letter of Assent

Dear Ms. Fine:

The undersigned party confirms that it agrees to be a party to and bound by the Project Labor Agreement for the Water System Improvement Program and the Second Addendum, thereto, dated July 23, 2019 (collectively, PLA), as the Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms.

The undersigned, as a Contractor or Subcontractor (hereinafter CONTRACTOR) on the Project DB-121R2 Moccasin Powerhouse Generator Rehabilitation (hereinafter PROJECT), for and in consideration of the award to it of a contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the PLA, copies of which were received and are acknowledged, hereby:

- (1) Accepts and agrees to be bound by the terms and conditions of the PLA, together with any and all amendments and supplements now existing or which are later made thereto;
- (2) The CONTRACTOR agrees to be bound by the legally established local trust agreements as set forth in Article IX of this PLA;
- (3) The CONTRACTOR authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the CONTRACTOR;
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said PLA;
- (5) Agrees to secure from any CONTRACTOR(S) (as defined in said PLA) which is or becomes a Subcontractor (of any tier) to it, a duly executed agreement to be bound in form identical to this document.

_____	_____
Date	Signature
_____	_____
Name of Contractor	Authorized Officer and Title
_____	_____
Contractor's State License No.	Address
_____	_____
Name of Prime Contractor or Higher Tier Subcontractor	Phone                      Fax



SECTION 00 61 13

PERFORMANCE AND PAYMENT BOND FORM

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

hereinafter designated as the "Principal", a Contract by COMMISSION RESOLUTION NO. \_\_\_\_, adopted \_\_\_\_\_, 202\_\_ for:

**Moccasin Powerhouse Generator Rehabilitation  
Contract No. DB-121R2 (Award \$ \_\_\_\_\_)**

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

NOW, THEREFORE, we the Principal and

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

(PERFORMANCE BOND)

(PAYMENT BOND)

and

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

(PERFORMANCE BOND)

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

(PAYMENT BOND)

THE CONDITION OF THIS OBLIGATION IS SUCH, that if said principal, its heirs, executors, administrators, successors or assigns, or its subcontractors, shall fail to pay (i) any of the persons named in California Civil Code Section 9100 for any materials, provisions, or other supplies used in, upon, for or about the performance of work under the Contract, or for any work or labor performed under the



SECTION 00 63 30

ESCROW AGREEMENT FOR SECURITY DEPOSITS IN LIEU OF RETENTION

This Escrow Agreement is made and entered into by and between the CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, whose address is 525 Golden Gate Avenue, 8th Floor, San Francisco, California 94102, hereinafter called "City" and,

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

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

and \_\_\_\_\_

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

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

1. Pursuant to section 22300 of the California Public Contract Code, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by the City pursuant to the construction contract entered into between the City and Contractor for Moccasin Powerhouse Generator Rehabilitation, Contract No. DB-121R2 in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereinafter referred to as the "Contract"). Alternatively, on written request of Contractor, the City shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify the City within 10 days of the deposit. The market value of the securities at the time of substitution shall be equal to the cash amount then required to be withheld as retention under the terms of the Contract between the City and Contractor. Securities shall be held in the name of CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, and shall designate Contractor as the beneficial owner.
2. The City shall make progress payments to Contractor for such funds which otherwise would be withheld from progress payments pursuant to the Contract provisions, provided that Escrow Agent holds securities in the form and amount specified above.
3. When the City makes payment of retentions earned directly to Escrow Agent, Escrow Agent shall hold them for the benefit of Contractor until such time as the escrow created under this Contract is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the City pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account and all expenses of the City. These expenses and payment terms shall be determined by the City, Contractor, and Escrow Agent.

5. The interest earned on the securities or the money market accounts held in escrow and all interest earned on that interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the City.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from the City to Escrow Agent that the City consents to the withdrawal of the amount sought to be withdrawn by Contractor.
7. The City shall have the right to draw upon the securities in the event of default by Contractor. Upon seven days' written notice to Escrow Agent from the City of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the City.
8. Upon receipt of written notification from both City Representatives listed in section 10 certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
9. Escrow Agent shall rely on the written notifications from the City and Contractor pursuant to sections 1 to 8, inclusive, of this Escrow Agreement, and the City and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of the securities and interest as set forth above.
10. The persons authorized to give written notice or to receive written notice on behalf of the City and on behalf of Contractor in connection with the foregoing are as follows:

a. On behalf of the City:

(Signature)	(Title)
(Name)	(Address)

and:

(Signature)	(Title)
(Name)	(Address)

b. On behalf of Contractor:

(Signature)	(Title)
(Name)	(Address)

c. On behalf of Escrow Agent:

_____	_____
(Signature)	(Title)
_____	_____
(Name)	(Address)

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

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

CITY AND COUNTY OF  
SAN FRANCISCO:

By: \_\_\_\_\_  
Eric Sandler  
AGM Business Services/Chief Financial Officer

Approved as to form:  
Dennis J. Herrera  
City Attorney

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

ESCROW AGENT:

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

CONTRACTOR:

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name)

\_\_\_\_\_

(Title)

***Note: Contractor shall submit 3 original executed copies of this section to the City.***

END OF SECTION

## SECTION 00 67 00

## ESCROW BID DOCUMENTS

## 1.01 SCOPE AND PURPOSE

- A. This Section establishes a procedure to preserve all documentary information generated by Contractor in preparation of its Bid prices for the Contract Work (hereinafter, "Escrow Bid Documents"). The Escrow Bid Documents of Contractor will be held in escrow for the duration of the Contract. Such Documents will be available for use by the parties to assist in the negotiation of price adjustments and Change Orders and in the settlement of disputes and claims.
- B. Contractor agrees that the Escrow Bid Documents constitute all of the information used in the preparation of its Bid, and that no other Bid preparation information shall be considered in resolving disputes or claims. Contractor and City mutually agree that nothing in the Escrow Bid Documents shall change or modify the terms and conditions of the Contract Documents and that the Escrow Bid Documents shall be available exclusively to assist in the negotiation of price adjustments and Change Orders and in the resolution of disputes and claims.

## 1.02 FORMAT AND CONTENTS

- A. Contractor shall submit Escrow Bid Documents in its usual cost estimation format; a standard format is not required. The intent of the procedure set forth in this Section is not to cause Contractor extra work during the preparation of its Bid, but to ensure that the Escrow Bid Documents will be adequate to enable complete understanding and proper interpretation for their intended use. The Escrow Bid Documents must be in the language (i.e., English) of the Contract Documents.
- B. The Escrow Bid Documents must clearly itemize estimated costs of performing the Work of each Bid Item contained in the Schedule of Bid Prices. Bid Items should be separated into sub-Items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all quantity takeoffs, crew, equipment, calculations of rates of production and progress, copies of quotations from Subcontractors and Suppliers, and memoranda, narratives, add/deduct sheets, and all other information used by the Contractor to arrive at the prices contained in the Bid. Estimated costs should be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and subcontract costs, as appropriate. Plant and equipment and indirect costs should be detailed in the Contractor's usual format. The Contractor's reallocation of indirect costs, contingencies, markup and other items to each Bid Item shall be identified.
- C. All estimates for Items of Work that are based in whole or in part upon any baseline statements or information in the Geotechnical Baseline Report ("GBR"), shall clearly reference the baseline statements used. Contractor shall have no right to an adjustment to the Contract Sum or to the Contract Time (due to alleged Differing Site

Conditions) unless such baseline statements have been clearly identified in the Escrow Bid Documents.

- D. All costs shall be identified. For Bid Items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markups, as applicable, are allocated.
- E. Bid Documents provided by the City need not be included in the Escrow Bid Documents unless necessary to comply with the requirements of this Paragraph 1.02.

### 1.03 SUBMITTAL

- A. Contractor shall submit a set of Escrow Bid Documents accompanied by a signed original Escrow Bid Document Declaration form (refer to Section 00 67 00/A) within 10 working days after receiving notification of the award of Contract. Contractor will not be allowed to begin Work until acceptable Escrow Bid Documents have been received by the City. Contractor shall:
  - 1. Submit Escrow Bid Documents in a sealed container clearly marked on the outside with the Contractor's name, date of submittal, project name and the words: "Escrow Bid Documents - Open only in the presence of authorized representatives of both the City and Contractor." The Escrow Bid Documents may be submitted in hard copy or electronic format. If Contractor uses electronic format, submit Escrow Bid Documents in one or more PDF files (text-searchable highly preferred, but non-searchable is acceptable) stored in a digital memory device acceptable to the City (e.g., USB drive, CD-ROM, etc.).
  - 2. Attach the Escrow Bid Document Declaration form (Section 00 67 00/A), executed under oath by an individual authorized by the Contractor to execute the Bid.
  - 3. Make an appointment and deliver Escrow Bid Documents in person by an authorized representative of Contractor to:

Derek Wong  
SFPUC Contract Administration Bureau  
525 Golden Gate Avenue, 8th Floor  
City and County of San Francisco  
San Francisco, CA 94102  
415-551-4549
  - 4. Verification. At the time of submission, Escrow Bid Documents will be examined, organized and inventoried by representatives of the City, together with members of Contractor's staff who are knowledgeable of how the Bid was prepared. This examination is to ensure that the Escrow Bid Documents are legible and complete. The review will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of the



Contract Documents. Examination will not alter any term or condition of the Contract.

5. If all the documentation required by Paragraph 1.02, above, has not been included in the original submittal, Contractor shall submit additional documentation, at the City's sole discretion, within 24 hours after the original inventory and examination of the Escrow Bid Documents. The detailed breakdown of estimated costs shall be reconciled and revised, if appropriate, by agreement between the Contractor and the City.
6. The City, upon determining that the Escrow Bid Documents are complete, will, in the presence of Contractor's representative(s), place the complete Escrow Bid Documents (hard copy and/or electronic format) and Declaration in the container and seal it.
7. If Contractor's Total Bid Price is based upon subcontracting any part of the Work, Contractor shall also provide the Escrow Bid Documents for each Subcontractor required to be listed in accordance with section 4104 of the California Public Contract Code. The Subcontractors' Escrow Documents shall be opened and examined in the same manner and at the same time as the examination described above for Contractor.
8. For any portion of Work subcontracted after award or NTP, the City retains the right to require Contractor to submit Escrow Bid Documents from the proposed Subcontractor before such subcontract is approved.

1.04 **Refusal or Failure to Provide Escrow Bid Documents.**

- A. Contractor's failure or refusal to provide Escrow Bid Documents or to cooperate in their verification shall be deemed either (i) failure to enter into the Contract if the Contract has not yet been executed or (ii) a material breach of the Contract if the Contract has been executed.
- B. Should Contractor fail to enter into the Contract as stated in (i), above, the City will retain the Bid Security. Should Contractor fail to provide Escrow Bid Documents or cooperate in their verification after execution of the Contract, the City may, at its option, terminate the Contract for default subject to the default provisions of the General Conditions (Section 00 72 00.22). These remedies are not exclusive and the City may take such other action as is available to it under the Contract and applicable law.

1.05 **OWNERSHIP**

- A. Escrow Bid Documents are, and shall always remain, the property of Contractor, subject to joint review by the City and Contractor as provided herein. The City stipulates and expressly acknowledges that the Escrow Bid Documents may constitute trade secrets and may contain information which is known only to Contractor's business.

- B. The City will safeguard the Escrow Bid Documents, and all information contained therein, against disclosure to third parties to the fullest extent permitted by law.

#### 1.06 EXAMINATION

- A. The Escrow Bid Documents will be examined by both the City and Contractor at any time deemed necessary by the City or Contractor to assist in the negotiation of price adjustments and Change Orders or the settlement of disputes and claims.
- B. Examination of the Escrow Bid Documents is subject to the following conditions:
  - 1. The City and Contractor shall each designate, in writing to the other party and 7 calendar days prior to any examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents. Contractor shall cooperate with the City in good faith to provide reasonable and timely access to Escrow Bid Documents including without limitation during DRB proceedings (e.g., hearings and position papers), Contract and Government Code Claims review, and/or litigation relating to the Contract.
  - 2. Access to the documents may take place only in the presence of duly designated representatives of both the City and Contractor.
  - 3. Reproduction of any portion of the Escrow Bid Documents will not be permitted at any time without the express written permission of the Contractor.
- C. The City's examination of Escrow Bid Documents shall not include review of, and will not constitute approval of, proposed construction methods, estimating assumptions, or interpretations of Contract Documents. Examination shall not alter any condition or term of the Contract.

#### 1.07 STORAGE AND FINAL DISPOSITION

- A. The City will place Escrow Bid Documents in escrow for the duration of the Contract in a mutually agreeable location in San Francisco. The cost of storage will be paid by the City.
- B. Escrow Bid Documents will be returned to Contractor at such time as the Contract has been completed, final settlement of all pending claims has been achieved, and final payment has been issued by the City.

END OF SECTION

SECTION 00 67 00/A

ESCROW BID DOCUMENT DECLARATION

I, \_\_\_\_\_, hereby declare under penalty of perjury pursuant to the laws of the State of California that the Bid documentation contained herein constitutes all the information used in preparation of the Bid and that I have personally examined these contents and have found that this Bid documentation is complete and that no other Bid documentation is known to me which is necessary to consider in resolving disputes or claims.

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

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

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

\_\_\_\_\_  
Date

END OF SECTION



**SECTION 00 72 00.22**  
**GENERAL CONDITIONS**  
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## GENERAL CONDITIONS

### ARTICLE 1 – GENERAL

#### 1.01 DEFINITIONS

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

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

2. **Addenda:** Written or graphic instruments issued prior to the opening of Proposals or Bids which make changes, additions or deletions to the Proposal or Bid Documents.

3. **Advertisement for Bid:** A set of documents that includes, without limitation, the published advertisement for bids on a subcontract; the forms to be submitted with a bid, as required by the City; the construction contract general and special conditions; and the plans and specifications for the Work.

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

5. **Approved Equal:** Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the City Representative. The burden of establishing proof of equality is the responsibility of Design-Builder. Refer to Division 01 for procedures for proposing substitutions.

6. **Available Project Information:** Refer to "Reference Documents."

7. **Bid Documents:** The subset of the Contract Documents provided by the City with the Request for Bids.

8. **Bid Package:** A subset and presentation of the Construction Documents for procurement purposes for a defined scope of Work. Also known as "Trade Bid Package." It is the package of documents, specifications, drawings, Available Project Information, and instructions to bidders that describe the details of the Bid Package for bidding on Work. Bid Packages are prepared by the Design-Builder with the approval of the City, except for Bid Packages the Design-Builder desires to bid on or self-perform. (See 00 52 00, "Procurement of Trade Subcontractors")

9. **Bidder:** An entity or person providing a competitive bid in response to a Request for Bids.

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

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

12. **By Others:** Work on this Project that is outside the scope of Work to be performed by Design-Builder under this Contract that will be performed by the City, other contractors, or other means and at another's expense.

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

Article 6, Clarifications and Changes in the Work.

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

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

16. **City Representative**: The authorized Design Phase and on-Site representative of the City, identified by the City in writing who will act as the City’s representative with respect to Design-Builder’s performance of completion of the Construction Documents and the on-Site inspection and administration of the Contract. All liaisons between the City and Design-Builder shall be directed through the City Representative. City Representative shall also mean any person designated in writing by the City Representative as having the authority to act as a designee on behalf of the City Representative.

17. **Claim**: A written demand or assertion by Design-Builder seeking an adjustment of the terms of the Contract Documents, an adjustment in the Contract Sum or Contract Time, or both, or other relief with respect to the Contract Documents, including a determination of disputes between the City and the Design-Builder arising out of or related to the Contract Documents or the performance of the Work, which the Design-Builder may submit in accordance with the requirements of the Contract Documents. Refer to Article 13.

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

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

20. **Commission**: Refers to the San Francisco Public Utilities Commission. Refer to Section 00 52 00, Design Build Agreement Form.

21. **Commissioning**: A systematic quality assurance process including functional, performance, pre-start-up and start-up tests for facilities, systems and assemblies to ensure they meet the requirements as set forth in Section 01 75 60 - Testing Coordination And Start-Up Testing.

22. **Commissioning Agent**: Refer to "Testing Coordinator" in Section 01 75 60 - Testing Coordination And Start-Up Testing.

23. **Commissioning Plan**: Refer to test procedures and start-up plan in Section 01 75 60 - Testing Coordination And Start-Up Testing.

24. **Construction Documents**: For the Construction Phase, the Design-Builder’s complete Drawings, Specifications, Calculations, Reports, and other documents produced and delivered in accordance with the Criteria Package and City Representative’s iterative reviews and approval.

25. **Construction Drawings**: The graphic and pictorial portions of the Construction Documents to be prepared by the Design-Builder and approved by the City showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

26. **Construction Phase**: The point in time after the City Representative issues a Notice To Proceed for Construction. The Contract Documents may specify more than one NTP applicable to different portions of the Work. The Design Phase may be partially concurrent with the Construction Phase.

27. **Contract**: Refer to “Contract Documents.”

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

29. **Contract Sum**: The sum stated in the Design Build Agreement and, including City-approved adjustments, the total amount payable by the City to Design-Builder for the performance of the Work under the Contract Documents. Refer to Section 00 52 00, Design Build Agreement Form.

30. **Contract Time(s)**: The number of consecutive days as stated in Section 00 73 02 from the start date specified in the Notice to Proceed to: (i) achieve Substantial Completion for all the listed Work; (ii) complete the Work so that it is ready for final acceptance as evidenced by the City’s issuance of written acceptance as required by

section 6.22(k) of the Administrative Code; and (iii) achieve any interim Milestones specified in the Contract Documents. There may be separate Contract Times for the Design and Construction Phases.

**31. Contracting Requirements:** The Contracting Requirements establish the rights and responsibilities of the parties and include these General Conditions (Section 00 72 00.22) and the Sections as listed under Contracting Requirements in the Table of Contents (Section 00 01 10).

**32. Contractor:** Refer to "Design-Builder."

**33. Core Trade Subcontractor:** A pre-qualified Trade Subcontractor that may provide key pre-construction services, including but not limited to design-assist, design-build, or value engineering services. Core Trade Subcontractors may be retained to provide Construction Services. Refer to Section 00 52 00, Design Build Agreement Form, "Construction Services", if applicable.

**34. Criteria Package:** Any design specifications provided by the City with the Bid Documents including without limitations design criteria, performance criteria, engineering reports, and preliminary design documents.

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

**36. Critical Path Method ("CPM"):** Refers to the critical path method scheduling technique. Refer to Section 01 32 16 Construction Progress Schedule

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

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

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

**40. Department Head:** The contracting officer for the Design Build Agreement, i.e., the General Manager of the San Francisco Public Utilities Commission, or his/her designee, acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them. Refer to Section 00 52 00, Design Build Agreement Form.

**41. Design Build Agreement or DBA:** The Agreement or Contract to be entered into by and between the City and Design-Builder relating to the design and construction of the Project. The Contract Documents are incorporated into and made part of the DBA. Agreement. The Contract is fully executed upon certification by the Controller of the City and County of San Francisco as to the availability of construction funds. Refer to Section 00 52 00, Design Build Agreement Form.

**42. Design-Builder (Also referred to as "Contractor"):** The person or entity selected by the City to design and build the Project and with whom the City has executed the DBA. Design-Builder or Contractor is referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "Design-Builder" or "Contractor" means Design-Builder and its authorized representatives and agents, employees, successors and assigns, and any persons or entities who work by, through, or for any of them.

**43. Designer:** The entity in the Design-Builder's team responsible for designing the project. The Designer is referred to throughout the Contract Documents as if singular in number and neuter in gender.

**44. Design Professional:** A person that is a member of Design-Builder's team, either as an employee or through a subconsultant, who is lawfully entitled to practice architecture or engineering in the State of California who will provide design services for the Project.

**45. Design Directive:** A specific change to the design approach and scope determined by the City. Any changes resulting from a Design Directive will be incorporated into the contract by Change Order. Refer to Article 6.

**46. Design Manager:** An individual designated by Design-Builder to be responsible for the coordination and quality control of Project design elements, including the review and approval of design submittals.

**47. Design Phase:** The time from NTP for Design until the Construction Documents for the Project are complete. The Design Phase also may include pre-construction services before construction work begins.

**48. Design Requirements:** The design-related work and construction support services required to be provided

by Design-Builder as set forth in the Contract Documents and required to be performed by properly licensed design professionals.

**49. Design Submittal:** Documents, usually drawings and/or specifications, submitted by Design-Builder to the City to indicate how the Design-Builder intends to build the Project, and which will eventually become the Construction Documents.

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

**51. Differing Site Conditions:** Refer to Paragraph 3.05, Differing Site Conditions.

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

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

**54. Field Order:** A written order issued by the City which provides instructions or requires minor changes in the Work but which does not involve a change in the Contract Sum or the Contract Time. Refer to Paragraph 6.02, Requests for Information, Clarifications and Field Orders.

**55. Final Completion:** The date of written acceptance of the Work by the City, issued in accordance with section 6.22(k) of the Administrative Code, when the Contract Work has been fully and satisfactorily completed in accordance with the Contract Documents. Where the Contract Documents specify more than one phase of Work, Final Completion shall mean the date corresponding to Final Completion of the last phase of Work that Design-Builder completes.

**56. Bid:** Bidder's response to the Request for Bids that meets the City's requirements set forth in the Request for Bids.

**57. Force Account Work:** Change Order Work that the City authorizes and will pay for on the basis of direct costs plus markup on direct costs for overhead and profit as provided in Paragraph 6.07, Force Account Work.

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

**59. General Requirements:** The General Requirements include all Documents in Division 01, which govern the Design-Builder's performance of the Work set forth in all sections of the Specifications.

**60. Guarantee To Repair Period:** The period specified in Paragraph 8.03 or Division 01 during which Design-Builder must correct Non-conforming Work.

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

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

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

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

**65. Key Team Members:** The essential personnel on Design-Builder's team identified in the Proposer's Experience Statements submitted in response to the City's RFQ/RFB, subject to the City's approval prior to the start of each phase of Work. Design-Builder and its Subcontractors and Subconsultants agree not to transfer or remove said individuals from the Project without the prior written permission or direction of the City, which will not be unreasonably withheld.

**66. Lower-Tier Subcontractor or Supplier:** A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to furnish

materials or equipment to be incorporated in the Work by Design-Builder, Subcontractor or Lower-Tier Subcontractor, as applicable.

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

**68. Modification:** A document incorporating one or more Change Orders or a written instrument modifying the Design Build Agreement executed and approved in the same manner as the Design Build Agreement in compliance with the Certification by Controller requirements of the City's Charter as stated in Section 00 52 00 and all requirements set forth in Chapter 6 of the Administrative Code.

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

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

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

**72. Notice of Substantial Completion:** The written notice issued by the City to Design-Builder documenting City's determination that the Work is Substantially Complete. Said Notice shall not be considered to indicate the City's final acceptance of any portion of the Work or relieve Design-Builder from completing the punch list items attached to said Notice within the specified time and in full compliance with the Contract Documents.

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

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

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

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

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

**78. Project Manual:** The bound written portion of the Contract Documents prepared for the Request for Bids and Design-Builder's construction of the Work. A listing of the contents of the Project Manual, which consists of the Documents and Specification sections and may include schedules, is contained in the Section 00 01 10 – Table of Contents.

**79. Proposed Change Order ("PCO"):** A document prepared by the City requesting a quotation of cost or time from Design-Builder for additions, deletions or revisions in the construction Work.

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

**81. Punch List/Final Completion:** A list prepared by the City at Substantial Completion identifying deficient Work Items that the Design-Builder must correct in order to achieve Final Completion. Refer to Paragraph 9.09, Final Completion and Final Payment.

**82. Punch List/Substantial Completion:** The list provided by the City identifying incomplete or defective Work Items that Design-Builder must correct or complete to achieve Substantial Completion. Refer to Paragraph 9.08, Substantial Completion.

**83. Quality Assurance ("QA"):** All those planned and systematic actions by Design-Builder necessary to provide the City with confidence that Design-Builder has conducted a Quality Control Program.

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

**85. Reference Documents (Also referred to as "Available Project Information"):** Refer to Request for Bids and Criteria Package for identification of Reference Documents provided by the City, if any. Reference Documents are for informational purpose only and not part of the Contract Documents.

86. **Regular Working Hours:** 7:00 a.m. to 5:00 p.m., Monday through Friday, except City legal holidays.
87. **Request for Information (“RFI”):** A document submitted by Design-Builder requesting information from the City about the Project or the Contract Documents.
88. **Request for Product Substitution (“RFPS”):** A request from Design-Builder in accordance with the conditions specified in Division 01 to substitute a material, product, thing or service specified in the Contract Documents with an equal material, product, thing or service. Refer to Paragraph 3.13, Substitutions, and Section 00 49 18, Request for Product Substitution form.
89. **Request For Bids (“RFB”):** The City’s Request for Bids for Design-Build Services, including all Addenda.
90. **Request For Qualifications (“RFQ”):** The City’s Request for Qualifications, including all Addenda.
91. **Required:** Mandatory.
92. **Resident Engineer:** See “City Representative.”
93. **Samples:** Physical examples of materials, equipment, or workmanship submitted or provided by Design-Builder for adjudication of their compliance with the specification.
94. **Shop Drawings:** All drawings, diagrams, illustrations, schedules and other data or information that are prepared or assembled by or for Design-Builder and submitted to City.
95. **Site:** Geographical location of the Project as indicated elsewhere in the Contract Documents.
96. **Special Provisions:** The part of the Contract Documents that amends, modifies, or supplements these General Conditions. The Special Provisions include the 00 73 00-series Documents as listed in Section 00 01 10, Table of Contents.
97. **Specifications:** The portion of the Project Manual comprising Division 00 through Division 48 and listed in Section 00 01 10, Table of Contents, consisting of requirements and technical descriptions of materials, equipment, systems, standards and workmanship for the Work, and performance of related administrative services.
98. **Specified:** Written or indicated in the Contract Documents.
99. **Subcontractor:** A person or entity who has a direct contract with Design-Builder to perform a portion of the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor. The term “Subcontractor” shall also include contracts assigned to Design-Builder if so provided in the Supplementary Conditions or specified in the General Requirements (Division 01). Unless a Contract Document expressly states to the contrary, the term “Subcontractor” includes a person or entity who has a direct contract with Design-Builder to provide professional services in connection with the Work such as (but not limited to) engineering services, design professional services and/or construction administration services and may be referred to as “Subconsultant.” “Core Trade Subcontractors” are also “Subcontractors.”
100. **Submittal:** A written or graphic document prepared by Design-Builder that the Contract Documents require the Design-Builder to submit to the City. Design-Builder’s project manager and design manager shall certify in writing that each Submittal meets the requirement of the Criteria Package. Submittals may include, but are not limited to, Drawings, Specifications, progress and submittal schedules, BIM information, shop drawings, product data, samples, design data, test reports and certificates. Submittals other than Drawings or Specifications are not Contract Documents.
101. **Substantial Completion:** The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents including receipt of a temporary certificate of occupancy, if applicable, or use authorization, issued by the agency or agencies having jurisdiction over the Work so that the City can utilize the Work (or a specified part thereof) for the purposes for which it is intended. Where the Contract Documents specify more than one phase, Substantial Completion shall mean the date corresponding to Substantial Completion of the last phase that is substantially complete.
102. **Supplementary Conditions:** The part of the Contract Documents that amends, deletes or modifies these General Conditions. The Supplementary Conditions are set forth in Section 00 73 00.
103. **Supplier:** A manufacturer, fabricator, distributor, or vendor having a direct contract with Design-Builder or with a Subcontractor to furnish materials or equipment to be incorporated in the Work.
104. **Supply:** Refer to “Furnish.”

105. **Task Order:** A written instrument issued by the City and executed in writing by the City and Design-Builder, stating their agreement for Design-Builder to perform a specified portion of the Work that includes the following information: (a) scope of work; (b) a budget for the work, including staff and billable rates; (c) schedule for completion of the Work. The City will issue a separate Notice to Proceed for each Task Order. Design-Builder shall not commence work on any Task Order until the City has issued the NTP for the Work of that Task Order.

106. **Testing Agencies:** An independent entity engaged by the City or Design-Builder, as specified in the Contract Documents, to perform specific inspections or tests, either at the Site or elsewhere, and to report on and, if required, to interpret results of those inspections or tests.

107. **Total Bid Price:** Refer to the RFB.

108. **Trade Subcontractor:** A licensed construction Subcontractor that performs construction trade work during the Construction Phase.

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

110. **Unilateral Change Order:** A written Change Order issued by the City to the Design-Builder after the effective date of the Design Build Agreement in accordance with Paragraph 6.05.

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

112. **Work:** The performance by Design-Builder of all its responsibilities and obligations set forth in the Contract Documents. Work shall include, but not be limited to, providing all labor, materials, equipment, administrative services, design services, Commissioning services, and documentation required by the Contract Documents for the design and construction of the Project. References in the Contract Documents to "Work" may be to items of Work. Refer to Paragraph 1.03.

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

## 1.02 CONTRACT DOCUMENTS AND CONTRACTING REQUIREMENTS

A. The Contract Documents set forth the requirements for the design and construction of the Work, and consist of the following documents:

1. the Design Build Agreement and other documents listed in the Agreement;
2. Change Orders, Unilateral Change Orders, Clarifications, and Field Orders issued after execution of the Contract;
3. The General Conditions (Section 00 72 00.22);
4. The Special Provisions (Sections 00 73 00 through 00 73 84) and General Requirements (Div. 01);
5. The Criteria Package, including all appendices and attachments;
6. The Construction Documents and all Addenda thereto, which will be prepared by Design-Builder and Accepted by the City;
7. The Request for Bids, including all Addenda in chronological order, to the extent not in conflict with the foregoing; and
8. Design-Builder's Bid, to the extent, not in conflict with the foregoing.

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

C. The Contracting Requirements and the General Requirements contain information necessary for completion of every part of the Project and are applicable to each section of the Specifications. Where items of Work are performed under subcontracts, Design-Builder shall be responsible to ensure that the work complies with the Contracting Requirements and General Requirements

## 1.03 MEANING AND INTENT OF CONTRACT DOCUMENTS

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

B. Design-Builder is obligated to interpret the Contract Documents describe and provide for a functionally complete and operational Project (or part thereof) that Design-Builder must design, construct and turn over to the City in a new, complete and satisfactory operating condition. All Work, materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as necessary to properly execute and complete the Work to conform to the requirements of the Contract Documents shall be provided by Design-Builder with no change in the Contract Sum or Contract Time.

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

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

E. The Criteria Package sets forth the standard for workmanship and material for the Work. Where necessary, and where reasonably inferable from the Criteria Package, Design-Builder shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be subject to acceptance by the City. Repetitive features shown in outline on the Criteria Package shall be in exact accordance with corresponding features completely shown.

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

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

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

I. When there is a conflict between existing on-Site conditions and information indicated on the Drawings, other than Differing Site Conditions as defined in Paragraph 3.05, the existing condition shall govern. Design-Builder shall perform the Work and adjust to the existing condition at no additional cost to the City, provided Design-Builder should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Bid in accordance with the requirements of the RFB.

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

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

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

B. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (i) a Field Order; (ii) a Clarification, written interpretation or other bulletin issued by the City; or (iii) the City's review and acceptance of a shop drawing or sample in accordance with Paragraph 3.12.



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

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

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

1. Modifications in inverse chronological order, and in same order as specific portions they are modifying.
2. Executed Design Build Agreement (DBA Form).
3. Addenda.
4. Division 01 (General Requirements).
5. Division 00 (Bidding and Contract Requirements).
6. The Criteria Package.
7. Divisions 02 through 48 (Technical Specifications).
8. Construction Drawings.

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

1. Written numbers over figures, unless obviously incorrect.
2. Figured dimensions over scaled dimensions.
3. Large-scale Drawings over small-scale Drawings.
4. Schedules on Drawings or in Project Manual over conflicting information on other portions of Drawings.
5. Detail Drawings govern over general Drawings.
6. Drawing with highest revision number prevails.

## **1.06 REUSE OF CONTRACT DOCUMENTS**

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

## **ARTICLE 2 – CITY’S RESPONSIBILITIES AND RIGHTS**

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

A. The City shall administer the DBA as described in the Contract Documents.

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

C. During the Design Phase, the review, approval, or other action taken by the City upon Design-Builder's Design

Submittals shall apply only as to whether the design, drawings and specifications are in conformance with the intent and requirements of the Criteria Package. During the Construction Phase, the review, approval, or other action taken by the City upon Design-Builder's Construction Submittals shall be for strict compliance with the Construction Documents. The City will respond to Submittals with reasonable promptness provided that the City shall be provided a reasonable time, as set forth in the General Requirements, to permit adequate review. Such actions of the City shall in no way relieve Design-Builder from its responsibility to complete a fully functional and operational project, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper and timely execution of the Work. Should the City request a change that affects the cost or time of performance to a Design-Builder's Submittal that was previously approved by the City, and the Submittal conforms to the requirements of the Criteria Package or incorporates deviations from the Criteria Package specifically approved by the City, Design-Builder may submit a Claim in accordance with Article 13. Design-Builder shall be responsible to provide design and engineering or other costs necessary to prepare the Submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of approving a change in the requirements of the Criteria Package, from obtaining a credit for construction cost resulting from allowed concessions in the Work or materials therefor.

## **2.02 INFORMATION AND SERVICES**

A. The City shall make the Site available to Design-Builder so that Design-Builder can inspect the Site and perform the Work.

B. The City shall furnish survey and reports describing physical characteristics, legal limitations and utility locations for the Site.

C. The City shall make available to the Design-Builder as Reference Documents only, information available to the City concerning the Site and the Project. The City will provide assistance with, but will not be responsible for, the filing of documents as is required to obtain necessary approvals of governmental authorities, jurisdictional agencies, or utility companies having jurisdiction over the Project. Such assistance may be in the form of executing permits where owner's signature is required or in the providing of information that would not otherwise be available to Design-Builder. The Design-Builder shall be responsible for payment of related services, fees or taxes except as specified in Paragraph 3.08.

D. The City will be responsible for paying all real property taxes and assessments applicable during the performance of the Work or portions thereof.

E. The City shall apply and pay for the building permit if required for the Work and shall pay all permanent utility service connection fees. All other permits, easements, approvals, temporary utility charges, and other charges required for construction shall be secured and paid for by Design-Builder in accordance with Paragraph 3.08.

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

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

A. The City may order Design-Builder to stop the Work, or a portion thereof, until Design-Builder eliminates or addresses the cause for such order. City shall issue any such order to stop the Work in a written document signed by the City Representative, which provides Design-Builder with an effective date for stopping Work. The City may issue an order to stop Work immediately. Unless otherwise agreed to by the City, Design-Builder shall not be entitled to an adjustment of the Contract Time or Contract Sum as a result of an order to stop the Work.

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

C. The City may order Design-Builder to stop the Work, or a portion thereof, for reasons including but are not limited to the following:

1. Design-Builder fails to correct Work that is not in accordance with the requirements of the Contract Documents;
- or
2. Design-Builder fails to carry out Work in accordance with the Contract Documents; or
  3. Design-Builder disregards the authority of the authorized City Representative; or
  4. Design-Builder disregards the laws or orders of a public body having jurisdiction over the Project; or
  5. Design-Builder violates any material provisions of the Contract Documents; or

6. Design-Builder fails to maintain current certificates of insurance on file with the City; or

7. Design-Builder is proceeding with original Contract Work, which will be modified by a pending Change Order.

D. Alternatively, the City may issue a written notice to Design-Builder identifying the ground(s) for ordering Design-Builder to stop Work and providing the Design-Builder with a 14-day cure period to complete necessary corrective Work and/or actions. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Design-Builder or its Subconsultants, Subcontractors and Suppliers, Design-Builder shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence and prosecute the corrective Work and/or actions diligently. The City, after accepting Design-Builder's proposed schedule, will amend the stop work notice in writing to set forth the agreed-upon cure period. If Design-Builder fails to completely cure the ground(s) for stopping Work either (i) within the 14-day cure period set forth in the notice; or (ii) within the agreed-upon cure period set forth in an amended notice, the City may, without prejudice to any other rights or remedies that the City may have, order Design-Builder to stop the Work until the cause for such order has been eliminated.

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

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

A. In the event that Design-Builder fails to carry out the Work in accordance with the Contract Documents and fails to correct or prosecute the Work promptly within a 3-day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies.

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

## **2.05 EXAMINATION OF RECORDS; AUDIT**

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

B. Upon written notice by the City, Design-Builder immediately shall make available at its office at all reasonable times the materials noted in subparagraph 2.05A for examination, audit, or reproduction. Notice shall be in writing, delivered by hand or by certified mail, and shall provide not fewer than five-days' notice of the examination and/or audit. The City may take possession of the records and materials noted in subparagraph (A) by reproducing documents for off-site review or audit. When requested in the City's written notice of examination and/or audit, Design-Builder shall provide the City with copies of electronic documents and electronically stored information in a reasonably usable format that allows the City to access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Design-Builder shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.

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

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

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

F. Design-Builder shall insert and require the insertion of a clause containing all the provisions of this Paragraph in all

subcontracts in excess of \$10,000 with Subconsultants, Subcontractors, and Suppliers of all tiers.

## **2.06 NO WAIVER OF RIGHTS**

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

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

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

The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Design-Builder for any type of special, consequential or incidental damages arising out of or connected with Design-Builder's Work.

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

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

## **ARTICLE 3 – DESIGN BUILDER'S RESPONSIBILITIES**

### **3.01 GENERAL DESIGN AND CONSTRUCTION RESPONSIBILITIES**

A. Services and Standards. The Design-Builder shall perform or furnish all pre-construction, construction, and related services as set forth in the Contract Documents. Design-Builder shall provide all pre-construction and construction services necessary for receipt of all occupancy permits and authorizations to operate for a facility meeting or exceeding all design and specification requirements as agreed upon by the City & Contractor, and as set forth in the Contract Documents. Design-Builder assumes responsibility for on-budget, on-schedule delivery of the Project regardless of its contractual agreements with parties other than the City.

B. Key Team Members. Design-Builder acknowledges and agrees that the City selected Design-Builder upon the representation that the Key Team Members identified in the RFQ/RFB would be the Key Team Members involved in the services for the Project. Any changes in assignment or replacement of the Key Team Members, may be done only with the prior written consent of the City, which consent may be given or withheld in the sole, subjective (but not arbitrary) discretion of the City. In the event of a withdrawal from the Project by Key Team Members due to circumstances outside the control of Design-Builder, such as death, long-term illness, or resignation by any such Key Team Members, Design-Builder shall promptly notify the City in writing and shall submit for City approval its candidate to replace such individual.

C. Cooperation. Design-Builder shall provide the City, its employees, consultants, and other representatives, and representatives of other authorities having jurisdiction, with full cooperation in the performance of their duties and responsibilities related to the Work covered by the Contract and shall maintain civil decorum on the Project site. Such cooperation may take the form of providing appropriate personnel to attend meetings, reviews, hearings, inspections, or similar project-related functions, and to provide documents as requested.

### 3.02 DESIGN PROFESSIONAL SERVICES

A. This Paragraph sets forth Design Professional services that Design-Builder shall provide for the Project. Refer to the Criteria Package and Section 01 11 14 Designer Services for additional, specific requirements.

B. Design-Builder's design work for the Project shall be performed by or under the responsible charge of licensed Design Professional(s) who have the necessary expertise and experience required to prepare design documents to enable Design-Builder to complete the Project in accordance with the requirements of the Contract Documents.

1. All design work shall be stamped by State of California licensed architects or engineers, as appropriate.

2. Design-Builder's Design Manager shall approve all stamped design work.

C. Such Design Professional(s) shall be vested with the authority to act on behalf of Design-Builder in all matters relating to design or supervision of construction of that Item(s) for which he or she is responsible. Design-Builder's may replace Design Professional(s) only with the approval of the City.

D. Design-Builder shall require its Design Professional(s) to be responsible without limitation for the following:

1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.

2. Before undertaking each part of the Work, review the Contract Documents, including the Criteria Package, and existing Reference Documents and studies of the proposed Site and other data furnished to the Design Professional, and advise the City whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed. Design-Builder shall notify the City in writing promptly as specified in Paragraph 6.02 upon discovery of any conflict, error, fault, ambiguity, discrepancy, or defect, and the City will issue a Clarification or RFI reply, as appropriate, as to the procedure to be followed.

3. Provide additional surveys, studies, investigations (including potholing), reports and information related to the Site, which the Design Professional deems necessary for the performance of the Work.

4. Provide design-related services for preparing Design and Construction Documents necessary for Design-Builder to construct and interface the Item(s) in complete conformance with the intent and performance requirements of the Contract Documents.

a. Design-Builder shall submit Design and Construction Documents to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents. Design-Builder shall submit Construction Documents to the City for review and acceptance prior to Design-Builder initiating permit or construction activities based on such Construction Documents.

b. The City's review, approval or acceptance of Design and Construction Documents submitted by Design-Builder shall neither release Design-Builder from its responsibilities to coordinate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the

Contract Documents, nor transfer any design liability from Design-Builder to City.

c. All Design and Construction Documents, including CADD and/or other electronic files prepared by Design-Builder's Design Professionals, and all other documents prepared by Design-Builder or its Subconsultants in connection with Design Professional services, shall become and remain the property of the City, except as otherwise provided herein; provided, however, the Design-Builder shall be entitled to retain one reproducible copy thereof, made at Design-Builder's expense. Design-Builder will provide the City with software that will allow the City to view the CADD or other electronic files. Design-Builder shall provide the City with all tools or facilities necessary to view the files; the ability to alter the files is not intended.

d. Design-Builder shall prepare the Design and Construction Documents for the Work of the DBA only. Any unauthorized use of the Design and Construction Documents is at the sole liability of the user. The City and Design-Builder may make and retain copies of the Design and Construction Documents for information and reference in connection with the use and occupancy of the Project by the City.

5. Provide to the City design data, technical criteria and assistance necessary for supporting, protecting, and incorporating into the Project the Item(s) designed by the Design Professional.

6. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with authorities having jurisdiction over the Project.

7. Provide Design Professional's professional liability policies and coverages as required in Section 00 73 16.

8. Provide assistance in connection with the Commissioning, start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.

9. Assist the City in training staff and developing processes and procedures for operation, maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.

E. Design-Builder shall be wholly responsible for all engineering and design of all Items designed by Design-Builder regardless of any contribution, input, review, participation, or coordination that the City, its agents, members, employees, and authorized representatives may have provided to Design-Builder or its Designer.

F. At all times during the Design Phase of the Project, Design-Builder shall provide the City and its representatives full access to design documents and design meetings.

G. If, in connection with the Design Professional services performed under the DBA, Design-Builder or its Subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If it is ever determined that any such works created by Design-Builder under the DBA are not works for hire under Federal law, Design-Builder hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Design-Builder may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

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

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

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

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

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

F. Prior to start of Work, Design-Builder and the City Representative shall visit the site and adjacent properties as necessary to document existing conditions including photographs. Design-Builder shall document these conditions and shall submit to the City prior to the start of Work a complete report of existing conditions determined by the site survey as indicated in Division 01.

### **3.04 SUPERVISION OF THE WORK**

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

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

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

1. Coordinate its Work with the dependent work;
2. Provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
3. Supply and install items to be built into dependent work of others;
4. Make provisions for dependent work of others;
5. Examine dependent drawings and specifications and submittals;
6. Examine previously placed dependent work;
7. Check and verify dependent dimensions of previously placed work;
8. Notify Design-Builder of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
9. Not proceed with its Work until any unsatisfactory dependent conditions have been corrected.

D. Design-Builder shall immediately comply with and prosecute orders and instructions including, but not limited to, Change Orders, RFI replies and Clarifications given by the City in accordance with the terms of this Contract, but nothing stated herein shall be interpreted to relieve Design-Builder of any of its obligations or liabilities under this Contract, or of performing its duty to direct and supervise the Work.

E. Design-Builder shall at all times permit the City, its agents and authorized representatives to: (i) visit and inspect the Work, the materials and the manufacture and preparation of such materials; and (ii) reject materials that do not conform to the requirements of the Contract Documents. This obligation of Design-Builder shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to

be tested or inspected, Design-Builder shall not permit the Work to be covered up before inspection and approval by the City as set forth in Article 8.

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

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

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

### 3.05 DIFFERING SITE CONDITIONS

A. Consistent with section 7104 of the California Public Contract Code, if Design-Builder encounters any of the following conditions at the Site, Design-Builder shall promptly notify the City in writing of the specific differing conditions before such conditions are disturbed and before performing any affected Work to permit the City to timely investigate the conditions.

1. Material that Design-Builder believes may be classified as hazardous waste, as defined in California Health and Safety Code Section 25117, which is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of law.

2. Subsurface or latent physical conditions at the Site (including hazardous waste) which differ materially from those indicated by information about the Site made available to Design-Builders prior to the deadline for submitting Bids.

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

B. Design-Builder shall bear the burden of proving that a Differing Site Condition exists and that it could not reasonably have worked around the Differing Site Condition so as to avoid additional cost. Design-Builder's written notice of a Differing Site Condition shall be accompanied by a statement signed by a professional licensed or certified in the applicable field of expertise setting forth all relevant assumptions made by Design-Builder with respect to the condition of the Site, justifying the basis for such assumptions, explaining exactly how the existing conditions differ from those assumptions, and stating the efforts undertaken by Design-Builder to find alternative design or construction solutions to eliminate or minimize the problem and the associated costs.

C. Design-Builder's written notice shall include the following information concerning such Differing Site Conditions: (i) location; (ii) nature and extent; (iii) a description of how such conditions affect the Work; (iv) recommended methods to overcome such conditions; (v) the baseline conditions described in the Contract Documents that formed the basis of Design-Builder's expectations regarding the conditions that Design-Builder would encounter; (vi) the statement signed by a professional described in subparagraph 3.05B above; and (vii) the results of any testing, sampling, or other investigation conducted by Design-Builder.

D. Differing Site Conditions shall not include:

1. All that is indicated in or reasonably interpreted from the Contract Documents or Available Project Information;

2. All that could be seen on Site from a reasonable pre-bid visual site inspection;

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



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

E. The City will promptly investigate the conditions reported in Design-Builder's written notice, and will issue written findings to Design-Builder.

F. Design-Builder shall be responsible for the safety and protection of the affected area of the Work for the duration of the City's investigation of potential Differing Conditions.

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

H. If Design-Builder disagrees with the City's determination and wishes to pursue an adjustment to the Contract Sum and/or Contract Time, Design-Builder must timely submit a written Notice of Potential Claim to the City as provided in Paragraph 13.02 of these General Conditions. Design-Builder's Notice of Potential Claim must include the information required by Paragraph 13.02, and must also identify the Escrow Proposal Documents that formed the basis of Design-Builder's Bid to perform the Work affected by the alleged differing condition. In the event of such disagreement, Design-Builder shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.

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

### **3.06 KEY TEAM MEMBERS**

A. During the Construction Phase, Design-Builder shall at all times be represented at the Site by Design-Builder's competent project manager whom it has authorized in writing to make decisions and receive and carry out any instructions given by the City. During the term of the Contract, Design-Builder shall at all times be represented by the Design-Builder's project manager. Design-Builder shall be responsible for faithful compliance with such instructions. Prior to the issuance of Notice to Proceed for Construction, Design-Builder shall inform the City in writing of the name, address and telephone number of its project manager whom it has authorized to act as its representatives at the Site and who the City may contact in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Design-Builder is a joint venture, it shall designate only one such representative. Design-Builder shall also provide City with contact information for persons to contact if City is unable to reach Design-Builder's project manager, such as general construction superintendents, project coordinators, and foremen.

B. The City reserves the right to reject Design-Builder's project manager, general construction superintendents, project coordinators, and foremen at any time for cause as provided in subparagraph 3.06A. The City shall be given written notice of, and shall have the right to approve, replacement of Design-Builder's project manager, superintendents and foremen.

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

### **3.07 LABOR, MATERIALS AND EQUIPMENT**

A. Design-Builder shall employ only competent and skillful persons to perform the Work, and shall at all times

maintain good discipline and order at the Site. Upon the City's written directive, Design-Builder shall discharge from the Work and replace at no additional cost to the City an employee, Subcontractor, or Supplier used on the Work who, in the City's sole judgment: (i) is incompetent, obnoxious, or disorderly; or (ii) has intimidated or sexually harassed a City employee, agent or member of the public; or (iii) commits racist or other discriminatory actions or communicates or displays racist or other discriminatory statements or insignia; or (iv) is refusing to carry out the provisions of the Contract.

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

C. Before ordering materials, equipment, or performing Work, Design-Builder shall verify indicated dimensions in a timely fashion by taking field measurements required for the proper fabrication and installation of the Work as specified in Paragraph 3.03. If a discrepancy exists, Design-Builder shall notify the City immediately and request the City to provide a clarification. Upon commencement of a particular item of Work, Design-Builder shall be responsible for dimensions related to such item of Work.

D. Design-Builder shall be responsible for delivery, handling, storage, installation, and protection of all materials and equipment to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Design-Builder shall store packaged materials and equipment at the Site in their original and sealed containers, marked with the brand and manufacturer's name, until ready for use. Design-Builder shall deliver materials and equipment in ample time to facilitate inspection and tests prior to installation.

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

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

### **3.08 PERMITS, FEES AND NOTICES**

A. Design-Builder shall pay all utility charges for temporary connections to the Work.

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

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

2. The City will reimburse Design-Builder for reasonable costs incurred for obtaining permits that are not specified in the RFQ/RFB Documents to be obtained at Design-Builder's expense.

C. Design-Builder shall give all notices required by laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work, including those specified in California Civil Code section 832.

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

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

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

G. Design-Builder shall keep the permits, an approved set of Drawings and Specifications, and a copy of the Code at the Site readily available for inspection during regular working hours throughout the Contract Time.

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

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

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

### **3.09 RECORD DOCUMENTS**

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

B. Design-Builder shall furnish on a monthly basis the aforesaid record documents for the City to review and determine their sufficiency in conforming to the requirements set forth in subparagraph 3.09A. The City shall have the right to withhold 25% of progress payments due Design-Builder until Design-Builder has complied with this Paragraph 3.09.

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

### **3.10 DESIGN-BUILDER'S CONSTRUCTION DAILY REPORT**

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

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

### **3.11 PROGRESS AND SUBMITTAL SCHEDULES**

A. Within 10 consecutive calendar days from NTP for the Design Phase, Design-Builder shall submit to the City for review a critical path method ("CPM") schedule for the design of the Project as required by Division 01. Refer to Section 01 11 14 and Section 01 32 16 for additional requirements.

B. At least 60 calendar days prior to the pre-construction conference, Design-Builder shall submit to the City for review and approval the following documents:

1. A cost-and-resource-loaded baseline construction schedule for the Work which shall use, unless otherwise specified in Division 01, the critical path method ("CPM"), activity on arrow or precedence diagramming method, as outlined in the Associated General Design-Builders publication "The Use of CPM in Construction," and shall indicate the times (number of days or dates) for starting and completing the various

stages of the Work, including all milestones and special constraints specified in the Contract Documents; and

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

C. Unless specified elsewhere in the Contract Documents, within 10 days after submittal, the City and Design-Builder shall meet to review for acceptability to the City the schedules submitted under subparagraph 3.11A. Design-Builder shall have an additional 5 days to make corrections and adjustments and to complete and resubmit the schedules.

D. City will not issue any progress payments to Design-Builder unless and until Design-Builder submits and the City accepts the baseline schedule in accordance with Division 01.

E. Design-Builder shall adhere to the baseline construction schedule accepted by the City in accordance with subparagraph 3.11C and as may be adjusted during the performance of the Work in accordance with the Contract Documents. Design-Builder shall submit to the City for acceptance proposed revisions or adjustments in the baseline construction schedule. Design-Builder must submit proposed adjustments in the baseline construction schedule that will change the Contract Times to the City in accordance with Paragraph 7.02.

F. City's acceptance of baseline construction and submittal schedules will neither impose on the City responsibility for the sequencing, scheduling, or progress of the Work nor interfere with or relieve Design-Builder from its full responsibility therefor.

G. Design-Builder shall submit a monthly progress schedule update as a condition precedent to making an Application for Payment as set forth in Paragraph 9.03 and Division 01. Design-Builder shall submit all updates to the City for the City's acceptance; if rejected, Design-Builder shall correct and resubmit updates to the City's satisfaction before City will approve any pending application for payment.

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

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

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

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

H. Early Completion Schedule: If Design-Builder submits a baseline schedule that shows a completion time that is earlier than the Contract Time, the "float" or slack time shall belong to the Project and is an expiring resource available to City or Design-Builder as needed to meet Milestones or complete the Work within the Project Time. Design-Builder shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float."

### **3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

B. Design-Builder shall review, approve, stamp, and submit to the City as specified in Division 01 shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. City may return submittals from Design-Builder that are not required by the Contract Documents without taking any action.

C. By approving and submitting shop drawings, product data, samples and other submittals, Design-Builder

represents that it has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.

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

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

F. The review, acceptance, approval, or other action taken by the City upon Design-Builder's submittals such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Design-Builder from its responsibility to notify the City of errors or omissions therein in accordance with Paragraph 3.03, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City will review submittals with reasonable promptness provided that the City shall be provided a reasonable time, as set forth in Division 01, to permit adequate review. Approval/acceptance of submittals shall not affect the Contract Sum, and additional costs that may result therefrom shall be solely Design-Builder's obligation. Design-Builder shall be responsible to provide engineering, Items, or other service necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction without change to the Contract Sum or Contract Time. City is not precluded, by virtue of such approvals/acceptances, from obtaining a credit for construction costs resulting from approved concessions in the Work or materials therefor.

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

1. Design-Builder shall indicate any deviations clearly and boldly on shop drawing, product data, samples or related submittals.

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

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

### **3.13 SUBSTITUTIONS**

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

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

### **3.14 USE OF SITE**

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

B. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain

operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the boundaries described in the Contract Documents. Design-Builder shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties including but not limited to notice in accordance with section 832 of the California Civil Code. Design-Builder shall obtain all such permits, rights-of-way and easements at no cost to the City.

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

D. Design-Builder shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Design-Builder subject part of the Work or adjacent property to stresses or pressures that will endanger it.

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

### **3.15 ACCESS TO WORK**

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

### **3.16 CUTTING AND PATCHING**

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

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

### **3.17 CLEANING UP AND REMOVING DEBRIS**

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

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

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

3. Design-Builder shall remove and dispose of excess materials, rubbish, and other debris in conformance with applicable laws and regulations.

B. If Design-Builder fails to comply with this provision or to clean up as provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Design-Builder under the Contract after providing written notice to Design-Builder and Design-Builder's failure to provide clean up as provided in the Contract Documents within three (3) days of receipt of such written notice.

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

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

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

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

C. To the fullest extent permitted by law, Design-Builder shall save, defend, hold harmless, and fully indemnify the City and all its officers and employees connected with the Project, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent rights, copyrights, trademarks or other intellectual property claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of articles to be supplied under the Contract and of which Design-Builder is not the patentee or assignee or does not have the lawful right to sell the same.

1. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Completion and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Paragraph 3.21 shall apply to this intellectual property indemnity.

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

E. Subparagraphs 3.18C and 3.18D shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right (i) arising from any unauthorized modifications to the Work by the City or its agents or (ii) arising from the combination of Work with any products or services not provided or recommended by Design-Builder where the combination is the basis for infringement.

### **3.19 WARRANTY**

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

1. Design-Builder additionally warrants manufacturers' product warranties: (1) for the Guarantee-to-Repair Period; and (2) for any duration that may be specified in the Contract Documents for any particular product.

B. Design-Builder's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear. Testing shall not be construed as operation.

C. Design-Builder shall deliver product warranties and guarantees conforming to the requirements of the Specifications to the City Representative prior to Final Completion. Compliance with this requirement is a condition precedent to Design-Builder's achievement of Final Completion the City's obligation to issue a final payment.

D. The warranty provisions of this Paragraph 3.21 are separate and additional to the provisions for the Guarantee to Repair Period and correction of Non-conforming Work as specified in Article 8.

### **3.20 TAXES**

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

### **3.21 INDEMNIFICATION AND DEFENSE OBLIGATIONS**

A. General Indemnity and Defense. Consistent with Civil Code section 2782, Design-Builder shall immediately defend, indemnify, and hold harmless the City, its boards, commissions, officers, agents, and employees, and the portion of other parties designated in Article "Insurance for Others" of Section 00 73 16 employed by City or to which the City owes a contractual duty of defense or indemnity, and all of their officers, agents, members, employees, and authorized representatives, (collectively, "Indemnitees"), from and against any and all claims, causes of action, losses, lawsuits, litigations, liabilities, damages, expenses, penalties, costs, and fees (collectively, "Claims") for bodily injury (including death) and damages to third party tangible property, to the extent caused by the negligence or willful misconduct of Design Builder in performing its obligations under this Agreement. Contractor agrees that the assertion of liens against the City's property by Contractor's suppliers and the release of Hazardous Materials brought onto the work site by Contractor are within the scope of this indemnity. The obligations of indemnity herein are applicable on a pro rata basis. Design- Builder shall not be required to indemnify and hold harmless the City for liability attributable to the negligence of City, provided such negligence is determined by agreement between Design-Builder and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been negligent and where City's negligence accounts for a percentage of the liability involved, the obligation of Design-Builder will be for that portion or percentage of liability attributable to the negligence of the Design Builder.

B. Design-Builder's defense obligation is immediate upon an Indemnitee's tender of defense with counsel of Design Builder's choice. Design-Builder shall be solely responsible for all costs of providing the defense; however, City will reimburse Design-Builder for its share of the defense costs, if any, in proportion to its degree of fault as determined by a court of competent jurisdiction. Design Builder agrees to consult the City on the selection of counsel and give serious consideration to the City's input.

C. Qualified Indemnity and Defense for design professionals. Consistent with Civil Code section 2782.8, if Design-Builder is a design professional, then its indemnity and defense obligations under 3.21A are contingent upon the Claims arising from, pertaining to, or relating to Design-Builder's negligence, recklessness, or willful misconduct. If Design-Builder is a design professional, it shall be entitled to reimbursement for the proportionate percentage of defense costs exceeding its proportionate percentage of fault for the Claims as determined by a Court of competent jurisdiction or agreement of the City and Design-Builder. Notwithstanding, a design professional that is a joint venture partner to the Design-Build Agreement shall not be entitled to reimbursement for defense costs.

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

E. Indemnitee shall provide Design-Builder with prompt written notice after receipt of any claim, action or



demand ("claim") made by a third party against the Indemnitee, provided, however, that no delay on the part of the Indemnitee shall relieve Design-Builder from any obligation hereunder, except to the extent of actual prejudice to Design-Builder. Design-Builder shall obtain the City's and other indemnified parties' consent for Design-Builder's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other indemnified parties may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Design-Builder and the City and/or other indemnified party conflict and counsel chosen by Design-Builder cannot, in City's or other indemnified parties' reasonable opinion, adequately represent Design-Builder, City and/or other indemnified party, then the cost and expense associated with the City and/or other indemnified party retaining separate co-counsel shall be borne by Design-Builder, otherwise, the cost and expense of separate co-counsel retained by City and/or other indemnified party shall be borne by the City or other indemnified party, as applicable. Subject to Design-Builder's obligation to reimburse City's and other indemnified parties' costs of same, City and other indemnified parties will assist Design-Builder in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is no material conflict of interest.

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

2. If Design-Builder does not assume and conduct the defense of any claim as required above, (i) City or other indemnified party may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner reasonably deemed appropriate, and City or other indemnified party need not consult with, or obtain any consent from, Design-Builder, and (ii) Design-Builder will remain responsible for any losses City and/or other indemnified party may suffer resulting from, arising out of, relating to, in the nature of, or caused by the claim to the fullest extent provided in this Paragraph 3.21.

F. Design-Builder's liability shall not be limited to the amount of insurance coverages required under the Contract Documents.

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

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

### **3.22 COMPLIANCE WITH LAWS; INDEMNIFICATION**

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

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

C. As required by and in accordance with the procedures specified in Paragraph 3.21 Indemnification and Defense Obligations, Design-Builder shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other parties designated in Article "Insurance for Others" of Section 00 73 16, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of law, regulation, order or decree by Design-Builder or its Subcontractors or Suppliers of all tiers in connection with or resulting from performance of the Work.

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

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

F. Design-Builder shall be entitled to an increase in the Contract Time or Contract sum as a result of Design-Builder's compliance with this Paragraph 3.22 only due to a change in law that is not foreseeable.

### **3.23 LIABILITY OF DESIGN-BUILDER – CONSEQUENTIAL DAMAGES**

Design-Builder shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Design-Builder's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Design-Builder. This limit of liability shall NOT, however, apply to, limit or preclude: (A) Design-Builder's obligation to pay Liquidated Damages as set forth in the Contract Documents; (B) damages caused by Design-Builder's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (C) wrongful death caused by Design-Builder; (D) punitive or treble damages; (E) Design-Builder's liability for statutory damages imposed by the City upon Design-Builder failure to comply with applicable law, City Ordinances and Municipal Codes specified in this Agreement.

### **3.24 LIMITATION ON LIABILITY OF DESIGN-BUILDER**

Except for: (A) third party claims for bodily injury; (B) third party claims for damage to property; (C) punitive damages; and (D) fines and/or penalties assessed against an indemnified party arising from Design Builder's failure to comply with applicable law, the total liability of Design Builder (whether under a theory of negligence, tort, strict liability, professional liability, contribution, breach of contract or warranty, or otherwise) arising out of or in connection with the Work shall be limited to one and one half times (1.5x) the Contract Price.

## **ARTICLE 4 – SUBCONTRACTORS**

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

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

B. Unless otherwise specifically provided by the Contract Documents, Design-Builder shall only engage in subcontracting in accordance with the governing regulations regarding subcontracts, section 6.21 of the Administrative Code, and section 1771.1 of the California Labor Code. Section 6.21 and section 1771.1 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.

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

#### **4.02 SUBCONTRACTUAL RELATIONS**

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

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

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

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

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

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

A. Design-Builder shall constantly give its personal attention to the faithful prosecution of the Work. Design-Builder shall keep the Work under its personal control and shall not assign by power of attorney or otherwise, nor subcontract the whole or any part thereof, except as herein provided.

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

C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Design-Builder shall remove such Subcontractor immediately upon written request to the City and following a reasonable cure period designated by the City in its sole discretion, and shall request approval of a replacement Subcontractor to perform the Work in accordance with Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq., at no added cost to the City.

D. Design-Builder shall not assign the Contract to any other party except upon the written approval of the City in accordance with Administrative Code section 6.22(d).

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

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

A. Should the Contract Documents indicate that construction work, or work of any other nature, be performed by other contractors or other forces within or adjacent to the limits of Work, or be underway at the time the Work was advertised for Bids, Design-Builder shall cooperate with all such contractors or forces to the end so as to avoid delay or hindrance to their work. The cost of such cooperation shall be considered as

included in Design-Builder's Bid price and no direct or additional payment will be made therefor.

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

C. If the City gives Design-Builder written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Design-Builder is already performing Work, Design-Builder shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Design-Builder shall provide the City Representative written notice when it has completed cleanup and demobilization. The City Representative will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Design-Builder shall allow proper and safe access to the Work at the subject location and shall schedule and coordinate its Work with the other contractors' work.

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

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

F. In case of dispute or lack of coordination between Design-Builder and other contractor(s), the City Representative will issue written directive(s) resolving the dispute or addressing the lack of coordination, and Design-Builder shall follow any such directive(s) subject to its right to seek time and/or money under the terms of the Agreement as compensation for the impact of complying with the directive.

## 5.02 COORDINATION

A. Design-Builder shall afford other contractors and the City reasonable opportunity for storage of materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the City may direct.

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

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

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

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

E. If so directed by the City, Design-Builder shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contracts thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the

Contract Documents, then Design-Builder may submit a Change Order Request as provided under Paragraph 6.03 for additional costs incurred by it in preparation of such coordination drawings.

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

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

1. Withhold any payment otherwise owed under the Contract until Design-Builder complies with the City's directives; or
2. Direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or
3. Terminate any or all portions of the Contract for Design-Builder's failure to perform in accordance with the Contract.

### **5.03 CLEAN UP RESPONSIBILITIES**

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

B. In the event of conflicts, the City, after issuing 24 hour written notice to the contractors involved, will clean up the premises and deduct the proportionate cost of said cleanup that is attributed to Design-Builder's failures to clean up its work area from the Contract Sum.

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

### **6.01 GENERALLY**

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

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

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

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

### **6.02 REQUESTS FOR INFORMATION, CLARIFICATIONS AND FIELD ORDERS**

A Design-Builder is responsible for the design of the Project, including without limitation the Construction Drawings and the other Construction Documents. Design-Builder is responsible for resolving any discrepancies in the Construction Drawings or other Construction Documents, and to respond to any questions as to the meaning or intent of the Construction Drawings or other Construction Documents. Design-Builder must promptly respond to all Requests for Information (RFI) from Subcontractors and other Project participants. In responding to RFIs, Design-Builder must provide all relevant Clarifications regarding the Construction Drawings and other

Construction Documents. Design-Builder shall coordinate and schedule its Work to provide sufficient time to issue a written reply to the RFI before proceeding with Work affected thereby.

B. The City is not responsible for any discrepancies or defects in the design of the Project. The City is only responsible for changes that arise out of: (1) any Differing Site Conditions, if Design-Builder could not reasonably detect such conditions in the pre-bid site-inspection; (2) any defects in the Criteria Package; or (3) any City-directed changes in the Construction Documents, but only if those changes are not to resolve discrepancies or defects in the Construction Documents. The City is only responsible for responding to RFIs and/or issuing Clarifications regarding Differing Site Conditions, the Criteria Package, and City-directed changes. The City shall issue a reply to the RFI within 10 working days of receipt of the same. The reply may include written Clarifications as deemed by the City to be necessary and consistent with the Contract Documents, or a Field Order requiring minor changes in the Work.

C. Clarifications of the Contract Documents and Field Orders issued by the City shall be binding on Design-Builder and shall be promptly executed by Design-Builder. The City's right to clarify any element of the Contract Documents shall not be construed to entitle Design-Builder to a modification of the Contract Sum or a change in the Contract Time.

### **6.03 CHANGE ORDER REQUESTS AND PROPOSED CHANGE ORDERS**

A. COR Initiation: Should the City's Clarification or other written directive or determination, in the opinion of Design-Builder, materially exceed or change the requirements of the Contract Documents, Design-Builder shall submit to the City a written Change Order Request ("COR") within 10 working days of receipt of the Clarification or other written directive or determination. A COR shall reference the Clarification or other written directive or determination and the relevant Specification and Drawings, and clearly state reasons why a change is needed. A COR shall also include a cost proposal and/or a time adjustment proposal, as a good faith estimate of any additional compensation or time associated with the affected Work and/or the affected Bid Package, documented in accordance with subparagraphs 6.03E and 6.03F, below, and a narrative describing the scope of the COR including means and methods, sequence of Work, and other information necessary to fully understand the scope of the COR. The COR shall also include, as a minimum standard, quantity take offs and extensions identifying equipment and material against a specific Work task within the scope. Failure to submit a timely, fully documented COR shall constitute a waiver of any future claim for additional compensation or time relating to such Work. In addition to the above, Design Builder may submit a COR, seeking an increase in the Contract Price and/or an extension to the Contract Time in the event there is (a) an unforeseeable change in an applicable law, regulation, code or standard pertinent to the Works after the Effective Date of this Contract which has a material adverse impact on the Contract Price and/or a material adverse impact on the Contract Time or (b) if Design Builder suffers delays and/or incurs additional costs related to their operations and/or their ability to perform their obligations under this Contract as a result of new government or City directives issue after the Effective Date requiring the design and implementation of safety and health measures that are not in existence as of the Effective Date of this Contract related to the COVID-19 pandemic and which the City recognizes as an event beyond the control of the Design Builder.

B. COR Review: The City will review the COR. Within 10 working days after receipt of the COR and all required supporting documentation, the City will issue a written determination accepting or rejecting the COR in whole or in part. If the City requires additional time to issue a determination, it shall notify the Design-Builder of the same in writing, within the initial 10 working-day period. A final determination is any City determination on a COR which states that it is final. If the City issues a final determination denying a COR in whole or in part, Design-Builder may contest the decision by filing a timely Notice of Potential Claim per Article 13 of these General Conditions. If the City does not issue a determination within the 10 working-day period, or such other period as set forth in a written notice, then the COR is deemed rejected and the City's failure to issue a determination shall be treated as the issuance, on the last day of the applicable period, of a final decision denying the COR in its entirety.

C. PCO Initiation: The City may initiate a change in the Work by issuing a Proposed Change Order ("PCO"). A PCO will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Specifications, and will request from Design-Builder a quotation of cost and time for completing the proposed changes. After the City issues a PCO, Design-Builder shall not submit a COR for the same Work addressed in the City's PCO.

D. PCO Quotation Time Period: Design-Builder shall submit a PCO cost proposal and PCO time adjustment proposal, if applicable, to the City within 10 working days after receipt of a PCO. If Design-Builder fails to submit a PCO cost proposal and/or PCO time adjustment proposal within the 10 working-day period, or if the price or time adjustment cannot be agreed upon, the City may either direct Design-Builder to proceed with the Work on a Force Account basis or a Unilateral Change Order instructing Design-Builder to proceed with the PCO Work based

on the City's estimate of the cost and/or time adjustment.

E. COR and PCO Cost Proposal Requirements: The Cost Proposal shall include a complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both additions and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor Cost Proposals, which shall be furnished on the same form as required for Design-Builder. Design-Builder, Subcontractors, and Lower-Tier Subcontractors shall calculate the markup for overhead and profit for all Cost Proposals exclusively pursuant to Paragraph 6.06C.

1. At a minimum, Design-Builder shall provide the following documentation to the City in support of Design-Builder and Subcontractor cost proposals:

- a. material quantities and type of products;
- b. labor breakdown by trade classification, wage rates, and estimated hours; and
- c. equipment breakdown by make, type, size, rental rates, and equipment hours.

F. COR and PCO Time Adjustment Proposal Requirements: If Design-Builder asserts it is entitled to an adjustment in Contract Time due to the proposed change order work, whether by COR or PCO, Design-Builder shall provide the following documentation to the City in support of any Design-Builder and Subcontractor time adjustment proposals:

1. Design-Builder shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Critical Path and increase the Contract Time. The analysis shall also show the impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete and most current City-accepted progress schedule network, with appropriate logic so that a true analysis of critical path can be made.

2. Failure to comply with the requirements set forth in this subparagraph 6.03F shall constitute a waiver of any claim for delay, disruption, extended overhead and other associated costs or damages.

## 6.04 CHANGE ORDERS

A. Execution of Change Orders; Modifications: When the City and Design-Builder agree on the total cost and time of a COR or PCO, the City will prepare for signatures of parties a Change Order to implement the changed Work. No oral instructions of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract. Change Orders that result in an increase to the amount certified by the Controller for the Project are subject to the Certification by Controller requirements of the City's Charter (see Section 00 52 00) and are effective upon incorporation into an approved Modification.

B. Release of Claims: The parties agree to make good faith efforts to settle all Change Orders full and final at the time of Change Order execution. Accordingly, City and Design-Builder acknowledge and agree that Change Orders shall contain the following provision, unless and only if the City determines that good cause exists to use different release language for a specific change order:

"The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Design-Builder, all Subcontractors and all Suppliers and Lower-Tier Subcontractors and Suppliers, for the Work or change defined in the Change Order, including impact on unchanged Work. By executing this Change Order, Design-Builder acknowledges and agrees on behalf of itself, all Subcontractors, and all Suppliers, that the stipulated compensation includes payment for all Work contained in the Change Order, plus all payment for the interruption of schedules, extended field and home overhead costs (if any), delay, and all impact, ripple effect or cumulative impact on all other Work under this Contract. The execution of this Change Order indicates that the Change Order constitutes full mutual accord and satisfaction for the change, and that the time and/or cost under the Change Order constitutes the total equitable adjustment owed the Design-Builder, all Subcontractors, and all Suppliers as a result of the change. The Design-Builder, on behalf of itself, all Subcontractors, and all Suppliers, agrees to waive all rights, without exception or reservation of any kind whatsoever, to file any further claim related to this Change Order. No further claim or request for equitable adjustment of any type for any reasonably foreseeable cause shall arise out of or as a result of this Change Order or the impact of this Change Order on the remainder of the Work under this Contract."

C. Change Orders issued under this Article or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Design-Builder under the provisions of the Contract Documents, nor shall they relieve or release Design-Builder's sureties of bonds executed under such provisions. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of time made by reason thereof. Design-Builder shall be responsible for giving notice of any change affecting the Work, Contract Sum or Contract Times that is required to be given to its sureties by the provisions of any bond.

## 6.05 UNILATERAL CHANGE ORDERS

A. General: When time does not allow for a Change Order to be negotiated, or when the City and Design-Builder are unable to agree on the cost or time required to complete the change in the Work, the City may issue a Unilateral Change Order instructing Design-Builder to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Design-Builder shall proceed with the ordered Work.

B. Protest: If time did not allow for Design-Builder to submit a complete Cost and/or Time Adjustment Proposal prior to the issuance of a Unilateral Change Order, and Design-Builder disagrees with any terms or conditions set forth in a Unilateral Change Order and wishes to protest the Unilateral Change Order, Design-Builder shall submit, within 10 working days of receipt of the Unilateral Change Order, a complete Change Order Request ("COR") in accordance with the requirements of Paragraph 6.03 (including a complete Cost and/or time Adjustment Proposal, as applicable). If a COR is not timely submitted as required, Design-Builder waives all rights to additional compensation for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order. The City will review any COR submitted pursuant to this Paragraph and issue a determination per Paragraph 6.03. If the City denies the COR in whole or in part, Design-Builder may contest the decision by filing a timely Notice of Potential Claim per subparagraph 6.05C. As a point of clarification, the protest procedures specified in this subparagraph do not apply to circumstances where Design-Builder submitted a complete Cost Proposal and/or Time Adjustment Proposal prior to the issuance of the Unilateral Change Order at issue, and the City subsequently issued a Unilateral Change Order because the parties were unable timely to agree on the cost and/or time to complete the change in the work. In such circumstances, if Design-Builder disagrees with any terms or conditions set forth in the Unilateral Change Order and wishes to pursue the dispute, Design-Builder must submit a timely Notice of Potential Claim per subparagraph 6.05C (but does not have to submit a revised/new COR).

C. Claim Notification: Design-Builder waives all costs exceeding the City's estimate for Unilateral Change Order Work unless Design-Builder timely submits a written Notice of Potential Claim in accordance with the requirements of Article 13. Design-Build must submit any such Notice no later than 10 working days after occurrence of one of the following potential claim events, whichever occurs first:

1. Design-Builder submits an invoice for completion of the Unilateral Change Order Work; or
2. Upon Design-Builder's receipt of written notice from the City that the City considers the Unilateral Change Order Work completed.

## 6.06 COST OF CHANGE ORDER WORK

This Paragraph 6.06 shall not apply to Work included in any Bid Package added to the Design Build Agreement in accordance with Section 00 52 00, "Procurement of Trade Subcontractors."

A. For Change Order Work and Change Order Work proposal pricing, City will pay Design-Builder the sum of the direct costs for labor, materials and equipment used in performing the Work as determined by the procedures set forth in this subparagraph 6.06A.

1. Labor. Design-Builder will be paid the cost of labor for the workers used in the actual and direct performance of the Change Order Work. Working foremen will be considered a direct cost of the Change Order Work only if the individual is on Site physically installing the Work. The costs for all supervision, including general superintendents and foremen, will not be considered a direct cost and shall be included the markup defined in subparagraph 6.06B, below. The cost of labor, whether the employer is Design-Builder, a Subcontractor, or other forces, will be the sum of the following:

- a. Actual Wages. The actual wages paid shall include any actual payments by the employer for its



workers' health and welfare, pension, vacation, training, and similar purposes.

b. Labor Surcharge. To the actual wages, as defined above, will be added a labor surcharge as set forth in the version of the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates which is in effect on the date upon which the extra work is accomplished and which is incorporated by reference as though set forth in full. That labor surcharge shall constitute full compensation to Design-Builder for all of its costs for worker's compensation insurance, Social Security, Medicare, federal unemployment insurance, state unemployment insurance, and state training taxes. City shall not be obligated to pay any other fixed labor burdens, unless approved in writing by the City.

c. Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workers.

2. Materials: The City will pay Design-Builder on Change Orders only for those materials furnished by Design-Builder and directly required for performing the Change Order Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, whether Design-Builder, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Design-Builder, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the materials are obtained from a Supplier or source owned wholly or in part by Design-Builder, payment thereof shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

3. Equipment: City will pay for equipment costs on Change Orders at the rental rates listed for such equipment as specified in the current edition, at the time of the Change Order, of the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) published by the California Department of Transportation and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>.

Such rental rates shall be adjusted as deemed appropriate by the City and will be used to compute payments for equipment, regardless of whether the equipment is under Design-Builder's control through direct ownership, leasing, renting, or other method of acquisition; provided, however, for equipment rented or leased in arm's length transactions with outside vendors, Design-Builder will be reimbursed at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the publications identified above as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Design-Builder has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Design-Builder shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each PCO cost proposal.

For equipment that is not listed in the publications identified above, payment for equipment costs or the City's assessment of the reasonableness of rates in arm's length rental or lease transactions will be based on the lowest quote obtained by the City from CALTRANS. Design-Builder shall provide all necessary equipment ownership and other information as requested by the City so that the City may obtain a quote. CALTRANS will quote rental rates at no cost to the City.

a. City will pay for equipment based on daily, weekly, or monthly rates, whichever are lower. City will not pay for equipment based on hourly rates including operator. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, Design-Builder or Subcontractor or Lower-Tier Subcontractor uses equipment of unwarranted size or type and cost, the cost shall be calculated at the rental rate for equipment of proper size and type.

b. City will pay for equipment only for the time the equipment is in productive operation on the Work under the Change Order. City shall not be obligated to pay for equipment for time while equipment is inoperative due to breakdown or for non-work days. In addition, City shall not be obligated to pay for any equipment rental time required to move the equipment to and from the Site. City will pay for equipment loading and transportation costs, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. City shall not be obligated to pay for mobilization or demobilization for equipment already on the Site. City will reimburse Design-Builder for equipment that is idle, non-operating or in standby mode at the lesser of Caltrans' rates, as adjusted by Caltrans' Delay Factor, as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

c. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment; City will not pay for such tools and equipment since the costs of these tools and equipment are included as part of Design-Builder's markup for overhead and profit as defined in subparagraph 6.06B.

d. Payment to Design-Builder for the use of equipment as set forth herein shall constitute full compensation to Design-Builder for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Design-Builder incidental to the use of the equipment.

B. Costs Included as Part of Markup for Overhead and Profit: To the total of the direct costs computed as provided in subparagraph 6.06A, City will add a markup for overhead and profit as specified in subparagraph 6.06C; The markup shall constitute full compensation for all direct and indirect overhead costs and profit which shall be deemed to include all items of expense not specifically listed in subparagraph 6.06A as direct costs. City shall not be obligated to pay for any separate allowance or itemization for any overhead costs. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markup for overhead and profit for all Change Orders including Force Account Work:

1. Field and home office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.

2. All field and home office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service at the Site, long-distance telephone calls, fax machines, computers and software, internet and e-mail services, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1,000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to all regulatory requirements including compliance with safety regulations, safety programs and meetings, cartage, warranties, record documents, and all related maintenance costs.

3. Administrative functions including, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.

4. Bonds and Insurance costs.

5. All other costs and taxes required to be paid, but not included under direct costs as defined in subparagraph 6.06A.

C. Design-Builder's Markup for Overhead and Profit: City will apply the following maximum percentage to the total direct costs for each direct cost category to compensate Design-Builder, Subcontractors, and Lower-Tier Subcontractors fully for all indirect and overhead costs and profit:

Changed/Extra Work –Direct Costs	Markup Percentage
Design-Builder direct labor for Self-Performed Work	35%
Design-Builder direct materials for Self-Performed Work	15%
Design-Builder direct equipment for Self-Performed Work.	15%
Subcontractor (of any tier) direct labor	35%
Subcontractor/Supplier (of any tier) direct materials	15%
Subcontractor/Supplier (of any tier) direct equipment	15%

1. For Work performed by a Subcontractor, the Design-Builder shall receive a maximum 7.5% markup on the Subcontractor's total cost (total cost includes direct costs plus applicable markups specified above). Such

additional 7.5% markup shall reimburse Design-Builder for all additional indirect, administrative and overhead costs and profit associated with Change Order Work performed by the Subcontractor.

2. For Work performed by a Lower-Tier Subcontractor, Design-Builder and Subcontractor shall each receive a maximum 7.5% markup on the total cost of their respective Lower-Tier Subcontractors. Such additional 7.5% markup shall reimburse Subcontractor for all additional indirect, administrative and overhead costs and profit associated with Change Order Work performed by the Lower-Tier Subcontractor.

3. In no case shall the sum of the individual markups, as specified in subparagraphs 6.06C.1 or 6.06C.2 above, exceed 20%, regardless of the number of Subcontractor tiers involved in performing the Change Order Work.

D. For Work to be deleted by Change Order (“deductive Changer Order”), the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (i) Unit Prices stated in the Contract Documents; (ii) where Unit Prices are not applicable, a lump sum based upon the costs that Design-Builder would have been incurred in performing the deleted portions of the Work as calculated in accordance with Paragraph 6.06, supported by a Cost Proposal as required by Paragraph 6.03; and (iii) the deductive Changer Order will include a ten-percent (10%) mark-up on the direct costs to reflect a credit to the City for Design-Builder’s overhead and profit on the deleted Work. City shall not be obligated to compensate Design-Builder nor a Subcontractor or Lower-Tier Subcontractor for administering a deductive Changer Order.

1. When both additions and credits are involved in any one Change Order, Design-Builder’s markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.

2. If the City issues written notice of deletion of a portion of Work after the commencement of such Work or after Design-Builder has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Design-Builder because it is unnecessary due to actual Site conditions, payment will be made to Design-Builder for direct costs of such Work actually performed plus markup for overhead and profit as provided in subparagraph 6.06C.

3. City shall not be obligated to compensate Design-Builder for costs incurred after receipt of the City’s written notice deleting the portion of Work.

4. Materials ordered by Design-Builder prior to the City’s issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, Design-Builder shall return the material and the City will pay Design-Builder only for the actual charges made by the vendor for returning the material including restocking charges.

E. Costs Not Included in the Work: Design-Builder shall be solely responsible for determining which of its Subcontractors and Suppliers receive Change Orders. City will provide no additional compensation to Design-Builder for the cost of its Subcontractors and Suppliers to review, post, coordinate, and perform related tasks to administer Change Orders that do not result in direct cost charges from such Subcontractors or Suppliers. Such costs shall be considered normal business costs, which are contractually determined between Design-Builder and its Subcontractors and Suppliers prior to Bid, and Design-Builder shall include such costs in its Total Bid Price.

F. Records: Design-Builder shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, CORs, and Claims initiated by Design-Builder.

## **6.07 FORCE ACCOUNT WORK**

A. General: When City pays for additions, deletions, or revisions in the Work on a Force Account basis, all direct costs itemized in subparagraph 6.06A shall be subject to the approval of the City and compensation will be determined as set forth herein.

1. The City will direct Design-Builder to proceed with the Work on a Force Account basis, and the City will establish a “not to exceed” budget.

2. All requirements regarding direct costs and markup for overhead and profit provided in subparagraph 6.06B shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.

3. Design-Builder shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in subparagraph 6.06C.

B. Notification and Verification: Design-Builder shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with the Force Account Work. All Force Account Work shall be witnessed, documented, and approved in writing by the City on the day that the Work is performed. City shall not be obligated to compensate Design-Builder for Force Account Work if Design-Builder fails to provide timely notice to the City before commencing the Force Account Work. In addition, Design-Builder shall notify the City when the cumulative costs incurred by Design-Builder for the Force Account Work equal 80% of the budget pre-established by the City. City shall not be obligated to compensate Design-Builder for Force Account Work exceeding the "not to exceed" budget amount if Design-Builder fails to provide the required notice before exceeding 80% of the Force Account budget.

C. Reports: Design-Builder shall diligently proceed with City-directed Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Design-Builder's authorized representative shall complete and sign the report. City shall not be obligated to compensate Design-Builder for Force Account Work for which Design-Builder does not timely complete and submit the aforementioned report to the City.

D. Records: Design-Builder shall maintain detailed records of all Work done on a Force Account basis. Design-Builder shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.

E. Agreement: If Design-Builder and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Design-Builder's signed written reports shall be discontinued and all previously signed reports shall become invalid.

## 6.08 UNIT PRICE WORK

A. General: Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price proposed for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices included in Design-Builder's Proposal. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price for each Item. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Division 01, and the Contract Sum will be adjusted based on the actual quantities of units provided and Work performed.

1. Each unit price on a Schedule of Bid Prices shall include an amount considered by Design-Builder to cover Design-Builder's markup for overhead and profit as defined in Paragraph 6.06.

B. Quantity Increases: Should the total quantity of any Item of Unit Price Work performed exceed the estimated quantity indicated on the Schedule of Bid Prices by more than 25%, the Work in excess of 125% of such estimated quantity will be paid for by adjusting the unit price proposed therefor as follows:

1. The unit price will be adjusted by the difference between the unit price proposed for the Item and the actual unit cost, determined as follows, of the total quantity of Work performed under said Item. The actual unit cost will be determined based on the direct costs per unit less fixed costs, which will be deemed to have been recovered by Design-Builder with the payments made for 125% of the quantity indicated on the Schedule of Bid Prices and markup for overhead and profit as provided in Paragraph 6.06.

2. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125% of the quantity as indicated on the Schedule of Bid Prices is less than \$5,000 at the unit price proposed therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except

that an adjustment will be made if Design-Builder submits a Change Order Request (“COR”) in accordance with the requirements of Paragraph 6.03.

3. At the City’s option, payment for Unit Price Work in such excess will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08B.1 or 6.08B.2 above.

C. Quantity Decreases: Should the total quantity of any Item of Unit Price Work performed be less than 75% of the estimated quantity indicated on the Schedule of Bid Prices, an adjustment in compensation will not be made unless Design-Builder submits a COR in accordance with Paragraph 6.03. If Design-Builder so requests, the quantity of said Item performed will be paid for by adjusting the unit price proposed therefor as follows:

1. The unit price will be adjusted by the difference between the unit price proposed for the Item and the actual unit cost, determined based on the direct costs per unit, including fixed costs described under subparagraph 6.08B.1, and markup for overhead and profit as provided in Paragraph 6.06, of the total quantity of Work performed under said Item, provided however, that in no case shall the payment for such Work be less than that which would be made at the unit price proposed therefor.

2. The payment for the total pay quantity of such Item of Unit Price Work will in no case exceed the payment which would be made for the performance of 75% of the estimated quantity as indicated on the Schedule of Bid Prices at the unit price proposed therefor.

3. At the City’s option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Paragraph 6.07 in lieu of adjusting the unit price in accordance with subparagraphs 6.08C.1 and 6.08C.2 above.

## **6.09 COST OF DESIGN CHANGE WORK**

A. For Design Change Order Work and Design Change Order Work proposal pricing, Design-Builder will be paid the sum of the labor and other direct cost used in performing the Work as determined by the procedures set forth in this subparagraph 6.09A.

1. Labor. The City will pay the Design-Builder the cost of labor for the workers used in the actual and direct performance of the Design Change Order Work. The Design Manager will be considered a direct cost of the Design Change Order Work only if the individual is actually performing the design Work. If the City and Design-Builder cannot agree to a forward priced amount for additional design work, based on an estimate of hours by classification and task, Designer, Design Professional, Subconsultant, or other forces, shall provide timesheets showing all assigned projects, base scope, other change work, and the subject change work. The cost of labor, whether provided by the Designer, Design Professional, Subconsultant, or other forces, will be the sum of the following:

a. Actual unburdened wages (i.e., the direct base wage rate paid to the employee exclusive of any fringe benefits, substantiated by submission of payroll records).

b. A surcharge of 140 percent of actual unburdened wages, which shall constitute full compensation for all State and federal payroll, unemployment and other taxes, insurance and bond premiums, fringe benefits (including health insurance, retirement plans, vacation, sick leave and bonuses) and all other payments made to, or on behalf of, the worker, as well as overhead and profit.

The maximum hourly rate, total cost of labor as described in subparagraphs 6.09A.1a and 6.09A.1b above for additional services, shall not exceed \$250 per hour unless requested by the Design-Builder and approved in advance in writing by the City Representative.

2. Other Direct Costs: The City will pay Design-Builder on Change Orders only for those materials directly required for performing the Design Change Order Work. Design-Builder shall provide invoices or receipts for any Other Direct Costs. There shall be no markup on Other Direct Costs. Designer-Builder shall not submit costs in excess of \$500 without prior written authorization from the City. There shall be no mark-ups of any kind allowed on costs reimbursed under this Paragraph 6.09. Such expenses shall be allowable only to the extent that costs incurred, or otherwise established prices, are consistent with the Federal Cost Principles (Title 48, Code of Federal Regulations, Part 31).

B. For Design Change Work, the Design-Builder shall receive a two percent (2%) markup on the total cost of

the design work. This markup shall reimburse Design-Builder for all indirect, administrative and overhead costs associated with Design Change Order Work. No additional markup shall be allowed on Design Change Work.

## ARTICLE 7 – TIME

### 7.01 PROGRESS AND COMPLETION

A. Design-Builder shall commence the Work of the Contract within 5 days from the start date established in the Design Phase Notice to Proceed and in the Construction Phase Notice to Proceed issued by the City and shall diligently and continuously prosecute the Work to its completion.

B. No demolition, removal, or reconstruction Work at the Site shown in the Construction Documents shall be started until Design-Builder has presented evidence satisfactory to the City Representative that it can, upon commencement, prosecute the Work continuously and expeditiously, and a Construction Phase Notice to Proceed has been issued by the City for Work to start.

C. The continuous prosecution of the Work by Design-Builder shall be subject only to the delays defined in Paragraph 7.02. The start of Work shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, schedule of values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.

D. Design-Builder shall bring the Work of this Contract to Substantial Completion and Final Completion, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in Section 00 73 02, from and after the official start date established in the written Notice to Proceed.

1. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by the authority having jurisdiction over the Work.

2. During the time between Substantial Completion and Final Completion, Design-Builder shall complete the punch list work, but Design-Builder shall not disrupt the City's beneficial occupancy of the Project or any public use of the Work.

3. Final Completion is a condition precedent to final payment. The City will issue final payment to Design-Builder acknowledging that the Project is complete and the Work is acceptable to the City.

4. The limits of Contract Time as specified in Section 00 73 02 shall not be affected by the acceptance of any of the Alternate Bid Items included in any Bid Package provided that said Alternate Bid Items were incorporated into subcontracts within the number of months after the date specified in such Bid Package.

5. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation because of adjustment of the limits of Contract Time shall be made in accordance with the requirements of Paragraph 13.03.

E. Design-Builder shall at all times keep on the premises sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach completion of the Project within the specified limits of Contract Time required by the Contract Documents. Design-Builder shall not start the Work unless it has sufficient equipment and materials available for the Project to allow diligent and continuous prosecution of the Work.

F. Design-Builder shall be responsible to maintain its schedule so as not to delay the progress of the Project or the schedules of other contractors. Design-Builder is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain its schedule and complete the Work within the specified limits of Contract Time. The City shall not be obligated to compensate Design-Builder for such cooperation. Notwithstanding, Design-Builder may file a COR for undertaking additional work at the Direction of the City or allegedly incurred due to any other contractors' refusal or failure to cooperate with Design-Builder's Work.

G. If, in the opinion of the City, Design-Builder has fallen behind schedule according to Design-Builder's most current and City-approved update of the progress schedule submitted as set forth in Paragraph 3.11, or if Design-Builder delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Design-Builder shall take some or all of the steps as follows to improve its

progress at no additional cost to the City and shall submit operational plans to the City to demonstrate the manner in which Design-Builder will regain the desired rate of progress:

1. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
2. Increase, when permitted in writing by the City, the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;
3. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities;
4. Expedite delivery of materials and equipment such as by airfreight;
5. Accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with the Supplier should such priority lists exist as a normal course of its business; and
6. Any other means deemed appropriate by the City.

H. The City may direct Design-Builder to take steps enumerated in subparagraph 7.01G for the convenience of the City and if Design-Builder is not at fault. Should the City Representative direct Design-Builder to take measures previously described, the City will reimburse Design-Builder for reasonable costs of complying.

I. Should Design-Builder at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to enter Default, following written notice and a 3-day opportunity to cure, and terminate the Contract for cause as set forth in Paragraph 14.01.

## 7.02 DELAYS AND EXTENSIONS OF TIME

A. Unavoidable Delays: Pursuant to section 6.22(h)2(C) of the Administrative Code and for the purposes of the Contract Documents the term Unavoidable Delay shall mean an interruption of the Work beyond the control of Design-Builder that could not have been avoided by Design-Builder's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Paragraph 3.11, Design-Builder shall demonstrate that the Unavoidable Delay actually extends the most current Contract Substantial Completion date. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Design-Builder (i.e., Avoidable Delays).

1. Non-compensable Delay/Time Extension. Design-Builder will be entitled to only a non-compensable time extension for the following types of Unavoidable Delay: Acts of God (as used herein, includes only earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in subparagraph 7.02C or the Supplementary Conditions); fires; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Design-Builder to procure labor; material shortages; inability of Design-Builder to procure material; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work when a bilateral change order has been issued for an agreed upon sum, as such change orders include an overhead mark-up for the additional time required by the changes as provided in subparagraph 6.06B; the prevention of Design-Builder from commencing or prosecuting the Work because of the acts of others for which the City is not responsible, excepting Design-Builder's Subcontractors and Suppliers of all tiers; and inability to procure or failure of public utility service.

a. Whenever Design-Builder has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Design-Builder shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.

b. In addition, Design-Builder shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved progress schedule, including but not limited to such measures as: promptly seeking appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible,

seeking other sources of supply or service; or any other measures that Design-Builder may appropriately utilize as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Design-Builder fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Design-Builder-caused delay under any and all applicable provisions of the Contract Documents.

2. Compensable Delay/Time Extension. Design-Builder shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by (i) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (ii) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents where such failure is not the result of any default or misconduct of Design-Builder; (iii) the failure of the City to perform some other contract obligation where such failure is not the result of any default or misconduct of Design-Builder; (iv) the suspension of the Work by the City for its own convenience or benefit where such decision is not the result of any default or misconduct of Design-Builder; or (v) a materially differing site condition per Paragraph 3.05, provided such City-caused Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Design-Builder-caused delay (Avoidable Delay) or other type of Unavoidable Delay as previously defined (not caused by the City), and if City has not issued a Change Order to compensate Design-Builder for direct costs plus mark-up for overhead and profit arising from the materially differing site condition. If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Design-Builder to a compensable time extension. Refer to Paragraph 7.03 for more information regarding compensable delay.

a. Float or slack time within the baseline schedule belongs to the Project and is an expiring resource available to City or Design-Builder as needed to meet Milestones or complete the Work within the Project Time. Accordingly, Design-Builder acknowledges and agrees that any City-caused delays on the project may be offset by City-caused time savings (including, but not limited to, the return of critical path submittals in less time than allowed under the Contract Documents, approval of substitution or value engineering requests that result in savings of time along the Critical Path). In such event, Design-Builder shall not be entitled to receive a compensable time extension until all City-caused time savings are exceeded and the Contract Time is also exceeded.

b. Early Completion Schedule: If Design-Builder submits a baseline schedule that shows a completion time that is earlier than the Contract Time, the float shall belong to the Project. Design-Builder shall not be entitled to a compensable time extension for any Change Order, Unilateral Change Order or City-caused delay that causes the early completion date to be extended within the float.

3. Concurrent Delay: Design-Builder shall be entitled to only a non-compensable time extension in the event that a City-caused (otherwise compensable) delay is concurrent with either a Design-Builder-caused delay or a non-compensable Unavoidable Delay.

B. Avoidable Delays: The term Avoidable Delay shall include, but is not limited to, the following:

1. Any delay that could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Design-Builder or its Subcontractors or Suppliers of any tier; or

2. Any delay in the prosecution of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the prosecution of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or

3. Any delay caused by the untimely review by Design-Builder of the Contract Drawings and Specifications pursuant to subparagraph 3.03C; or

4. Any delay resulting from the City responding to Design-Builder-generated RFIs as long as the response is in accordance with subparagraph 6.02B; or

5. Any delay arising from an interruption in the prosecution of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time.

6. Design-Builder shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs or damages for delay, disruptions, hindrances or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity



and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.

C. Adverse Weather Delays:

1. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Design-Builder shall make every effort to continue work under prevailing conditions. Such efforts by Design-Builder shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay.

2. The City may classify an adverse weather day as a non-compensable Unavoidable Delay, provided Design-Builder made efforts to work during adverse weather and to avoid the impacts of adverse weather to its schedule. If such an event occurs, and Design-Builder is prevented by adverse weather or conditions from proceeding with at least 75% of the scheduled labor, material and equipment resources for at least 5 hours per work day on activities shown as critical on the most current and City-approved progress schedule update, the delay will be classified as an Unavoidable Delay, and City will grant Design-Builder a non-compensable time extension.

3. Regardless of the type and severity of the adverse weather, Design-Builder shall be responsible for all costs of its efforts to mitigate the impacts of adverse weather to its schedule during the Contract Time.

4. Adverse weather shall mean rain, windstorm, flood, air pollution episode, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Design-Builder to be detrimental to the progress of the Work. Design-Builder shall plan the Work to allow for the following number of days of inclement weather during normal working hours:

<u>Month</u>	<u>Rain Days</u>	<u>Month</u>	<u>Rain Days</u>
January	3	July	0
February	3	August	0
March	3	September	0
April	1	October	1
May	0	November	3
June	0	December	3

a. Design-Builder's progress schedule shall incorporate a prudent allowance for the anticipated number of days of inclement weather specified herein.

b. The Contract Time allowed for completion of Work specified in Contract Time and Liquidated Damages (Section 00 73 02) is predicated on the anticipated number of days of inclement weather specified herein.

c. Design-Builder shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.

d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Design-Builder has requested a time extension because of adverse weather.

e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Design-Builder has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Design-Builder shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.

D. Notice of Delay:

1. Pursuant to section 6.22(h)(2)(D) of the Administrative Code, Design-Builder shall notify the City in writing promptly of all anticipated delays in the prosecution of the Work and, in any event, promptly upon the occurrence of a delay. Such notice may permit the City may take steps to prevent the occurrence or continuance of the delay and/or determine to what extent Substantial Completion is delayed thereby.

2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if the notice requests such time extension, specifies whether Design-Builder believes the time extension is compensable or non-compensable, sets forth Design-Builder's estimate of the additional time required together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Article 13, including the requirement that such Notice be submitted to the City within 10 days of the event which the Design-Builder contends affected the performance of the Work.

3. The City's determination of whether to grant an extension of time and whether the extension is compensable or non-compensable will be based on Design-Builder's demonstration to the City's satisfaction that such Unavoidable Delays will extend Design-Builder's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path schedule.

4. If Design-Builder does not submit a notice as set forth in subparagraph 7.02D.2, above, Design-Builder thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Design-Builder understands and agrees that City will not grant an extension of time or adjust the Contract Sum.

#### E. Extensions of Time:

1. In the event City determines that it is necessary to extend the time for completion of the Work to be performed under these Contract Documents beyond the specified limits of Contract Time, such extensions shall in no way release Design-Builder's contractual obligation to provide guarantees or warranties pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release Design-Builder's surety or the sureties from payment and performance bond obligations.

2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of time.

3. The length of any extension of time shall be limited to the extent that the commencement, prosecution and completion of the Work are delayed by the event as determined by the City in accordance with section 6.22(h)(2)(D) of the Administrative Code.

4. Adjustments to the Contract Sum for compensable time extensions shall be calculated in accordance with the provisions specified in Paragraph 7.03.

5. Extensions of time that cumulatively extend the Contract Time in excess of 10% of the original contract duration as specified in Section 00 73 02 shall be subject to the approval of the Mayor (or the Mayor's designee) or the Commission (or the Commission's designee), as appropriate.

6. In no event shall such extensions of time be granted after the date of Final Completion.

7. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests.

8. Should Design-Builder, or any subcontractor of any tier or any supplier of any tier, seek an extension of time for the completion of the Work under the provisions of this Paragraph 7.02, Design-Builder and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for extensions of time.

9. Neither this provision, nor any other provision of the Contract Documents, are intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, the City Representative, the City's consultants, and their respective directors, officers, members, employees, and authorized representatives from responsibility for their own sole negligence, violation of law or other willful injury to the person or property of another.

### **7.03 ADJUSTMENTS TO THE CONTRACT SUM FOR COMPENSABLE DELAY/COMPENSABLE TIME EXTENSION**

A. The City will adjust the Contract Sum for a compensable delay as specified in subparagraph 7.03C, below, if,

and only if, Design-Builder demonstrates that it is entitled to a compensable time extension under subparagraph 7.02A.2 and timely complies with the Notice of Delay requirements of these General Conditions.

B. Change Order, Unit Price and Force Account Work Excluded. The provisions of this Paragraph 7.03 and subparagraph 7.02A.2 do not apply to Change Order Work paid under Paragraphs 6.06 (Cost of Change Order Work) or 6.08 (Unit Price Work), or to Force Account Work performed under Paragraph 6.07. Design-Builder's right to recovery of compensation, costs, expenses and damages for delay, disruption, hindrance and interference (including without limitation interruption of schedules, extended, excess or extraordinary field and home office overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of extras, changes, additions or deletions in the Work shall be limited to the adjustment of the Contract Sum (including without limitation the mark-ups specified) as set forth in Paragraphs 6.06 or 6.08 of these General Conditions. Those Paragraphs include markups to cover field and home office overhead costs. Overhead claims in excess of the markups specified are not allowed for Change Order Work, Force Account Work or Unit Price Work. The Contract Sum adjustment provisions set forth in Paragraphs 6.06 and 6.08 constitute the sole, exclusive and complete compensation that the City is obligated to pay Design-Builder for all costs, expenses and damages incurred by Design-Builder and its Subcontractors and Suppliers of all tiers associated with Change Order Work, Force Account Work or Unit Price Work.

C. Field Office Overhead – Daily Rate. If Design-Builder meets the conditions for a compensable time extension specified in subparagraph 7.03A, above, then the City shall pay Design-Builder such amount as the City may find to be fair and reasonable compensation for such part of Design-Builder's actual loss that was unavoidable. This City will calculate fair and reasonable compensation as follows:

1. Within the time and in the format specified by the City, Design-Builder must submit a detailed listing of daily field office overhead cost components that are time related. The individual cost components shall represent costs that have been or will be incurred or increased as a sole or direct result of the compensable time extension. This listing may include without limitation onsite project management, supervision, engineering, and clerical salaries; onsite office utilities and rent; onsite company vehicles and their operating expenses; site maintenance, and safety and security expenses.

2. The listing of the daily field office overhead cost components described above must be based on the Design-Builder's actual field office overhead costs. This listing must be submitted with the first Notice of Delay that includes a request for a compensable time extension. If Design-Builder's time-related daily field office overhead cost changes for subsequent compensable delays, then the Design-Builder shall submit a new overhead rate based on the Design-Builder's overhead costs at the time of the subsequent delay.

3. The daily field office overhead rate shall be multiplied by the number of days the Contract is to be extended. No markup for overhead and profit shall be allowed on the extended daily field office overhead cost.

4. Design-Builder shall submit the information specified above in sufficient detail to allow review and shall prepare the information in accordance with generally accepted accounting principles. The City shall have the right to audit Design-Builder's costs under Paragraph 2.05 of these General Conditions.

D. Extended Home Office Overhead. Absent extraordinary circumstances, Design-Builder shall not be entitled to receive extended home office overhead for compensable delays. Extended home office overhead and its application to a compensable time extension will not be allowed unless Design-Builder demonstrates to the satisfaction of the City that each and every of the following conditions apply to the delay period: (i) the delay was caused by the City and meets the conditions of Paragraph 7.02A.2; (ii) such City-caused delay was of an indefinite (unknown) duration; (iii) the City-caused delay suspended most, if not all, project Work; (iv) the City-caused delay resulted in a substantial disruption or decrease in the income stream from the project; (v) during the City-caused delay, Design-Builder was required to remain ready to resume Contract Work immediately; and (vi) Design-Builder was unable to secure comparable replacement work due solely to the said delay from this project during the impacted period to replace the reduced cash flow from this project. If Design-Builder believes that it may be entitled to extended home office overhead, it must notify the City through the Notice of Delay process specified in subparagraph 7.02D, above. Within the time and in the format specified by the City, Design-Builder must submit detailed evidence of entitlement and the requested rate, including all supporting evidence from which the City may make a determination (including an audit by a California-licensed Certified Public Accountant if the City so requests). Supporting evidence shall be prepared in accordance with generally accepted accounting principles, and the City shall have the right to audit Design-Builder's submittal under Paragraph 2.05 of these General Conditions. If the City determines that extended home office overhead is available, then the City shall have the discretion to determine the methodology for calculation of the rate.

E. Credit for Change Order and Force Account Markups. If Design-Builder timely requests additional compensation for a compensable delay in accordance with the Contract, and the City determines Design-Builder entitlement to additional compensation for such delay, then the City will adjust the amount payable to Design-Builder for the compensable delay by deducting a fair and reasonable credit to account for additional overhead paid to Design-Builder under the markups specified in Paragraph 6.06 for Change Order Work and Force Account Work, including markups from changes performed and paid under bids items (i.e. unit priced and contingency allowance bid items). The baseline credit amount will be five (5) percent of the value of all Change Order Work and Force Account Work performed by Design-Builder under the Contract prior to and during the compensable delay period (but excluding any future Change Order Work and Force Account Work). If the City seeks a credit in excess of five (5) percent, then the City will provide Design-Builder with supporting documentation. Such supporting documentation may include, at the City's discretion, the results of an audit or examination of documents performed under Paragraph 2.05. If Design-Builder seeks either a credit of less than five (5) percent or objects to the credit amount proposed by the City, then Design-Builder shall timely provide the City with supporting documentation. Such supporting documentation shall include the results of an audit performed by a CPA at Design-Builder's cost if so requested by the City.

## 7.04 LIQUIDATED DAMAGES

### A. Determination of Damages:

1. The actual fact of the occurrence of damages and the actual amount of the damages that the City would suffer if the Work were not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and, from the nature of the case, it is impracticable and extremely difficult to fix the actual damages.

2. Damages that the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City Representatives and consultants; costs of administration, inspection and supervision; and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time.

B. Agreed Amount of Damages: It is understood and agreed by Design-Builder and City that if Design-Builder does not complete all the Work specified or indicated in the Contract Documents within the specified limits of Contract Time, or within such time limits as extended in accordance with Paragraph 7.02, the City will sustain actual damages in the event of and by reason of such delay.

1. Design-Builder and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages that the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for Substantial Completion, as such date may be modified in accordance with the Contract Documents.

2. Design-Builder and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every day of delay beyond the number of days specified in Section 00 73 02 for completing the punch list of remedial Work and achieving Final Completion, as such date may be modified in accordance with the Contract Documents.

3. Design-Builder and City agree that the amount of liquidated damages set forth in Section 00 73 02 represents the Parties' reasonable estimate of the approximate damages that the City will sustain for each and every day (or other measure) of delay beyond the number of days (or other measure) specified in Section 00 73 02 for completing the specified critical, independent milestone Work (e.g., shutdown Work), if any, as such date may be modified in accordance with the Contract Documents.

4. The parties therefore agree that Design-Builder shall pay such amount of liquidated damages as specified in Section 00 73 02., and in case such amount is not paid, Design-Builder agrees that the City may deduct the amount therefor from any money due or that may become due Design-Builder under the Contract.

### C. Payment of Damages:

1. In no event shall liquidated damages payable under this Contract exceed, in the aggregate 20% of the Contract Price.

2. All liquidated damages under this Contract shall be the City's sole and exclusive remedy and shall be in full and final satisfaction of Design Builders's responsibility towards the City for the corresponding delay.

## **ARTICLE 8 – INSPECTION AND CORRECTION OF WORK**

### **8.01 UNCOVERING OF WORK**

A Design-Builder shall not cover any Work or portion of Work until inspected by the City or other public authorities having jurisdiction as required by the Contract Documents.

B. If Design-Builder covers any part of the Work contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Design-Builder must, upon written request, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this subparagraph shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.

C. Should the City or other public authorities having jurisdiction wish to either (i) re-inspect a portion of the Work that has been covered by Design-Builder in compliance with subparagraph 8.01A, above, or (ii) inspect a portion of the Work that has been covered by Design-Builder which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Design-Builder shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable. If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Design-Builder shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

### **8.02 TESTS AND INSPECTIONS**

A. All testing and inspection of the Work required by the Contract Documents (other than special inspections as set forth in subparagraph 8.02B below) shall be arranged and paid for by Design-Builder through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

B. City will pay for special inspections to be performed by the City as specified in the Contract Documents or as required to comply with the Code or by another agency having jurisdiction. Design-Builder shall give the City Representative, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 working days' notice, excluding weekends and City holidays, of when and where such special inspections are required so the City may arrange for the appropriate City representatives and inspectors, and representatives from other public authorities having jurisdiction if any, to be present to perform the necessary inspections or tests.

1. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.

C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in subparagraph 8.02A, the City will order the performance of such services by qualified independent testing agencies or consultants as may reasonably be required. The City shall bear such costs except as otherwise provided in subparagraph 8.02D.

D. If such testing, inspection or approval reveal failure of the portion of the Work to comply with requirements of the Contract Documents, Design-Builder shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.

1. If the City's observation of any inspection or testing undertaken pursuant to this Paragraph 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (i) with the requirements of the Contract Documents or (ii) with laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction with respect to the performance of the Work, then the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable.

2. Design-Builder shall bear all costs thereof, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Paragraph 8.02 nor any decision made by the City Representative in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Design-Builder, any subcontractor, or any of their agents or employees, or any other person performing any of the Work.

E. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Design-Builder from Design-Builder's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.

F. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective materials shall not be construed:

1. To imply acceptance of such Non-conforming Work or materials; or
2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
3. To relieve Design-Builder from the responsibility of correcting Non-conforming Work or materials.

G. Unless otherwise required by the Contract Documents, Design-Builder shall secure and furnish to the City required certificates of testing, inspection or approval in accordance with the Specifications.

H. Design-Builder shall provide promptly all facilities, labor, equipment, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. City or its agents will perform tests or inspections conducted pursuant to the Contract Documents promptly to avoid unreasonable delay in the Work.

1. The City reserves the right to charge to Design-Builder any additional cost of inspection or test, including travel, transportation, lodging, etc., when the Work, material or workmanship is not ready for testing or inspection at the specified time.

### **8.03 CORRECTION OF NON-CONFORMING WORK AND GUARANTEE TO REPAIR PERIOD**

A. Design-Builder shall (i) correct Non-conforming Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period and (ii) replace, repair, or restore to the City's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of Non-conforming Work or correction of Non-conforming Work. Design-Builder shall promptly commence such correction, replacement, repair, or restoration upon notice from the City Representative, but in no case later than 10 working days after receipt of such notice; and Design-Builder shall diligently and continuously prosecute such correction to completion. Design-Builder shall bear all costs of such correction, replacement, repair, or restoration, and all damages resulting from such Non-conforming Work, including without limitation additional testing, inspection, engineering, and compensation for City Representative's services and expenses (including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services). This Subparagraph shall not be interpreted to provide for recovery of attorney's fees.

B. The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period of time is specified in the General Requirements or other Contract Documents or prescribed by applicable laws and regulations, commencing as follows:

1. For any Work not described as incomplete in the Punch List / Final Completion, on the date of Substantial Completion.
2. For space beneficially occupied or for separate systems fully utilized prior to Substantial Completion per

Paragraph 9.07 (Partial Utilization), as established in a Notice of Partial Utilization.

3. For all Work other than described in subparagraphs B.1 and B.2, above, from the date of Final Completion.

C. Design-Builder's obligation to correct Non-conforming Work shall continue until one year after the date of correction of repaired or replaced items, or such longer period as may be specified in the Contract Documents or mutually agreed to by Design-Builder and City.

D. If Design-Builder fails to commence correction of Non-conforming Work or fails prosecute such correction diligently within 10 working days of the date of written notification from the City, the City may correct the Non-conforming Work or may remove it and store the salvageable materials or equipment at Design-Builder's expense. If Design-Builder does not pay the costs of such removal and storage within 5 working days after written notice, the City may sell, auction, or discard such materials and equipment. The City will credit Design-Builder's account for the excess proceeds of such sale, if any. The City will deduct from Design-Builder's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing such salvageable materials and equipment, and discarding the materials and equipment, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Design-Builder shall reimburse the City.

E. If immediate correction of Non-conforming Work is required for life safety or the protection of property and is performed by City or a separate contractor, Design-Builder shall pay to the City all reasonable costs of correcting such Non-conforming Work. Design-Builder shall replace, repair, or restore to City's satisfaction any other parts of the Work and any other real or personal property that is damaged or destroyed as a result of such Non-conforming Work or the correction of such Non-conforming Work.

F. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.

G. Design-Builder's obligations under this Paragraph 8.03 are in addition to and not in limitation of its warranty obligations under Paragraph 3.19 or any other obligation of Design-Builder under the Contract Documents. Enforcement of Design-Builder's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to and not in limitation of any other rights or remedies City may have under the Contract Documents or at law or in equity for Non-conforming Work. Nothing contained in this Paragraph shall be construed to establish a period of limitation with respect to other obligations of Design-Builder under the Contract Documents. Establishment of correction periods for Non-conforming Work relate only to the specific obligations of Design-Builder to correct the Work and in no way limits either Design-Builder's liability for Non-conforming Work or the time within which City may commence proceedings to enforce Design-Builder's obligations under the Contract Documents.

#### **8.04 ACCEPTANCE OF NON-CONFORMING WORK**

If, in the sole and unfettered judgment of the City, it is undesirable or impractical to repair or replace any Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Design-Builder shall rebate moneys previously paid by the City.

### **ARTICLE 9 – PAYMENTS AND COMPLETION**

#### **9.01 CONTRACT SUM**

A. Payment to Design-Builder of the Contract Sum shall be full compensation for furnishing all labor, materials, equipment and tools necessary to the Work; for performing and completing all Work in accordance with the requirements of the Contract Documents; and for all expenses incurred by Design-Builder for any purpose incidental to performing and completing the Work.

B. Whenever the Contract Documents specify that Design-Builder is to perform Work or furnish materials of any class for which no price is fixed in the Contract, it shall be understood that such Work is to be performed or such materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of

performing such Work or furnishing such materials is included in Design-Builder's Total Bid Price.

## 9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

A. Within 30 days after receipt of the Notice to Proceed, or as otherwise specified in Division 01, Design-Builder shall submit a detailed cost breakdown of each of the lump sum Items in the Schedule of Bid Prices, including Alternate Bid Items selected by the City, coordinated with the progress schedule. This breakdown shall be referred to as the schedule of values and shall serve as the basis for progress payments for lump sum Items. City will not issue any progress payments for of lump sum Items until the City has reviewed and accepted Design-Builder's schedule of values.

1. The specific format, detail and submittal requirements for the schedule of values shall be as specified in Division 01 or as directed by the City to facilitate and clarify progress payments to Design-Builder for completed Work.

2. The sum of the individual costs listed in the schedule of values for each lump sum Item shall equal the lump sum price Bid therefor under the Bid Item named in Schedule of Bid Prices.

3. Unless otherwise provided in the Contract Documents, Design-Builder's overhead, profit, insurance, bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal Design-Builder's Total Bid Price.

B. The City will review and return Design-Builder's schedule of values with comments. Design-Builder shall make all corrections requested by the City and resubmit for approval.

1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Design-Builder's schedule of values.

2. Design-Builder's schedule of values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Design-Builder's Bid amount to component parts of the Work.

C. Upon concurrence by the City, City will issue a written formal approval of Design-Builder's schedule of values. If the City later determines that the schedule of values is insufficient or incorrect, Design-Builder shall make an adjustment to address the City's concerns. City may withhold 25% of subsequent progress payments due to Design-Builder until Design-Builder corrects its schedule values to the City's satisfaction, which will not be unreasonably withheld.

## 9.03 PROGRESS PAYMENTS

A. Subject to the conditions set forth in these General Conditions, and to the authorization of the City or the authorized representatives of the City, the City shall issue payments to Design-Builder upon demand of Design-Builder and pursuant to the Contract Documents as follows.

B. On the 25th day of each month, Design-Builder shall submit to the City for review an Application for Payment, on a form approved by the City and signed by Design-Builder, covering the Work completed by Design-Builder as of the date of the Application and accompanied by such supporting documentation as specified in Division 01.

1. The monthly value of lump sum Work shall be estimated by Design-Builder pursuant to the schedule of values prepared in accordance with Paragraph 9.02. Design-Builder's estimates need not be based on strict measurements but shall consist of good-faith approximations and shall be proportional to the total amount, considering payments previously made, that becomes due for such Work satisfactorily completed in accordance with the requirements of the Contract Documents.

2. Progress payments on account of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices proposed by Design-Builder, adjusted as specified in Paragraph 6.08 for the actual quantities of Work performed.

3. Progress payments on account of allowances named in Schedule of Bid Prices shall be made for such sums as may be acceptable to the City. Prior to final payment, the City will issue an appropriate Change Order in an amount determined by the City Representative to reflect actual amounts due Design-Builder on account of Work covered by allowances, and the City will adjust the Contract Sum accordingly.



C. The Application for Payment shall identify the amount of Design-Builder's total charges to date.

D. City will base monthly progress payment amounts to Design-Builder on completed Work or percentages of Work completed prior to the end of the payment period. Except as provided in Paragraph 9.10, the City will not approve payments for materials or equipment not incorporated into the Work.

E. Design-Builder shall base its monthly Applications for Payment on information developed at monthly progress meetings and prepared by Design-Builder as specified in Division 01. Submission of approved monthly progress schedule updates for the same period as the Application for Payment shall be a condition precedent to making progress payment Applications. City will not make any partial progress payments to Design-Builder until Design-Builder has submitted and City has reviewed all cost information requested by the City.

F. In addition to other requirements specified in Division 01, consistent with San Francisco Mayor's Executive Directive 12-01, Design-Builder shall include its Subcontractors' and Suppliers' acceptable invoices with the Monthly Application for Payment that it submits no later than 30 days after receipt of such invoices from its Subcontractors, and Suppliers.

G. As soon as practical after estimating the progress of the Work, the City will pay to Design-Builder in a manner provided by law an amount based upon Contract prices, of labor and materials incorporated in the Work at the Site until midnight of the 25th day of the current month, less the aggregate of the amount of previous payments. The City may, however, withhold payments at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in Paragraph 9.06.

1. The City shall endeavor to make progress payments for undisputed amounts within 15 business days, but no later than 45 business days, of receiving a payment request and the required documentation including, without limitation, certified payrolls, and Contract Monitoring Division program participation forms. In no event shall the City become liable for interest or other charges for late payment except as set forth in Administrative Code section 6.22(j)(7).

H. No inaccuracy or error in said monthly estimates shall operate to release Design-Builder or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.

I. In accordance with the provisions of section 22300 of the California Public Contract Code, Design-Builder will be permitted to substitute securities for any moneys retained by the City to ensure performance under the Contract under the following conditions:

1. At the request and expense of Design-Builder, securities listed in section 16430 of the California Government Code, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Design-Builder which are equivalent to the amount retained under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Design-Builder. Upon satisfactory completion of the Project and all Work under the Contract, City will return the securities to Design-Builder.

2. Design-Builder shall be the beneficial owner of the securities substituted for moneys withheld and shall receive any interest thereon.

3. Design-Builder shall enter into an escrow agreement with the City Controller according to Section 00 63 30 (Escrow Agreement for Security Deposits in Lieu of Retention), specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Design-Builder, and termination of escrow upon completion of the Contract.

J. The granting of any progress payment, or the receipt thereof by Design-Builder, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen Design-Builder's obligation to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.

K. It is mutually understood and agreed that the City may withhold from any payment otherwise due Design-Builder such amounts as may be necessary to protect the City to ensure completion of the Project pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Design-Builder shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract.

1. If City withholds any payment or portion of payment, City will notify Design-Builder in writing of the cause(s) of such action.

L. Design-Builder shall include only amounts for Change Orders and undisputed portions of Unilateral Change Orders completely approved and executed by the City on its payment applications, and only that portion of the Change Order Work actually performed. Design-Builder shall submit a breakdown for each Change Order by Change Order number on its Application for Payment.

M. Submission of Electronic Certified Payrolls. City will not process any monthly progress payment applications until Design-Builder has submitted weekly certified payrolls to the City for the applicable time period. Design-Builder shall prepare certified payrolls in accordance with the requirements of Section 1770 et seq. of the California Labor Code for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and materials incorporated into the Work.

1. Design-Builder shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the internet. City will assign the Design-Builder and each Subcontractor and Supplier a log-on identification and password to access the PRS.

2. Use of the PRS may require Design-Builder, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked and hours worked on this project, and wage and benefit rates paid. Design-Builder's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.

3. The City will provide basic training in the use of the PRS at a scheduled training session. Design-Builder and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.

4. Design-Builder shall comply with the requirements of this subparagraph 9.03M at no additional cost to the City.

5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Design-Builder's failure to make a timely and accurate submittal of certified payrolls.

N. The City will not process monthly progress payment applications until Design-Builder has submitted weekly certified payrolls to the California Department of Industrial Relations (in addition to the City) for the applicable time period. Design-Builder shall submit certified payrolls to the California Department of Industrial Relations in the manner specified by the DIR.

O. Design-Builder Prompt Payment. Except as otherwise required by Chapter 14B of the Administrative Code, and consistent with the provisions of section 6.22(q) of the Administrative Code, Design-Builder shall pay its Subcontractors within seven calendar days after receipt of each progress payment from the City, unless otherwise agreed to in writing by both Design-Builder and the Subcontractor. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from Design-Builder to a Subcontractor, the Design-Builder may withhold the disputed amount but shall pay the undisputed amount. If Design-Builder violates the provisions of Section 6.22(q), then Design-Builder shall pay to the Subcontractor directly the penalty specified in Section 6.22(q).

## **9.04 RETENTION**

A. As required by and in conformance with the procedures set forth in section 6.22(j) of the Administrative Code, the City shall hold five (5) percent in retention from each progress payment.

B. When the City determines that the Work is 98% or more complete, the City may reduce retention funds to an amount equal to 200% of the estimated value of work yet to be completed, plus any amounts necessary to cover offsets by the City for liquidated damages, defective Work, stop notices, forfeitures and other charges.

C. The City shall release the balance of retention only upon the following conditions: (i) the Design-Builder has reached Final Completion as provided in paragraph 9.09, below, and (ii) the Contract is free of offsets by the City for liquidated damages and defective work and is free of stop notices, forfeitures, and other charges.

D. The Design-Builder may apply for early release of retention for Work performed by (1) any subcontractor certified by the City as an LBE or (2) any subcontractor under a Contract with a construction duration of more

than two years. The Design-Builder shall make such application in writing and shall certify the following:

1. That the Work by the subcontractor is completed and satisfactory in accordance with the Contract Documents;
  2. The total amount paid to the subcontractor by Design-Builder as of the date of the written request; and
  3. The amount of retention associated with the Work performed by the subcontractor.
4. Design-Builder acknowledges and agrees that the release of retention under this subparagraph shall not reduce the responsibilities or liabilities of the Design-Builder or its surety(ies) under the Contract or applicable law.

### **9.05 PAYMENT AUTHORIZATION**

A. The City will, after receipt of Design-Builder's Application for Payment, approve such amount as the City determines is properly due.

B. The City will issue payment based on the City's determination that the Work has progressed satisfactorily to the point stated in the application for payment. Payment shall not be a representation that the City has:

1. Inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or
2. Reviewed Design-Builder's means, methods, techniques, sequences or procedures of construction; or
3. Ascertained how or for what purpose Design-Builder has used money paid, or determined that title to any of the Work, materials, or equipment has passed to the City free and clear of any liens.

### **9.06 WITHHOLDING PAYMENT**

A. The City may decide not to authorize payment, in whole or in part, to the extent reasonably necessary to protect itself, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Design-Builder's failure if, in the City's judgment, the determination required by subparagraph 9.05B cannot be made. If the City does not authorize payment in the amount of the application, the City will notify Design-Builder of the reasons for withholding payment. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, up to a maximum of 125% of the estimated cost, as determined by the City, to cure or otherwise correct or account for Design-Builder's failure, for one or more of the following reasons:

1. The City determines the existence of Non- conforming Work or completed Work that has been damaged, requiring correction or replacement.
2. A third party has filed claim for damages alleged to arise from Design-Builder's Work, or there is reasonable evidence indicating probable filing of such claims.
3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
4. The Contract Sum has been reduced by Change Orders.
5. Design-Builder is responsible for damage to the City or another contractor.
6. The City determines that Design-Builder will not complete the Work within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.
7. The City determines that Design-Builder persistently has failed to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the causes enumerated under subparagraph 14.01A).
8. The City determines that Design-Builder has failed to submit timely PCO cost proposal breakdowns in accordance with the Contract Documents.
9. The City determines that Design-Builder has failed to comply with any other requirements of the Contract

Documents.

### **9.07 PARTIAL UTILIZATION**

A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, Design-Builder shall grant the City's to permit the City to take possession of and use the Work, or a part thereof, at no additional cost to the City. When so used, City will be responsible for the cost of maintenance and repair due to ordinary wear and tear caused by the City. The use by the City of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Design-Builder of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.

B. Such Partial Utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.

C. If, in response to the City's written request(s) to take possession of and use part of the Work, Design-Builder believes that a specified part of the Work is Substantially Complete and ready for Partial Utilization, Design-Builder shall notify the City in writing and request a joint inspection of that part of the Work per the procedures described in Paragraph 9.08. When the City determines that the Work is ready for Partial Utilization, the City will issue a Notice of Partial Utilization, which shall establish the Partial Utilization date. The City will also issue a Punch List for the Work identifying deficient items to be corrected by Design-Builder prior to Final Completion.

D. Partial utilization of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

E. Design-Builder shall perform final cleaning of such partially utilized Work as specified in the Division 01 when directed to do so by the City.

F. The Guarantee to Repair Period, as defined in Paragraph 8.03, will commence upon the date specified in the Notice of Partial Utilization except that the Guarantee to Repair Periods for that part of equipment or systems that serve portions of the Work for which the City has not taken Partial Utilization or issued a Notice of Partial Utilization shall not commence until the City has taken Partial Utilization for that portion of the Work or has issued a Notice of Substantial Completion for the entire project.

G. Except as provided in this Paragraph 9.07, there shall be no additional cost to the City due to Partial Utilization.

### **9.08 SUBSTANTIAL COMPLETION**

A. Design-Builder shall notify the City in writing when Design-Builder considers that the Work is Substantially Complete and request that the City inspect the Work and prepare a Notice of Substantial Completion. Attached to Design-Builder's request for a Substantial Completion inspection shall be a preliminary list of items to be completed or corrected before Final Completion.

B. Within 10 working days from receipt of Design-Builder's written notification, the City will inspect the Work to determine whether it is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Design-Builder with a Punch List/Substantial Completion within 15 working days from Design-Builder's notice, which lists all Items that Design-Builder must correct or complete before the City considers the Work Substantially Complete.

C. Once Design-Builder has completed all items on the Punch List/Substantial Completion, Design-Builder shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in subparagraph 9.08B. Design-Builder shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.

D. As a condition precedent to Substantial Completion, Design-Builder shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other equivalent agency having jurisdiction over the Work in the event that such temporary occupancy permit or equivalent permit is necessary for the City to utilize the

Work for the purposes for which it is intended.

E. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.

F. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Design-Builder (i) a Punch List/Final Completion identifying deficient items to be corrected by Design-Builder prior to Final Completion; and (ii) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.

### **9.09 FINAL COMPLETION AND FINAL PAYMENT**

A. When Design-Builder considers all Work complete, including all items of Work on the Punch List/Final Completion and all closeout requirements, Design-Builder shall notify the City in writing and request that the City issue a certificate of acceptance.

B. Within 10 working days of receipt of Design-Builder's written notice, the City will verify whether Design-Builder has completed all Punch List/Final Completion items. If the City finds that any of the Punch List/Final Completion items are not complete, the City will notify Design-Builder in writing within 15 working days from Design-Builder's notice. Design-Builder shall promptly take actions necessary to complete such Punch List/Final Completion items. The City will add to or modify the Punch List if it discovers additional non-compliant work prior to Final Completion.

C. Once Design-Builder considers all deficient Punch List/Final Completion items complete, Design-Builder shall notify the City in writing and request a second inspection. If the City finds the Punch List/Final Completion items are still not complete, Design-Builder shall be responsible for all costs for conducting such additional inspections incurred by the City and its consultants before Final Completion. The cost of such inspections shall not be considered a delay cost and shall be charged in addition to any liquidated damages that may become due as a result of Design-Builder's failure to achieve Final Completion within the time prescribed in Section 00 73 02. The City may deduct all such costs of the City and its consultants from amounts that are due or become due to Design-Builder.

D. While deficient Punch List / Final Completion Work is outstanding, the City may, at its option, pay Design-Builder any earned Contract funds, including retention, subject to offset for the following: (i) funds subject to a certification of forfeiture by the Office of Labor Standards Enforcement and/or stop notice claims and/or funds to be withheld as otherwise required by law or court order; (ii) an amount not to exceed 200% of the total estimated cost of labor and materials to correct any Non-conforming, unacceptable, or incomplete Work; and (iii) amounts assessed for liquidated damages.

E. After Design-Builder has completed to the satisfaction of the City all Punch List / Final Completion items and close-out requirements in accordance with the Contract Documents, and the Commission issues a Resolution accepting the Work, the City will issue a written certificate of acceptance as required by section 6.22(k) of the Administrative Code stating that the Work is acceptable, and Design-Builder will receive the final payment.

F. Design-Builder and each assignee under any assignment in effect at the time of final payment shall, if required by the City, execute and deliver at the time of final payment, as a condition precedent to final payment, a release in the form specified in Division 01 and containing such exemptions as may be found appropriate by the City, discharging the City and the City's consultants, and their directors, officers, members, employees, agents and authorized representatives of all liabilities, obligations and Claims arising under this Contract.

### **9.10 PAYMENT FOR UNDELIVERED LONG LEAD ITEMS; PAYMENT FOR ITEMS DELIVERED AND STORED ON OR OFF THE SITE**

A. Long Lead Items Not Delivered to Design-Builder. In general, the City will not make payments for undelivered equipment or materials. Notwithstanding that general rule, the Contract Documents may, in limited circumstances, authorize partial payment for undelivered equipment or materials that require lengthy fabrication periods. City will issue payment according to and limited to the specific authorization and process set forth in the Design Build Agreement Form (Section 00 52 00). The City will not make partial payment for undelivered Items unless the Agreement specifically authorizes such payment.

B. Items Delivered and Stored On or Off the Site. In general, the City will not make partial payment to Design-

Builder for material or equipment procured by Design-Builder but stored on or off the Site and not incorporated into the Project. Notwithstanding that general rule, the following exception applies in limited circumstances:

1. The City will, upon written request by Design-Builder, make partial payment for material or equipment procured by Design-Builder and not incorporated into the Project subject to the following conditions:

a. City will not issue partial payment for any materials or equipment unless each individual piece of the material or equipment will become a permanent part of the Work, the materials and/or equipment are required by the Contract Documents, and the materials and/or equipment are specially manufactured for the Project and could not readily be used for or diverted to another job.

b. City will not issue partial payment for living or perishable plant material, or for degradable materials such as rock, sand, cement, or for reinforcing steel, miscellaneous piping, off the shelf and catalog items, or similar items, until they are incorporated into the Work.

c. Applicable materials and/or equipment are either stored on the Site or at an off-Site location approved in advance and in writing by the City and in compliance with the requirements set forth in this Subparagraph.

d. Partial payment for materials or equipment stored off the Site shall be limited to the lesser of 75% of the invoice cost or the Bid Item amount less an estimate by the City for installation. Partial payment for materials or equipment stored on the Site shall be limited to the lesser of 95 percent of the invoice cost or the Bid Item amount less an estimate by the City for installation. Design-Builder shall provide all documentation necessary to establish the cost of the materials or equipment. The City shall be sole judge of installation costs. The actual percentage paid (subject to the 75% or 95% limit, as applicable) shall be at the discretion of the City.

e. The General Requirements may set forth additional conditions applicable to partial payment for materials and equipment.

2. The City will not approve a request for partial payment for material or equipment not incorporated into the Project unless Design-Builder complies with each of the applicable requirements set forth below. City will not issue partial payment until Design-Builder submits sufficient and satisfactory documentation to the City as required below.

a. Design-Builder shall submit to the City Representative proof of off-Site material or equipment purchases, including bills of sale, invoices, unconditional releases and/or other documentation as requested by the City warranting that Design-Builder has received the material or equipment free and clear of all liens, charges, security interests, and encumbrances.

b. Design-Builder shall submit to the City Representative proof that title to stored Items vested in the City at time of delivery to the Site or off-Site warehouse. Design-Builder shall be responsible for all costs associated with storage of the Items.

c. Design-Builder shall store the materials and/or equipment in a bonded warehouse or facility approved by the City Representative. The materials and equipment shall be physically segregated from all other materials or equipment within the facility and shall be identified as being the "PROPERTY OF THE CITY AND COUNTY OF SAN FRANCISCO." Design-Builder shall exercise all measures necessary to ensure preservation of the quality, quantity, and fitness of such materials or equipment and shall perform the manufacturers' recommended maintenance of the materials or equipment. Design-Builder shall inspect the materials and equipment, and shall submit regular reports to the City Representative as specified in the General Requirements, listing all of the equipment stored, results of its inspection, and the maintenance performed.

d. Design-Builder, at no additional cost to the City, shall insure stored material and/or equipment against theft, fire, loss, vandalism, and malicious mischief, and shall deliver the policy or certificate of such insurance to the City Representative naming the City as an additional insured. Insurance shall not be cancelable for at least 30 days and cancellation shall not be effective until certificate thereof is provided to the City. The insurance shall cover the material or equipment while stored at the approved location, while in transit to the Site, while being off-loaded at the Site and until the material or equipment is incorporated into the Work and the Work is accepted by the City.

e. Design-Builder shall submit to the City Representative written consent from Design-Builder's sureties approving the partial payment for Items stored on or off Site. The written consent must include a statement confirming that remittance of the advance payment will not relieve the sureties of any of their obligations under the Bonds.

f. Stored material or equipment shall be available for inspection by the City at all times. Design-Builder shall, upon request, assist the City Representative in conducting a full view, piece-by-piece, inventory or all such material or equipment.

g. Design-Builder shall protect stored material and equipment from damage. Damaged material and/or equipment, even though paid for, shall not be incorporated into the Work. In the event of loss or damage to paid material and/or equipment, Design-Builder shall be responsible for replacing such lost or damaged material and/or equipment at its own cost and shall be responsible for all delays incurred to the Project as a result of such loss or damage. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Design-Builder fails to replace lost or damaged material and/or equipment at its own cost.

h. Design-Builder shall deliver stored material and equipment to the Site. After delivery, if Design-Builder or City discovers any inherent or acquired defects in such material and/or equipment, Design-Builder shall remove and replace any defective Items with suitable Items at no additional cost to the City. Design-Builder shall be responsible for all delays incurred to the Project resulting from the removal and replacement of defective material and/or equipment. Consistent with Paragraph 9.06, the City may nullify the whole or a part of an advance payment previously issued in the event that Design-Builder fails to remove and replace defective Items.

3. Nothing in this Paragraph 9.10 shall relieve Design-Builder of its responsibility for incorporating material and equipment into the Work that conform to the requirements of the Contract Documents.

4. Design-Builder shall absorb any and all costs incurred to meet the requirements of this Paragraph 9.10 without modification to the Contract Sum.

## **ARTICLE 10 – INSURANCE AND BONDS**

### **10.01 INSURANCE REQUIREMENTS**

A. Design-Builder shall purchase and maintain in force throughout the Contract Time such liability and other insurance as provided in Section 00 73 16.

### **10.02 PERFORMANCE BOND AND PAYMENT BOND**

A. At the time of execution of the Contract, Design-Builder shall file with the City the following bonds using the form provided in Section 00 61 13:

1. a corporate surety bond, in a sum not less than 100% of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and

2. a corporate surety bond, in a sum not less than 100% of the Contract Sum, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").

B. Said Performance Bond shall cover all corrective Work required during the Guarantee to Repair Period, all warranty and maintenance Work required by the Contract Documents, and any and all Work required to correct latent defects.

C. Corporate sureties issuing these bonds and Bid bonds as specified in the RFB and Section 00 52 00 shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have either a current A.M. Best Rating not less than "A-, VIII" or shall be listed in the current version of the United States Department of the Treasury's Listing of Approved Sureties (Department Circular 570), and shall be satisfactory to the City.

## **ARTICLE 11 – LABOR STANDARDS**

### **11.01 PREVAILING WAGES**

A. It is hereby understood and agreed that all provisions of section 1770, et seq., of the California Labor Code are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.

B. It is hereby understood and agreed that all provisions of sections 6.22(e) and 6.22(f) of the Administrative Code are incorporated as provisions of the Contract Documents including, but not limited to, the following:

1. Design-Builder shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

2. Design-Builder shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.

3. Design-Builder shall keep or cause to be kept complete and accurate payroll records for all persons performing labor in or about the Work. Such records shall include the name, address and social security number of each worker who provided labor, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every Subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and the California Department of Industrial Relations.

4. Should Design-Builder, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Design-Builder shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Design-Builder and the Subcontractor shall jointly and severally forfeit back wages due plus the penalties set forth in Labor Code Section 1775, but not less than \$50 per day per worker.

5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five days (Monday-Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour day), except in those crafts in which a different work day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Design-Builder or any Subcontractor who violates this provision shall forfeit back wages due plus the penalties set forth in Labor Code section 1775, but not less than \$50 per worker per day.

C. The most current highest prevailing wage rate determinations made at the time of the advertisement for Bids are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.

2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

D. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations and the San Francisco Office of Labor Standards Enforcement.

E. Design-Builder shall post job site notices prescribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

## 11.02 PAYROLLS

A. Certified Payroll Records: Design-Builder shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the preparation, keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its Subcontractors of all tiers.



1. Design-Builder shall certify the accuracy and completeness of payroll records under penalty of perjury and submit payroll information electronically to the City and, where required, to the California Department of Industrial Relations, as set forth in Paragraph 9.03M. In addition, Design-Builder shall make the payroll records available for inspection at all reasonable hours at the job site office of Design-Builder on the following basis:

a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.

b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.

c. Design-Builder shall make a certified copy of all payroll records available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job site office of Design-Builder.

d. Design-Builder shall file a certified copy of the payroll records with the entity that requested such records within 10 days after receipt of a written request.

2. In providing copies of payroll records to any requestor, Design-Builder shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.

3. Design-Builder shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 working days, provide a notice of a change of location and address.

4. In the event that Design-Builder receives a written notification of noncompliance with section 1776, Design-Builder shall have 10 days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-day period, Design-Builder shall forfeit the penalties set forth in Administrative Code section 6.22(e) and (f) and/or California Labor Code section 1776. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, City shall withhold such penalties from the Contract Sum.

5. Design-Builder is solely responsible for compliance with Section 1776. The City shall not be liable for Design-Builder's failure to make timely or accurate submittals of certified payrolls.

### **11.03 APPRENTICES**

A. Design-Builder and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and Administrative Code, section 6.22(n). Design-Builder shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.

1. Design-Builder shall comply with all requests by the City to provide proof that Design-Builder and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.

2. Design-Builder shall include in all of its subcontracts the obligation for Subcontractors of every tier to comply with the requirements of the State Apprenticeship Program.

3. Section 1777.5 does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

B. Should Design-Builder fail to comply with the apprenticeship requirements of section 1777.5, Design-Builder shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

C. Design-Builder, if not signatory to a recognized apprenticeship training program under chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Design-Builder shall require its Subcontractors who are not signatories to provide such evidence to the City as a

condition precedent to qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

#### **11.04 LABOR STANDARDS ENFORCEMENT**

A. All Work is subject to compliance monitoring and enforcement of prevailing wage requirements by the California Department of Industrial Relations ("DIR") and the San Francisco Office of Labor Standards Enforcement

B. In accordance with Administrative Code section 6.22(e)(7) and section 6.24 and the applicable sections of the California Labor Code, Design-Builder further acknowledges and agrees as follows:

1. Design-Builder will cooperate fully with the DIR and the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.

2. Design-Builder agrees that the DIR and the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.

3. Design-Builder shall maintain a sign-in and sign-out sheet showing which employees are present on the job site.

4. Design-Builder shall post job site notices pre-scribed by the California Department of Industrial Relations at all job sites where Work is to be performed.

5. The DIR and the Labor Standards Enforcement Officer may audit such records of Design-Builder as is deemed reasonably necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter, Chapter 6 of the Administrative Code, and the applicable sections of the California Labor Code.

C. Under California Public Contract Code section 6109, Design-Builder or Subcontractors who are ineligible to bid or work on, or be awarded, a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

1. Any contract for the Project entered into between Design-Builder and a debarred subcontractor is void as a matter of law.

2. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works project. Design-Builder shall return to the City any public money that may have been paid to a debarred subcontractor by Design-Builder.

3. Design-Builder shall be responsible for the payment of wages to workers of a debarred subcontractor that has been allowed to work on the Project.

### **ARTICLE 12 – SAFETY**

#### **12.01 PRECAUTIONS AND PROGRAMS**

A. Design-Builder shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Design-Builder shall be solely responsible for any and all fines, penalties or damages which result from Design-Builder's failure to comply with applicable health and safety laws and regulations during performance of the Work. Refer also to Section 00 73 19 - Health and Safety Requirements. Design-Builder shall designate in writing a responsible competent person of Design-Builder's organization at the Site as Project safety representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a day, 7 days a week by telephone or other approved means.

B. Design-Builder shall perform all Work relating to hazardous materials as required by the Contract Documents. Design-Builder and its Subcontractors shall comply with all federal, state and local statutes and regulations on training, handling, storage, public notification and disposal of hazardous materials and hazardous wastes. In the event that Design-Builder or its Subcontractors introduces and/or discharges, spills or releases a hazardous material onto the site in a manner not specified by the Contract Documents; and/or (ii) disturbs a hazardous material identified in the Contract Documents or Available Project Information, the Design-Builder shall immediately notify the City Representative and any required agencies of the spill, release or discharge and Design-Builder shall stop the Work, and cordon off the affected area to secure entry. Removal and disposal of the hazardous material, if deemed necessary by the City, will, at the discretion of the City, be performed either by the City at Design-Builder's expense or by Design-Builder, through a qualified remediation Subcontractor, at Design-Builder's expense. Under no circumstance shall the Design-Builder perform remediation Work for which it is not qualified.

C. Should Design-Builder or any of its Subcontractors, while performing Work on the Site, unexpectedly encounter any hazardous material not show in the Contract Documents or Available Project Information, or have reason to believe that any other material encountered may be a hazard to human health and safety and/or the environment, Design-Builder shall stop the Work, cordon off the affected area to secure entry, and shall immediately notify the City Representative. Removal and disposal of the hazardous material not shown in the Contract Documents or Available Project Information, if deemed necessary by the City, will be performed as directed by the City at the City's expense. In the event that Design-Builder is delayed in the completion of the Contract Work solely because of such hazardous materials or conditions not previously identified in the Contract Documents or Available Project Information, the Design-Builder shall be entitled to an extension of time in accordance with Article 7 of these General Conditions.

## 12.02 PERSONS AND PROPERTY

A Design-Builder shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:

1. All persons on the Site or others who may be affected by the Work;
2. The Work and the materials and equipment to be incorporated therein, whether in storage on or off the Site; and
3. Other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.

B. Design-Builder shall give notices pursuant to California Civil Code section 832 and shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

C. Design-Builder shall notify owners of adjacent property, underground facilities and utilities, such as PG&E, AT&T, Municipal Transportation Agency / Municipal Railway, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Design-Builder's operations a reasonable time in advance thereof so as to permit the owners to make suitable markings on the street surface of the locations of such facilities. After such markings have been satisfactorily made, Design-Builder shall maintain them as long as necessary for the proper conduct of the Work.

D. Design-Builder shall not hinder or interfere with an owner or agency having underground facilities and utilities when removing, relocating, or otherwise protecting such facilities.

E. Design-Builder shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, such as posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying owners and users of adjacent sites, underground facilities and utilities of Design-Builder's operations.

F. Design-Builder shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of their removal or adjustment and to avoid damage to such facilities lying outside of or below a required excavation or trench area which are intended to remain in place.

G. Design-Builder shall be responsible for coordinating the exchange of material safety data sheets or other

hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable laws and regulations.

H. In the event of damage or loss to property referred to in the previous subparagraphs, whether caused by Design-Builder, its Subcontractors or Lower-Tier Subcontractors, Design-Builder shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Design-Builder are in addition to Design-Builder's obligations under Paragraph 3.21 of these General Conditions.

I. Pursuant to section 6705 of the California Labor Code, Design-Builder shall not begin excavation for trenches 5 feet or more in depth until Design-Builder has received acceptance from the City of Design-Builder's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Design-Builder shall submit a shoring plan in accordance with the requirements of the Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system less effective than that required by the Construction Safety Orders of the Division of Occupational Safety and Health. If Design-Builder's shoring plan varies from the shoring system standards established by the Construction Safety Orders, the plan shall be prepared and sealed by an engineer retained by Design-Builder who is registered as a civil or structural engineer in the State of California. The City's acceptance of Design-Builder's shoring plan shall not be construed to relieve Design-Builder of its sole responsibility for damage or injuries related to the excavation resulting from unsafe shoring.

J. Design-Builder shall be responsible for each operation and all Work, both permanent and temporary. Design-Builder shall protect its Work and materials and fully or partially completed work of the City or separate contractors from damage due to construction operations from its Work, the action of the elements, the carelessness of its subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Completion of the Work. If a separate contractor covers over or integrates Design-Builder's improper Work with its own work, then Design-Builder is responsible for the cost to correct any damage or defects its improper Work caused to the separate contractor's work, and also the cost of removing and replacing the separate contractor's work in order to access and correct the improper Work, without any expense to the City.

### **12.03 SAFETY PERMITS**

A. Design-Builder shall obtain and pay for a California industrial safety permit if the following occurs:

1. The construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
2. The demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
3. The excavation of a trench 5 feet deep or deeper into which a person must descend.

B. Design-Builder shall obtain and pay for all other required safety permits.

### **12.04 EMERGENCIES**

A. In emergencies affecting the safety or protection of persons or property at the Site, Design-Builder shall act promptly to prevent threatened damage, injury or loss. Design-Builder shall give prompt written notice to the City if Design-Builder believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations in the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Design-Builder in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

## **ARTICLE 13 – CONTRACT AND GOVERNMENT CODE CLAIMS**

### **13.01 CLAIMS GENERALLY**

A. The City and Design-Builder acknowledge and agree that early identification and resolution of potential

claims or disputes benefits all parties and advances the success of the Project.

B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential claims prior to the Design-Builder performing disputed Work and having documentation from the Design-Builder concerning a dispute as Work is being performed is critical for the City to make informed decisions which could impact the budget and schedule for the Project.

C. Compliance with the Notice of Potential Claim and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and Administrative Code Chapter 10. As set forth in Paragraph 13.04, Design-Builder's submittal of timely and proper Notices of Potential Claims and Contract Claims may, in some circumstances, toll Design-Builder's compliance with the Government Code Claim requirements until the Contract Claim process is finally completed. Refer to Paragraph 13.04, below. The timely submittal of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract and not expressly excluded from the Contract Claim process per subparagraph 13.01D, below. Disputed issues not timely raised and properly documented in conformance with this Article shall be deemed waived by the Design-Builder and may not be asserted in a Government Code Claim, subsequent litigation, or legal action. Furthermore, by executing this Contract, Design-Builder waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.

D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (1) claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (2) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury of death; (3) claims by the City; or (4) claims respecting stop notices.

E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

### **13.02 NOTICE OF POTENTIAL CLAIM**

A. If, during the course of the Project, the Design-Builder seeks an adjustment of the terms of the Contract Documents, an adjustment to the Contract Sum and/or Contract Time, or other relief with respect to the Contract Documents, including a determination of disputes or matters in question between the City and the Design-Builder arising out of or related to the Contract Documents or the performance of Work (including without limitation determination of delay, assessment of liquidated damages, Proposed Change Orders, Unilateral Change Orders, denial of Change Order Requests, payment, nonpayment, termination for cause, termination for convenience, or other act by the City impacting or potentially impacting payment, nonpayment, withholding, or the performance of the Work), then the Design-Builder must submit to the City a timely Notice of Potential Claim to preserve its right to seek such additional compensation and/or time.

B. Design-Builder must submit a Notice of Potential Claim to the City within seven (7) days of the event, activity, occurrence, or other cause giving rise to the potential Claim. For potential Claims that involve or relate to an extra, change, addition or deletion to the Work, Design-Builder's seven-day period to submit a Notice of Potential Claim will commence when the City Representative issues a final written decision denying, in whole or in part, Design-Builder's Change Order Request or other proper request for adjustment to the Contract Sum and/or Contract Time. Note that Design-Builder's failure to comply with required notice and submittal requirements for Change Order Requests (Article 6) or Differing Site Conditions (Paragraph 3.05) shall constitute grounds to deny any related Claim.

C. A Notice of Potential Claim shall describe the nature and circumstances of the potential claim event, set forth the reason(s) for which Design-Builder believes additional compensation and/or time will or may be due, and provide a good faith estimate of the cost and/or time impact to which Design-Builder believes it may be entitled. Notices of Potential Claims submitted per Paragraph 3.05 (Differing Site Conditions) must also identify the Escrow Bid Documents that formed the basis of Design-Builder's Bid to perform the Work affected by the alleged Differing Site Condition.

D. The Notice of Potential Claim provides early notice to the City of a disputed issue and provides the City with the opportunity to mitigate associated costs, allowing for early resolution. Failure by Design-Builder to submit a timely Notice of Potential Claim shall constitute a waiver of any claim arising out of the event, activity, occurrence, or other cause giving rise to the potential Claim.

E. The requirements of Paragraph 13.02 apply regardless of whether or not the disputed issue underlying a potential claim event has been or will be submitted to an issue resolution/escalation ladder, Dispute Review Board, Dispute Resolution Advisor, or similar dispute resolution process that may be required by the Contract Documents.

### 13.03 CONTRACT CLAIM

A. General. The Contract Claim shall be the Design-Builder's sole and exclusive administrative remedy for additional compensation or time associated with its performance of the Work under the Contract. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Design-Builder as to any claims relating to its performance of the Work under the Contract and a failure to exhaust its administrative remedies.

B. Deadline to Submit Contract Claim. The time to submit a Contract Claim will depend on the dispute resolution process(es) that are incorporated into the Contract Documents.

1. If the Contract Documents require the establishment of an issue resolution/escalation ladder, Dispute Review Board, Dispute Resolution Advisor, or similar mandatory or optional supplemental dispute resolution process(es), and Design-Builder timely refers a disputed issue to the applicable process(es), then the time to submit a Contract Claim shall be extended as set forth in the Contract Document that implements the supplemental dispute resolution process(es). For example, as set forth in Section 00 73 10 (if used), for disputes reviewed by a Dispute Resolution Advisor and heard using a formal Dispute Meeting, Design-Builder must submit any certified Contract Claim for the dispute no later than 15 days after expiration of the acceptance period for the DRA Report. Design-Builder's timely referral of a disputed issue to a supplemental dispute resolution process that the Contract Documents identify as mandatory (e.g., Dispute Review Board) is a prerequisite to filing a Contract Claim under this Article. By failing timely to refer a disputed issue to the applicable mandatory supplemental dispute resolution process specified in the Contract Documents, Design-Builder waives future Contract Claims relating to the disputed issue.

2. The following Contract Claim submittal requirements apply (i) if the Contract Documents do not establish a supplemental dispute resolution process or (ii) the Contract Documents establish an optional supplemental dispute resolution process(es) and Design-Builder elects to not refer the disputed issue to an optional supplemental dispute resolution process. In such cases, Design-Builder may file a Contract Claim only as to disputed issues presented to and rejected by the City Representative through the Notice of Potential Claim process set forth in Paragraph 13.04, below. The City Representative will respond, in writing, to Design-Builder's Notice of Potential Claim, submitted per Paragraph 13.04, within 30 days of receipt of the Notice. If the City Representative requires additional time to issue a determination, he or she will notify the Design-Builder of the same in writing, within the initial 30-day review period. Design-Builder shall submit a Contract Claim within 15 days of receipt of the City Representative's written determination on the Notice of Potential Claim if Design-Builder disputes the City Representative's written determination and wishes to preserve its right to pursue the disputed issue. In the event that the City Representative does not issue a written determination on Design-Builder's Notice of Potential Claim within the prescribed period, the Design-Builder must submit a Contract Claim either within 15 days of the expiration of the prescribed period, or 45 days of submitting its Notice of Potential Claim, whichever is later, if Design-Builder wishes to preserve its right to pursue the disputed issue.

#### C. Contract Claim Certification Requirement:

1. Design-Builder, under penalty of perjury, shall submit with the Contract Claim certification by Design-Builder and its Subcontractor(s), as applicable, that:

- a. the Claim is made in good faith;
- b. supporting data are accurate and complete to the best of Design-Builder's, or Design-Builder's and Subcontractor's, as applicable, knowledge and belief; and
- c. the amount requested accurately reflects the Contract adjustment for which Design-Builder believes the City is liable.

2. An individual or officer who is authorized to act on Design-Builder's behalf shall execute the certification. Failure to certify a claim under penalty of perjury shall render the Contract Claim a nullity and the underlying claim waived by the Design-Builder.

3. In regard to a Claim or portion of a Claim by a Subcontractor, Design-Builder shall fully review the Subcontractor's Claim and shall certify the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Claim, under penalty of perjury, in the same manner the Design-Builder would certify its own claim under the foregoing subparagraph 13.03C.1. The City will not consider a direct claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.

4. Design-Builder hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Design-Builder as to the subject Claim.

5. Design-Builder further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Design-Builder may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

D. Format of a Contract Claim:

1. The Design-Builder shall document its Contract Claim in the following format:

- a. Cover letter and certification.
- b. Narrative Summary of Claim merit and amount, and clause under which the Claim is made.
- c. List of documents relating to Claim:
  - 1) Specifications
  - 2) Drawings
  - 3) Clarifications/RFIs
  - 4) Citations from Criteria Package
  - 5) Correspondence
  - 6) Schedules
  - 7) Other
- d. Chronology of events and correspondence.
- e. Analysis of Claim merit.
- f. Analysis of Claim cost (money and time).
- g. Attachments:
  - 1) Specifications
  - 2) Drawings
  - 3) Clarifications/RFIs
  - 4) Correspondence
  - 5) Schedules
  - 6) Other

E. Additional Requirements for Contract Claims Seeking Time Extensions or Contesting the Assessment of Delay:

1. All Contract Claims seeking time extensions or challenging the assessment of delay and/or liquidated damages shall include, in addition to all other applicable requirements of this Article 13, a written analysis of all changes and all delays impacting the as-built critical path (the "As-Built Schedule Analysis"). Design-Builder shall base its As-Built Schedule Analysis on an as-built schedule that incorporate all actual start and finish dates, actual durations of activities, and actual sequences of construction. Design-Builder shall obtain the as-built schedule from the most recent baseline schedule or progress schedule update as of the time of the activity, occurrence or other cause giving rise to the Claim. Design-Builder shall create the as-built schedule as an early start schedule, and the schedule shall use the original activity durations for all incomplete Work and

the actual logic driving all activities. The As-Built Schedule Analysis shall incorporate all delays (including City, Design-Builder and third-party Unavoidable Delays without exception) in the time frame that they occurred with actual logic ties. As part of its review of Design-Builder's As-Built Schedule Analysis, the City will determine the critical path and identify any City-caused and/or third-party caused delays (if any) on the critical path. The City will not review or consider any Contract Claim seeking time extensions or contesting the assessment of delay (including liquidated damages) that does not include an As-Built Schedule Analysis that meets the requirements of this Subparagraph.

**F. Procedure for Review of a Contract Claim:**

1. The City shall review only a timely, certified, and properly documented Contract Claim.
2. The City shall respond to a Contract Claim in writing, within 45 days of receipt of such Claim. In its response, the City shall either grant or deny the Claim in whole or in part. If the City does not respond to a Claim within the 45-day period, the Claim is deemed denied in its entirety.
3. Within 10 days of the date of the City's response or expiration of the 45-day period, whichever is earlier, the Design-Builder may request review of the Contract Claim and the City's response by the Department Head. The request must be in writing, directed to the Department Head and copied to the City Representative. Failure by the Design-Builder to make a timely request to the Department Head, copied to the City Representative, shall constitute acceptance by the Design-Builder of the City's original response.
4. Upon a timely and proper request, the Department Head, or his/her designee (other than personnel assigned to the Project), shall review the relevant documents, meet with the Design-Builder and City personnel assigned to the Project, and confirm or revise the City's response to the Contract Claim. The Department Head, or his/her designee, shall issue such determination within 60 days of the date of the request for review. The determination by the Department Head, or his/her designee, shall constitute the final administrative determination of the City. If the Department Head takes no action on a request for review within the 60-day period, the City's original response shall constitute the final administrative determination by the City.

**13.04 GOVERNMENT CODE CLAIM**

A. For the purposes of this Contract, the City and the Design-Builder hereby agree that any action at law against the City arising out of or relating to Design-Builder's performance of the Work shall accrue either on the effective date of termination (under Article 14 of these General Conditions) or on the date of Substantial Completion, whichever is earlier. Notwithstanding the foregoing, the timely submittal of a complete and proper Notice of Potential Claim and Contract Claim under the administrative procedure specified in this Article 13 shall operate to toll Design-Builder's compliance with the Government Code Claim requirements under California Government Code section 900, et seq., and Administrative Code Chapter 10 until the City issues a final administrative determination per subparagraph 13.03F.4.

**ARTICLE 14 – TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.01 NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE**

- A. Grounds for Default. Design-Builder will be in Default of the Contract if Design-Builder:
1. Refuses or fails to supply enough properly skilled workers, adequate and proper materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
  2. Is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
  3. Refuses or fails in a material way to replace or correct Work not in conformance with the Contract Documents; or
  4. Repeatedly fails to make prompt payment due to Subcontractors or for labor; or
  5. Materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any public



authority having jurisdiction; or

6. Intimidates or sexually harasses a City employee, agent, or member of the public; or
7. Is otherwise in material breach of any provision of the Contract Documents.

B. Notice of Default. When any of the aforementioned grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Design-Builder. The City shall provide a copy of any Notice of Default to the Design-Builder's surety.

1. The Notice of Default shall identify the ground(s) for Default and provide the Design-Builder with a 14-day cure period to complete necessary corrective Work and/or actions.

2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-day cure period through no fault of Design-Builder or its subcontractors/suppliers, Design-Builder shall, within the 14-day cure period, (i) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (ii) commence diligently performance of the corrective Work and/or actions. The City, after accepting Design-Builder's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Design-Builder's surety.

C. Termination for Cause. If Design-Builder fails to cure the Default completely either (i) within the 14-day cure period set forth in the Notice of Default; or (ii) within the agreed-upon cure period set forth in an amended Notice of Default, the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Design-Builder and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:

1. Take possession of the Site and use any materials, equipment, tools, and construction equipment and machinery thereon owned by Design-Builder to complete the Project;
2. Accept assignment of subcontracts and agreements pursuant to Paragraph 4.03; and
3. Finish the Work by whatever reasonable method the City may deem expedient.

D. If the City terminates the Contract for one of the grounds set forth in subparagraph 14.01A, Design-Builder shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the cost of finishing the Work, including all liquidated damages for delays, such excess shall be paid to Design-Builder. If such costs exceed the unpaid balance, Design-Builder shall pay the difference to the City. The amount to be paid to Design-Builder or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract.

1. Upon completion of all Work, Design-Builder shall be entitled to the return of all its materials which have not been used in the Work, its plant, tools, equipment and other property provided, however, that Design-Builder shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

E. If, after termination of the Design-Builder's right to proceed, the City determines that the Design-Builder was not in default or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, will be the same as if the termination had been issued for the convenience of the City, as provided under Paragraph 14.03.

## **14.02 SUSPENSION BY THE CITY FOR CONVENIENCE**

A. The City may, without cause, order Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.

B. City will make an adjustment as specified in subparagraph 7.02A for increases in the cost of performance of the Contract caused by suspension, delay or interruption. City will not make an adjustment to the extent that:

1. performance is, was or would have been so suspended, delayed or interrupted by another cause for which Design-Builder is responsible; or
2. City denies a request for an adjustment under another provision of this Contract.

### 14.03 TERMINATION BY THE CITY FOR CONVENIENCE

A. Pursuant to section 6.22(l) of the Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Paragraph 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. City shall deliver written notice of any such termination to Design-Builder specifying the extent to which performance of Work under the contract is terminated, and the date upon which such termination becomes effective.

B. After receipt of a notice of termination, and except as otherwise directed by the City, Design-Builder shall comply with all of the following requirements:

1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.
2. Place no further orders or subcontracts for materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.
3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the rights, title, and interest of Design-Builder under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to settle or pay any or all Claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Paragraph 14.03.
6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (i) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (ii) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.
7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Design-Builder (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Design-Builder under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.
8. Complete performance of any part of the Work not included in the City-issued notice of termination.
9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract which is in the possession of Design-Builder and in which the City has or may acquire an interest.

C. After receipt of a notice of termination, Design-Builder shall submit to the City its termination claim, in the form and with the certification the City prescribes. Design-Builder shall submit such termination claim promptly, but in no event later than 3 months from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Design-Builder within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Claim at any time after such 3-month period or extension period. If Design-Builder fails to submit its termination Claim within the time allowed, the City may determine, on the basis of information available to the City, the amount, if any, due to Design-Builder because of the termination. The City shall then pay to Design-Builder any amount so determined.

D. Subject to the previous provisions of this Paragraph 14.03, Design-Builder and the City may agree upon the whole or any part of the amount or amounts to be paid to Design-Builder because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by

the amount of payments otherwise made and as further reduced by the Contract Sum of Work not terminated. The City will undertake to amend the Contract accordingly, and City will pay Design-Builder the agreed amount. Nothing following, which prescribes the amount to be paid to Design-Builder in the event of failure of Design-Builder and the City to agree upon the whole amount to be paid to Design-Builder because of the termination of Work under this Paragraph 14.03, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that the parties may agree upon to be paid to Design-Builder pursuant to this subparagraph 14.03D.

E. If Design-Builder and the City fail to agree in accordance with subparagraph 14.03D on the whole amount City will pay to Design-Builder because of the termination of Work under Paragraph 14.03, the City shall determine, on the basis of information available to the City the amount, if any, due to Design-Builder by reason of the termination and will pay to Design-Builder the amounts determined as follows:

1. For all Contract Work performed before effective date of the notice of termination, the total (without duplication of any items) of the following items:
  - a. The cost of such Work.
  - b. The cost of settling and paying Claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by Design-Builder before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.
  - c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable. But, if it appears that Design-Builder would have sustained a loss on the entire Contract if Design-Builder had completed all the Work, City shall not be obligated to pay Design-Builder an amount for profit.
2. The reasonable cost of the preservation and protection of property incurred as previously provided.
3. The total sum City will pay to Design-Builder shall not exceed the total Contract Sum as reduced by:
  - a. the amount of payments already made;
  - b. the Contract price or value of Work terminated; and
  - c. the fair value, as determined by the City, of destroyed, lost, stolen or damaged Work or materials for which Design-Builder was responsible.

F. Design-Builder shall have the right to dispute in a court of competent jurisdiction within the State of California any determination the City makes under subparagraph 14.03E. But, if Design-Builder has failed to submit its termination Claim within the time provided and has failed to request extension of such time, it shall have waived such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Design-Builder the following:

1. If there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or
2. If a proceeding is initiated in a court of competent jurisdiction within the State of California, the amount finally determined in said proceeding.

G. In arriving at the amount due Design-Builder under this clause, the City shall deduct:

1. All unliquidated advances or other payments on account theretofore made to Design-Builder, applicable to the terminated portion of the Contract;
2. Any Claim which the City may have against Design-Builder in connection with the Contract; and
3. The agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by Design-Builder or sold, under the provisions of this Paragraph 14.03, and not otherwise recovered by or credited to the City.

H. Design-Builder understands and agrees that the foregoing termination of Contract for convenience

provisions shall be interpreted and enforced pursuant to cases interpreting and enforcing similar provisions in federal procurement contracts.

## **ARTICLE 15 – MISCELLANEOUS PROVISIONS**

### **15.01 GOVERNING LAW AND VENUE**

A. The Contract Documents shall be interpreted in accordance with the laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the Administrative Code, which is incorporated by this reference as if set forth herein in full.

B. All litigation relative to the formation, interpretation and performance of the Contract Documents will be decided by a court of competent jurisdiction within the State of California.

### **15.02 RIGHTS AND REMEDIES**

A. All of City's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of City under the Contract Documents or otherwise available at law or in equity.

B. No action or failure to act by the City or the City Representative will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by City or the City Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

### **15.03 COMPLETE AGREEMENT**

The Contract Documents constitute the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified or amended only as specified in Paragraph 1.04 of these General Conditions.

### **15.04 SEVERABILITY OF PROVISIONS**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**END OF SECTION**



## SECTION 00 73 00

## SUPPLEMENTARY CONDITIONS

## 1.01 SUMMARY

- A. This Section includes supplements that amend, delete, or modify provisions of Section 00 72 00.22, the General Conditions of the City and County of San Francisco, as required for the Work of this Contract.
- B. All provisions that are not so modified shall remain in full force and effect.

## 1.02 ARTICLE 1

- A. Amend subparagraph 1.03J to read as follows:
  - "J. All references in the Contract Documents to satisfactory, sufficient, reasonable, acceptable, suitable, proper, correct, or adjectives of like effect shall be construed to describe an action or determination of the City Representative for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in subparagraph 1.03B. Such determinations of the City Representative shall be final and conclusive, subject to claims, appeals, protests, and challenges as allowed by the Contract Documents."

## 1.03 ARTICLE 2

- A. Amend subparagraph 2.01C to read as follows:
  - "C. During the Design Phase, the review, approval, or other action taken by the City upon Design-Builder's Design Submittals shall apply only as to whether the design, drawings and specifications are in conformance with the intent and requirements of the Criteria Package. During the Construction Phase, the review, approval, or other action taken by the City upon Design-Builder's Construction Submittals shall be for strict compliance with the Construction Documents. The City's action will be taken with such reasonable promptness provided that the City shall be provided a reasonable time, as set forth in the General Requirements, to permit adequate review. Such actions of the City shall in no way relieve Design-Builder from its responsibility to complete a fully functional and operational project, nor from providing all labor, equipment, and materials in accordance with the requirements of the Contract Documents necessary for the proper and timely execution of the Work. Should the City request a change that affects the cost or time of performance to a Design-Builder's Submittal that was previously approved by the City, and the Submittal conforms to the requirements of the Criteria Package or incorporates deviations from the Criteria Package specifically approved by the City, Design-Builder may submit a Claim in accordance with Article 13. Design-Builder shall be responsible to provide design and engineering or other costs necessary to prepare the Submittals and obtain approvals required by the Contract Documents from the City or other authorities having jurisdiction. The City is not precluded, by virtue of approving a change in the requirements of the Criteria Package, from obtaining a credit for construction cost resulting from

allowed concessions in the Work or materials therefore if such change results in a reduction of cost to the Design-Builder.”

#### 1.04 ARTICLE 3

- A. Amend subparagraph 3.02D.4 with the addition of new subparagraph 3.02D.4.e as follows:
- "e. Design-Builder does not transfer any intellectual property rights to City under the Order (nor grant City any right to use any intellectual property other than for purposes expressly agreed to in writing by Design-Builder), and the City shall treat any and all proprietary and intellectual property provided or disclosed to City by Design-Builder as confidential. Design-Builder hereby grants the City an irrevocable license to use any intellectual property reflected in the Design and Construction Documents for the purposes of maintenance, ongoing work, and future work at the Project.”
- B. Amend subparagraph 3.03B to read as follows:
- "B Design-Builder shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Design-Builder shall be responsible for the accuracy of such dimensions and determinations. The City shall provide all necessary access and facilitate all necessary inspection outages at the time and to the degree necessary to enable Design-Builder to comply with this clause as mutually agreed by the City and Design-Builder at the time of contracting.”
- C. Amend Paragraph 3.19 with the addition of new subparagraph 3.19E as follows:
- "E. The foregoing warranty is exclusive and in lieu of all statutory, oral, or implied warranties and guarantees of quality and performance and results (including, any warranty of merchantability or fitness for a particular purpose; or implied warranties against redhibitory defects, vices, or defects, hidden or otherwise) are hereby disclaimed by Design-Builder and all equipment manufacturers. However, all other written and/or express warranties shall remain valid and enforceable, including without limitation any warranties provided by equipment or material manufacturers.”
- D. Amend Paragraph 3.20 to read as follows:
- “3.20 TAXES
- A. Design-Builder shall be responsible for paying all applicable Project taxes in effect as of the date of Bid opening during the performance of the Work or portions thereof. The SFPUC will be responsible to pay Project tax amounts imposed by any applicable tax increases occurring after the date of Bid opening, and the City shall be entitled to a deductive change order in the amount of any reduction in the amount of taxes imposed on the Project due to any decreases in applicable tax rates occurring after the date of Bid opening.”
- E. Amend subparagraphs 3.22D and 3.22F to read as follows:

“D. If the City incurs any fines or penalties because of Design-Builder's (or its Subcontractor's or Supplier's) failure to comply with a law, regulation, order or decree, the City may determine and deduct from the Contract Sum the proportional amount of the fine or penalty attributable to Design-Builder's (or its Subcontractor's or Supplier's) failure.”

“F. Design-Builder shall not be entitled to any increase in the Contract Time or Contract sum as a result of Design-Builder's compliance with this Paragraph 3.22 unless a change of law impacts the work schedule and/or Contract Sum.”

## 1.05 ARTICLE 6

A. Amend subparagraph 6.08A with the addition of new subparagraph 6.08A.2 as follows:

“2. Subparagraphs 6.08B and 6.08C do not apply to Bid Items COV-1 and COV-2. Refer to subparagraph 6.08D for quantity adjustments applicable to bid items COV-1 and COV-2.”

B. Amend Paragraph 6.08 with the addition of new subparagraph 6.08D as follows:

“D. Method for Calculating Quantity Adjustments for Bid Items COV-1 and COV-2:

1. SFPUC reserves the right to remove the COVID Safety and Infectious Disease Preparedness and Response Plan (IDPRP) requirements from the Contract scope, in the event that the government directives that resulted in these requirements are lifted or otherwise terminated. In that event, SFPUC will issue a deductive change order that removes this scope and adjusts the associated cost that was bid for this item. Contractor agrees that the adjustment of this cost in the deductive change order will be calculated as the daily rate bid for this item multiplied by the remaining days of Contract Time (as bid), which will then be subtracted from the Contract Sum.
2. In the event of a compensable delay, Contractor's sole compensation for all additional costs associated with Bid Items COV-1 and COV-2 as a result of the delay will be based on the daily rate that Contractor bid for each of these items, respectively, multiplied by the number of days granted in any time extension for the compensable delay.”

## 1.06 ARTICLE 7

A. Amend subparagraph 7.02D.3 to read as follows:

“3. The City's determination of whether an extension of time will be granted and whether the extension is compensable or non-compensable will be based on Design-Builder's demonstration that such Unavoidable Delays will extend Design-Builder's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.”



1.07 ARTICLE 14

A. Amend subparagraph 14.03E.1c to read as follows:

“c. A sum, as profit on the cost of the Work as provided in subparagraph 14.03D, that the City determines to be fair and reasonable.”

END OF SECTION

## SECTION 00 73 02

## CONTRACT TIME AND LIQUIDATED DAMAGES

## 1.01 SUMMARY

- A. This Section specifies the limits of Contract Time and amounts of liquidated damages the City may assess, which Design-Builder agrees to pay if assessed by the City, if Design-Builder fails to complete specified Work within the specified limits of Contract Time. Design-Builder shall include all milestone and completion dates, including commencement, substantial completion, final completion, interim milestones and key dates in the CPM Baseline Schedule that Design-Builder is obligated to prepare.

## 1.02 SUMMARY

- A. The City anticipates issuing Design Notice to Proceed (“NTP”) on or around June 5, 2021. Design-Builder shall not be entitled to any additional compensation based on when the City issue the NTP.
- B. The Design-Builder shall commence the Work within 5 calendar days after City issues the Design NTP, prosecute the Work diligently thereafter, and bring the Work to Substantial Completion within the time limit of 1033 consecutive calendar days beginning with and including the official date of Design NTP.
- C. Design-Builder shall achieve Final Completion no later than 60 consecutive calendar days after the date of the Notice of Substantial Completion.
- D. The City intends to issue the following separate NTPs.
1. Design Notice to Proceed
  2. Construction Notice to Proceed
- E. The specified milestones relate to the key scheduled dates as shown below.

No.	Milestone Descriptions	Key Scheduled Dates	Liquidated Damages
1	<u>Initial Submittal and Shop Drawings</u> for the “major parts and long lead items” as described in the Generator Rehabilitation Design Criteria, Paragraph 1.05, Construction Schedule and Sequencing. Refer to Section 01 33 00 Submittal Procedures.	Design Notice to Proceed + 42 Calendar Days	\$500 per Calendar Day. See Paragraph 1.03D below.
2	<u>Shutdown Outage #1</u> : Moccasin Powerhouse Generator Unit 2 outage. The generator will be locked and tagged out allowing for generator replacement.	November 28, 2022 to March 28, 2023	None

3	Complete Construction of Generator Unit 2 (Notice of Partial Utilization Generator Unit 2)	March 28, 2023	\$4,000 per Calendar Day. See Paragraph 1.03C below.
4	<u>Shutdown Outage #2</u> : Moccasin Powerhouse Generator Unit 1 outage. The generator will be locked and tagged out allowing for generator replacement.	December 4, 2023 to April 2, 2024	None
5	Substantial Completion	April 2, 2024	\$4,000 per Calendar Day. See Paragraph 1.03A below.
6	Final Completion	June 2, 2024	\$2,000 per Calendar Day. See Paragraph 1.03B below.

- F. Scheduling and Sequencing requirements. Six (6) months performance operational period cannot start before startup, testing, and commissioning is complete and signed off by the City's Representative.

### 1.03 LIQUIDATED DAMAGES

- A. The City and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay the City and County of San Francisco the sum of four thousand dollars (\$4,000.00) for each calendar day that transpires with the Work not Substantially Completed after the time limit for achieving Substantial Completion specified in Paragraph 1.02B.
- B. In addition, Contractor shall pay the sum of two thousand dollars (\$2,000.00) for each calendar day that transpires with the Project not Finally Completed after the time limit for achieving Final Completion specified in Paragraph 1.02C.
- C. In addition, Contractor shall pay the sum of four thousand dollars (\$4,000.00) for each calendar day that transpires with the Construction of Generator Unit 2 work not completed after the time limit as specified in Paragraph 1.02E.
- D. In addition, Contractor shall pay the sum of five hundred dollars (\$500.00) for each calendar day that transpires with the Initial Submittal and Shop Drawings work not completed after the time limit as specified in Paragraph 1.02E.

### 1.04 MISCELLANEOUS LIQUIDATED DAMAGES, PENALTIES, AND FINES

- A. Confidentiality Agreement - liquidated damages in the amount of \$150,000 per incident for breach of the Confidentiality Agreement relating to the use of project plans and specifications and other records.
- B. Contractor is advised that miscellaneous provisions for potential liquidated damages, penalties and fines are located elsewhere in the Contract, including but not limited to the following:

1. Section 00 45 60 - \$50 per day per person forfeiture plus five year disqualification for failure to comply with prevailing wage requirements.
2. Section 00 49 18 provides as an incentive, an equal split in cost saving between Contractor and the City, resulting from a Contractor submitted substitution request approved by the City.
3. Section 00 52 00, Article 7.03A – back wages due plus not less than \$50 per calendar day penalty for each worker not paid the highest general prevailing rate of wage; This is repeated in Article 11.01B.4 of Section 00 72 00.22 General Conditions.
4. Section 00 52 00, Article 7.03B – back wages due plus not less than \$50 per calendar day penalty for each worker not compensated in accordance with the prevailing overtime standard and rate; This is repeated in Article 11.01B.5 of Section 00 72 00.22 (General Conditions).
5. Section 00 72 00.22, Article 11.02A.4 – a daily penalty for each worker consistent with analogous provisions of the California Labor Code, including section 1776, if after 10 days following Contractor’s receipt of a written notice of noncompliance with the payroll records certification requirements of California Labor Code section 1776, said noncompliance is still evident.
6. Section 00 73 30 and Administrative Code Section 6.22(g)(7)(F) – amount equal to the journeyman or apprentice prevailing wage rate, as applicable, for the primary trade used by Contractor or a Subcontractor for each hour by which Contractor or Subcontractor fell short of the local hiring requirement.
7. Section 00 73 63, Article 1.03E - \$100 fee for each identification badge that is unreturned or otherwise not properly accounted for by the Contractor, when said badge is no longer needed.

END OF SECTION

## SECTION 00 73 10

## DISPUTE RESOLUTION ADVISOR SPECIFICATION

## 1. GENERAL

- 1.1 This Section specifies the requirements for selecting and using a Dispute Resolution Advisor ("DRA"). The DRA will be available to assist the parties by facilitating the timely resolution of disputes relating to the performance of Work under this Contract.
- 1.2 The City and the Contractor shall diligently cooperate with each other and the DRA, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of any dispute.
- 1.3 This specification does not supersede or modify provisions of the Contract regarding submitting Notices of Potential Claims, nor does it reduce or change the respective rights and duties of the City and Contractor under the Contract. Rather, the DRA process is available to supplement normal Project communications and Contract procedures in the event that the City and the Contractor cannot resolve a dispute on their own.
- 1.4 At all times during the course of the DRA process, the Contractor shall continue with the Work as directed by the City, in a diligent manner without delay and in conformance with all applicable provisions of the Contract. Records of the work shall be kept in sufficient detail to enable payment in accordance with the Contract terms and conditions.
- 1.5 The following categories of disputes are not eligible for referral to or review by the DRA:  
(i) claims regarding penalties or forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (ii) claims regarding personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury or death; (iii) claims regarding stop notices; and (iv) claims/disputes between Contractor and a subcontractor, supplier or other third party that do not involve the City. In addition, disputes regarding Contractor's obligation to defend and indemnify the City against third party claims as specified in the Contract Documents are not eligible for referral to or review by the DRA.

## 2. DEFINITIONS

- 2.1 "ADR" shall mean Alternative Dispute Resolution.
- 2.2 A "dispute" is a claim under the Contract by either the City or the Contractor that is eligible for review by the DRA.
- 2.3 "Dispute Meeting" shall mean both the formal and informal dispute meeting processes to review a dispute eligible for consideration, which shall result in a recommendation by the DRA.
- 2.4 The "DRA" shall mean the Dispute Resolution Advisor who is signatory to the DRA Agreement.
- 2.5 "DRA Agreement" shall be an agreement, appended to this Specification, to which the DRA, the City, and the Contractor are parties, which establishes the DRA for this Project consistent with the requirements of this Specification.
- 2.6 "DRA Report" shall be a nonbinding, written recommendation issued by the DRA as a result of a formal Dispute Meeting, as described in this Specification.
- 2.7 "DRB" shall mean Dispute Review Board.

- 2.8 "Financial ties" or "Financial interest" shall mean any ownership interest, loans, receivables, or payables.
- 2.9 "Party directly involved" shall mean the City or the Contractor under this Contract.
- 2.10 "Party indirectly involved" shall mean the construction managers, architects/engineers, subconsultants, counsel, consultants, or subcontractors and suppliers of all tiers on this Project.

### 3. DRA QUALIFICATIONS AND REQUIREMENTS

- 3.1 The DRA shall represent that he or she is qualified and able to perform independently and impartially the duties set forth in the DRA Agreement. It is imperative that the DRA show no partiality to either the Contractor or the City, or have any conflict of interest. The DRA shall agree to abide by the Canon of Ethics recommended by the Dispute Resolution Board Foundation ("DRBF").
- 3.2 The DRA shall have completed training in the DRB process or other ADR process(es) and meet the relevant ADR referral organization's (e.g., DRBF, American Arbitration Association or equivalent) requirements for DRA or DRB panel members.
- 3.3 The DRA shall have the following professional experience and qualifications:
- Experience with the interpretation and implementation of public work contract documents; and
  - Experience in construction matters and/or construction disputes relevant to the scope of work for the Project; and
  - Experience in the DRA, DRB, or other ADR process(es).
- 3.4 The DRA shall meet the following criteria and limitations for membership:
- **Direct Employment:** Prospective DRAs who are current employees of any of the parties directly or indirectly involved are prohibited from serving as a DRA. Prospective DRAs who are former employees of one of the parties directly involved must disclose that prior employment information and may serve as the DRA only if the other party consents in writing to the prospective DRA's appointment. Prospective DRAs who are former employees of one of the parties indirectly involved must disclose that employment information prior to appointment.
  - **Consulting Assignments:** Individuals who are currently engaged in a consulting capacity by any of the parties directly involved are prohibited from serving as a DRA. Prospective DRAs who are currently engaged as a consultant by one of the parties indirectly involved may serve as the DRA only if the other party consents in writing to the prospective DRA's appointment. Previous employment as a consultant by any party directly or indirectly involved must be disclosed.
  - **Financial Ties:** Individuals with financial ties to any of the parties directly involved are prohibited from serving as a DRA. Prospective DRAs with financial ties to one of the parties indirectly involved may serve as the DRA only if the other party consents in writing to the prospective DRA's appointment. Previous financial ties with any party, directly or indirectly, involved must be disclosed.

- **Close Personal or Professional Relationships:** Individuals with close personal or professional relationships with a key member of any party directly involved are prohibited from service as DRA. Prospective DRAs with such current relationships with a member of any party indirectly involved in the contract may serve as DRA only if the other party consents in writing to the DRA's appointment. All past personal or professional relationships with a key member of one of the parties directly or indirectly involved must be disclosed.
- **Prior Service as a DRA or DRB Member:** All past and current service as a DRA or DRB member on projects where any parties directly or indirectly involved were also involved must be disclosed.
- **No DRA shall have had substantial prior involvement in the Project, as determined by the City and the Contractor.**
- **Ongoing Responsibilities:** While serving on this Project, the DRA shall not participate in any discussion contemplating the creation of an agreement or making an agreement with any party directly or indirectly involved in the Contract regarding present or future employment or fee-based consulting services, or any other business arrangement after the Contract is completed.

#### 4. SELECTION OF THE DRA

- 4.1 As soon as practicable after award of the Contract, the City and the Contractor shall meet to discuss the establishment of the DRA, possible nominees, and to exchange lists of the construction managers, designers, architects, engineers, professional service firms, consultants, joint venture partners, subcontractors, and suppliers involved, or likely to be involved in the Project, with a listing of the key personnel of each.
- 4.2 The City and the Contractor shall each propose 3 potential DRA candidates. Within 15 days of the Design Notice To Proceed ("NTP"), the City and the Contractor shall exchange their respective nominees' full name and contact information and the following information:
  - Resume showing training, experience and qualifications as required by paragraphs 3.2 and 3.3, above. For past DRA and/or DRB participation, if any, list each DRA and/or DRB assignment separately, indicating the name and location of the Project, dates of DRA/DRB service, name of owner, name of contractor, contract value, nominating party (if applicable), names of other DRB members, and the number of disputes heard.
  - Disclosure statement describing past, present, and anticipated relationships, including indirect relationships through the nominee's full-time employer, if any, to the Project, and with all parties directly and indirectly involved in the Contract. Disclose close professional or personal relationships with key members of all such parties.
  - Disclosure is a continuing obligation of the DRA throughout the term of the Contract.
- 4.3 The City and Contractor will be allowed 10 days after the exchange of nominee information to review the resumes and disclosure statements for the DRA candidates proposed by the other party for the purposes of accepting or rejecting a nominee's participation as DRA. The City and the Contractor shall then attempt to select one of the 6 nominees to be the DRA. If the City and the Contractor cannot agree on one candidate, the City and the Contractor shall each choose one

of the three candidates nominated by the other, provided that each party is able to choose a nominee who does not have an actual or potential conflict of interest per section 3.4, above. The final selection of the DRA will be decided by a coin toss between the two candidates.

- 4.4 The City, the Contractor, and the selected DRA shall execute the DRA Agreement within 30 days of NTP. No DRA meeting shall take place until the DRA Agreement has been signed by all parties, unless all parties agree to sign it at the first meeting.

## 5. GENERAL PROCEDURES

- 5.1 The DRA shall meet with the parties at the start of the project to establish procedures that will govern the conduct of its business and reporting procedures in conformance with the requirements of the Contract and the terms of the DRA Agreement. The DRA need not adopt hard and fast rules for every aspect of its operation; the entire procedure shall be kept flexible to adapt to changing situations. Any procedures established by the DRA shall be implemented only upon approval by the parties. In addition, during the course of the Project, any modifications to the DRA's existing rules of operation shall be subject to the approval of both the City and Contractor.
- 5.2 Subsequent DRA meetings shall be held only to hear disputes between the parties.
- 5.3 While in the presence of the City and the Contractor, the DRA shall refrain from expressing opinions on the merits of statements on matters under dispute or potential dispute.
- 5.4 The DRA shall not meet with or discuss Contract or Project issues with individual parties. In addition, the DRA shall not undertake independent investigations of any kind pertaining to disputes or potential disputes, except with the knowledge and express permission of both parties.

## 6. DISPUTE RESOLUTION PROCESS: REFERRAL TO DRA

- 6.1 Prior good faith negotiation: The City and the Contractor shall enter into good faith negotiations to resolve their differences before referring a dispute to the DRA. The good faith negotiations shall be founded on the principles of full and timely disclosure of each party's position to the other party, including the exchange of pertinent supporting records, analyses, expert reports, and similar documentation, and shall proceed without delay following the inception of the disputed issue.
- 6.2 Dispute referral: Either party may initiate review of a dispute eligible for consideration by the DRA by written notice of dispute to the DRA, copied concurrently to the other party. The dispute referral shall concisely define the nature and specifics of the dispute that are to be considered by the DRA and the scope of the recommendation requested, and shall indicate whether the referring party prefers that the DRA use a formal or informal Dispute Meeting. The time and process for referral of disputes is as follows:
  - Referral by the Contractor: The Contractor may initiate dispute review only as to issues presented to and rejected by the City Representative through the Notice of Potential Claim process set forth in Article 13 of the General Conditions (Section 00 72 00.22). The City Representative will respond, in writing, to Contractor's Notice of Potential Claim within 30 days of receipt of the Notice. If the City Representative requires additional time to issue a determination, he or she will notify the Contractor of the same in writing, within the initial



30-day period. If Contractor objects to the City Representative's written determination and wishes to refer the matter to the DRA, Contractor shall, within 10 days after receipt of the City Representative's written determination, file a written reply with the City Representative, stating clearly and in detail the basis of the objection. Contractor shall then promptly refer the dispute to the DRA. The Contractor shall make the referral in writing to the DRA, simultaneously copied to the City, within 15 days after receipt of the City Representative's written determination. In the event the City Representative does not issue a written determination within the prescribed period, and Contractor wishes to refer the matter to the DRA, the Contractor must refer a disputed item to the DRA within 45 days of submitting its Notice of Potential Claim.

- Certification by Contractor: Contractor shall include with its dispute referral a certification, executed under penalty of perjury by an individual or officer who is authorized to act on Contractor's behalf, that: (i) Contractor is pursuing the dispute with the City in good faith; (ii) the supporting data currently known to Contractor are accurate and complete to the best of Contractor's knowledge; and (iii) the amount requested by Contractor accurately reflects the Contract adjustment for which the Contractor believes the City is liable based on information currently available to Contractor.
- Although referral to the DRA is not a prerequisite to the submittal of a Contract Claim, if Contractor wishes to refer a matter to the DRA, it must do so within the time limits specified above. Failure of Contractor to timely refer a disputed matter to the DRA shall result in the waiver of Contractor's right to refer the matter to the DRA, and Contractor must timely submit a Contract Claim per the General Conditions (Section 00 72 00.22) if it wishes to pursue the matter.
- Referral by the City: The City may refer a dispute to the DRA after passage of a reasonable period of time without progress toward a negotiated settlement. Referral by the City is not a condition precedent to affirmative claims asserted by the City against Contractor, including without limitation the assessment of liquidated damages or litigation.

6.3 Scope of the Recommendation Requested: The referring party may seek a recommendation as to entitlement only or as to entitlement and guidelines for compensation.

## 7. DISPUTE RESOLUTION PROCESS: PROCEDURES FOR DISPUTE MEETINGS

7.1 Upon being notified of the need for a Dispute Meeting, the DRA shall convene to review and consider the dispute. The DRA shall determine the time and location of the dispute meeting with due consideration for the needs and preferences of the parties, while recognizing the importance of a speedy resolution to the dispute. The Dispute Meeting shall be held no later than 25 days after receipt of the written referral, unless otherwise agreed by all parties. In no event shall the DRA consider a dispute without reviewing the Contract requirements and the facts, documentation, and analyses presented by both sides.

- If the written dispute referral indicates that the referring party prefers that the DRA use an informal Dispute Meeting, the DRA and the other party shall indicate their agreement or disagreement with that approach no later than 3 working days after receipt of the written referral. Failure of the other party to indicate its agreement or disagreement within the specified time period shall be construed as agreement to the use of an informal Dispute Meeting. An informal Dispute Meeting shall not be convened unless both parties and the DRA agree that an informal Meeting is appropriate for the dispute at issue.

- 7.2 As requested by the DRA, both parties shall furnish copies of written evidence or documentation to the DRA and the other party at least 10 days prior to the scheduled Dispute Meeting. The parties shall produce such additional evidence as the DRA may deem necessary to reach an understanding and a determination of the dispute. The party furnishing additional evidence shall furnish copies of such additional evidence to the other party at the same time the evidence is provided to the DRA. The DRA shall not consider evidence not furnished in conformance with the terms specified herein.
- In the event that either party fails to submit information requested by the DRA by the date established by the DRA, the DRA shall, at its discretion, determine whether the Dispute Meeting shall proceed as originally scheduled, or whether additional time shall be provided and a new date established. On the final date and time established for the Dispute Meeting, the DRA shall proceed with the Meeting utilizing the information that has been submitted.
- 7.3 Location: Normally, the DRA will conduct a Dispute Meeting at the job site. However, any location that would be more convenient and still provide all required facilities and access to necessary documentation is satisfactory.
- 7.4 Attendance by the parties: The City and the Contractor shall both limit attendance at a Dispute Meeting to individuals directly involved in the dispute and participants in the good faith negotiations that were conducted prior to submittal to the DRA, except as noted below.
- Prior to the date established for the Dispute Meeting, each party shall provide a list of proposed attendees to the DRA and the other party. In the event of any disagreement as to the number of attendees proposed by a party, the DRA shall make the final determination as to the number of attendees that each party may bring to the Meeting.
  - Attorneys shall not participate in the Dispute Meeting. Attorneys representing the parties are not permitted to attend Dispute Meetings unless prior written approval is obtained from the other party. If permitted to attend, attorneys shall only observe.
- 7.5 The DRA, with approval of the parties, may obtain technical services necessary to adequately review the disputes presented, including audit, geotechnical, schedule analysis, and other expert services. The parties' technical staff or an outside expert may supply those services, as appropriate. Prior to arranging for any outside expert, the DRA shall obtain prior approval from the City and the Contractor by providing: (1) a statement explaining why the expert assistance is needed; (2) an estimate of the cost of the expert assistance; (3) a disclosure statement, in accordance with the requirements for DRA selection as provided above; and (4) a confidentiality statement, consistent with the DRA Agreement, executed by the proposed expert. The DRA shall include the cost of the outside expert in his or her regular invoice, and provide a copy of the invoice. Invoices shall be in accordance with the requirements for DRA invoices. The City and the Contractor shall equally bear the cost of the services of the outside expert employed by the DRA.
- 7.6 The DRA may keep his/her own notes during a Dispute Meeting. There shall be no reporting of the Dispute Meeting proceedings by a shorthand reporter or by electronic means. There shall be no testimony under oath or cross-examination during a Dispute Meeting. Audio or video recordings are not permitted.
- 7.7 The conduct of the Dispute Meeting shall be established by the DRA according to its operating procedures and generally consistent with the following guidelines:

- The party who referred the dispute to the DRA shall present its position first, followed by the other party.
  - Both parties shall be allowed successive rebuttals, assuring a full and adequate opportunity to present their position, and to rebut the opposing party's position until, in the DRA's opinion, all aspects of the dispute have been fully and fairly covered.
  - The DRA shall be fully prepared to, and may at any time, ask questions, request clarifications, or ask for additional data and/or job records.
  - Either party may request that the DRA direct a question to, or request a clarification from the other party. The DRA shall determine at what point in the proceedings such requests may be made and if they will be granted. In general, the DRA will not allow one party to be questioned directly by the other party.
  - In difficult or complex cases, additional meetings may be necessary to facilitate full consideration and understanding of the dispute.
  - The DRA, in its sole discretion, may allow introduction of arguments, exhibits, handouts, or documentary evidence that were not provided in advance of the Dispute Meeting and have not been previously submitted to the other party. In such cases, the other party will be granted time to review and prepare a rebuttal to the new material.
  - During the Dispute Meeting, the DRA shall not express any opinion concerning the merit of any facet of the case.
- 7.8 Failure to Appear for a Dispute Meeting: In the event that some or all of the representatives of either party fails to appear at the appointed time of a Dispute Meeting, the DRA shall proceed with the Meeting. The Dispute Meeting shall take place as if all party representatives were in attendance, and the DRA shall consider all evidence brought before it and hear testimony from those party representatives that are present.
- 7.9 Disputes Involving Subcontractor Potential Claims: For the purposes of this paragraph, a "subcontractor potential claim" shall include any potential claim by a subcontractor (including also any pass through potential claims by a lower tier subcontractor or supplier) against the Contractor that is actionable by the Contractor against the City which arises from the work, services, or materials provided or to be provided in connection with the Contract. If the Contractor determines to pursue a dispute against the City that includes a subcontractor potential claim, the dispute shall be processed and resolved in accordance with the Contract Documents and in conformance with the following:
- Contractor shall identify clearly in submissions pursuant to this Section that portion of the dispute that involves a subcontractor potential claim or potential claims.
  - The Contractor shall include, as part of its submissions and referrals required under Article 7.2, above, a certification by the subcontractor's or supplier's officer, partner, or authorized representative with authority to bind the subcontractor and with direct knowledge of the facts underlying the subcontractor potential claim. Contractor shall also submit a certification that the subcontractor potential claim is acknowledged and forwarded by the Contractor. The form of these certifications is available from the City Representative.

- At Dispute Meetings involving one or more subcontractor potential claims, the Contractor shall require that each subcontractor involved in the dispute have present an authorized representative with actual knowledge of the facts underlying the subcontractor potential claim to assist in presenting the subcontractor potential claim and to answer questions raised by the DRA.
- Failure by Contractor to declare a subcontractor potential claim on behalf of its subcontractor (including lower tier subcontractors' and suppliers' pass through potential claims) at the time of submission of Contractor's potential claims, as provided hereunder, shall constitute a release of the City by Contractor of such subcontractor potential claims.
- Contractor shall include in all subcontracts under this Contract that subcontractors and suppliers of any tier (a) agree to submit subcontractor potential claims to the Contractor in a proper form and in sufficient time to allow processing by Contractor in accordance with the requirements of this Section; (b) agree to be bound by the terms of this Section to the extent applicable to subcontractor potential claims; and (c) agree that the existence of a dispute resolution process for disputes involving subcontractor potential claims shall not be deemed to create any claim, right, or cause of action by any subcontractor or supplier against the City.
- This Section shall not apply to, and the DRA shall not have the authority to consider, subcontractor potential claims between the subcontractor(s) or supplier(s) and the Contractor that are not actionable by the Contractor against the City.

## 8. DISPUTE RESOLUTION PROCESS: SPECIAL PROCEDURES FOR FORMAL DISPUTE MEETINGS

- 8.1 The DRA may request clarifying information from either party within 5 days after the Dispute Meeting. Requested information shall be submitted to the DRA within 5 days of the DRA's request.
- 8.2 The DRA shall issue nonbinding recommendations for resolution of a dispute and, if appropriate, recommended guidelines for determining compensation, formalized in a written Report in a format as determined by the DRA and signed by the DRA. The DRA shall issue the DRA Report to both parties within 10 days of the Dispute Meeting, or within 5 days of receiving requested clarification information, whichever is later. Time extensions may be granted at the request of the DRA and with the written concurrence of both parties. The recommendations in the DRA Report shall be based on the pertinent contract provisions, applicable laws and regulations, and the facts and circumstances involved in the dispute eligible for consideration, and shall include an explanation of the DRA's reasoning in reaching the recommendations. The recommendations in the Report must be consistent with the applicable provisions of the Contract between the City and Contractor. The DRA shall reference applicable Contract provisions in its Report. The DRA Report shall stand on its own, without attachments or appendices
- 8.3 Clarification: Either party may request clarification of a DRA Report within 5 days following receipt of the Report. Requests for clarification shall be submitted in writing simultaneously to the DRA and to the other party. Only one request for clarification per dispute from each party will be allowed. The DRA shall provide written clarification to both parties within 5 days of receipt of a request for clarification.

- 8.4 Reconsideration: Either party may request reconsideration of a Report within 10 days following receipt of the Report, subject to the rules and restrictions set forth below. As expeditiously as practicable, the DRA shall provide written reconsideration to both parties.
- Requests for reconsideration shall be submitted in writing simultaneously to the DRA and to the other party.
  - The DRA will not entertain requests for reconsideration that amount to a renewal of prior argument or additional argument based on facts available at the time of the Dispute Meeting.
  - Only one request for reconsideration per dispute from each party will be allowed.
- 8.5 Acceptance: The City and the Contractor shall submit their written acceptance or rejection of the recommendation(s) contained in a DRA Report concurrently to the other party and to the DRA within 10 days of receipt of the Report or following receipt of responses to requests for clarification or reconsideration.
- Failure by either party to accept or reject within the specified period shall be construed as acceptance of the Report by that party.
  - Acceptance by the City of a Report on entitlement only, or on entitlement with guidelines for compensation, does not obligate the City to any particular compensation amount.
- 8.6 If the parties are able to settle their dispute with the aid of the DRA Report, the City and Contractor shall promptly accept and implement the settlement of the parties. If the parties cannot agree on compensation within 30 days of the acceptance by both parties of the settlement, either party may request the DRA to make a recommendation regarding compensation.
- 8.7 Audit: If the Contractor seeks a recommendation from the DRA as to additional compensation under the Contract, the City may request a review or audit of the Contractor's project and accounting records. The City must request the review or audit within 10 calendar days of the Contractor's request for the DRA's recommendation as to compensation. The City shall select and shall bear the cost of the individual or firm performing the review or audit. If the City requests a review or audit pursuant to this paragraph, the Contractor shall produce, for examination and reproduction, its project and accounting records, including, but not limited to, bid estimates; budgets; job cost reports; subcontracts; invoices; timesheets and timecards; correspondence; daily reports; project schedules; and financial statements. The Contractor shall produce all requested project and accounting records promptly so that the City receives all records no later than 15 calendar days after service of the City's request for review or audit. The City shall promptly complete its review or audit and shall provide the DRA and the Contractor with the results of the review or audit as directed by the DRA. If the Contractor fails to fully comply with the City's request for review or audit, the DRA shall retract and revoke its Report recommending entitlement, and the Report will not be admissible as evidence in any subsequent proceeding.

## 9. DISPUTE RESOLUTION PROCESS: SPECIAL PROCEDURES FOR INFORMAL DISPUTE MEETINGS

9.1 If the parties and the DRA agree that an informal meeting is appropriate for the dispute at issue, the DRA shall consider disputes as quickly as possible, taking into consideration the particular circumstances and the time required to prepare detailed documentation. Procedural steps may be omitted as agreed to by both parties, and time periods may be shortened to hasten resolution. In no event shall the DRA consider a dispute without reviewing Contract requirements and the facts, documentation, and analyses presented by both sides.

9.2 The following procedures shall be used after an informal Dispute Meeting:

- After the Dispute Meeting has concluded, the DRA shall deliberate in private on the same day, or as otherwise agreed to by the parties, until the DRA develops recommendations with findings for the parties. The DRA shall then verbally deliver its recommendations to the parties. The DRA will not issue a written report.
- After the DRA presents its recommendations, the parties may ask the DRA for clarifications.
- If the parties are able to settle their dispute with the aid of the DRA's verbal recommendations, the City and Contractor shall promptly accept the recommendations and implement a settlement.
- If the parties are unable to settle their dispute with the aid of the DRA's verbal recommendations, either party may request a formal Dispute Meeting. The DRA will not be bound by its verbal recommendations in the event that a dispute is later heard by the DRA in a formal Dispute Meeting. Any follow-up formal Dispute Meeting shall take place as quickly as possible, taking into account particular circumstances.

## 10. DISPUTE RESOLUTION PROCESS: SUBSEQUENT PROCEEDINGS

10.1 In the event that the DRA process does not result in a resolution of a dispute, the Contractor must comply with the certified Contract Claim requirements under the Contract, in accordance with Administrative Code Chapter 6 and other applicable laws. For disputes reviewed by the DRA and heard using a formal Dispute Meeting, Contractor must submit any certified Contract Claim for the dispute no later than 15 calendar days after expiration of the acceptance period for the DRA Report. For disputes reviewed by the DRA and heard using an informal Dispute Meeting, with no follow-up formal Dispute Meeting, Contractor must submit any certified Contract Claim for the dispute no later than 15 calendar days after the informal Dispute Meeting. Failure to timely submit a certified Contract Claim will result in Contractor waiving its right to additional compensation and/or time pertaining to the dispute.

10.2 In any subsequent litigation or similar proceeding arising out of a dispute heard by the DRA, the final, written DRA Report and other DRA materials will not be admissible as evidence. Neither party may call the DRA as a witness in any subsequent proceeding.

## 11. COMPENSATION OF THE DRA

11.1 Fees and expenses of the DRA shall be shared equally by the City and the Contractor as set forth in the DRA Agreement.

11.2 The Contractor shall pay the invoices of the DRA after approval by both parties. Upon receipt of satisfactory evidence of payment of the invoices of the DRA by the Contractor, the City will then reimburse the Contractor for 50% of such invoices, with no mark-up. If the Contractor fails or refuses to pay the DRA invoices, the City may pay such invoices and deduct the Contractor's portion from any amount that is due or may become due under the Contract.

## 12. TERM

12.1 The DRA will be available during the term of the Contract through final acceptance of the Work and, if needed, for a reasonable post-construction period following final acceptance of the Work, but not to exceed the date that the City administratively closes the Contract.

12.2 Notwithstanding the term specified in paragraph 12.1, above, the DRA will terminate and cease to operate in the following circumstances: (i) at any time during the Contract term if City and Contractor mutually agree in writing to terminate the DRA and provide the DRA with 10-days written notice of termination; or (ii) in the event of early termination of the Contract per Article 14 of the General Conditions (Section 00 72 00.22), unless the City and Contractor mutually agree in writing to extend the DRA for a reasonable post-termination period.

END OF SECTION

## SECTION 00 73 10/A

## CITY AND COUNTY OF SAN FRANCISCO

DISPUTE RESOLUTION ADVISOR  
THREE-PARTY AGREEMENT

THIS AGREEMENT, dated for convenience as of the \_\_\_\_ day of \_\_\_\_\_, 202\_\_, is between the City and County of San Francisco (the "City"), acting by and through its Public Utilities Commission (the "PUC"), \_\_\_\_\_ (the "Contractor"), and the following individual: \_\_\_\_\_ (the "DRA").

**Recitals**

- A. The City, by and through its PUC, has awarded to the Contractor public work Contract No. DB-121R2 (the "Contract") for the construction of a public work known as Moccasin Powerhouse Generator Rehabilitation (the "Project").
- B. Included as part of the Contract is Section 00 73 10, implementing a Dispute Resolution Advisor procedure for the Project (the "DRA Specification").
- C. The DRA has been selected in conformance with the DRA Specification.

**Agreement**

NOW THEREFORE, the City, the Contractor, and the DRA hereby agree as follows:

1. **Compliance with Specification.** The DRA agrees to be bound by the terms of the DRA Specification and to perform the required duties strictly as set forth in the DRA Specification. The DRA Specification is incorporated herein by reference as if fully set forth.
2. **Compensation.** The City and the Contractor agree that the DRA shall be compensated for his/her individual services as DRA at a billing rate of \$\_\_\_\_\_ per hour. Compensation shall be paid at the stated billing rate, applied to travel time and reasonable study/consultation time, time spent in Dispute Meetings, and preparation of any written Report as set forth in the DRA Specification. Included in the billable rate shall be routine office expenses, such as secretarial, administrative, report preparation, telephone, computer, and internet connections.
3. **Additional Compensation.** Not included in the billable rate, and considered additional compensation, shall be any travel expenses, outside reproduction costs, and postage costs. Travel expenses must be approved in writing by both the City and the Contractor prior to being incurred. Outside reproduction and postage expenses for DRA Reports and other written communications may be billed at cost.
4. **Invoices.** The DRA shall submit to the Contractor invoices for work completed (a) not more often than once per month; (b) based on the agreed billing rate and conditions and on the number of hours expended, together with direct, non-salary expenses including an itemized listing supported by copies of original bills, invoices, and expense accounts; and (c) accompanied by a description of activities performed daily during the invoice period.
5. **Confidentiality.** The DRA shall not divulge any information acquired during DRA activities without obtaining prior written approval from the City and the Contractor.
6. **Recordkeeping.** The DRA shall maintain cost records pertaining to this Agreement for inspection by the City or the Contractor for a period of three years following the end or termination of this Agreement.



- 7. **Assignment.** No party to this Agreement shall assign any duty established under this Agreement or the DRA Specification.
- 8. **Termination.** This Agreement may be terminated by mutual agreement of the City and the Contractor at any time upon not less than 10 days written notice to the DRA or as otherwise set forth in Section 00 73 10. If the DRA resigns, is unable to serve or is terminated, he/she will be replaced within four weeks in the same manner as he/she was originally selected under the DRA Specification. This Agreement shall be amended to indicate the member replacement.
- 9. **Legal Relations.** The parties to this Agreement expressly acknowledge that the DRA, in the performance of his or her duties under this Agreement and the DRA Specification, is acting in the capacity of an independent agent and not as an employee of the City or the Contractor. The DRA shall not participate in any subsequent dispute proceedings relating to the Contract or the Project. The City and Contractor release the DRA from any and all liability, claims, demands, actions and causes of action arising out of or resulting from the findings and recommendations of the DRA. The release set forth above excludes any and all liability, claims, demands, actions, and causes of action arising out of or resulting from fraud or willful misconduct by the DRA.
- 10. **Jurisdiction and Venue.** Disputes among the City, the Contractor, and the DRA arising out of this Agreement shall be brought in the California Superior Court, County of San Francisco. The Agreement shall be interpreted in accordance with the laws of the State of California. The DRA hereby consent to the personal jurisdiction of the California Superior Court, County of San Francisco.

CITY AND COUNTY OF SAN FRANCISCO [CONTRACTOR]  
 PUBLIC UTILITIES COMMISSION

BY: \_\_\_\_\_  
 Name:  
 Title:

BY: \_\_\_\_\_  
 Name:  
 Title:

DRA

BY: \_\_\_\_\_

Approved as to form:  
 DENNIS J. HERRERA  
 City Attorney

BY: \_\_\_\_\_  
 Deputy City Attorney

## SECTION 00 73 16

## INSURANCE REQUIREMENTS

## 1.01 SUMMARY

- A. This Section includes insurance requirements, which amend Article 10 of the General Conditions.

## 1.02 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 for each accident, injury, or illness and Jones Act benefits,. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.
  2. Commercial General Liability insurance with limits not less than \$25,000,000.00 each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors ,products, and completed operations.
  3. Commercial Automobile Liability insurance with limits not less than \$2,000,000.00 each occurrence combined single limit for bodily injury and property damage, including owned, hired, or non-owned vehicles, as applicable.
- B. Approval of Contractor's insurance by the City will not relieve or decrease the liability of Contractor under this Agreement. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

## 1.03 ADDITIONAL COVERAGES

- A. Builder's Risk Insurance: Contractor shall provide "Special Form" (All Risk) Builder's Risk Insurance on a replacement cost basis as follows:
1. Amount of Coverage: The amount of coverage shall be equal to the full replacement cost on a completed value basis, including periodic increases or decreases in values through change orders. The policy shall provide for no deduction for depreciation. The policy shall provide coverage for "soft costs," such as but not limited to design and engineering fees, code updates, permits, bonds, insurances, and inspection costs caused by an insured peril; the policy may limit the amount for soft costs but such limit shall not be less

than 5% of the coverage amount. The Builder's Risk Insurance shall also include the full replacement cost of all City-furnished equipment, if any.

2. Additional Premium: If, due to change orders or project term extensions authorized by the City, the Builder's Risk policy becomes subject to additional premium, the City will reimburse Contractor the actual cost of such additional premium, without markup, provided that the Contractor submits to the City proof of payment of such additional premium and either:
  - a. A copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
  - b. A copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form basis.
3. Parties Covered: The Builder's Risk policy shall identify the City and County of San Francisco as loss payee. The policy shall include as additional named insureds the City and County of San Francisco, the Contractor and its subcontractors of every tier.

Each insured shall waive all rights of subrogation against each of the other insured to the extent that the loss is covered by the Builder's Risk Insurance.

4. Included Coverage: The Builder's Risk Insurance shall include, but shall not be limited to, the following coverages:
  - a. All damages of loss to the Work and to appurtenances, to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Project site, to construction plant and temporary structures.
  - b. The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and water damage.
  - c. The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and any applicable law, ordinance, or regulation with a sub-limit of not less than 25% of the value of the construction contract.
  - d. Start up and testing and machinery breakdown including electrical arcing.
5. Deductibles: The Builder's Risk Insurance may have a deductible clause not to exceed the amounts below. Contractor shall be responsible for paying any and all deductible costs. The deductible for coverage of All Perils shall not exceed the following:
  - a. \$25,000 for projects valued up to \$25,000,000;
  - b. \$50,000 deductible for projects valued in excess of \$25,000,000 and up to \$75,000,000; and

- c. \$100,000 deductible for projects valued in excess of \$75,000,000.
- B. Professional Liability Insurance: In the event that Contractor employs professional engineering or land surveyor services for performing field engineering or preparing design calculations, plans, and specifications, Contractor shall require the retained engineers and land surveyors to carry professional liability insurance with limits not less than \$5,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Contractor's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.
- C. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, or its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than \$1,000,000 each occurrence combined single limit (true occurrence form), including coverages for on-site or off-site third party claims for bodily injury and property damage.

#### 1.04 INSURANCE FOR OTHERS

- A. For general liability, environmental pollution liability and automobile liability insurance, Contractor shall include as additional insured, the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them. Other parties to be protected by Contractor's liability insurance shall be as follows:
  1. City's consultants / City's subconsultants: N/A.
  2. Non-City Agencies: N/A.
- B. General /Auto Liability policies shall:
  1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees as well as others as required by contract and must include coverage for bodily injury and property damage.
  2. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

#### 1.05 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 5 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, but only to the extent the contractor is contractually responsible, excluding damage caused by earthquake and flood consistent with section 7105 of the California Public Contract Code in excess of 5% of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.
- C. The Contractor and its subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
- D. Liability insurance, with an allowable exception for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
- E. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated.
- 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 5 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 calendar days’ advance written notice to the City of reduction or non-renewal of coverages or cancellation of coverages, except for non-payment of premiums for which no fewer than 10 calendar days’ advance notice shall be provided to the City, unless otherwise approved by the City. All notices shall be made to:

Manager, SFPUC Contract Administration Bureau  
City and County of San Francisco

525 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102.

- H. Contractor, upon receipt of any such notice of cancellation, shall file with the City a certificate of insurance of the required new or renewed policy, including applicable policy endorsements, at least 10 calendar days before the effective date of such cancellation, change or expiration, or as soon as practicable before such effective date in the case of non-payment issues. Upon request, Contractor promptly shall furnish the City with a complete copy of the new or renewed policy.
- I. If, at any time during the life of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be discontinued immediately, and all Contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Subparagraph "H" that such insurance has been restored to full force and effect and that the premiums therefor have been paid for a period satisfactory to the City.
- J. 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.

#### 1.06 QUALIFICATIONS

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

END OF SECTION

## SECTION 00 73 17

## PDF DOCUMENT LIABILITY WAIVER AND RELEASE

## 1.01 SUMMARY

- A. The City may issue to Contractor Portable Document Format (PDF) files, which were prepared for the City for the Work of Project, in electronic format for the limited purpose of facilitating Contractor's design of the Work.

## 1.02 PROJECT CONDITIONS

- A. The City's issuance of Project PDF files to Contractor is not a representation of the completeness or accuracy of the information contained in the files.
- B. Because Contractor is required to perform all Work in accordance with the requirements of only the printed versions of the Bid Documents for Project as originally issued or modified in accordance with the Contract Documents, Contractor shall review the PDF files for the same accuracy and completeness as the original printed versions prior to Contractor's use and shall certify that all information contained in said Project PDF files accurately conforms to said Contract Documents.
- C. Contractor agrees not to transmit to third parties or otherwise reuse Project PDF files without prior written consent of the City. Unauthorized use of Project PDF files shall be at the sole liability of the user.
- D. Contractor hereby agrees to release the City from inaccuracies, incompleteness, or discrepancies between Project PDF files and said printed versions of the Contract Documents.
- E. Contractor shall be responsible for all damages resulting in whole or in part from inaccuracies, incompleteness, or discrepancies between said Project PDF files and said printed versions of the Contract Documents.

END OF SECTION

SECTION 00 73 18.20

PROJECT LABOR AGREEMENT

The San Francisco Public Utilities Commission Water System Improvement Program Project Labor Agreement, dated March 27, 2007, and its Second Addendum, dated July 23, 2019, are hereby incorporated by reference in the Contract Documents and are available at the following internet address: <http://sfwater.org/pla>.

Water System Improvement Program Project Labor Agreement, dated March 27, 2007:  
<http://www.sfwater.org/modules/showdocument.aspx?documentid=146>

Second Addendum to the San Francisco Public Utilities Commission Water System Improvement Program Project Labor Agreement, dated July 23, 2019:  
<https://www.sfwater.org/Modules/ShowDocument.aspx?documentID=14258>

END OF SECTION



## SECTION 00 73 19

## HEALTH AND SAFETY REQUIREMENTS

## INTRODUCTION

This Section sets forth general health and safety requirements for the Contract.

Contractor shall be solely and fully responsible for compliance with all laws, rules and regulations applicable to health and safety of persons during the performance of the Work, and shall fully assume the defense of, indemnify, and hold harmless those entities and persons identified in Sections 00 72 00.22 and 00 73 16. Contractor shall be solely and fully responsible for all construction means, methods, techniques, sequences, and procedures, including all safety precautions and programs taken in connection with the Work, as well as coordinating all portions of the Work. Contractor, not the City, is responsible and liable for the health and safety of Contractor's employees and Subcontractors as set forth in applicable statutes, laws, and regulations. Contractor shall be solely responsible for any and all fines, penalties or damages which result from its failure to so comply.

The health and safety requirements specified in this Section are not all-inclusive. In addition, some of the requirements specified may not apply to the specific Work of this Contract. It is Contractor's sole responsibility to identify and comply with all applicable health and safety requirements for the Work. The City will neither assume administration nor direct control and responsibility for maintaining Contractor's health and safety program.

Nothing contained in this Section shall relieve Contractor, or any Subcontractor or Supplier, from the obligations set forth above and obligations as required by applicable laws, rules, or regulations. If a provision of this Section conflicts with any applicable provision of this Contract or any federal, state, or local safety regulations, the more stringent requirements that maintain a greater level of safety shall apply. Section includes:

- 1.0 Related Documents
- 2.0 Submittals
- 3.0 References
- 4.0 Definitions
- 5.0 General Health and Safety Requirements
- 6.0 Staff Organization
- 7.0 Controlled Substance Abuse and Alcohol
- 8.0 Training
- 9.0 Meetings
- 10.0 Project Activity Hazard Analysis/Job Hazard Analysis Program
- 11.0 Site-Specific Contractor Health & Safety Plan (HASP)
- 12.0 Inspections
- 13.0 Incident Reporting and Investigation
- 14.0 Personal Protective Equipment (PPE)
- 15.0 Emergency Equipment
- 16.0 Logs, Reports, and Recordkeeping
- 17.0 Remedial Action

## 1.0 RELATED DOCUMENTS

Documents related to the health and safety requirements set forth in this Section include, but are not necessarily limited to the following:

- A. Contractor Health and Safety Plan (HASP) Template
- B. Section 00 72 00.22 (General Conditions)
- C. Construction Management Plan (CSP)
- D. Section 00 73 18.20 Project Labor Agreement (PLA)
- E. WSIP Construction Safety Approach (see web page on: <https://sfwater.org/index.aspx?page=257>)

## 2.0 SUBMITTALS

This Article summarizes required safety-related Submittals. This Article is not intended to be all-inclusive. In addition, some Submittal requirements specified below may not apply depending on the specific Work under this Contract. Contractor is solely responsible for identifying and submitting to the City and appropriate authorities having jurisdiction all Submittals required by applicable laws, rules, and regulations.

- A. Site-Specific Contractor Health and Safety Plan (HASP) – Submitted to the City Representative 10 working days prior to commencement of Site work activities. Note: Contractor’s HASP will include plan for administration of the Substance Abuse Policy in Appendix H of the PLA
- B. Resume for the Site Safety Representative (SSR)
- C. Completed Activity Hazard Analysis (AHA) or Job Hazard Analysis (JHA) submitted with the HASP using the AHA/JHA template for all significant activities and tasks with a high-risk potential, describing the job steps, key equipment to be used, hazards associated with each job step and the controls used to remove or minimize the associated hazards
- D. Project Specific Contractor Hazardous Communications Plan – Submitted to the City Representative 10 working days prior to commencement of Site work activities
- E. Air Monitoring Results/Reports – Submitted to the City Representative on request (if applicable)
- F. Monthly Field Project Report – Including man-hours, incident/injury and property damage reports – Submitted to the City Representative on a monthly basis within 5 days of the last working day of the month
- G. Heavy Equipment Inspection Forms – Submitted to the City Representative on request (if applicable).
- H. Detailed three week Look-Ahead Schedule addressing specific scheduled activities, the associated hazards and their mitigation shall be addressed in the AHA’s previously submitted. The look ahead schedule shall be reviewed to ensure applicable AHA’s are in place for the upcoming work – The schedule should be submitted to the City Representative on request (if applicable)
- I. Incident Investigation Reports – Submitted to the City Representative within 24 hours of the project incident
- J. HASP modification requests, and approved modifications to the appended HASP – Submitted to the City Representative for review (if applicable)

- K. Documentation for all individuals applicable to Regulatory Medical Surveillance guidelines and HAZWOPER training per Cal/OSHA requirements – Submitted to the City Representative for review prior to beginning any work associated with these requirements (if applicable)
- L. Critical Lift Plans – Submitted to the City Representative a minimum of three work days in advance of work to allow for review (if applicable)
- M. Crane Inspection Certifications – Submitted to the City Representative a minimum of three work days prior to the start of work (if applicable)
- N. Crane Operators certification – Submitted to the City Representative on request (if applicable)
- O. Applicable employee training and required medical approval documentation in compliance with Cal/OSHA standards
- P. Copies of detailed and documented annual and Quad crane inspections conducted by qualified individuals
- Q. Written crane inspections to City Representative on a daily basis
- R. A final report, submitted within 20 working days following completion of the on-site work and prior to final acceptance by the City. The following minimum information shall be included in the final report:
  - 1. Summary of the overall performance of safety and health (accidents or incidents including near misses, unusual events, lessons learned, etc.)
  - 2. Final decontamination documentation including procedures and techniques used to decontaminate equipment, vehicles, and on-site facilities.
  - 3. Complete summary of personnel monitoring
  - 4. Complete summary of air monitoring accomplished during the project (if applicable)
- S. Arc Flash Risk Analysis – Submitted to the City 10 working days prior to performing electrical work on equipment/panels 240 volts or above. For any and all work on energized lines/equipment, Contractor shall also submit the qualifications of the Electricians performing such work to the City Representative upon request. For any system that the Contractor does not believe meets this threshold, the Contractor should submit a justification which includes but is not limited to Hazard Risk Category of the equipment in question, the results of the Shock Risk Assessment, and Arc Flash Assessment
- T. Energized Electrical Work Permit – Contractor shall submit an Energized Electrical Work Permit, which is attached to this Section as **Exhibit A**, 72 hours prior to performing energized electrical work. The permit submitted shall cover only the work detailed in the permit. Should the location or work change, a new Energized Electrical Work Permit will be required.
- U. Electrical Safety Program – Submitted to the City Representative on request (if applicable)
- V. Excavation Plan – For all excavation work below five feet, where a California Dig Permit is required to be held by the Contractor, an excavation plan shall be submitted. The plan shall define work approach, methods and mitigations in place to ensure for safe entry and delineation of open trenches /excavations. For excavations deeper than 20 feet, the plan shall be stamped and signed by a California-registered Professional Engineer (Civil/Structural) as required by Cal/OSHA.
- W. Daily Health and Safety inspections performed by the Contractor’s Site Safety Representative (SSR) will be submitted to the City Representative in a weekly report.

- X. Safety Meeting Attendance sheet (“Toolbox” meetings) – Submitted to the City Representative on request

### 3.0 REFERENCES

Work performed shall be consistent with the following guidelines and references and in compliance with all applicable regulations and standards, including those listed below. In the case that these requirements are conflicting, the one which offers the greatest level of safety shall be followed.

- A. Cal/OSHA Occupational Safety and Health Administration (OSHA) Regulations
  - 1. CCR Title 8 Standards (All)
  - 2. CCR Title 8 Tunnel Safety Orders (8400-8568)
- B. National Institute for Occupational Safety and Health (NIOSH) Publications
- C. U.S. Environmental Protection Agency (USEPA) Publications
- D. American Conference of Governmental Industrial Hygienists (ACGIH) Publications
- E. NFPA 70E 2018 Edition – Standard for Electrical Safety in the Workplace
- F. ANSI/NFPA 70 – National Electrical Code
- G. InterNational Electrical Testing Association – NETA ATS latest Edition: Acceptance Testing Specifications, and/or NETA MTS latest Edition: Maintenance Testing Specifications.

### 4.0 DEFINITIONS

- A. Activity Hazard Analysis (AHA)/Job Hazard Analysis (JHA) – a form used to identify the task and break it down into steps, identify the hazards associated with each step, and identify the control measures used for each step to protect the worker, environment or public. This form is also commonly referred to as Job Safety Analysis (JSA).
- B. Arc Flash – a dangerous condition associated with the possible release of energy caused by an electric arc.
- C. Competent Person – one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them
- D. Hot Work – any activity using tools or equipment resulting in the generation of sparks or open flame. This includes, but is not limited to, cutting or burning with torches, welding, grinding, and the use of reciprocating saws
- E. Incident – any unplanned or unexpected event that results in personal injury, property damage, or environmental release
- F. Near-miss Incident - any unplanned or unexpected event that could have resulted in personal injury, property damage or environmental release, but does not, due to luck, chance, or other circumstances.
- G. Project Personal Protective Equipment (PPE) – ANSI Z87.1 safety glasses/shields; hard hat; work boots or protective footwear; gloves; hearing protection; and high visibility vest.
- H. Qualified Person – one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has

successfully demonstrated his/her ability to solve or resolve problems related to the subject matter, the work, or the project.

- I. Site Safety Representative – a Contractor’s employee(s) assigned to the project based on the contract requirements on a full-time basis for the entire duration of construction activities.
- J. Work Areas – Refers to the perimeter of the work area for that specific Contractor.

## 5.0 GENERAL HEALTH AND SAFETY REQUIREMENTS

- A. The list of general health and safety requirements set forth in this Article is not a comprehensive list of all requirements that may apply to Work under this Contract. In addition, some of the specified requirements may not apply to the Work under this Contract, depending on the type and scope of the Work. Contractor is solely responsible for determining and complying with all applicable health and safety requirements in accordance with applicable laws, rules, and regulations.
- B. Contractor shall implement a zero incident philosophy on the project and establish a goal of zero accidents and zero injuries with work tasks designed to minimize or eliminate hazards to personnel, process, equipment, environment, and the general public.
- C. Contractor shall develop and use Activity Safety Analyses (AHAs)/JSAs that address all elements of work required by Cal/OSHA to be undertaken by the Contractor.
- D. Contractor shall have a written Lockout/Tagout Procedure that complies with CCR Title 8, Section 3314. The written program will also be coordinated with and submitted to SFPUC facility personnel when applicable based on scope and location of work.
- E. The Prime Contractor shall be the Controlling Contractor for all confined space operations or work and shall have a written Confined Space Program that complies with CCR Title 8, Subchapter 4 Construction Safety Orders, Section 1950-1962 and shall submit as part of the Contractor’s site specific HASP for all contracts with confined space work. Contractor shall provide City Representative with documentation of confined space entrant(s), attendant(s), supervisor(s), and rescue training.
  - 1. The following Confined Space requirements shall be incorporated into the Contractor’s Confined Space Program and are required for working within all SFPUC jobsites and assets:
    - a. Contractor's Project Site Safety Representative shall be present at the worksite from the time that entry into a permitted confined space is initiated until exit from the confined space has been completed for all confined space entries.
    - b. Each entrant shall be equipped with a four-gas meter capable of detecting hydrogen sulfide (H<sub>2</sub>S), carbon monoxide (CO), oxygen (O<sub>2</sub>), and Lower Explosive Limit (LEL) gases in accordance with Cal/OSHA atmospheric testing requirements for confined spaces.
    - c. Include procedures to coordinate entry operations for all persons entering the confined space.
    - d. Contain site specific procedures required to protect employees and any members of the public within 100 feet of the confined spaces entrance(s).

- e. Shall include an evaluation of the hazards identified with the confined space(s) that may cause a particular space to be deemed or cause a space to become a Permit-Required Confined Space.
  - f. Shall include a provision to communicate any immediate hazard posed by the confined space or hazards within the confined space to SFPUC or other City personnel
  - g. Shall include a debriefing at the conclusion of confined entry operations to report any hazards encountered or created within the confined space.
  - h. For all permit-required confined space entries, shall follow the subsequent additional requirements:
    - i. Contractor's Project Site Safety Representative shall be present, within 100 feet from the entrance(s), and fulfill the role of the Entry Supervisor from the time that entry into a permitted confined space is initiated until exit from the confined space has been completed.
    - ii. The Contractor shall continuously monitor the confined space using a four-gas meter equipped with pump module which draws air across the sensor and capable of remote sampling by use of extendable wand, or probe attached to the meter by tubing, into the hazardous atmosphere while the user remains outside the confined spaces.
    - iii. Each entrant shall remain connected to a retrieval device, have a self-contained self-rescuer device with a minimum of 10 minutes of air, or must have a rescue service or crew able to respond to a rescue summons in a timely manner, considering the hazard(s) identified and capable of fulfilling the Cal/OSHA requirements, as delineated in Subchapter 4. Construction Safety Orders Article 37. Confined Spaces in Construction.
    - iv. If Contractor plans to utilize a rescue crew, service, or emergency service, the Contractor shall submit the following for City Representative's review and acceptance prior to entry.
      - 1. Documentation showing who will provide rescue services.
        - a. If using an emergency service provider to perform rescue or rescue standby, the Contractor must submit a copy of a letter of agreement from the named emergency service provider, stating the emergency service provider will provide confined space rescue and understands the hazards of the confined space for the work performed under this contract.
      - 2. Documentation demonstrating adequate training of rescue personnel if using Contractor or subcontractor personnel to perform rescue.
- 2. For entry into all Wastewater assets:
    - a. The Contractor shall notify the designated Wastewater Operations personnel upon entry and exit of each asset. This includes, but is not limited to, entry onto Wastewater Treatment Plants/Pump stations, outfalls, manholes, transport boxes, cisterns, storm drains, etc.
  - 3. For all work performed within SFPUC Wastewater Treatment Plants and Pump Stations, or other SFPUC Wastewater facilities, no personal vehicles will be allowed onsite.
  - 4. The Contractor, along with the Contractor's SSR, shall to meet with the City Representative to receive a Contractor Advisement after NTP and prior to

start of work. The purpose of the Contractor Advisement is to provide specific information about potential hazards and to review the SFPUC procedures, specific to the planned confined space work within any of our existing assets and/or facilities.

- F. Contractor shall have a written Fall Protection Program to address work activities that occur at heights greater than 6 feet, which is communicated to all affected employees.
- G. Hoisting of personnel on a personnel platform by a crane or derrick is prohibited, except when the erection, use, and dismantling of conventional means of reaching the worksite, such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform or scaffold, would be more hazardous or is not possible because of structural design or worksite conditions. This type of operation must meet the requirements of Cal/OSHA regulatory requirements.
- H. Never raise a load over people or occupied buildings. Tag lines must be used to control every load. All materials shall be rigged to prevent unintentional displacement. Hooks with self-closing safety latches shall be used to prevent components from slipping out of the hook. Defective rigging equipment shall be tagged and removed from service.
- I. Only qualified operators may operate power equipment. Seat belts must be worn where applicable.
- J. Safe lifting procedures for cranes and hoists must be developed and documented. Crane and hoist operators and qualified riggers must conduct rigging equipment inspections prior to each use on each shift and as necessary during its use.
- K. Preventative maintenance must be conducted on cranes and hoists in accordance with manufacturer's guidance or regulatory requirements.
- L. Riding on hooks, headache balls, or slings of hoisting equipment is strictly prohibited.
- M. Scaffolds shall be built per Cal/OSHA standards.
- N. All scaffolds must be inspected by a Qualified Person before use and must be designed for the safe working load. Guardrails and toe-boards shall be used on all scaffolds and secured per Cal/OSHA requirements. Rolling tower scaffolds must be locked while the scaffold is in use.
- O. Scaffold platforms more than 6 feet above any working surface must be equipped with a guardrail system – Top rails (42 inches plus or minus 3 inches), mid rails (midway between the top rail and the scaffold platform) and toe boards – or personal fall arrest systems must be utilized.
- P. No scaffold shall be erected, moved, dismantled, or altered except by trained personnel under the authority of the Qualified Person.
- Q. The Scaffold Tag System shall be implemented using red, yellow, and green tags.
- R. Outriggers and platforms below the working/walking level shall be fully planked.
- S. Contractor shall perform a Shock Rick Assessment, in accordance with NFPA 70E – 130.04, and Arc Flash Risk Assessment in accordance with NFPA 70E – 130.5 prior to performing electrical work on any and all equipment operating at 50 volts and higher.
- T. Energized lines/equipment shall not be installed, repaired or removed, except by an Electrician who has successfully completed a NFPA 70E course or an equivalent course. Documentation of training shall be submitted to the City Representative upon request.
- U. Prior to Final Completion and prior to turning over equipment, Contractor shall affix all final required Arc Flash labeling.

- V. Electrical equipment shall not be installed, repaired, or removed except by trained qualified electricians.
- W. Temporary lighting must be guarded.
- X. All 120-volt, single phase 15 and 20-ampere receptacle outlets on construction sites, which are not part of permanent wiring of the building or structure and are in use by employees, shall have approved Ground Fault Circuit Interruption (GFCI) for personnel protection.
- Y. Extension cords must be at least 16-gauge heavy duty 3-wire with a UL approved three prong ground plugs.
- Z. Gasoline and similar flammable liquids must be stored only in and approved safety containers and in areas free of bringing hazards.
- AA. Open fires are strictly prohibited on the job sited.
- BB. Every hot work operation must have a properly trained and equipped fire watch with appropriate fire extinguishers for the specific hazard in the work area. The fire watch must remain in the work are for at least 30 minutes after the hot work activity is completed.
- CC. The contractor will utilize a hot-work permit system when working in/around a combustibile environment.
- DD. Defective tools and equipment must be taken out of service and shall be properly repaired before reuse.
- EE. Compressed gas cylinders shall remain standing and securely tire doff, whether empty or full. Valves shall be closed on all empty cylinders. Protection caps shall remain on cylinders when not in use.
- FF. When cylinders are not in use, they must be secured and capped. If cylinders are not used within a 24-hour period, they are considered to be in storage, and must be secured, capped, and separated. Separate oxygen and fuel gas cylinders by a minimum distance of 20 feet or by a noncombustible barrier that is at least 5 feet high, and has a fire-resistance rating of a 1/2 hour.
- GG. A motor vehicle engine shall not be left running if the vehicle/equipment is unattended unless it is necessary in the normal operational requirement of the unit. Unattended means that the operator has left the normal control position of the vehicle. The vehicle shall be placed in PARK on the transmission, emergency brake set and at least one rear wheel chocked.
- HH. All moving equipment must be equipped with back-up alarms.
- II. Job-made wooden ladders can be utilized on the job site if they meet Cal/OSHA requirements.
- JJ. Stepladders (A-Frame) must be fully open and cannot be used as straight/extension ladders.
- KK. Tie-off all straight and extension ladders to keep them secure. Straight and extension ladders must extend 3 feet beyond the top landing. The base of the ladder shall be set out at least one-fourth of the ladder height measured from bottom to point of bearing.
- LL. Contractor is responsible for cleaning up and removing hazardous and non-hazardous waste generated on the job site.
- MM. Each Contractor shall be responsible to maintain areas where he is performing work free from waste materials, debris, and rubbish.
- NN. All protruding nails in form lumber, boards, etc., must be withdrawn or bent into the wood before the wood is stacked or piled.



- OO. Provide a proper collection container and floor protection when using cutting oil, solder flux, hydraulic oil, and other fluids. In the event of a large spill, immediately install acceptable containment barriers and notify the City Representative.
- PP. Follow the safety standards for Tunnel work as specified in Cal/OSHA Title 8, Section 8400-8568 regulations. The Contractor is required to provide the necessary Emergency Rescue Team.
- QQ. Alcoholic beverages, recreational drugs, and people under the influence of these substances are not permitted on the job site.
- RR. Weapons and firearms are strictly prohibited on the job site.
- SS. Heavy equipment operators are prohibited from using music radios/headsets, cellular phones, internet access devices, and other similar distracting objects/devices while occupying the cab of the equipment when the heavy equipment is idling or operating on the jobsite.
- TT. No cameras or video equipment are permitted on site except as necessary to document the progress of the Work, as may be allowed under the Site Security Guidelines or approved by the City Representative.
- UU. Smoking is only allowed in designated project areas based on the City Representative's approval.
- VV. Horseplay and fighting is prohibited.
- WW. Protect floor openings by providing adequate barricades and secured covers. All covers must be painted with high visibility paint or shall be marked with the word "HOLE" or COVER" to provide warning of the hazard.
- XX. All project employees to include trade workers, vendors, and visitors must comply with the project's security and access program as outlined in the Contract Documents.
- YY. All liquid hazardous materials must be properly contained in accordance with the Contract Documents and environmental regulations.
- ZZ. Park in designated Contractor-parking areas. The driver of any motor vehicle on job site is responsible for its safe condition and use. The driver is required to have a valid driver's license and the vehicle must have a valid license plate. All job site traffic rules must be obeyed.

## 6.0 STAFF ORGANIZATION

- A. The Contractor shall develop an organizational structure that sets forth lines of authority, responsibility, and communication. The Contractor shall include a description of this organization and responsibilities of each key personnel (see Article 11.0, below)
- B. The Contractor shall designate in writing, subject to contract requirements, at least one individual to be the full time Site Safety Representative (SSR). If more than one project site working shift is initiated, the Contractor will have to ensure that provisions are made to have a qualified SSR for all work shifts.
- C. ASSR shall possess at a minimum, the following qualifications:
  - 1. OSHA 30-hour Construction Safety and Health trained, instructed by an OSHA Authorized Trainer.
  - 2. First Aid/CPR trained within the past two (2) years.
  - 3. Trained and experienced in the hazards and complexity of site and contract scope.
  - 4. 5 years of Construction Project Safety Management experience on similar projects

5. Or CSP with experience in construction related projects
- D. The SSR should also have formal documented safety training as required by Cal/OSHA or other state regulations, including but not limited to the following:
    1. Fall Protection (if applicable)
    2. Material Handling (if applicable)
    3. Confined Space (if applicable)
    4. OSHA 500 (30 hour construction training)
    5. Excavation (if applicable)
    6. Scaffolding (if applicable)
  - E. The SSR shall be physically present at the site during all working hours and have no other project site duties/responsibilities other than full-time Contractor Site Safety Representative. The SSR shall be available 24 hours a day, 7 days a week by telephone or other approved means.
  - F. Contractor shall provide at least two individuals on the job site current in CPR/First Aid training. A job site is defined as an area where work is occurring and qualified CPR/FA response is immediately available. When a project has multiple job sites, spanning large areas, the Contractor is to determine whether the need for more than two qualified CPR/FA responders may be necessary. Where Contractor provides Automatic External Defibrillators (AEDs), at least two individuals must be trained in its use.
  - G. Contractor must identify and certify competent persons as defined by Cal/OSHA for work or tasks requiring this level of qualification or supervision. The personnel identified must be present on the project when work requiring the competent person is taking place. The names of these competent persons will be provided by the Contractor to the City Representative in writing prior to start of work activities.
  - H. All Contractor employees, City and Project Representatives shall have “Stop Work Authority” – the ability to stop work without any adverse consequences when unsafe conditions are present.

## 7.0 CONTROLLED SUBSTANCE ABUSE AND ALCOHOL

- A. The City, Contractors, and the Unions are committed to protecting the health and safety of individual employees, their co-workers, and the public at large from the hazards caused by the misuse of drugs and alcohol on the job. The safety of the public, as well as the safety of fellow employees, dictates that employees are not permitted to perform their duties while under the influence of drugs or alcohol. Accordingly, the Contractor agrees to comply with the Substance Abuse Policy contained in Appendix H to the PLA titled Substance Abuse Policy. Refer to Section 00 73 18.20.

Contractor agrees to apply the policy contained in Appendix H. of the PLA to all employees covered by the PLA as defined in Article II of the PLA – SCOPE OF AGREEMENT.

Contractor also agrees that those “non-manual employees” excluded from the scope of the PLA in Section 2.7(a) of the PLA will also be subject to the same substance abuse testing procedures described in Appendix H.

- B. Substance Abuse Third Party Administrator

Contractor will utilize Substance Abuse Third Party Administrators specified by the City to conduct all required substance abuse testing.

## 8.0 TRAINING

- A. Contractor must comply with all applicable Cal/OSHA training requirements.
- B. Contractor Managers, Supervisors, and Site Safety Representatives must attend a Site-Specific Safety Orientation training conducted by the City that will include site-specific hazards and controls.
- C. The Contractor shall provide a Project Orientation session that includes site hazards, procedures, and all requirements. (See Article 11.0, below). This Orientation will be provided to all Contractor employees and all employees of Subcontractors working on the project site. This training shall be documented. Records shall be kept on site and available for review by the City Representative.
- D. Prior to working on the Site, Contractor's Superintendents must have completed a 30-hour OSHA Construction Safety and Health training from an OSHA Authorized Trainer. The Contractor must submit documentation of such training to City Representative.
- E. Crane operators shall meet the Cal/OSHA requirements for certification. Proof of current certification shall be provided to the City Representative prior to commencement of crane activities on the job site.
- F. Confined Space Training Requirements:
  - 1. Entrants shall receive Confined Space entry training that shall establish employee proficiency, which meets the current Cal/OSHA standards, and is intended to instruct employees working within confined spaces. The Contractor shall provide documentation of this training to the City Representative upon request.
  - 2. Employees working as Attendants shall receive Confined Space entry training, equal or better to that of employees working within the Confined Space. Employees who work as Attendants shall receive additional training that shall establish employee proficiency as an Attendant, which meets the current Cal/OSHA standards. The Contractor shall provide documentation of this training to the City Representative upon request.
  - 3. The Contractor's Site Safety Representative shall receive Confined Space Entry training, equal or better to that of employees working within the Confined Space. The Site Safety Representative shall also receive training that shall establish the SSR's proficiency as the Confined Space Entry Supervisor and which meets the current Cal/OSHA standards. The Contractor shall provide documentation of this training to the City Representative upon request.
  - 4. Confined Space Rescue Personnel who work for the Contractor, a subcontractor, or lower tier contractor shall receive documentable training which meets the current Cal/OSHA standard for both employees who are entrants and specific training for Confined Space Rescue which shall train that employee to perform the assigned rescue duties. An employee designated as Rescue Personnel shall, at minimum, take part in practice Confined Space Rescue once a year by means of simulated rescue operations in which they remove dummies, manikins, or actual persons from the actual permit spaces or from representative permit spaces. Representative permit spaces shall, with respect to opening size, configuration, and accessibility, simulate the types of permit spaces from which rescue is to be performed. The Contractor shall provide documentation of this training and a

copy of each such employee's current First Aid/CPR training to the City Representative upon request.

- G. CPR/First-aid trained persons assigned to the work covered by this Contract must have received training within the past two (2) years. First-aid/CPR training must be from the U.S. Bureau of Mines, the American Red Cross, or equivalent training that can be verified by documentary evidence, shall be available at the worksite to render first aid. Persons who received First-aid/CPR training online will not be accepted as the Contractor's First-aid/CPR persons for the work covered under this Contract.
- H. Electrician working on energized equipment/lines must successfully complete an Arc Flash safety training that contains the requirements referenced in Cal/OSHA Electrical Safety Orders, NFPA 70E, and covers the work which will be performed under the Contract scope. Submit documentation of such training upon request of the City Representative.

## 9.0 MEETINGS

- A. The Contractor (at a minimum) shall conduct "toolbox" safety meetings per Cal/OSHA standards. The meeting must be documented using the Safety Meeting Attendance sheet and submitted to the City Representative.
- B. The Contractor's Project Manager, Superintendent(s), and SSR shall attend City Representative meetings as required to review project Immediately Dangerous to Life and Health (IDLH), stop work activities, incidents, and incident investigations.

## 10.0 PROJECT ACTIVITY HAZARD ANALYSIS/ JOB HAZARD ANALYSIS PROGRAM

- A. Contractor shall develop AHA/JHA for job site hazardous work activities based on their three-week look-ahead project schedule.
- B. The Contractor will submit the completed AHAs/JHAs to the City Representative prior to conducting work activities. The submission of AHAs/JHAs to the City shall not be construed as approval of the adequacy of the Contractor's SSR, the AHAs/JHAs, the Contractor's HASP, or any safety measures taken in or near the construction site.
- C. Contractor's supervision will monitor workers which includes observing a worker's behaviors and comparing them against the written AHA/JHA.
- D. Observations by supervision indicating non-compliance with AHAs/JHAs should be corrected immediately and documented. The observation program should be reviewed at the monthly Contractor safety committee meetings conducted by the Contractors Site Safety Representative.

## 11.0 SITE-SPECIFIC CONTRACTOR HEALTH AND SAFETY PLAN (HASP)

- A. Contractor shall be responsible for developing, implementing, enforcing, and submitting a site-specific Contractor HASP consistent with all CCR Title 8 or other applicable regulations, depending upon their scope of work. The scope shall be stated within the HASP.
- B. The Contractor shall prepare a site-specific Contractor Health and Safety Plan (HASP). Contractor HASP shall establish, in detail, the protocols necessary for the recognition, evaluation, and control of all hazards associated with each task

- performed by the Contractor and lower tier subcontractors. The Contractor HASP shall be site specific and cover all work to be performed under this Contract.
- C. Contractor shall include with the HASP or as separate submittal, an Infectious Disease Preparedness and Response Plan (IDPRP) to protect workers from any and all infectious diseases. IDPRP must provide specific controls, measures, and steps to protect workers from coronavirus, specifically COVID-19; conform with OSHA laws and guidance, Cal/OSHA laws and guidance, all local and San Francisco City and County Orders and guidance, and San Francisco Department of Public Health Orders; and the IDPRP shall be updated should Orders and guidelines change. A copy of the most current Orders and guidelines may be obtained through the City Representative.
  - D. The Contractor HASP must be reviewed, and approved by signature, by the Contractor's Project Manager and the SSR, and submitted to the City Representative as specified in Article 2.0 of this Section. Submission of the HASP to the City, or any review of the HASP by the City, shall not be construed as approval of the adequacy of the Contractor's SSR, the Contractor's HASP or any safety measures taken in or near the construction site.
  - E. The Contractor HASP shall address site-specific safety and health requirements and procedures based upon site-specific project conditions.
  - F. Contractor will develop a HASP that complies with requirements as set forth in this Section 00 73 19.
  - G. A Copy of the Site Safety Representative's Department of Labor OSHA 30 card, a copy of the SSR's valid First Aid/CPR training documentation, and resume shall be submitted with the Health and Safety Plan (HASP).
  - H. The Contractor's HASP shall describe the emergency and first aid equipment to be provided by each Contractor and utilized for the project.
  - I. The Contractor's HASP shall include a written Hot-Work Program. The Contractor's written Hot-Work Program shall follow SFPUC Hot-Work guidelines delineated within the Contract Documents, pre-bid conference, and pre-construction conference. A sample Hot-Work Permit shall be included in the Contractor's HASP and made available to the City Representative upon requested.
  - J. An Example project safety inspection form shall be provided in Contractor's HASP and shall include date, work area checked, employees present in the work area, PPE, work equipment being used in each area, safety and health issues, notes, and signature of inspector.
  - K. The formats for all safety forms and reports shall be developed by the Contractor and submitted as part of the Contractor HASP.
  - L. The Contractor shall include an organizational structure in the HASP that sets forth lines of authority, responsibility, and communication, including a description of this organization and responsibilities of each key personnel.
  - M. Contractor shall develop Emergency Response and Contingency Planning procedures that will be included in the Contractor HASP to address potential emergencies that may occur during a task, relative to the Contractor's scope of work. The Emergency Response and Contingency Planning procedures shall identify the closest medical facility that provides urgent/emergency services by name, address, and include a map to the identified the best route to that medical facility.
  - N. Names and qualifications (resumes including education, training, experience, and certifications) of all site safety and health personnel designated to perform work on this project will be provided in the HASP when submitted to the City Representative. Submissions will include the designated Site Safety Representative and other

- competent and qualified personnel to be used on the project in support of job site safety requirements.
- O. Contractor will include the following information in the HASP, as applicable:
1. Confined Space Entry Plan
  2. Crane Critical Lift Plan
  3. Fall Protection and Prevention (FP&P) Plan
  4. Activity Hazard Analysis (AHA) /Job Hazard Analysis (JHA)
  5. Written Hazard Communication Plan for work place chemicals brought to the site must be established. Contractor shall also maintain a Safety Data Sheet (SDS) for all products/chemicals brought to the project site.
  6. Emergency Response Plan
  7. Excavation Plan
  8. Arc Flash Risk Analysis
- P. Any changes or modifications to the Contractor's HASP must be signed by the Contractor's Project Manager and SSR and submitted to the City Representative. The modification shall be appended to the Contractor HASP. All on-site personnel shall be fully informed of the modifications and required actions.
- Q. The Contractor's HASP shall describe the Contractor's plan for compliance with the Substance Abuse Policy in Appendix H of the PLA. The Contractor's plan for compliance with the Substance Abuse Policy will include but not be limited to the following:
1. Contractor's method for ensuring that all employees required to take a pre-employment substance abuse test on this project are tested.
  2. The name and telephone number of the Contractor's Designated Employer Representative for the Substance Abuse Policy.
  3. The location(s) Contractor designates as collection site(s) for pre-employment urine tests.
  4. The date(s) and location(s) of training to assist Contractor's management representatives in identifying factors which constitute reasonable cause for drug testing, as well as a detailed explanation of the terms and conditions of the drug policy.

## 12.0 INSPECTIONS

- A. Contractor SSR shall perform *daily* inspections of their active field work area(s) covering workplace conditions, physical facility safety, and employee work practices. Any deficiencies and corrective actions shall be documented. The daily inspection shall be documented in the Contractor's Weekly Health and Safety Report submitted to the City Representative.
- B. Each piece of heavy equipment shall be inspected upon delivery to the Site and at the beginning of each work shift. Heavy equipment inspection documentation shall be submitted to the City Representative upon request.
- C. Crane inspection documentation shall be submitted to the City Representative prior to use. The Contractor shall provide current inspection documentation and Certification per OSHA that the crane operator is qualified and trained in the operation of the crane to be used.
- D. Cranes shall be visually inspected prior to each shift by the Contractor's competent person. The inspection must include observation for deficiencies during operation.

The inspection must be written and a copy submitted to City Representative if requested.

### 13.0 INCIDENT REPORTING AND INVESTIGATION

- A. Contractor employees involved in or witnessing an Incident must immediately report it to the responsible supervisor or foreman, who in turn immediately notifies the City Representative. This notification shall be by phone initially and then followed-up by an email.
- B. Contractor will allow City Representatives to participate and review all project incident or near-miss investigations.
- C. Contractor employees involved in or witnessing a Near-Miss Incident must report it to the responsible supervisor or foreman in a reasonable time frame, not to exceed 24 hours, who in turn immediately notifies the City Representative.
- D. No supervisor may decline to accept or relay a report of injury or significant near-miss incident from a subordinate.
- E. All incidents and significant Near-Miss Incidents are investigated immediately by the Contractor's individual or team with training in accident investigation and root cause analysis.
- F. No work should continue in the incident area until the hazard and/or behavior that caused the incident are corrected by the Contractor.
- G. Contractors must investigate incidents and submit an initial investigation report to the City Representative using a Contractor Incident Investigation Report within 24 hours of learning about the incident. Final Report to be submitted to City Representative within 48 hours of incident.
- H. A final Root Cause Analysis and corrective actions report for the incident will be conducted by the Contractor and submitted to City Representative within 10 working days.
- I. Contractors must investigate near-miss incidents and submit an investigation report to the City Representative using a Contractor Incident Investigation Report within 24 hours of learning about the near-miss incident.

### 14.0 PERSONAL PROTECTIVE EQUIPMENT (PPE)

- A. Contractor shall define task specific PPE requirements for all personnel in compliance with applicable laws, rules, and regulations.
- B. PPE shall be worn at all times on the Site, including travel within the Site when starting or ending shifts. Minimum requirements include:
  - 1. Hard hats are required at all times in the work area areas.
  - 2. Appropriate eye and face protection that complies with ANSI Z87 shall be worn at all times.
  - 3. Safety glasses with side shields are required as minimum.
  - 4. Sensible and safe work clothing/shoes must be worn.
  - 5. No canvas /leather sneakers or sandals will be worn.
  - 6. Appropriate hearing protection shall be worn in work areas where levels exceed established standards.
  - 7. Suitable gloves must be worn to protect the hands from injury as appropriate.

8. High visibility warning vests or other suitable garments marked with or made of reflection or high-visibility material must be worn at all times on the project.
- C. The Contractor's SSR shall establish appropriate levels of protection for each work task.
- D. For electrical work, Personal Protective Equipment (PPE) and other Protective Equipment shall also conform with all NFPA 70E guideline (NFPA 70E 130 (G) provides guideline based on calculating an incident energy analysis method, based on the Hazard Risk Category for the equipment they have assessed as the tables 130.7(C)(14), 130.7(C)(15)(a), and 130.7(C)(15)(c), as applicable).
- E. If respiratory protection is utilized, the Contractor will have a Respiratory Protection Program in compliance with Cal/OSHA requirements. The Contractor will also provide the following to the City Representative prior to beginning work utilizing respiratory protections:
  1. Copies of the Respiratory Program
  2. Respirator training records
  3. Fit-testing and medical approval documentation
  4. Annual documentation for training, fit testing, and medical evaluations
- F. All respiratory equipment will be provided to the employees by the Contractor and properly inspected and maintained by the employees per Cal/OSHA regulations.
- G. Where "Hot Work" is involved, a Hot Work permit must be submitted to the City Representative prior to work. Protective clothing that provides thermal protection shall be required.
- H. Safety harnesses must be worn per manufacturers and OSHA requirements in manlifts.
- I. Workers must wear a safety harness with their safety lanyard secured to a separate lifeline while working from swing scaffolds, boatswain's chairs, or other suspended work platforms where a fall hazard is present.
- J. Proper personal protective equipment must be worn for welding and burning. Welding screens must be used when welding operations have the ability to expose other employees or the general public.

## 15.0 EMERGENCY EQUIPMENT

- A. The Contractor shall provide the required emergency and first aid equipment to be utilized for the project. The following items, at a minimum, shall be maintained on-site and available for immediate use:
  1. First aid equipment and supplies approved by a physician, including first aid kits and eyewash station.
  2. Spill control materials and equipment, including multi-purpose absorbent materials, poly bags, brooms and shovels and drums.
  3. Fire extinguishers with a minimum rating of 2A-10B:C and as required by OSHA regulations for scope of work.
  4. Emergency rescue equipment (if applicable), including SCBA or escape pack (with a minimum of 10 minutes of air), and tripod/extraction equipment for confined space rescue or tunnel rescue; backboard/basket for transport of injured personnel, air horns/bull horns for emergency signaling and communications.



5. All site Contractor safety personnel, project managers, and key line supervisors will be equipped with two-way radios for emergency communications.
6. All boats and vessels (if applicable) used on the project shall comply with the U.S. Coast Guard regulations and carry all Coast Guard–required safety equipment, including adequate personal flotation devices and signaling devices.

#### 16.0 LOGS, REPORTS AND RECORDKEEPING

- A. Contractor shall maintain Project safety audits, equipment safety inspection logs, incident reports, and all reports covering the implementation of Contractor HASP on the project site for review upon request by the City Representative.
- B. Contractor shall submit Monthly project safety statistical report to City Representative that includes hours worked by Contractor, OSHA Recordable Incidents, Incident Rates, Lost Work Day Cases, Total Project Lost Work Days, and Days Away from Work Rate, First Aid Cases, and Property Damage Incidents.
- C. Contractor shall submit Weekly Safety Inspection Reports to the City Representative which includes corrective actions.
- D. Contractor shall allow City Representatives access to all Contractor operations and records. The City's review of Contractor's logs and records documenting safety performance shall not be construed as approval of the adequacy of any safety measures taken in, on or near the construction site, nor shall it relieve the Contractor of its responsibilities of performing and enforcing health and safety inspections/audits, monitoring or any other components of the project safety requirements and site-specific Contractor HASP.

#### 17.0 REMEDIAL ACTION

- A. The City Representative will issue a notice of non-compliance to ensure that observed immediately dangerous to life and health situation(s) and repeated failure to comply with health and safety requirements violations are corrected by the Contractor in a timely manner. The notice will document non-compliance and requires an immediate action to remedy and correct the non-compliance with a written response from Contractor's Project Manager within 24 hours of receipt of this notice.
- B. If Contractor repeatedly fails to comply with applicable health and safety laws, rules, regulations, and orders, the City reserves the authority to have the necessary work performed by others and deduct corresponding costs from Contractor's progress payment(s), suspend progress payments, and terminate the contract for cause.
- C. The Contractor's non-compliance with applicable health and safety laws, rules, regulations, orders and contract safety requirements shall be considered failure by the Contractor to perform a provision of the Contract, and may be cause for the suspension of the Work and/or the discharge from the Work of an employee, Subcontractor or Supplier as set forth in the General Conditions. The Contractor will be responsible for all costs for stoppage of work and/or replacement of employee(s).

END OF SECTION

## EXHIBIT A: ENERGIZED ELECTRICAL WORK PERMIT FOR CONTRACTORS

### PART I: TO BE COMPLETED BY THE PERMIT REQUESTER

Contract Number/Task Order Number: \_\_\_\_\_

1. Description of circuit/equipment: \_\_\_\_\_
  2. Location: \_\_\_\_\_
  3. Scope of work: \_\_\_\_\_
  4. Justification of why the circuit/equipment that cannot be de-energized or why work cannot be deferred until the next scheduled outage/shutdown: \_\_\_\_\_
- Permit Applicant – Electrical Contractor Representative /Title/Company \_\_\_\_\_ Date \_\_\_\_\_
- General Contractor's Site Safety Representative/ Name and signature \_\_\_\_\_ Date \_\_\_\_\_

### PART II: TO BE COMPLETED BY THE ELECTRICALLY QUALIFIED PERSON PERFORMING THE WORK:

1. Detailed description of the of the work procedures to be used in performing the above described work: \_\_\_\_\_
2. Results of the shock risk assessment: \_\_\_\_\_
3. Results of the arc flash risk assessment: \_\_\_\_\_
4. Flash Risk/Arc Rating (cal./cm2):  <4    4 – 7    8 – 24    25 – 39    > 39

Hazards	Distance	Determined By (Arc Flash Risk Label, Table, Other (Specify)
Flash Protection Boundary		
Prohibited Approach Boundary		
Restricted Approach Boundary		
Limited Approach Boundary		

6. **Personal Protective Equipment to be used**
- |  |  |  |
|--|--|--|
| <p><b>Eyes</b></p> <p><input type="checkbox"/> Safety Glasses</p> <p><input type="checkbox"/> Goggles</p> <p><input type="checkbox"/> Arc-Rated Face Shield &amp; Goggles/Safety Glasses</p> <p><input type="checkbox"/> Other - Describe: _____</p> | <p><b>Extremities</b></p> <p><input type="checkbox"/> Insulated/Rated Gloves</p> <p><input type="checkbox"/> Leather Gloves</p> <p><input type="checkbox"/> Work Shoes/Rubber Boots</p> <p><input type="checkbox"/> Hard Hat</p> | <p><b>Body</b></p> <p><input type="checkbox"/> Non-Melting, Non-Flammable Street Clothes (plus cotton under garments*)</p> <p><input type="checkbox"/> FR Shirt and FR Pants (plus cotton under garments*)</p> <p><input type="checkbox"/> FR Shirt, FR Pants and Coveralls (plus cotton under garments*)</p> <p><input type="checkbox"/> Layered FR Coveralls (plus cotton under garments*)</p> |
| <p><b>Hearing</b></p> <p><input type="checkbox"/> Ear Plugs</p> <p><input type="checkbox"/> Ear Muffs</p> <p><input type="checkbox"/> Other - _____</p>  | <p><b>Ventilation</b></p> <p><input type="checkbox"/> Exhaust Fan</p> <p><input type="checkbox"/> Blower Fan</p> <p><input type="checkbox"/> Other - _____</p>   | <p><b>Fall Protection</b></p> <p><input type="checkbox"/> Safety Harness</p> <p><input type="checkbox"/> Lanyard</p> <p><input type="checkbox"/> Portable Anchor Type: _____</p>   |
- Fixed Anchor Location: \_\_\_\_\_
- Self-Retracting Lifeline (SRL)

If additional hazards (i.e., Confined Space Entry or Hot Work) are present then additional CSP's and/or Permits are necessary.

\*Please note, this permit is only valid until the specified activities at the specified location are completed.

## PART II Continued

7. Means employed to restrict access of unqualified persons from the work area: \_\_\_\_\_
8. Evidence of completion of a job briefing (please attach if additional room is needed). Please include any job-related hazards. \_\_\_\_\_
9. Do you agree the above described work can be done safely? Yes  No (If no, return to applicant)

Permit owner and Electrically Qualified Person:

I certify that all required precautions have been taken, the necessary equipment has been provided for the above work, and that the information contained in this permit truly reflects the work plan which will be used by all who perform work under this permit.

\_\_\_\_\_  
Print Name of Qualified Electrical Worker and Title Sign and date

\_\_\_\_\_  
Print Name of additional Qualified Electrical Worker and Title Sign and date

## PART III: APPROVAL(S) TO PERFORM THE WORK WHILE ELECTRICALLY ENERGIZED:

- This permit is approved \*
- This permit is not approved for the following reason(s) (required if not approved): \_\_\_\_\_
- \_\_\_\_\_

\_\_\_\_\_  
Electrical Engineer - Print Name Sign and date with the time

\_\_\_\_\_  
Electrical Maintenance Manager (for existing facilities) - Print Name Sign and date with the time

\_\_\_\_\_  
Electrical Supervisor (for existing facilities) - Print Name Sign and date with the time

\*Please note, this permit is only valid until the specified activities at the specified location are completed.

## SECTION 00 73 30

## LOCAL HIRING REQUIREMENTS

## 1.01 SUMMARY

- A. This Section 00 73 30 incorporates applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in Section 6.22(g) and Chapter 82 of the San Francisco Administrative Code. The Provisions of the Policy are hereby incorporated as a material term of this Contract. Contractor agrees that (i) Contractor shall comply with all applicable requirements of the Policy; (ii) the provisions of the Policy are reasonable and achievable by Contractor and its Subcontractors; and (iii) they have had a full and fair opportunity to review and understand the terms of the Policy.
- B. The Office of Economic and Workforce Development (OEWD) is responsible for administering the Policy. For more information on the Policy and its implementation, please visit the OEWD website at: [www.oewd.org](http://www.oewd.org).
- C. Meeting the local hiring requirements of the Policy as set forth in this Section will satisfy Contractor's obligations under the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83).

## 1.02 DEFINITIONS

- A. "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.
- B. "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.
- C. "Covered Project" means a public work or improvement or part thereof with estimated cost in excess of the Threshold Amount as set forth in Section 6.1 of the San Francisco Administrative Code.
- D. "Non-covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.
- E. "Disadvantaged Worker" means a local resident, who (i) resides in a census tract within the City with a rate of unemployment in excess of 150% of the City unemployment rate; or (ii) at the time of commencing work on a covered project has a household income of less than 80% of the AMI, or (iii) faces or has multiple barriers to employment as set forth in Section 82.3 of the Administrative Code.
- F. "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project. For projects outside the jurisdictional boundaries of

the City, “local resident” also applies to residents within the San Francisco Public Utilities Commission service territory, except where a reciprocity agreement exists with another local agency, in which case the reciprocity agreement controls.<sup>1</sup>

- G. “Project Work Hours” means the total work hours worked on a construction contract by all apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.
- H. "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of three (3) business days' notice.
- I. “Targeted Worker” means any Local Resident or Disadvantaged Worker.

### 1.03 LOCAL HIRING REQUIREMENTS

- A. Total Project Work Hours by Trade. For all Covered Projects advertised for bids on or after March 25, 2013, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.
- B. Apprentices. For all Covered Projects, at least 50% of the Project Work Hours performed by apprentices within each trade shall be performed by Local Residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Disadvantaged Workers.
- C. Out-of-State Workers. For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to SFPUC and OEWD the number of Project Work Hours performed by residents of states other than California.
- D. Pre-construction or other Local Hire Meeting. Prior to commencement of construction on Covered Projects, Contractor and its Subcontractors identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by awarding department or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority.

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<sup>1</sup> For Covered Projects located in whole or in part in San Mateo County, the following reciprocity agreement controls:  
<http://oewd.org/sites/default/files/Workforce/Workforce-Docs/SFO-SM%20reciprocity%20agreement.pdf>

- E. The Policy does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of the Policy shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

#### 1.04 CITYBUILD WORKFORCE DEVELOPMENT PROGRAM: EMPLOYMENT NETWORKING SERVICES

- A. OEWD administers the CityBuild Program. CityBuild is a resource for Contractor and Subcontractors to use in meeting local hiring requirements under the Policy. CityBuild has two main goals:
  - 1. Assist with local hiring requirements under the Policy by connecting Contractor and Subcontractors with qualified journey-level, apprentice, and pre-apprentice local residents.
  - 2. Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force.
- B. Where Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of the Policy, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:
  - 1. Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.
  - 2. Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under the Policy. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is "disadvantaged" as defined in the Policy.

#### 1.05 CONDITIONAL WAIVER FROM LOCAL HIRING REQUIREMENTS

- A. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the local hiring requirements on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.
  - 1. Specialized Trades. OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of the Policy will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the project work hours utilized in each

designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade.

2. Credit for Hiring on Non-Covered Projects. Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:
  - a. the Targeted Workers are paid the prevailing wages for work on the Non-Covered Projects; and
  - b. for Non-Covered Projects located in the City, the number of hours to be credited for the Non-Covered Project exceed one-half of the number of hours that would be required if the project were a Covered Project.
3. Sponsoring Apprentices. Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and retaining those apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California Department of Industrial Relations that the new apprentices are registered and active apprentices.
4. Direct Entry Agreements. OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with the Policy by Contractor or Subcontractor hiring and retaining apprentices who are enrolled through such direct entry agreements. Such exception from assessments of penalties is subject to review and approval by OEWD.

## 1.06 LOCAL HIRING FORMS

- A. Utilizing the City's online Project Reporting System ("PRS"), Contractors shall submit the following forms, as applicable, to the SFPUC **within 15 calendar days of notice of Award:**
  1. Form 1: Local Hiring Workforce Projection. The City will not issue Notice to Construction Proceed (NTP) until Contractor completes and submits a Local Hiring Workforce Projection.
  2. Form 2: Local Hiring Plan. For Covered Projects estimated to cost more than \$1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2. The OEWD-approved Local Hiring Plan will be incorporated into this Contract as a Contract Document, and will serve as the basis for determining Contractor's and its Subcontractors' compliance with local hiring requirements.

3. The City will not issue Construction NTP until Contractor submits the Local Hiring Plan. Contractor shall be fully responsible for any delays to Construction NTP and associated damages incurred by the City caused by Contractor's failure to timely submit a Local Hiring Plan.
4. The Local Hiring Plan must be reviewed and approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor.
5. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.
6. Form 4: Conditional Waivers. To be completed by Contractor in the event that Contractor or a Subcontractor believes the local hiring requirements cannot be met. Refer to Articles 1.04 and 1.05 for more information regarding conditional waivers.

#### 1.07 ENFORCEMENT, RECORD KEEPING, NONCOMPLIANCE AND PENALTIES

- A. Subcontractor Compliance. Contractor shall ensure that Subcontractors of all tiers comply with applicable requirements of the Policy. Refer to Administrative Code Section 82.7(d).
- B. Reporting. As required by Subparagraph 9.03M of the General Conditions (Section 00 72 00.22) Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and SFPUC will monitor compliance with the Policy electronically.
- C. Recordkeeping. Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of project work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project.
  1. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the covered project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method).
  2. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.



3. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the awarding department and the OEWD.
- D. Monitoring. From time to time and in its sole discretion, OEWD and/or the awarding department may monitor and investigate compliance of Contractor and Subcontractors working on the Project with requirements of this Policy. Consistent with the Access to Work provisions of Paragraph 3.13 of the General Conditions (Section 00 72 00.22), Contractor shall allow representatives of OEWD and the awarding department, in the performance of their duties, to engage in random inspections of the Site. Contractor and all Subcontractors shall also allow representatives of OEWD and the awarding department to have access to employees of Contractor and Subcontractors and the records required to be maintained under the Policy.
- E. Noncompliance and Penalties. Failure of Contractor and/or its Subcontractors to comply with the requirements of the Policy and the obligations set forth in the Local Hiring Plan may subject Contractor to the consequences of noncompliance specified in Section 82.8(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 82.8(f)(2). The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 82.8(f)(4) for a description of the recourse procedure applicable to penalty assessments under the Policy.

END OF SECTION



## FORM 1: LOCAL HIRING WORKFORCE PROJECTION

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

The Contractor must complete and submit this Local Hiring Workforce Projection (Form 1) within 15 calendar days from notice award of the contract. The Contractor must include information regarding all of its Subcontractors who will perform construction work on the project regardless of Tier and Value Amount. Notice to Proceed (NTP) will not be issued until the City receives a completed Form 1 from Contractor. The Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by Contractor's failure to submit an accurate and complete Form 1 for its workforce and the workforce of its Subcontractors in a timely manner.

### Will you be able to meet the mandatory Local Hiring Requirements?

- YES** (Please provide information for all contractors performing construction work in Table 1 below.)
- NO** (Please complete Table 1 below and Form 4: Conditional Waivers.)

#### INSTRUCTIONS FOR COMPLETING TABLE 1:

- Please organize the contractors' information based on their Trade Craft work.
- For contractors performing work in various Trade Craft, please list contractor name in each Trade Craft (*i.e. if Contractor X will perform two trades, list Contractor X under two Trade categories.*)
- If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by Local Residents.
- Additional blank form is available at our Website: [www.owwd.org](http://www.owwd.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**TABLE 1: WORKFORCE PROJECTION**

Trade Craft	Contractor <i>List contractors by Trade Craft</i>	Est. Total Work Hours	Est. Total Local Work Hours	Est. Total Local Work Hours %	
<i>Example:</i> Laborer	Contractor X	<i>Journey</i>	800	250	31%
		<i>Apprentice</i>	200	100	50%
<i>Example:</i> Laborer	Contractor Y	<i>Journey</i>	500	100	20%
		<i>Apprentice</i>	0	0	0
<i>Example:</i>	<b>TOTAL LABORER</b>	<i>Journey</i>	1300	350	<b>27%</b>
		<i>Apprentice</i>	200	100	<b>50%</b>
<i>Example:</i>	<b>TOTAL</b>	<b>1500</b>	<b>450</b>	<b>30%</b>	
		<i>Journey</i>			
		<i>Apprentice</i>			
		<i>Journey</i>			
		<i>Apprentice</i>			
		<i>Journey</i>			
		<i>Apprentice</i>			

**DISCLAIMER:** If the Total Work Hours for a Trade Craft are less than 5% of the Total Project Work Hours, the Trade Craft is exempt from the Mandatory Requirement. Subsequently, if the Trade Craft exceeds 5% of the Total Project Work Hours at any time during the project, the Trade Craft is subject to the Mandatory Requirement.

\_\_\_\_\_  
 Name of Authorized Representative      Signature      Date      Phone      Email



CITY AND COUNTY OF SAN FRANCISCO  
OFFICE OF ECONOMIC AND WORKFORCE DEVELOPMENT  
CITYBUILD PROGRAM





## FORM 2: LOCAL HIRING PLAN

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

If the Engineer's Estimate for this Project exceeds **\$1 million**, then Contractor must submit a Local Hiring Plan using this Form 2 through the City's Project Reporting System. NTP will not be issued until Contractor submits a completed Form 2. Contractor shall be responsible for any delays to NTP and resulting damages incurred by the City caused by the Contractor's failure to submit a completed Form 2 in a timely manner. The Local Hiring Plan must be approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor. The OEWD-approved Local Hiring Plan will be a Contract Document and will be the basis for determining Contractor's and its Subcontractors' compliance with the local hiring requirements. Any OEWD-approved Conditional Waivers (Form 4) will be incorporated into the OEWD-approved Local Hiring Plan.

**COMPLETE AND SUBMIT A SEPARATE FORM 2 FOR EACH TRADE THAT WILL BE UTILIZED ON THIS PROJECT.**

**INSTRUCTIONS:**

1. Please complete tables below for Contractor and all Subcontractors that will be contributing Project Work Hours to meet the Local Hiring Requirement.
2. Please note that a Form 2 will need to be developed and approved separately for each trade craft that will be utilized on this project.
3. If you anticipate utilizing apprentices on this project, please note the requirement that 50% of apprentice hours must be performed by Local Residents.
4. The Contractor and each Subcontractor identified in the Local Hiring Plan must sign this form before it will be considered for approval by OEWD.
5. If applicable, please attach all OEWD-approved Form 4 Conditional Waivers.
6. Additional blank form is available at our Website: [www.oewd.org](http://www.oewd.org). For assistance or questions in completing this form, contact (415) 701-4894 or Email @ [Local.hire.ordinance@sfgov.org](mailto:Local.hire.ordinance@sfgov.org).

**List Trade Craft. Add numerical values from Form 1: Local Hiring Workforce Projection and input in the table below.**

Trade Craft	Total Work Hours	Total Local Work Hours	Local Work Hours%	Total Apprentice Work Hours	Total Local Apprentice Work Hours	Local Apprentice Work Hours %
<i>Example: Laborer</i>	1500	450	30%	200	100	50%

**List all contractors contributing to the project work hours to meet the Local Hiring Requirements for the above Trade Craft**

Contractor and Authorized Representative	Local Journey Hours	Local Apprentice Hours	Total Local Work Hours	Start Date	Number of Working Days	*Contractor Signature
Contractor X Joe Smith	250	100	350	3/25/13	60	<i>Joe Smith</i>
Contractor Y Michael Lee	100	0	100	5/25/13	30	<i>Michael Lee</i>

**\*We the undersigned, have reviewed Form 2 and agree to deliver the hours set forth in this document.**

City Use Only	
OEWD Approval	<input type="checkbox"/> Yes <input type="checkbox"/> No
Signature and Date:	



**FORM 4: CONDITIONAL WAIVERS**

**Contractor:** \_\_\_\_\_ **Project Name:** \_\_\_\_\_ **Contract #:** \_\_\_\_\_

Upon approval from OEWD, Contractors and Subcontractors may use one or more of the following pipeline and retention compliance mechanisms to receive a Conditional Waiver from the Local Hiring Requirements on a project-specific basis. Conditional Waivers must be approved by OEWD prior to approval of Contractor's first Application for Payment. If applicable, each contractor must submit their individual Waiver request to OEWD and copy their Prime Contractor.

**TRADE WAIVER INFORMATION:** Please provide information on the Trades you are requesting Waivers for:

Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours	Laborer Trade Craft	Est. Total Work Hours	Projected Deficient Local Work Hours
1.			3.		
2.			4.		

Please check any of the following Conditional Waivers and complete the appropriate boxes for approval:

1. SPECIALIZED TRADES     2. SPONSOR APPRENTICE(S)     3. CREDIT FOR NON-COVERED PROJECTS or DIRECT ENTRY HIRE

1. **SPECIALIZED TRADES:** Will your firm be requesting Conditional Waivers for "Specialized Trades" designated by OEWD and listed on OEWD's website or project-specific Specialized Trades approved by OEWD during the bid period?  Yes     No

Please CHECK off the following Specialized Trades you are claiming for Condition Waiver:

- MARINE PILE DRIVER     HELICOPTER, CRANE, OR DERRICK BARGE OPERATOR     IRONWORKER CONNECTOR  
 STAINLESS STEEL WELDER     TUNNEL OPERATING ENGINEER     ELECTRICAL UTILITY LINEMAN     MILLWRIGHT  
 TRADE CRAFT IS LESS THAN 5% OF TOTAL WORK HOURS\*. LIST:  
\*WAIVER VOIDED IF TOTAL WORK HOURS EXCEED 5%.

a. List OEWD-approved project-specific Specialized Trades approved during the bid period: \_\_\_\_\_

OEWD APPROVAL:  Yes  No    OEWD Signature: \_\_\_\_\_

2. **SPONSORING APPRENTICES:** Will you be able to work with OEWD to sponsor an OEWD-specified number of new apprentices in the agreeable trades into California Department of Industrial Relations' Division of Apprenticeship Standards approved apprenticeship programs?  Yes     No

PLEASE PROVIDE DETAILS:	Est. # of Sponsor Positions	Union (Yes / No)	If Yes, Local #	Est. Start Date	Est Duration of Working Days	Est Total Work Hours Performed
Construction Trade		Y <input type="checkbox"/> N <input type="checkbox"/>				
		Y <input type="checkbox"/> N <input type="checkbox"/>				

OEWD APPROVAL:  Yes  No    OEWD Signature: \_\_\_\_\_

3. **CREDIT for HIRING on NON-COVERED PROJECTS or DIRECT ENTRY HIRE:** If your firm cannot meet the mandatory local hiring requirement, will you be requesting credit for hiring Targeted Workers on Non-covered Projects or hiring workers with Direct Entry Agreements?  Yes     No

PLEASE PROVIDE DETAILS:	Est. # of Off-site Hires	Est Total Work Hours Performed	Offsite Project Name	Project Address
Labor Trade, Position, or Title				
Journey				
Apprentice				

OEWD APPROVAL:  Yes  No    OEWD Signature: \_\_\_\_\_

## SECTION 00 73 63

## SECURITY REQUIREMENTS

## 1.01 DESCRIPTION

## A. Responsibilities include:

1. Contractor shall comply with the SFPUC's protocol for personnel identification, site access control, and contractor deliveries.
2. Site Security shall be the Contractor's responsibility from commencement of Work through Final Completion.
3. Contractor's Site Security Monitor shall be on-site and available at all times while Work is being performed, ensuring that requirements of this Section are met.

## B. Related Sections:

1. Section 01 14 13 Access to Site

## 1.02 SUBMITTALS

## A. Contractor to provide daily sign-in log to the City Representative at the end of the workday identifying all workers and visitors with all forms of badges as specified in Article 1.03B. Log shall include the following information:

- individual's full name
- company name
- responsibilities
- company phone number

## B. Submit to the City Representative the Key Control Plan per Article 1.05C.

## C. Submit to the City Representative no less than 10 business days before the commencement of Work, completed Photo ID/Access Card Request Forms (Appendix A) for all personnel who will work at the site.

## D. Submit name and cell phone contact number of individual(s) designated as the Site Security Monitor(s) to the City Representative.

## E. A monthly report detailing any and all lost or missing badges shall be forwarded to the City Representative.

## 1.03 PERSONNEL IDENTIFICATION AND BADGING

## A. Contractor's personnel and all others directly associated with the Work will be issued individual SFPUC Photo-Identification Badges that will be valid either for the duration of the project(s), or for a maximum period of one year from the date of the

Construction Notice to Proceed. If project duration exceeds one year, the Contractor shall submit a written request to the City Representative for an extension of the validity of the badges.

Project badges will be issued by the SFPUC for use by Contractor's staff, subcontractor's staff, and all persons associated with the Work. There will be three types of identification badges required: (a) Photo-Identification Badges with an orange colored background for personnel who will work at the site regularly; (b) Temporary Contractor Badges with a yellow colored background for those personnel awaiting their permanent Photo-Identification Badges, or those who will only work at the site on an infrequent basis or for less than a total of 10 days, and (c) Visitor Badges with a white background and black lettering for those personnel who will be at the site for the day only.

The Contractor shall provide Proof of Identification (e.g., copy of driver's license), an electronic photograph in jpeg format, and a completed Photo ID/Access Card Request Form (shown in Appendix A and available here:

<https://sfpuc.sharefile.com/d-s5292a7a93df4bb68>) to the City Representative for each individual prior to issuance of a Photo-Identification Badge. The jpeg photograph must be in color and conform to the following parameters: full-face frontal view from the top of the sternum to several inches above the top of the head taken from a range of 3 feet to 4 feet from subject, with an orange-colored background, clear and in focus, with a minimum resolution of 640 by 480 pixels. The Contractor may provide a jpg file conforming to the requirements above, or shall make arrangements with the City Representative to have personnel photographs, including photographs of the Subcontractors, taken at the SFPUC Department of Human Resources at 525 Golden Gate Avenue, 3<sup>rd</sup> Floor, San Francisco, CA 94102. The Contractor should not proceed to the SFPUC Department of Human Resources without making prior arrangements through the City Representative. The Contractor shall repeat this procedure on an as-needed basis when additional Photo-Identification Badges are required.

- B. Contractor shall keep a written record of the name, employer, and work telephone number of each person issued a Photo-Identification Badge or a Temporary Contractor Badge. Lost or missing badges shall be reported within 24 hours to the City Representative and Site Security Monitor. A Temporary Contractor Badge will be issued by the Contractor until a replacement Photo-Identification Badge or Temporary Contractor Badge is obtained from the SFPUC. A monthly report detailing any and all lost or missing badges shall be forwarded to the City Representative, who will then forward it to the SFPUC Director of Homeland Security. Upon receipt of the report documenting a lost or missing badge, the SFPUC will replace that badge within 10 business days.
- C. All project Photo-Identification Badges and Temporary Contractor Badges shall be surrendered to the City Representative no later than at the completion of the Contract unless Contractor is actively working on another SFPUC project. The Contractor will identify which badges have not been surrendered and provide documentation that the Contractor is working on another SFPUC project. Failure to return or properly account for badges will delay Final Payment. Contractor will pay a fee of \$100 for

each unreturned badge, which shall be deducted from the Final Payment. The Site Security Monitor shall immediately surrender to the City Representative the badges of any Contractor's employees that are reassigned to other non-SFPUC sites or terminated during the construction. The Site Security Monitor shall be responsible for collecting and returning badges on a continuing basis when they are no longer required.

- D. The SFPUC will also issue twenty Temporary Contractor Badges to the Contractor for Contractor's temporary workers, delivery personnel, and other temporary workers. Upon verification by the Contractor's Site Security Monitor, and compliance with Article 1.03 of this Section, a Temporary Contractor Badge or Visitor Badge will be issued to the temporary worker. The Contractor shall supply the Visitor Badges unless otherwise noted in the Specifications. If additional Temporary Contractor Badges are needed, the Contractor shall submit a request in writing to the City Representative for approval.
- E. All personnel associated with the Work shall be required to wear a Photo-Identification Badge, Temporary Contractor Badge, or Visitor Badge as described in Article 1.03B of this Section at all times while working at the site. All forms of identification badges shall be attached above the waist on outer garments and shall be visible at all times. Any Contractor employee or worker who does not display a Photo-Identification Badge, Temporary Contractor Badge, or Visitor Badge while on site shall be required to leave the site or will be denied access until such time as they have an approved badge.
- F. Upon request, badges shall be shown to SFPUC's staff or Security Officers. Persons without badges shall be required to immediately leave the site unless the Contractor's Site Security Monitor can verify that the person is required on site. Upon verification by the Site Security Monitor and compliance with Article 1.03 of this Section, a Temporary Contractor Badge (or a Visitor Badge) will be issued as provided for in Article 1.03 of Specification Section 01 14 13.
- G. If emergency site access (for emergency access as determined by the Contractor and approved by the City Representative) is needed, the Contractor's Site Security Monitor shall verify the identity of the visitor to the City Representative. After sign-in with the Site Security Monitor, the visitor will be issued a Visitor Badge as provided for in Article 1.03 of Specification Section 01 14 13. The visitor shall return his/her badge to the designated location as identified in Article 1.03 of Specification Section 01 14 13 by the end of the day.
- H. The Contractor will be assessed \$100 for each unreturned Photo-Identification Badge, Temporary Contractor Badge, or each replacement Photo-Identification or Temporary Contractor Badge, which shall be withheld from the Monthly Progress Payment.
- I. Contractor and all other people associated with the Work that enter the site are required to possess and carry a Photo-Identification Badge, Temporary Contractor Badge, or Visitor Badge in addition to a valid and current California Driver's License, California Identification Card (issued by the California Department of Motor Vehicles), valid and current Passport, or current driver's license or photo-



identification card issued by another state. This identification shall include a photograph and signature of the holder. Personnel without such identification shall be removed from the site by the Contractor.

#### 1.04 BACKGROUND CHECKS

- A. Upon the request of the SFPUC and at no additional cost to the SFPUC, the Contractor shall provide such information as necessary and as allowed by law for a Department of Justice (DOJ) background check on any person that enters the site. Using the information, the SFPUC subsequently will bear the costs of conducting a DOJ background check.

#### 1.05 SITE ACCESS CONTROL

- A. At the end of each workday, any gates, hatches, doors, windows, manways, and exterior ladders, etc., shall be secured, closed, and locked. Any alarmed system, which is activated or disabled during the workday, shall be tested through to the alarm monitoring station for proper actuation.
- B. At the end of each workday the Contractor shall secure all equipment, hazardous materials, tools, materials, and flammable fluids. The Contractor shall maintain Key Control to assure only authorized personnel have access to equipment, hazardous materials, tools, materials, and flammable fluids.
- C. The Contractor shall prepare a Key Control Plan outlining the lock system to be used along with the list of personnel who will be issued keys and are authorized to use said keys. Upon loss of critical keys, the Contractor shall replace all corresponding locks and re-issue keys to prevent unauthorized access.
- D. Unless otherwise indicated on the Drawings, existing fences and gates at the site shall remain intact and in use throughout construction. The existing perimeter security of the site shall be maintained at all times. Fences and gates that are breached due to construction (e.g., construction of a utility crossing under a fence) shall be restored by the end of working hours each day. The SFPUC reserves the right to request additional fencing around any areas of the construction site. Additional fencing shall be paid for as extra work. Fencing or gates installed by the Contractor that are breached and/or damaged shall be immediately restored/replaced at Contractor's expense.
- E. Contractor-requested modifications to existing fences and gates are subject to City Representative's approval. Additional fencing or modifications requested by the Contractor shall be at Contractor's expense.
- F. The Contractor is advised that all persons seeking entry to the site will be required to show proof of identification (e.g., driver's license). All Contractor's trucks and drivers are subject to the same search requirements as described in Article 1.06.

### 1.06 VEHICLE AND EQUIPMENT SEARCH

- A. All vehicles and packages are subject to search by SFPUC security personnel or by SFPUC staff.
- B. If the driver/owner of a vehicle will not allow the search, access to the site will be denied. All vehicles on SFPUC property may be searched for items that may pose a threat to the facility or to personnel.

### 1.07 PHOTO CONTROL

- A. Contractor and its subcontractors shall restrict photographs, video, film, or any other images or image formats to the Limit of Work, unless otherwise required in the Specifications. The Contractor and its subcontractors shall seek the prior written approval of the City Representative before taking any photographs, video, film, or any other images or image formats and shall specifically identify the intended object(s) being captured.
- B. Photographs, video, film, negatives, backup copies, archived copies, any electronic hardcopies and electronic or digital files, and any other images or image formats of the project are considered confidential, protected information. The Contractor and its subcontractors agree to hold the above-described confidential, protected information in trust and confidence and agree that it shall be used only for documenting the work performed and shall not be used for any other purpose or be disclosed in any form to any person, entity, or third party without the prior written approval of the SFPUC.
- C. The Contractor shall provide to the City Representative at project completion a detailed list of photographs, video, film, negatives, backup copies, archived copies, any electronic hardcopies and electronic or digital files, and any other images or image formats of the project to be retained by the Contractor and its subcontractors.
- D. The SFPUC reserves the right to disallow photography at any site, of any SFPUC facilities, equipment, or processes which are deemed to be sensitive in nature.

### 1.08 PRODUCTIVITY LOSS AND COST DUE TO SECURITY REQUIREMENTS

- A. Time lost and/or costs incurred due to compliance with SFPUC security measures (e.g., deliveries or personnel held at the gate without badges or identification, refusal of package deliveries, etc.) shall be deemed an inexcusable delay, and will not be reimbursed for any delay costs. Contractor shall allow additional time to accommodate site security measures.
- B. Failure to comply with these security measures may lead to suspension or termination of the Contract, in accordance with Article 14 of Section 00 72 00.22 (General Conditions).

1.09 PAYMENT

- A. Full compensation for any and all costs, including labor, equipment, and materials, required to comply with site security requirements as specified in these Specifications shall be incidental to the price bid for the Contract.
- B. Adjustments will be made to the Monthly Progress Payment for each lost or replacement Photo-Identification Badge or Temporary Contractor Badge at \$100 each.
- C. Adjustments will be made to the Final Payment for each unreturned Photo-Identification Badge or Temporary Contractor Badge at \$100 each.

END OF SECTION



# San Francisco Public Utilities Commission

## Request for Photo Identification Credential

### Non-SFPUC Employees

NAME

ORGANIZATION

DIVISION

WORK LOCATION

**SFPUC credentials will only be issued during an appointment.** To make an appointment, please email [BadgeRequest@sfgwater.org](mailto:BadgeRequest@sfgwater.org). All appointments will be at 525 Golden Gate Avenue, 10th Floor.

Date of Credential Request

Reason for Credential Request

- New SFPUC Consultant
- Other CCSF Department
- CCSF Vendor
- Lost or Stolen Badge (notify Security immediately)
- Other

#### Details of Work to be Performed:

Company/Firm  Contract or Task Order Number

Project Manager  Contract End Date

Description of Work

**By submitting this form, I acknowledge that I will receive an SFPUC Identification Credential and I agree that this badge remains the property of the SFPUC. I hereby agree that it will be returned to the SFPUC upon separation of employment.**

Badge Requestor Name  Signature

SFPUC Contract Manager Name  Signature

For Office Use Only

Security Approval:

Badge Number:  Date Badged:

SECTION 00 73 73

STATUTORY AND OTHER REQUIREMENTS

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## ARTICLE 1 – GENERAL

- A. All requirements in this Section are incidental work, unless specified otherwise.
- B. Contractor shall be responsible and liable for any and all failures to comply with the requirements specified herein. 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 or may assess statutory liquidated damages or penalties, as applicable.
- C. The full text of the City Requirements provided in Articles 2 and 3, below, are incorporated by reference in the Contract Documents, and are available at [http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco\\_ca](http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca)

## ARTICLE 2– REQUIREMENTS FOR ALL CITY-ADMINISTERED CONTRACTS

### 2.01 CONFLICT OF INTEREST

By executing the Agreement (Section 00 52 00), the Contractor agrees to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The Contractor will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the Contractor might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the Contractor that the City has deemed the Contractor to be the lowest, responsible, and responsive Bidder. The term "entity" includes any parent, subsidiary or other related business of the Contractor.

#### A. Obligations

It is the obligation of the Contractor as well as its Subcontractors and Subconsultants to determine whether or not participation in that contract constitutes a conflict of interest. While city staff maintains records regarding award and execution of contracts, it does not have access to specific information concerning which entities, partners, subconsultants, subcontractors or team members perform specific work on these contracts. A conflict of interest or an unfair advantage may exist without any knowledge of the SFPUC. The database of our records concerning work performed by various subconsultants or subcontractors is available for reference to Contractors

making their own determination of potential conflicts. Contractors have sole responsibility for compliance with these requirements. A court makes the final determination of whether an actual conflict exists. The guidelines below are provided to assist Contractors; however, the City is not providing legal advice in providing the information and assumes no responsibility or liability arising from Contractor's reliance on this information. The guidelines below address conflicts under the aforementioned laws but there are other laws that affect qualifications for a contract.

## B. Work

There are many phases of work pertaining to city contracts. Potential conflicts arise out of progressive participation in various phases of that work. Set forth below are general guidelines regarding when participation in a specific phase of work may create a conflict. Because an actual determination regarding whether a conflict exists depends upon the specific facts of each situation, the general guidelines set forth below should be treated only as a starting point. A Contractor should consult with its legal counsel to determine whether a potential conflict exists.

1. **RFI/RFQ/RFP/Bid Documents.** Any entity that participates in the development of any of these documents has participated in "making the contract" for the work. For these purposes "participating in making" has the same meaning as under Government Code Section 1090.
2. **General Program Management Services.** Because these advisory services necessarily assist in general definitions of the program and projects, conflicts would likely exist in participation in the design, construction management, and/or construction phase of any project.
3. **Preplanning.** Participation in preplanning work, which may include the needs assessment report since it is an initial phase, would likely be limited only by previous participation in preparation of RFI/RFQ/RFP or bid documents.
4. **Planning.** The planning phase of any project establishes the facts pertaining to the project and possible options for consideration.
  - a. **Alternative Analysis Report.** This phase proposes to decision-makers the various alternatives in project scope, cost, schedule and environmental impact necessary to make a determination of the proper project. Firms may have a conflict of interest in subsequent design work if they participated in the decision-making process of selecting an alternative.
  - b. **Conceptual Engineering Report.** This document defines the project and shapes the design contract. Participation in this phase may likely be in conflict with any future design services.
5. **Environmental Review.** Similar to the planning phase, this phase of work gathers information from other sources resulting in a definition of the project for the purposes of reviewing the environmental effects of the work. Firms

participating in environmental review would likely not have a conflict in participating in subsequent phases.

6. **Final Engineering Design.** Documents produced under this phase constitute the definition of the construction contract. Participation in this phase would likely be in conflict with participation in any subsequent phases, such as construction management or general construction.
7. **Construction Management.** This work consists of review, assessment and recommendation for actions based on interpretation of contract documents. No firm under one contract can review any of its own work performed under another contract. Conflicts would likely arise had any entity participated in either preparation of final engineering design or any documents enumerated in a contract for construction or documents the SFPUC requires a Contractor to rely on in the preparation of their bid. Participation in this phase also would likely be in conflict with participation in the construction phase.
8. **Construction.** It is unlikely that participation in construction contracts would result in conflicts on subsequent contracts. Restrictions on participation in construction contracts may be stipulated in other federal, state or local laws.
9. **Alternative Delivery.** To the extent that an alternative delivery method is used, e.g. design-build or construction manager/general contractor, the restrictions on design or construction management services mentioned herein would apply to those phases of the alternative delivery project.
10. **General.** Work associated with gathering, assessing, or reviewing technical data such as geotechnical investigations, site surveys, condition assessments, or cost estimating would likely have conflicts with other work only if an entity were in a position to review its own work.
11. **Administrative Services.** Any subconsultant or vendor providing general administrative services such as communications, reprographic, janitorial or security services during one phase of a project will not be precluded from providing similar services during later phases of the same project.

C. Consultation with Counsel

The SFPUC strongly advises any proposing/bidding firm to consult with its legal counsel to determine whether or not a conflict of interest exists. It is the responsibility of the proposing/bidding firm to make that determination. The SFPUC will not advise Contractors or consultants on conflict of interest matters.

## 2.02 NONDISCRIMINATION REQUIREMENTS

- A. **Incorporation of Administrative Code Chapter 12C.** The provisions of Chapter 12C of the 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 §§ 12C.3 of the Administrative Code and shall require all subcontractors to comply with such provisions.

#### 2.03 REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

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 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.

By signing the Agreement Form (Section 00 52 00), Contractor certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

#### 2.04 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

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 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.

#### 2.05 MACBRIDE PRINCIPLES - NORTHERN IRELAND

The provisions of 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

#### 2.06 PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY

In performing the Work, Contractor shall comply with Administrative Code Chapter 12G, 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 12G, 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.

## 2.07 LIMITATIONS ON CONTRIBUTIONS

By executing the Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. By executing the Agreement, the Contractor also certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a bid for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

## 2.08 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. If the Contract Documents require City to disclose "Private Information" to Contractor within the meaning of 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.

## 2.09 UNFAIR BUSINESS PRACTICES CLAIMS; ASSIGNMENT TO AWARDING BODY

Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:

- A. 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.
- B. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.
- C. Contractor shall include the provisions of this Section in its subcontracts and purchase agreements to supply goods, services, or materials pursuant to the Agreement.

## 2.10 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

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.

## 2.11 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

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.

## 2.12 FOOD SERVICE WASTE REDUCTION REQUIREMENTS

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.

## 2.13 LOCAL BUSINESS ENTERPRISE AND NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS

A. Pursuant to chapter 14B of the Administrative Code the following requirements are made part of the Contract:

1. Chapter 14B of the Administrative Code, their implementing Rules and Regulations, and CMD Attachment 6 – Requirements for SFPUC Regional 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://www.sfgov.org/cmd>

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 Section 14B.7(H)(2) of the Administrative Code and CMD Attachment 6, 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 6, article 1.05 "Noncompliance and Sanctions."
4. Contractor shall maintain, and shall require its subcontractors to maintain, records including such information requested by CMD necessary for monitoring their compliance with Chapter 14B. Such records shall be maintained for 3 years after the date of Final Completion.
5. Contractor shall fulfill during the term of the Contract its LBE participation commitments submitted with its Bid.

6. Contractor shall compensate a LBE subcontractor as provided in Section 14B.7(H)(5) of the Administrative Code 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. Whenever Change Orders are made which cumulatively increase the Contract Sum by more than 10%, Contractor shall comply with all LBE subcontracting provisions of this Section with respect to the Change Order.
7. 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.
8. 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.
9. Contractor shall submit CMD Contract Performance Forms (CMD Forms 7, 8, 9, and 10) as set forth in CMD Attachment 6, article 1.03.
10. Contractor shall comply with the employment and nondiscrimination provisions as set forth in CMD Attachment 6.

## 2.14 CHAPTER 12X CERTIFICATION REQUIREMENTS REGARDING STATES THAT ALLOW DISCRIMINATION

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or have restrictive abortion laws or where any or all of the work on the contract will be performed in any of those states. Bidders are hereby advised that Bidders, which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List, may not enter into contracts with the City.

A list of states on the Covered State List can be found at: <http://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list>. Bidders are advised to regularly check the City Administrator's website for updates.

## 2.15 SUNSHINE ORDINANCE

Contractor acknowledges that the Contract Documents and all records related to their formation, Contractor's performance of Work, and City's payment are subject to the

California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

## 2.16 SUBMITTING FALSE CLAIMS; REMEDIES

Pursuant to Article V of Chapter 6 of the 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.

## 2.17 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 Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor’s obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section 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, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal

or state law or with a requirement of a government agency implementing federal or state law.

- 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 Paragraph 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.

## 2.18 DRONES

- A. Contractor shall comply with the SFPUC Drone policy, which includes but not limited to applying for approval from the SFPUC Emergency Planning and Security and/or San Francisco Department of Technology's Committee on Information and Technology ("COIT") through the City Representative before operating and/or entering into a contract with a third party to operate drones. The term "drone" means an unmanned aircraft flown by a pilot via a ground control system or flown autonomously or flown semi-autonomously through use of communication links, an on-board computer, and/or other equipment. The SFPUC Drone Policy and Certification page are available at: <https://sfpuc.sharefile.com/d-scd834b4f709449e9> and <https://sfpuc.sharefile.com/d-sa122718c10b49f98>.
1. The authorized use of drones is limited to SFPUC lands, rights of way, and facilities (collectively, "SFPUC Property"). There are only three authorized uses under the policy:
    - a. Construction Management: Examples include inspection of project sites for contract and environmental compliance
    - b. Environmental Monitoring and Documentation: Examples include monitoring of vegetation type and health, wildlife, and streams and reservoirs
    - c. Inspections: Examples include conducting surveys and assessments of SFPUC properties and assets
- B. Contractor's use of drones outside the SFPUC Property will require additional approval from the appropriate authority, City Department, and/or San Francisco's Committee on Information and Technology ("COIT"). Refer to the City and County of San Francisco's Citywide Employee Drone Policy: <https://sfpuc.sharefile.com/d-sa650ee1c0064806a>.

## 2.19 CONSIDERATION OF SALARY HISTORY

Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration->



[salary-history](#). Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

ARTICLE 3– REQUIREMENTS FOR CONSTRUCTION WORK TAKING PLACE WITHIN THE 47 SQUARE MILES OF THE CITY AND COUNTY OF SAN FRANCISCO

3.01 SUMMARY

A. NOT USED

ARTICLE 4– STATUTORY REQUIREMENTS FOR CONSTRUCTION WORK OUTSIDE OF THE CITY AND COUNTY OF SAN FRANCISCO

4.01 GENERAL

A. Project Work conducted outside of the City and County of San Francisco shall be performed in accordance with all local statutes and ordinances applicable to the jurisdiction of the work.

1. NOT USED

ARTICLE 5 – CITY/COUNTY NON-STATUTORY REQUIREMENTS

5.01 GENERAL

A. NOT USED

END OF SECTION



