

**INVITATION FOR BIDS**

**SAN FRANCISCO BAY AREA  
WATER EMERGENCY TRANSPORTATION AUTHORITY**

**TERMINAL DREDGING  
VALLEJO AND SOUTH SAN FRANCISCO  
IFB #18-015**

**VOLUME 1**

**DIVISION 0  
BIDDING AND CONTRACT REQUIREMENTS**

**JUNE 21, 2018**

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**SECTION 00100****INVITATION FOR BID**

NOTICE IS HEREBY GIVEN THAT SEALED BIDS will be received by the Operations Manager of the San Francisco Bay Area Water Emergency Transportation Authority (hereinafter "**WETA**") at Pier 9, Suite 111, San Francisco, CA 94111, until 2:00 p.m. on **July 19, 2018**, at which time bids will be publicly opened and read for performing work as follows:

The work to be done includes performing maintenance dredging at the Vallejo Terminal and the South San Francisco Ferry Terminal. WETA may award one or more contracts as a result of this IFB. The Vallejo Ferry Terminal includes the transportation of and installing a temporary ferry loading float and gangway system, driving piles, installation of temporary electrical and lighting system, installation of temporary utility services, disconnecting and removing the existing permanent ferry loading gangway and float, transportation of permanent ferry loading float to a repair facility for drydocking, repair, upgrades, maintenance, painting, and ballast modifications of the permanent loading float, maintenance of permanent loading gangway in place, dredging and disposal of sediments at the Cullinan Ranch Restoration Site (or approved upland site), reinstallation of permanent gangway and float system hydrographic surveys, including reconnection of all utilities, removal of temporary gangway and float system, providing insurance and licenses as necessary, including all other times and services necessary or incidental to providing a complete improvement according to the Contract Documents. The South San Francisco Ferry Terminal includes the furnishing and installation of two (2) three-pile clusters, dredging and disposal of sediments at the Corps of Engineers Alcatraz disposal site (SF-11), SF-DODS, Cullinan Ranch Restoration Site or Montezuma Wetlands Restoration Site (or approved upland site) hydrographic surveys, providing insurance and licenses as necessary, including all other times and services necessary or incidental to providing a complete improvement according to the Contract Documents. The bidder shall include in his bid and provide all labor, tools and materials for a complete and working Project in conformance with the intent shown on the drawings and as specified herein.

Bids shall be submitted in accordance with the requirements of the Contract Documents. Bids shall be securely sealed in a suitable envelope marked with the name and address of the Bidder, and marked in capital letters on the front and back of the envelope, as follows:

**SAN FRANCISCO BAY AREA WATER EMERGENCY  
TRANSPORTATION AUTHORITY  
18-015 TERMINAL DREDGING VALLEJO AND SOUTH SAN FRANCISCO**

**(Name and Address of Bidder)**

Whether mailed or personally delivered, all bids shall be addressed to the Manager, Operations of WETA at Pier 9, Suite 111, San Francisco, CA 94111.

WETA intends to award the Contract to the responsible Bidder who provides the lowest responsive bid. WETA reserves the right to reject any and all bids and/or to waive any irregularities or informalities in any bid or in the procurement process. WETA specifically reserves the right to not award the Contract after the submittal of bids.

Bids will be examined and reported to the Board of Directors of WETA within ninety (90) days of the bid opening. Except as permitted by applicable law, no Bidder may withdraw its bid for a period of ninety (90) days after the date of the opening of bids. Each Bidder will be notified of any award of the Contract by WETA.

A **Mandatory Pre-Bid Conference** will be held prior to the date of bid opening. The conference will take place on **July 10, 2018 from 12:30 PM to 1:30 PM at Pier 9, Suite 111, San Francisco, CA 94111. Failure to attend will cause disqualification of a Bidder.**

A Bid Guaranty in an amount not less than ten percent (10%) of the total bid dollar amount and conforming to the prescribed bidding procedures is required to be submitted with each bid, as a guaranty to be forfeited should the Bidder, if awarded the Contract, fail to enter into the same, or fails to furnish in a timely manner the bonds and/or proof of insurance.

The successful Bidder will be required to furnish a Performance Bond and a Payment Bond, both in the amount set forth in the General Provisions.

**DBE/SBE Compliance and Documentation Forms** – The Agreement awarded pursuant to this IFB, if any, will be assisted by funds from the U.S. Department of Transportation (U.S. DOT). WETA's proposed annual overall Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Year 2018 is 1.78% for FTA-assisted contracts. WETA proposes to meet 100% of its goals using race-neutral methods. WETA's proposed annual overall Small Business Enterprise (SBE) goal for Federal Fiscal Year 2018 is 5.04% for FTA-assisted contracts.

Contractors are strongly encouraged to obtain DBE and SBE participation on this Project, although there is no contract-specific DBE or SBE goal. Please document the process used to solicit and select subcontractors/sub-consultants/suppliers. Documentation must be submitted on the forms contained in Attachment B: (1) Prime Contractor/Consultant and Subcontractors/Sub-consultants/Suppliers Report; and (2) Description of the Selection Process of Subcontractors/Sub-consultants/Suppliers. Please be sure to submit the Small Business Affidavit of Size for your firm, if applicable, and for any SBE subcontractors/subconsultants/suppliers proposed to perform the Services. Submittals that fail to document the solicitation of DBE or SBE participation will not be considered. For DBE questions or assistance, refer to the DBE Program, available at [www.watertransit.org](http://www.watertransit.org), and/or contact Lauren Duran Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

Bidders and their proposed Subcontractors shall hold such licenses as may be required by the laws of the State of California for the performance of the work specified in the Contract Documents. Bidders bidding as the prime contractor shall possess a valid California Contractor's General Engineering License "A" at the time of Contract award and throughout the Contract term. The Contractor will also be required to ensure that all Subcontractors working on this Project are holding valid licenses suitable for their trade.

Pursuant to Section 1773 of the Labor Code, the general prevailing wage rates in the county, or counties, in which the work is to be done have been determined by the Director of the California Department of Industrial Relations. The prevailing wage rates may be obtained at [www.dir.ca.gov/dlsr/PWD/index.htm](http://www.dir.ca.gov/dlsr/PWD/index.htm). In addition, Federal minimum rates, as predetermined by the U.S. Secretary of Labor, are included in the Contract Documents. To the extent that state and federal requirements identify different prevailing wage rates for the same job description, the higher rate shall apply.

Contractors and subcontractors must be registered with the Department of Industrial Relations (DIR) at the time of bid, or else the bid may be rejected as non-responsive. (See Labor Code sections 1725.5 and 1771.1.) Each bidder must submit proof of contractor registration with DIR (e.g. a hard copy of the relevant page of the DIR's database found at: <https://efiling.dir.ca.gov/PWCR/Search>). This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4.

Pursuant to California Public Contract Code Section 22300, the successful bid may submit certain securities in lieu of the Owner withholding retention of payments during the Project.

Attention is directed to the Contract Documents for complete details and bid requirements. Said Contract Documents, including Instructions to Bidders, General Provisions, Technical Specifications, Bid Forms, Bonds, and this Invitation for Bid, shall be considered as a part of any Contract made pursuant to this

solicitation. Copies of the Contract Documents may be obtained at the office of the WETA Operations Manager Pier 9, Suite 111, San Francisco, CA 94111.

Contract Documents will also be made available on WETA's website at [www.watertransit.org](http://www.watertransit.org) and can be downloaded at no cost.

All questions prior to award of the Contract shall be in writing and directed to the attention of the undersigned via email to [Stahnke@watertransit.org](mailto:Stahnke@watertransit.org). The deadline for submissions of questions and clarifications concerning the Contract Documents is **July 13, 2018**. Answers will be distributed to all Bidders and may be in the form of Addenda to this IFB. Only signed Addenda issued by WETA are binding.

WETA reserves the right to request change orders at any time.

The allowable dredging permit window for the Vallejo Ferry Terminal Project is August 1st through November 1st.

The allowable dredging permit window for the South San Francisco Ferry Terminal Project is June 1st through November 30th.

WETA reserves the right to accept a bid and enter into a contract subject to receipt of all permits and approval from regulatory agencies having jurisdiction over the Project.

Date: June 20, 2018

Keith Stahnke  
WETA Manager, Operations

**END OF SECTION 00100**

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**SECTION 00200**  
**INSTRUCTIONS TO BIDDERS**  
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## **TERMS**

With regard to these instructions, where the term “**technical**” is used (i.e., Technical Proposal, technical merit, etc.), it shall be construed to encompass management, facilities, past performance, financial stability and other factors, other than price, that may influence the character and quality of the work and for which Owner requests information.

All capitalized terms are defined in the General Provisions and apply to the entire IFB unless the context requires otherwise.

## **PROJECT**

The purpose of this procurement is to obtain bids and award a Contract to construct improvements as shown and set forth in the Contract Documents. The Work will be partially financed with federal funds and all terms and conditions imposed by the federal government as a result of this funding are incorporated into the Contract Documents, including this Invitation for Bids (“**IFB**”).

The Work includes the furnishings of all labor, materials, incidentals and equipment necessary for the TERMINAL DREDGING- VALLEJO AND SOUTH SAN FRANCISCO Project. The Contractor shall be required to provide, at its own cost and expense, all necessary insurance, as required by law or these specifications, and shall pay the costs and expense of any and all incidental matters herein required.

## **QUALIFICATIONS OF BIDDER**

Each Bidder shall complete and submit with their bid, Section 00420 **CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS.**

Upon the request of Owner, any Bidder whose bid is under consideration for the award of the Contract shall promptly submit satisfactory evidence showing the Bidder's financial resources, its construction experience, and its organizations availability for the performance of the Contract.

The low Bidder may be required to establish to the satisfaction of Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the work described in the documents.

## **EXAMINATION OF DOCUMENTS**

The Bidders are expected to carefully examine and be familiar with the materials provided by WETA in all of the Contract Documents. The submission of a bid shall be considered prima facie evidence that Bidder has made such examination and is satisfied as to the requirements contained in the Contract Documents. No claim for additional compensation will be allowed that is based upon a lack of knowledge of any Contract Documents.

## **INSPECTION OF SITE**

The information provided by Owner is not intended to be a substitute for, or a supplement to the independent verification by the Bidder to the extent such independent investigation of the site conditions is deemed necessary or desirable by the Bidder.

## **MANDATORY PRE-BID CONFERENCE**

Owner will conduct a mandatory pre-bid conference on as described in the Invitation for Bid section above. The purpose of the conference is to clarify such matters as Bidders may request clarification.

Owner will transmit to all attendees of record such Addenda as Owner in its discretion considers necessary in response to questions arising at the pre-bid conference. Oral statements shall not be relied upon and will not be binding or legally effective. Owner will issue minutes of the pre-bid conference, which shall constitute the sole and exclusive record, and statement of the results of the pre-bid conference. The minutes issued by Owner are not Contract Documents.

## **ADDENDA**

Addenda issued during the time of bidding shall become a part of the documents furnished Bidders for the preparation of bids, shall be covered in the bids, and shall be part of the Contract Documents. Each bid shall include specific acknowledgment in the space provided of receipt of all Addenda issued during the bidding period. Failure of Bidders to acknowledge receipt of any Addenda may result in the bid being rejected as not responsive. Failure of any Bidder to receive such Addenda shall not be grounds for non-compliance with the terms of or instructions in such Addenda.

Addenda will be transmitted electronically to the email addresses of individuals or companies as registered on the attendance record for the pre-bid conference. The return-receipt function will be utilized.

## **REQUIREMENTS PRIOR TO BIDDING**

Submission of a bid indicates that Bidder has made a careful examination of Contract Documents and has a complete understanding of the nature, extent and location of work to be performed. Each Bidder must complete the tasks listed in Section 00500 (Form of Agreement), as a condition to bidding, and submission of a bid shall constitute the Bidder's express representation to Owner that Bidder has fully completed these tasks.

## **POSTPONEMENT OF OPENING**

The Owner reserves the right to postpone the date and time for receiving and/or opening of bids at any time prior to the date and time established in the IFB. Postponement notices if any, will be issued by Addendum.

## **BID GUARANTY**

Each bidder shall submit with its bid one of the following forms of Bid Guaranty:

- a. An unconditional Certified or Cashier's Check on a solvent bank, in an amount equal to at least ten percent (10%) of the amount bid, payable to the Owner; or
- b. A Bidder's Bond, in an amount equal to at least ten percent (10%) of the amount bid, using the form entitled "Bidder's Bond," provided with the bid documents, and properly executed and acknowledged by the bidder and by an admitted corporate surety authorized and admitted to transact such business in the State of California and acceptable to the Owner; or
- c. An Irrevocable Standby Letter of Credit, which is available upon bidder's demand when accompanied by a signed statement from an Officer of the Owner, stating that the amount drafted is due to the owner because of failure to enter into a written contract awarded to it by the Owner, or to furnish the requisite bond(s) or insurance certificates within the time and in the manner required by the Contract Documents and Specifications. This letter of credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision of the International Chamber of Commerce Publication No. 600.)

Any condition or limitation placed upon said check, any alteration of said form of bond or Irrevocable Standby Letter of Credit, or any imperfection in the execution thereof, as herein required, will render it

informal and may, at the option of the Owner, result in the rejection of the bid under which such check, bond, or Irrevocable Standby Letter of Credit is submitted. Said check, Bidder's Bond, or Irrevocable Standby Letter of Credit shall be a guarantee that the bidder, if awarded the contract, will execute the required contract and Contract Bonds within 10 calendar days after such contract has been awarded to it or such additional time as may be allowed by the Owner. If the bidder fails or refuses to execute the required contract and Contract Bonds within said time, the money and proceeds from the check, bond, or letter of credit as the case may be, shall be applied towards payment of the damage to the Owner on account of the delay in the execution of the contract and bonds and the performance of the work thereunder, and the necessity of accepting a higher or less desirable bid resulting from such failure or refusal to execute the contract and bonds as required. The amount of the check, bond, or letter of credit, as the case may be, shall not constitute a limitation upon the right of the Owner to recover for the full amount of such damage. The checks, bonds, or letters of credit of the successful bidder and the next two lowest bidders will be returned after the execution of the contract with the successful bidder and the approval of its bonds or letter of credit on behalf of the Owner, and the checks, bonds, or letters of credit of the other bidders will be returned promptly after the bids have been opened and reviewed by the Owner.

### **RETURN OF BID GUARANTIES**

Within Thirty (30) calendar days after the award of the Contract, Owner will return the Bid Guaranties accompanying those bids that are not to be considered in making the award. All other Bid Guaranties will be held until the Agreement has been finally executed, after which time they will be returned to the respective Bidders whose bids they accompanied.

### **RIGHT OF REJECTION/NON-RESPONSIVE BIDS**

Owner reserves the right to reject at any time any bids that do not comply with and address all terms and requirements of the Contract Documents, including this IFB. Owner may reject bids if they are incomplete, fail to acknowledge Addenda, are improperly signed, or are conditioned in any way. However, Owner reserves the right to waive any such irregularities when it is in Owner's interest to do so.

Owner reserves the right to reject any or all bids at any time prior to award of the Contract, and to modify or cancel in part or in its entirety this IFB. Owner shall assume no obligation of any kind for expenses incurred by any Bidder.

Owner reserves the right to disqualify Bidders and reject their bids for any reason, including, but not limited to, any of the following:

- A. If Bidder does not meet the mandatory minimum qualifications of this IFB and the other Contract Documents, including: a) marine construction experience; and b) financial capacity to perform this Project, as demonstrated by a letter from a surety indicating that Bidder will be able to obtain a performance bond in the amount of the Contract Price.
- B. If Bidder has significant uncompleted work under other contracts which, in the judgment of Owner, might hinder Bidder's ability to complete the Work.
- C. Failure to pay, or satisfactorily settle, all bills due for labor and material on previous contracts in force at the time that the Bidder submits the Bid Forms.
- D. Failure to comply with any requirements in any of the Contract Documents.
- E. Default under previous contracts, or fraud or dishonesty in the performance of previous contracts.

- F. Unsatisfactory performance record, judged from the standpoint of conduct of work, workmanship, or progress, as shown by past or current work.
- G. Failure to reimburse Owner for moneys owed on any previous contracts.
- H. Evidence of collusion among Bidders. Participants in such collusion will receive no recognition as Bidders for any future work of Owner until any such participants shall have been reinstated as qualified Contractors.
- I. Failure to properly complete and submit, in ink or type print, any and all required Bid Forms.
- J. If there are unauthorized additions, conditional or alternative bids, or irregularities of any kind which may tend to make the bid incomplete, indefinite, or ambiguous as to its meaning.
- K. If Bidder adds any provisions reserving the right to accept or reject any award or fails to enter into an Agreement pursuant to an award.
- L. If Bidder has not acknowledged receipt of each Addenda by its assigned number and date of issue.
- M. If any of the items in the bid schedule are excessively unbalanced (either above or below the amount of a reasonable price) such that Bidders would receive a disproportionate amount of the total Contract price relative to the value received by Owner.
- N. If Owner obtains through Quality Audits, Quality Surveillance, or other means, information that discloses factual discrepancies in the bid.
- O. If a bid initially determined to be in the competitive range is subsequently determined to be non-competitive.
- P. If the bid is in a format unacceptable to Owner.

#### **OPENING OF BIDS**

All bids, irrespective of any irregularities or informalities, if received on time, will be opened and publicly read aloud at the time and place set forth in the IFB. Bidders, their representatives and other interested persons may be present at the opening and reading of bids.

Any bids received after the time for receiving and opening bids as set forth in the invitation to bid or as postponed by Addenda will be considered nonresponsive and will not be opened. Any such bids will be returned unopened to the Bidder.

The public reading of each bid will include at least the following:

- A. Name and address of Bidder.
- B. The total amount of bid.

#### **INCURRED COSTS**

No costs incurred by Bidders or their agents in preparing bids, including travel and personal expenses, may be charged as an expense of performing the Contract. Likewise, Owner shall not be subject to payment for costs incurred by Bidders or their agents for bid or Agreement preparations as a result of

termination of this procurement action, or termination of the Contract resulting from an award under this procurement action.

## **INTERPRETATION OF CONTRACT DOCUMENTS**

No oral representations or interpretations will be made to any Bidder as to the meaning of the Contract Documents. Requests for an interpretation shall be made in writing or e-mail and delivered by July 13, 2018 to:

Keith Stahnke  
WETA Manager, Operations  
San Francisco Bay Area Water Emergency Transportation Authority  
Pier 9, Suite 111, The Embarcadero  
San Francisco, CA 94111

E-mail: [Stahnke@watertransit.org](mailto:Stahnke@watertransit.org)

Requests to clarify the source of materials, equipment, Suppliers or any other such matter which does not modify, change, increase, or decrease the scope of work requires no action by Owner other than a response to the Bidder requesting the clarification. Requests to clarify possibly ambiguous or incomplete statements or designs, or any other such clarification which materially modifies, changes, increases or decreases the scope of work, will require issuance of an Addendum by Owner for the interpretation to become effective.

## **DISCLOSURE OF BID CONTENTS**

All responses and other materials submitted, including detailed financial information, become the property of Owner and may be returned only at Owner's option. Once the bids are opened, bid information will become public information. If a Bidder believes that any portion of its bid contains trade secrets or other proprietary information, the Bidder may request that Owner withhold from disclosure the proprietary information by marking each page containing proprietary information as confidential. Bidder may not designate its entire bid as confidential, and the Bid Forms, including the bid price, may not be marked as confidential.

If Owner withholds a Bidder's pages marked confidential from disclosure, then the Bidder will assume all responsibility for any challenges resulting therefrom and the Bidder will indemnify, defend, and hold harmless Owner from and against all damages and liabilities (including but not limited to attorney's fees that may be awarded to the party requesting the Bidder's bid information) and pay any and all costs and expenses incurred by Owner relating to the withholding of the information.

## **JOINT VENTURES**

Joint ventures are acceptable for performing this Contract. Joint-venture Bidders shall stipulate the members of the joint venture and shall provide a copy of the joint venture agreement, with amendments, with the bid. Unless clear in such agreement, the bid must also include supporting documentation describing the key management personnel and proposed management structure of the joint venture. This information must include an explanation of how the companies will relate to each other and ensure a clear chain of command for this Work.

All provisions of the bid are binding on each entity comprising the joint venture.

The joint-venture agreement and supporting information will be subject to Owner review and approval. Owner reserves the right to reject any joint venture bid submitted without the joint-venture agreement and supporting information.

**CONFLICT OF INTEREST**

Any architectural or engineering firm or individual retained by Owner to assist in the development of evaluation criteria or preparation of the IFB or the Contract Documents shall not be eligible to bid for any part of the Work.

An officer or employee of WETA may not seek to acquire, be a party to, or possess a financial interest in, this Contract if:

- A. The officer or employee is an employee of the administrative unit that supervises the award of this Contract; or
- B. The officer or employee has the power to take or withhold official action so as to affect the award or execution of the Contract.

**JURISDICTION AND VENUE**

Any dispute arising out of or relating to the Contract Documents shall be resolved under the laws of the State of California, without regard to California's choice-of-law rules. These laws will control as to procedure and provide the substantive rule of decision. Any appeal of an administrative order or ruling and any other action to enforce any provision of the Contract Documents or to obtain any relief from or remedy in connection with this agreement may be brought only in the superior court for the First Judicial District, pursuant to the California Rules of Appellate Procedure.

**PROTEST PROCEDURES**

Chapter 5, Article XII, of WETA's Administrative Code provides that specific protest procedures set forth in an IFB prevail over those that may be included in WETA's Administrative Code. The following procedures therefore apply.

All protests should be submitted to WETA's Executive Director.

Protests based upon restrictive requirements or alleged improprieties in the IFB procedure which are apparent or reasonably should have been discovered prior to the Proposal due date, must be filed in writing at least five (5) calendar days prior to the Bid due date. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought. Protesters must first have availed themselves of the procedures for requesting modifications or clarifications of the RFP prior to submitting any protest.

Protests based upon WETA's notification of intent to award the Contract must be submitted in writing within forty-eight (48) hours of receipt of notice intent to award. The protest must clearly specify in writing the grounds and evidence on which the protest is based and the relief sought.

Protests that are received outside of the above time period will be rejected. For timely protests based upon restrictive requirements or alleged improprieties in the IFB procedures, the Executive Director will respond with a written determination prior to the Bid due date. If the Executive Director's determination could affect proposal submission, an appropriate extension of the proposal due date may be granted. The decision of the Executive Director is final.

For timely protests based upon the notice of intent to award, the Executive Director will make efforts to notify other Proposers of the protest. The Executive Director will refer the matter to the Board with a recommendation regarding the protest. The Board will afford the protestor an opportunity to address the full Board. After consideration of the protestor's evidence, the Executive Director's recommendation, and any other relevant information, the Board may determine whether to reject or

allow the protest. Upon Board action, a written statement of its reasons will be included in the record. The decision by the Board is final.

No protests will be considered after contract award, except for compelling reasons whereby the lateness is due to WETA's untimely handling of the protest submission. In no event will WETA consider protests filed after contract award due to the neglect of the protestor. Failure to comply with the time periods for filing protests as set forth in this section will be a basis for rejection of the protest.

## **CONTRACT AWARD**

WETA may award one or more contracts as a result of this IFB. The Contract(s) will be awarded to the responsible Bidder that submits the lowest responsive bid for each of ferry terminal dredging projects set forth separately on separate bid forms. Each ferry terminal project bid will be evaluated separately. Bidders do not need to bid on both terminals, however Bidders must provide pricing for all options and/or alternates within the bid item as set forth on the Bid Forms.

Vallejo Ferry Terminal: The low bid will be determined as the lowest Total Bid (sum of Pay Items 1A through 8A).

South San Francisco Ferry Terminal: The low bid will be determined as the lowest Total Bid (sum of Pay Items 1B through 4B).

WETA reserves the right to include in the Contract, if a Contract is awarded, the base bid only, or the base bid plus any alternate bid or combinations of alternates/optional bid(s), as applicable.

## **TIME OF AWARD**

The Owner shall use its best efforts to maintain the Time of Award schedule stated herein. However, failure to do so will not affect the Owner's rights under this section.

Each bid as submitted must remain in effect for ninety (90) calendar days after the date the bids are opened. No Bidder may withdraw its bid during this time period. Within forty-five (45) calendar days after the opening of bids, the Owner will use best efforts to reject all bids or to award the Contract to the lowest responsible, responsive Bidder. If the lowest responsible, responsive Bidder refuses or fails to execute the Agreement and provide an acceptable Performance Bond and Payment Bond, and acceptable insurance certificate(s), the Owner may award the Contract to the second lowest responsible, responsive Bidder. The Owner will use best efforts to make such award, if made, within sixty (60) calendar days after the opening of bids. If the second lowest responsible, responsive Bidder refuses or fails to execute the Agreement and provide an acceptable Performance Bond and Payment Bond, and acceptable insurance certificate(s), the Owner may award the Contract to the third lowest responsible, responsive Bidder. Owner will use best efforts to make such award, if made, within ninety (90) calendar days after the opening of Bids. The Owner reserves the right to adjust the periods of time specified above within which an award of Contract may be made and if the ninety (90) day period for award is insufficient, said period shall be subject to extension for such further period as may be agreed upon in writing by the Owner and the Bidder or Bidders concerned. Owner reserves the right to reject any or all bids (i) at any time prior to award of the Contract, or (ii) if a Bidder to whom the Contract has been awarded fails to execute the Agreement and provide an acceptable Performance Bond and Payment Bond, and acceptable insurance certificate(s), and to modify or cancel in part or in its entirety this IFB.

## **EXECUTION OF AGREEMENT**

The successful Bidder shall, within fifteen (15) calendar days after having received notice that the Contract has been awarded, sign and deliver to the Owner an Agreement in the form hereto attached together with the Contract Bonds and insurance certificates as required in the Contract Documents.



The successful Bidder will sign the Agreement as detailed in the “Authorized Signature” section below. After receiving the signed Agreement with acceptable bonds and insurance certificates from the successful Bidder, the Owner will sign the Agreement.

If the successful Bidder is an individual, the Agreement shall be executed personally by the successful Bidder. If the successful Bidder is a partnership, it is desirable that the Agreement be executed by all of the partners, but it may be executed by one of them with authority to do so. If the Successful Bidder is an LLC, the contract will be executed by two officers or other members who have full and proper authorization to execute contracts on behalf of the LLC. If the successful Bidder is a corporation, the executed Agreement must have the corporate seal affixed thereto, and the Agreement must be executed by two officers of the corporation consisting of (1) the chairman of the board, president or vice president; and (2) the secretary, assistant secretary, chief finance officer, treasurer or assistant treasurer. In the alternative, a person other than an officer may sign the Agreement, provided evidence satisfactory to the Owner is provided indicating the individual's authority to bind the corporation. If the corporate seal is not affixed to the Agreement, or if the Agreement is executed by a person other than an officer, or only by one officer, there must be attached to the Agreement a certified copy of a resolution of the corporation authorizing such officer or person to execute Agreement. If the Contractor is a joint venture, the Agreement must be executed on behalf of each participating firm or entity by officers or other individuals who have the full and necessary authorization to do so.

#### **FAILURE TO EXECUTE AGREEMENT**

Failure of a Bidder to whom the Contract is awarded to promptly and properly execute the Agreement or furnish acceptable Contract Bonds or certificates of insurance shall be just cause for the annulment of the award and the forfeiture of such Bidder's Bid Guaranty.

#### **NOTICE TO PROCEED**

After execution of the Agreement and submission of Contractor's performance and payment bonds and certificate of insurance, Owner will issue the Notice to Proceed indicating that the Work may commence on the date indicated. The Notice to Proceed will also identify Owner's Designated Representative (“ODR”) for the Project. Notice to Proceed will be issued within one hundred twenty (120) days of the date that the Contract is fully executed.

#### **ASSIGNMENTS**

Assignment of rights and duties under the Contract Documents is not permitted unless authorized in writing by Owner.

#### **AUTHORIZED SIGNATURE**

Bids must be manually signed in ink by an individual authorized to bind the Bidder to its bid. All words in the bid must be typed or hand written in ink. If the Bidder is a corporation, the bid shall be signed by an individual having authority to sign the Agreement. If the Bidder is a partnership, the bid shall be signed by any authorized member of the partnership. If the Bidder is a joint venture, the bid shall be signed by representatives legally authorized to bind the joint venture. If the Bidder is a sole proprietorship, the bid shall be signed by the owner of the proprietorship.

**BID WITHDRAWAL**

Pursuant to Public Contract Code section 5103, if a Bidder, within five (5) days after the opening of bids, can establish to Owner's satisfaction that a mistake was made in preparing the bid, the Bidder may withdraw its bid. A Bidder desiring to withdraw shall give written notice to the WETA Operations Manager, specifying, in detail, how the mistake occurred and how the mistake made the bid materially different than it was intended to be. Withdrawal will not be permitted for mistakes resulting from errors in judgment or carelessness in inspecting the Work Site in reading the Contract Documents. If the WETA Operations Manager consents to relieve a Bidder of a bid because of mistake, he or she shall prepare a report in writing to document the facts establishing the existence of each element required by Section 5103. The report shall be available for inspection as a public record.

**BID REVISION**

On written request filed with the WETA Operations Manager, a bid already received may be revised or withdrawn at any time prior to the end of the time established for receiving bids. The request must be executed by the Bidder or its authorized representative as described in the "AUTHORIZED SIGNATURE" section above. Revision shall be made in writing, executed, and submitted in the same form and manner as the original bid. Withdrawal of bid does not prejudice a Bidder's right to submit a new bid within the time designated for the submission of bids. No bid may be withdrawn after the time established for receiving bids except as provided in the "BID WITHDRAWAL" section above.

**FORMS AND CONTENTS**

All information submitted shall be in the English language. Dimensions and units of measurement shall use the United States customary units of measurement (foot, pound, second, ampere, dollars, etc.), except where the IFB explicitly allows other units of measurement for specific items. It is not the intention of Owner to cause the Bidder extra work during the preparation of its bid, but to insure that the Contract Documents will enable complete understanding and proper interpretation of their intent.

**SUBMITTAL**

The Bid Forms shall be submitted with a certification letter, signed by an individual authorized by the Bidder, stating that the material in the Bid Forms constitutes the Bidder's bid and that s/he has personally examined the Documents and found that the Documents are complete and correct.

The Bid Forms shall be in an envelope clearly marked on the outside with the Bidder's name, date of submittal, Project name and the words "**Bid Forms**".

It is the sole responsibility of the bidder to insure that their bid is received by the City prior to the time specified for receipt of bids. Any bid received after the scheduled closing time for receipt of bids shall be returned to the bidder unopened.

**DISPOSITION**

Unless expressly requested otherwise in Bidder's cover letter, all Bid Forms become the property of Owner and may be disposed of as Owner sees fit.

**EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION**

The EEO-1 Certification form included in Section 00410 Bid Forms shall be completed using the instructions on the form and shall be provided prior to Contract Award.

**DBE**

See General Provisions Section 13 (Disadvantaged Business Enterprise ("DBE") Program).

**Appendix A****CONTRACT AWARD SCHEDULE OF EVENTS**

| <b>Event</b>   | <b>Estimated Completion</b> |
|--|-----------------------------|
| WETA Manager, Operations Issues Invitation for Bid (“IFB”) | <b>June 21, 2018</b>        |
| Bidders Protest Based on IFB content                       | <b>June 26, 2018</b>        |
| Bidders (Pre Bid) Conference (attendance is mandatory)     | <b>July 10, 2018</b>        |
| Deadline for submissions of questions and clarifications   | <b>July 13, 2018</b>        |
| Final Addendum   | <b>July 17, 2018</b>        |
| WETA Operations Manager Receives and opens bids            | <b>July 19, 2018</b>        |
| Submit bid evaluation results to WETA’s Executive Director | <b>July 25, 2018</b>        |
| WETA Board Meeting   | <b>August 2, 2018</b>       |

**SECTION 00400****BID SCHEDULE****1.01 GENERAL INSTRUCTIONS**

A. Bidders are directed to submit firm unit and lump-sum prices for all Work set forth in the Contract Documents.

Unit prices and lump-sum prices must be entered in the appropriate spaces provided. Unit prices shall be multiplied by the quantities shown, and the total shall be inserted in the "PRICE AMOUNT" column. In the event of any error or discrepancy between the Unit Price and the calculated price amount, the Unit Price shall govern. Owner may correct any mathematical errors apparent on the face of the bid.

The prices shown in the Amount column must be added together in arriving at the total bid price.

The prices included within the Bid Schedule shall include all costs for labor, materials, tools, equipment, services, Subcontractors, Suppliers, taxes, insurance, shipment, delivery, overhead, profit and all other costs necessary to perform the Work in accordance with the Contract Documents.

B. The total bid shall be the sum of the amounts bid for each of the designated portions of the Work. In the event of any error or discrepancy, the Unit Prices shall govern. The Owner may correct any mathematical errors that are apparent on the face of the bid.

**1.02 BID PRICES**

A. Information provided by the successful Bidder regarding its Unit Prices shall remain firm for the duration of the Contract and shall not be subject to adjustment under Section 00700 (General Provisions) unless and until the actual quantity of work is increased or decreased by a Change Order in an amount greater than twenty five percent (25%) of the estimated quantity indicated for such item. For changes in quantity of greater than twenty five percent (25%), Owner may elect to renegotiate Unit Prices based on Contractor's audited actual costs for the item.

**1.03 UNBALANCED BID PRICES**

A. Prices provided for each bid item shall be inclusive of all direct costs of the covered Work (including all direct costs of Subcontractors, Suppliers, and materials), plus a proportionate share of the costs for general requirements, overhead, insurance, applicable taxes, and any other indirect costs and profit.

B. Bidders are strongly discouraged from submitting Unbalanced Bid Prices. As used herein, the term "**Unbalanced Bid Price**" is defined as any Bid Price that does not include a reasonably proportionate allocation of indirect costs and profit to each bid item indicated in the form.

| <b>SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY</b><br><b>18-015A TERMINAL DREDGING</b><br><b>VALLEJO FERRY TERMINAL</b><br><br><b>BID SCHEDULE</b>  |  |              |         |                |                  |
|---|--|--------------|---------|----------------|------------------|
| COMPANY NAME:<br>ADDRESS:<br>PUBLIC WORKS CONTRACTOR (PWC) REGISTRATION NUMBER:<br>DUNS NUMBER or CAGE CODE:  |  |              |         |                |                  |
| To the MANAGER, OPERATIONS WATER EMERGENCY TRANSPORTATION AUTHORITY<br><br><b><u>Bidders Please Note:</u></b> Before preparing the Bid Form, carefully read the Contract Documents.<br><br>The Bidder shall insert a Unit Price in figures in the column (5) opposite each pay item. The price amount, column (6), for each line will be the product of the Unit Price and the quantity. The Bidder shall add the items in column (6) together and enter the Total in the space provided. If there is a discrepancy between a Unit Price and extended line item price, the Unit Price shall control. Owner reserves the right to correct any math errors apparent on the face of the Bid.<br>The undersigned hereby agrees that Owner may rely on the information provided in this Bid Form as being factual and correct and that this bid includes all work to be done under the Contract and incidental to the Contract. The undersigned acknowledges this Bid Form will be incorporated into the final Contract Documents. |  |              |         |                |                  |
| <b>The Bidder shall insert a price in figures opposite each pay item listed below.</b>  |  |              |         |                |                  |
| Pay Item No.  | Pay Item Description (2)   | Pay Unit (3) | Qty (4) | Unit Price (5) | Price Amount (6) |
| 1A  | Mobilization/Demobilization  | LS           | 1       |                |                  |
| 2A  | Remove, Transport, and Replace Permanent Boarding Facility   | LS           | 1       |                |                  |
| 3A  | Handling and Coordination of Permanent Boarding Facility   | LS           | 1       |                |                  |
| 4A  | Upgrades, Maintenance, and Repairs of Permanent Gangway  | LS           | 1       |                |                  |
| 5A  | Upgrades, Maintenance, and Repairs of Permanent Passenger Float  | LS           | 1       |                |                  |
| 6A  | Transportation, Installation, and Removal of Temporary Boarding Facility   | LS           | 1       |                |                  |
| 7A  | Dredging and Disposal at Cullinan Ranch Restoration Site (or approved beneficial site) (including 1-foot allowable/paid over-depth) + all fees | CY           | 6,500   |                |                  |
| 8A  | Drydock Repairs to Permanent Passenger Float   | LS           | 1       |                |                  |
| TOTAL BASE BID 1A-8A  |  |              |         |                |                  |

**BID FORM SIGNATURES ON FOLLOWING PAGE**

The undersigned acknowledges receipt of the following Addenda:

| Number | Date | Number | Date |
|--------|------|--------|------|
|        |      |        |      |
|        |      |        |      |

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

|                      |
|----------------------|
| Printed name & Title |
|----------------------|

| <b>SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY</b><br><b>18-015B TERMINAL DREDGING</b><br><b>SOUTH SAN FRANCISCO FERRY</b>  |  |              |         |                |                  |
|---|--|--------------|---------|----------------|------------------|
| <b>BID SCHEDULE</b>   |  |              |         |                |                  |
| COMPANY NAME:<br>ADDRESS:<br>PUBLIC WORKS CONTRACTOR (PWC) REGISTRATION NUMBER:<br>DUNS NUMBER or CAGE CODE:  |  |              |         |                |                  |
| To the MANAGER, OPERATIONS WATER EMERGENCY TRANSPORTATION AUTHORITY<br><b><u>Bidders Please Note:</u></b> Before preparing the Bid Form, carefully read the Contract Documents.<br><br>The Bidder shall insert a Unit Price in figures in the column (5) opposite each pay item. The price amount, column (6), for each line will be the product of the Unit Price and the quantity. The Bidder shall add the items in column (6) together and enter the Total in the space provided. If there is a discrepancy between a Unit Price and extended line item price, the Unit Price shall control. Owner reserves the right to correct any math errors apparent on the face of the Bid.<br>The undersigned hereby agrees that Owner may rely on the information provided in this Bid Form as being factual and correct and that this bid includes all work to be done under the Contract and incidental to the Contract. The undersigned acknowledges this Bid Form will be incorporated into the final Contract Documents. |  |              |         |                |                  |
| <b>The Bidder shall insert a price in figures opposite each pay item listed below.</b>  |  |              |         |                |                  |
| Pay Item No.  | Pay Item Description (2)   | Pay Unit (3) | Qty (4) | Unit Price (5) | Price Amount (6) |
| 1B  | Mobilization/Demobilization  | LS           | 1       |                |                  |
| 2B  | Furnish and Install Two (2) Timber Cluster Fender Piles  | LS           | 1       |                |                  |
| 3B  | Dredging and Disposal at SF-11 (including 1-foot allowable/paid over-depth) + all fees   | CY           | 7,260   |                |                  |
| 4B  | Dredging and Disposal at SF-DODS, or approved beneficial reuse site (Cullinan Ranch Restoration Site or Montezuma Wetlands Restoration Site) (including 1-foot allowable/paid over-depth) + all fees | CY           | 29,240  |                |                  |
| Proposed Beneficial Site:   |  |              |         |                |                  |
| TOTAL BASE BID 1B-4B  |  |              |         |                |                  |

**BID FORM SIGNATURES ON FOLLOWING PAGE**

The undersigned acknowledges receipt of the following Addenda:

| Number | Date | Number | Date |
|--------|------|--------|------|
|        |      |        |      |
|        |      |        |      |

|           |      |
|-----------|------|
| Signature | Date |
|-----------|------|

|                      |
|----------------------|
| Printed name & Title |
|----------------------|

**END OF SECTION 00400**



**SECTION 00410****BID FORMS****TABLE OF CONTENTS****BID FORMS**

**Each of the following forms must be submitted with Bid.**

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**NONCOLLUSION DECLARATION**

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the \_\_\_\_ of \_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_[date], at \_\_\_\_[city], \_\_\_\_[state].

\_\_\_\_\_  
Signature of Bidder's Authorized Official\_\_\_\_\_  
Name & Title of Bidder's Authorized Official\_\_\_\_\_  
Date

Subscribed and sworn to before me,  
a Notary Public in and for the  
State of California, County of \_\_\_\_\_,  
this \_\_\_\_\_ day  
\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public  
My commission expires \_\_\_\_\_, 20\_\_\_\_

(Seal)

**END OF NONCOLLUSION DECLARATION**

**IRAN CONTRACTING CERTIFICATION**

Section 2200 et seq. of the California Public Contract Code prohibits a person from submitting a proposal for a contract with a public entity for goods and services of \$1,000,000 or more if that person is identified on a list created by the Department of General Services (DGS) pursuant to Section 2203(b) of the California Public Contract Code. The list will include persons providing goods or services of \$20,000,000 or more in the energy sector of Iran and financial institutions that extend \$20,000,000 or more in credit to a person, for 45 days or more, that will use the credit to provide goods or services in the energy sector in Iran. DGS is required to provide notification to each person that it intends to include on the list at least 90 days before adding the person to the list.

In accordance with Section 2204 of the California Public Contract Code, the undersigned hereby certifies that:

It is not identified on a list created pursuant to Section 2203(b) of the California Public Contract Code as a person engaging in investment activities in Iran described in Section 2202.5(a), or as a person described in Section 2202.5(b), as applicable; or

It is on such a list but has received permission pursuant to Section 2203(c) or (d) to submit a bid or proposal in response to this Contract No. 2017-B-12.

Note: Providing a false certification may result in civil penalties and sanctions.

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

Entity: \_\_\_\_\_

Federal ID Number: \_\_\_\_\_ (if available)

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

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

Note: Duplicate this form so that it is signed by the Bidder and all joint venture members of the Bidder.

**FTA BUY AMERICA CERTIFICATION***Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).*

The Bidder hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

*Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)*

The Bidder hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company Name \_\_\_\_\_

Title \_\_\_\_\_

**DBE/SBE FORMS AND PROGRAM INFORMATION**

- Prime Consultant and Subcontractors/Subconsultants/Suppliers Report. Your submittal will not be considered if this form is not completely filled out. Please carefully read instructions starting on page 3 of the form.
- Small Business Enterprise Affidavit of Size, if applicable
- Description of the Selection Process of Subcontractors/Subconsultants/Suppliers. Your submittal may not be considered if this form is not completely filled out.
- WETA's Diversity Program for Contracts (the Program) is available on the AUTHORITY's website at [www.sanfranciscobayferry.com/weta/publications](http://www.sanfranciscobayferry.com/weta/publications) - WETA's Small Business Enterprise Element is included as Exhibit C to the Program.

## PRIME CONTRACTOR AND SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER REPORT

### Section A: Prime Consultant/Contractor Information:

1. IFB # and Name: \_\_\_\_\_
2. Offeror's Name: \_\_\_\_\_
3. Address: \_\_\_\_\_
4. Phone: \_\_\_\_\_ Email: \_\_\_\_\_
5. Owner or Contact Person: \_\_\_\_\_
6. Title: \_\_\_\_\_
7. Prime Consultant NAICS Codes: \_\_\_\_\_

8. Is your firm a Small Business Enterprise (SBE)? Yes \_\_\_\_ No \_\_\_\_
9. If your firm is a DBE or SBE please list certification type or No. and Certifying Agency: \_\_\_\_\_
10. If your firm is an SBE, please read and fill out, if applicable, the SBE Affidavit of Size form and attach a copy of your firm's certification.
11. Age of your firm: \_\_\_\_\_
12. Annual Gross Receipts (please check one): Below \$500K: \_\_\_\_ \$500K-\$1M: \_\_\_\_ \$1M-\$4M: \_\_\_\_ \$4M-\$6M: \_\_\_\_ \$6M-\$13M: \_\_\_\_ Above \$13M: \_\_\_\_

### Section B: Subcontractor/Subconsultant/Suppliers Information

Attach a copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed, and if applicable fill out SBE Affidavit of Size form included in proposal document. Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above. Offerors MUST provide the following information on ALL subcontractors/subconsultants/ suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this IFB pursuant to Authority's sub-proposal reporting requirements. Include all sub-proposal acceptance(s) AND rejection(s). Please carefully read all instructions on page 3.

|  |   |  | DBE/SBE PARTICIPATION              |                                    |                                       |   |  |  |  |
|--|---|--|------------------------------------|------------------------------------|---------------------------------------|---|--|--|--|
| 1.<br>Subcontractor/Subconsultant/<br>Supplier | 2.<br>Annual Gross<br>Receipts<br>(check one) | 3.<br>Contractor's<br>License No.<br>(if applicable) | 4.<br>Certified<br>DBE<br>(Yes/No) | 5.<br>Certified<br>SBE<br>(Yes/No) | 6.<br>DBE/SBE<br>Certifying<br>Agency | 7. DBE<br>Certification<br>No. &/or<br>SBE Type | 8.<br>Describe Work or Type of<br>Materials/Supplies <b>and list<br/>NAICS Codes</b> | 9.<br>Proposal<br>Accepted<br>(Yes/No) | 10. Percentage<br>of Contract<br>Participation |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |

|  |   |  | DBE/SBE PARTICIPATION              |                                    |                                       |   |  |  |  |
|--|---|--|------------------------------------|------------------------------------|---------------------------------------|---|--|--|--|
| 1.<br>Subcontractor/Subconsultant/<br>Supplier | 2.<br>Annual Gross<br>Receipts<br>(check one) | 3.<br>Contractor's<br>License No.<br>(if applicable) | 4.<br>Certified<br>DBE<br>(Yes/No) | 5.<br>Certified<br>SBE<br>(Yes/No) | 6.<br>DBE/SBE<br>Certifying<br>Agency | 7. DBE<br>Certification<br>No. & Type<br>/ SBE Type | 8.<br>Describe Work or Type of<br>Materials/Supplies <b>and list<br/>NAICS Codes</b> | 9.<br>Proposal<br>Accepted<br>(Yes/No) | 10. Percentage<br>of Contract<br>Participation |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |
| Name:  | Below \$500K                                  |  |                                    |                                    |                                       |   |  |  |  |
| Address:                                       | \$500K-\$1M                                   |  |                                    |                                    |                                       |   |  |  |  |
|  | \$1M-\$4M                                     |  |                                    |                                    |                                       |   |  |  |  |
| Contact Person:                                | \$4M-\$6M                                     |  |                                    |                                    |                                       |   | NAICS Codes:   |  |  |
| Phone:   | \$6M-\$13M                                    |  |                                    |                                    |                                       |   |  |  |  |
| Email:   | Above \$13M                                   |  |                                    |                                    |                                       |   |  |  |  |
| Age of Firm:                                   |   |  |                                    |                                    |                                       |   |  |  |  |

Attach additional sheets as necessary.

11. DBE Amount: \_\_\_\_\_ = \_\_\_\_\_ % Bidder's DBE Achievement
12. SBE Amount: \_\_\_\_\_ = \_\_\_\_\_ % Bidder's SBE Achievement

The undersigned will enter into a formal agreement with the subcontractor(s), subconsultant(s) and/or supplier(s) whose sub-proposal was accepted conditioned upon execution of a contract with the San Francisco Bay Area Water Emergency Transportation Authority. I certify under penalty of perjury that the information included on this form is accurate and true.

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

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

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

## How to fill out Prime Consultant and Subcontractor/Subconsultant/Supplier Report Form

### Section A: Prime Consultant/Contractor Information:

1. IFB # and Name: Insert name of the Authority Request for Proposals/Qualifications (RFP/RFQ) or Invitation for Bids (IFB)
2. Offeror's Name: Insert company name.
3. Address: Insert address of company.
4. Phone & Email: Insert phone number and email address of person responsible for filling out information contained in this form.
5. Owner or Contact Person: Insert contact name for the prime contractor.
6. Title: Insert title of person listed in #5.
7. Prime Consultant/Contractor NAICS Codes: List the North American Industry Classification System Code(s) for work performed by the Prime. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
8. Is your firm a Small Business Enterprise (SBE)?: Indicate, by checkmark, if your firm is a Small Business Enterprise as defined in the attached description of WETA's SBE Program Eligibility. Please see instructions for Section B #7, below, for SBE Certifications accepted by WETA.
9. If your firm is a DBE or SBE list certification type or No. and Certifying Agency: For DBE firms list the certification number provided by the California Unified Certification Program and the certifying agency. For SBE firms please list the type of certification (e.g. SDBE, SWBE, SB, MB, SBA, SBE/MBE/WBE) and the certifying agency. Please see the description of WETA's Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
10. If your firm is an SBE, read and fill out, if applicable, the SBE Affidavit of Size form included in this IFB and attach a copy of your firm's certification.
11. Age of your firm: Provide the number of years your firm has been in business.
12. Annual Gross Receipts: Indicate, by checkmark, the range of annual gross receipt your firm receives.

### Section B: Subcontractor/Subconsultant/Suppliers Information

#### PLEASE NOTE THE IMPORTANT REQUIREMENTS BELOW:

Offerors **MUST** provide the following information on ALL subcontractors/subconsultants/suppliers that provided Offeror a bid, quote, or proposal for work, services or supplies associated with this IFB pursuant to Authority's sub-proposal reporting requirements. This information shall be provided for all sub-proposers regardless of tier for DBEs, SBEs, non-DBEs and non-SBEs. Include all sub-proposal acceptance(s) AND rejection(s).

Attach a copy of the proof of DBE/SBE certification for each DBE/SBE subcontractor listed.

Attach "Intent to Perform" letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above.

1. Insert the name, address, contact person, phone number, email address and age of firm for each subcontractor, subconsultant, or supplier.
2. Annual Gross Receipts: Indicate, by checkmark, the range of the firm's annual gross receipts.
3. Contractor's License No.: If applicable, insert the contractor's license number.
4. Certified DBE (Yes/No): Indicate if the firm is a certified DBE firm accepted by WETA. WETA accepts DBE participation only from firms currently certified in the California Unified Certification Program



(CUCP), go to [www.californiaucp.org](http://www.californiaucp.org) for further information. A copy of DBE certification must be attached to your submittal. Do not indicate more than one “Yes” for alternative subcontractors/subconsultants for the same work.

5. Certified SBE (Yes/No): Indicate if the firm is a certified SBE accepted by WETA. Please see WETA’s SBE Program Eligibility description on the following pages for more information on certification types accepted and other requirements. A copy of SBE certification and, if applicable, SBE Affidavit of Size must be attached to your submittal.
6. DBE/SBE Certifying Agency: If you marked yes as a Certified DBE or SBE, note which agency your certification letter is from—BART, SFMTA, SamTrans etc.
7. DBE Certification No. & Type / SBE Type: If you marked yes as a Certified DBE, please provide the CUCP Certification Number AND the number corresponding to the type of DBE as follows: 1. African-American, 2. Hispanic, 3. Native American, 4. Asian-Pacific, 5. Asian-Indian, 6. Female-Woman, 7. Other. If you marked yes as a Certified SBE please list the type of certification (e.g. SDBE, SWBE, SB, MB, SBA, SBE/MBE/WBE). Please see the description of WETA’s Small Business Enterprise Program Eligibility on the following pages for SBE Certifications accepted by WETA.
8. Describe Work or Type of Materials/Supplies and list NAICS Codes: DBE/SBE participation includes that portion of the work actually performed by a certified DBE/SBE with its own forces. For example, for DBE supplier, count 60% of the costs of materials and supplies. List the North American Industry Classification System Code(s) for the work to be performed by the Subcontractor/Subconsultant/Supplier. Codes can be found at [www.census.gov/naics](http://www.census.gov/naics).
9. Proposal Accepted (Yes/No): Indicate if the subcontractor/subconsultant/supplier’s proposal has been accepted. If yes, please attach “Intent to Perform” letter signed by each subcontractor who will perform work should this contract be awarded to the Prime listed above.
10. Percentage of Contract Participation: Insert the percentage of the prime contract participation for each subcontract. Prime consultant/contractor understands that the percentage of contract participation from DBE or SBE firms listed on this form is a firm commitment and will become a condition of the contract should it be awarded.
11. DBE Amount & % Bidder’s Achievement: For DBE Amount, insert the sum of column 10 for each DBE listed. For % Bidder’s Achievement, divide the DBE Amount by the Total Bid Amount and provide in percentage format.
12. SBE Amount & % Bidder’s Achievement: For SBE Amount, insert the sum of column 10 for each SBE listed. For % Bidder’s Achievement, divide the SBE Amount by the Total Bid Amount and provide in percentage format.

Use additional sheets if necessary. If there are no subcontractors proposed, Section B will remain blank.

### SMALL BUSINESS ENTERPRISE AFFIDAVIT OF SIZE

**If your business was certified by any of the following, please complete and submit this form with a copy of your certification. This form may be used for Prime Contractors, Subcontractors, Subconsultants, and Suppliers. See Exhibit C, section A1a and A1b for further information.**

- SMBE/SWBE Certification by state other than California, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SB Certification by the California DGS, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98.41 million.
- SBA 8(a) Certification by the Small Business Administration provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.
- SBE/MBE/WBE Certification by any California county or local government-certifying agency or out-of-state government-certifying agency, provided that your firm's average annual gross receipts fall below the SBA industry-specific size cap and in no case exceed \$23.98 million.

I HEREBY DECLARE AND AFFIRM that I am the \_\_\_\_\_ (Title)  
and duly authorized representative of \_\_\_\_\_

(Name of Firm)

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

and whose phone number is \_\_\_\_\_

I HEREBY DECLARE AND AFFIRM that the firm is a Small Business Enterprise (SBE) in accordance with the Water Emergency Transportation Authority (AUTHORITY) standards as defined in its Diversity Program for Contracts. The firm is certified as of the date that the AUTHORITY receives the bid/proposal for:

\_\_\_\_\_  
(IFB Name)

and I will provide the certification to document this fact with this enclosure.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING STATEMENTS ARE TRUE AND CORRECT, AND THAT I AM AUTHORIZED, ON BEHALF OF THE ABOVE FIRM, TO MAKE THIS AFFIDAVIT.

(Date) \_\_\_\_\_ (Affiant) \_\_\_\_\_ (Title) \_\_\_\_\_

**DESCRIPTION OF THE SELECTION PROCESS OF  
SUBCONTRACTORS/SUBCONSULTANTS/SUPPLIERS**

IFB # and Name: \_\_\_\_\_  
Offeror's Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Owner or Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Provide a narrative description of how the Offeror selected its subcontractors/ subconsultants/suppliers, including the following elements (please attach additional sheets as necessary):

1. Soliciting small businesses, including DBEs, to participate through all reasonable and available means.

Example: Include attendance at pre-bid meeting, advertisements, written notices and agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using small business concerns.

2. Selecting portions of the work that are economically feasible for small businesses, including DBEs.

Example: List items of work which the Contractor made available to small business concerns, including, where appropriate, any breaking down of the scope of Services (including those items normally performed by the Contractor with its own forces) into economically feasible units to facilitate DBE/SBE participation.

3. Providing adequate information about the Scope of Services in a timely manner to DBEs/SBEs.

Example: List dates of written notices soliciting bids from DBEs/SBEs and the dates and methods used for following up initial solicitations to determine with certainty whether the DBEs/SBEs were interested.

4. Negotiating in good faith with DBEs/SBEs.

5. Not rejecting DBEs/SBEs as unqualified without sound business reasons.

Example: Explain reasons for rejecting bids from DBEs/SBEs and accepting proposals from selected firms.

6. Making efforts to assist DBEs/SBEs in obtaining required insurance.

7. Making efforts to assist DBEs/SBEs in obtaining necessary equipment, supplies or materials.

8. Describe any other steps that the Contractor used to select its subcontractors/ subconsultants/suppliers.

**The undersigned certifies that the above narrative description is true and accurate.**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

| Water Emergency Transportation Authority<br>DBE Form: Final Expenditure Report  |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|---|--------------|---------------|--|-----------------|-------------------------------|----------------------|------------------------------|---------------------------|-----------------------------|-------------------------|----------------------------|
| <i>To Be completed by the Prime Contractor at end of the contract and submitted to Lauren Gularte, WETA: gularte@watertransit.org</i>   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| Contract Title/No:  |              |               | Total Contract Award Amount:                     |                 |                               |                      | Date of Award:               |                           |                             |                         |                            |
| Prime Contractor/Consultant Name and Address:   |              |               | Total Expenditures at End of Contract:           |                 |                               |                      | Date of Contract Completion: |                           |                             |                         |                            |
| Project Manager Name:   |              |               | Project Manager Signature:                       |                 |                               |                      |                              | Date:                     |                             |                         |                            |
| Contract Person Name RE: Final Exp. Report:   |              |               | Contact Phone Number:                            |                 |                               |                      | Contact Email:               |                           |                             |                         |                            |
| IMPORTANT: 1) Identify all DBE/SBE Firms being claimed for credit. 2) List names of all DBE/SBE subcontractors and their respective items of work.  |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| DBE Participation   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| List Business Firm(s)<br>List Name, Address, and Contact Person<br>(If not the same as above)   | Phone Number | Email Address | Items of Work, Service, or<br>Materials Supplied | NAICS<br>Code** | Certified<br>DBE/SBE<br>(Y/N) | Certifying<br>Agency | Type of DBE<br>or SBE**      | Date of Work<br>Completed | Date of<br>Final<br>Payment | Total<br>Amount<br>Paid | % of Total<br>Expenditures |
| <b>A. Prime Contractor:</b>   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| <b>B. Subcontractors/Vendors/Joint Ventures</b>   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| Total   |              |               |  |                 |                               |                      |                              |                           |                             | \$                      | %                          |
| Comments/Notes: (Explain cost overruns or discrepancies; DBE firm substitutions, etc)   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
|   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| *NAICS Code: North American Classification System Code. Codes can be found at <a href="http://www.census.gov.naics">http://www.census.gov.naics</a>   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| **Type of DBE/SBE: (1) African American (2) Hispanic (3) Native American (4) Asian-Pacific (5) Asian-Indian (6) Female-Woman (7) Other (designated as a Small Business)   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| -DBEs must be certified by an agency participating in the Californian Unified Certification Program. Visit the Caltrans website at <a href="http://dot.ca.gov/hq/bep/ucp.htm">http://dot.ca.gov/hq/bep/ucp.htm</a> for a list of participating agencies |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| -SBEs must be certified by the California Department of General Services ( <a href="http://www.eprocure.dgs.ca.gov/default.htm">http://www.eprocure.dgs.ca.gov/default.htm</a> , _____)   |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| -Important: Attach proof of certification for each DBE/SBE firm used toward meeting the DBE/SBE goal  |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |
| - Use additional sheets as necessary  |              |               |  |                 |                               |                      |                              |                           |                             |                         |                            |

**EQUAL OPPORTUNITY CERTIFICATION**

The Bidder, \_\_\_\_\_, hereby certifies that it has \_\_\_\_\_ has not \_\_\_\_\_ participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: the above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)), and must be submitted by Bidders and proposed Subcontractors only in connection with contracts and subcontracts that are subject to the equal opportunity clause. Contracts and subcontracts exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontracts who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such Bidder submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

The Bidder's execution on the signature portion of this bid shall also constitute an endorsement and execution of those certifications that are a part of this bid.

**END OF EQUAL OPPORTUNITY CERTIFICATION**

**ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS**

Included in the Bid Price is full compensation for the requirements set forth in Section 00860 (Insurance Requirements) of the Contract Documents

\_\_\_\_\_  
Signature of Bidder/Title

\_\_\_\_\_  
Date

**END OF ACKNOWLEDGEMENT OF INSURANCE REQUIREMENTS**

**LOBBYING CERTIFICATION FOR CONTRACTS GRANTS, LOANS AND  
COOPERATIVE AGREEMENTS (Pursuant to 49 CFR Part 20, Appendix A)**

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

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Bidder, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Bidder understands and agrees that the provisions of 31 U.S.C. A 3801, et. seq. apply to this certification and disclosure, if any.

\_\_\_\_\_ Signature of Authorized Official

\_\_\_\_\_ Name and Title of Authorized Official

\_\_\_\_\_ Date

**END OF LOBBYING CERTIFICATION FOR CONTRACTS GRANTS, LOANS AND  
COOPERATIVE AGREEMENTS**



## INSTRUCTIONS FOR COMPLETION OF STANDARD FORM-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered federal action. Use the Standard form-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the federal program name or description for the covered federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance ("CFDA") number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in item 1 (e.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number, the Contract, grant, or loan award number, the application/bid control number assigned by the Federal agency). Include prefixes (e.g., "IFB-DE-90-001")
9. For a covered federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

#### **END OF FEDERAL LOBBY RESTRICTIONS**

| <b>DISCLOSURE OF LOBBYING ACTIVITIES</b><br>Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  |   |   |
|--|---|---|
| 1. Type of Federal Action:<br><br>a. Contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance   | 2. Status of Federal Action:<br><br>a. bid/offer/application<br>b. initial award<br>c. post-award   | 3. Report Type:<br><br>a. initial filing<br>b. material change<br><br>For Material Change Only:<br>Year _____ Quarter _____<br>Date of last report: _____ |
| 4. Name and Address of Reporting Entity:<br><br><div style="display: flex; justify-content: space-between;"> <span><input type="checkbox"/> Prime</span> <span><input type="checkbox"/> Subawardee</span> </div> <div style="text-align: center;">Tier, if known: _____</div><br>Congressional District, if known: _____   |   | 5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:<br><br><br>Congressional District, if known: _____                        |
| 6. Federal Department/Agency:  | 7. Federal Program Name/Description:<br>CFDA Number, if applicable:   |   |
| 8. Federal Action Number, if known:  | 9. Award Amount, if known: \$_____  |   |
| 10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):   | 10. b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):   |   |
| (Attach Continuation Sheet(s), if necessary)   |   |   |
| 11. Amount of Payment (check all that apply):<br>\$_____ <input type="checkbox"/> actual <input type="checkbox"/> planned  | 13. Type of Payment (check all that apply):<br><input type="checkbox"/> a. retainer<br><input type="checkbox"/> b. one-time fee<br><input type="checkbox"/> c. commission<br><input type="checkbox"/> d. contingent fee<br><input type="checkbox"/> e. deferred<br><input type="checkbox"/> f. other; specify _____ |   |
| 12. Form of Payment (check all that apply):<br><input type="checkbox"/> a. cash<br><input type="checkbox"/> b. in-kind; specify: nature _____ value _____  |   |   |
| 14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:  |   |   |
| (Attach Continuation Sheet(s), if necessary)   |   |   |
| 15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No  |   |   |
| 16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reference was placed by the user above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi- | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No. _____ Date: _____  |   |

|  |  |
|--|--|
| annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.   |  |
| Reporting Entity: _____ Page _____ of _____  |  |
| Authorized for Local Reproduction<br>Standard Form - LLL-A<br>BILLING CODES 3410-01-C; 6450-01-C; 6690-01-C;<br>8025-01C; 7510-01-C; 3510-FE-C; 8120-01-C; 4710-24-<br>C; 6116-01-C; 6051-01-C; 8230-01-C; 3210-01-C; 4210-<br>32-C; 4410-18-C; 4510-23-C; 4810-25-C; 3001-01-C;<br>4000-01-C; 3820-01-C; 6560-50-C; 6820-61-C; 4310-RF-<br>C; 6718-01-C; 4150-04-C; 7555-01-C; 7537-01-C; 7536-<br>01-C; 6050-28-C; 4910-62-C |  |

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**INSTRUCTIONS FOR COMPLETING SCHEDULE OF VALUES FORM**  
**(To be completed by apparent low Bidder per Section 00200)**

**Note:** (1) All costs and price information shall be in U.S. Dollars.

**Project Name:** Insert Project name

**Contract Number:** Leave blank

**Prepared by:** Insert the printed name of individual responsible for completing the form

**Date:** Insert the date form was completed

**Page \_\_\_\_ of \_\_\_\_ :** insert the page number of each sheet and the total page count for the entire Schedule of Values.

**Name of Bidder:** Insert name of Bidder.

**Phase:** Insert either "Design" or "Construction". Complete separate sheets for the costs associated with the design phase and the construction phase of the Project. Each phase may require more than one sheet.

**Column A, Activity code:** Insert an activity code. This shall correspond to an activity code in the CPM schedule discussed in section 01324.

**Column B, Description:** The description shall correspond to the description for the associated activity code in the CPM schedule discussed in section II.2

**Column C, Unit of Measure:** Unit by which the item is measured for payment. Examples include, but are not limited to: Lump Sum (LS), Cubic yard (CY), Each (ea), Linear Foot (LF), Hours (H), Ton (T) and Square foot (SF). Provide a legend for any abbreviations or symbols used.

**Column D, Unit cost:** Cost per unit item.

**Column E, Quantity:** Number of units proposed.

**Column F, Total cost of item:** The unit cost times the quantity. This number shall equal the sum of the costs for this line under Columns H, cost breakdown (Labor, Material, Equipment, Subcontractors, O & P and other).

**Column G, % of Contract:** Total cost of item as a percentage of the total proposed Contract amount. The total proposed Contract amount shall equal the Contract total from form WETA 8.

**Column H, Cost Breakdown - Labor:** The labor costs incorporated into the total cost of item.

**Column H, Cost Breakdown - Materials:** The materials costs incorporated into the total cost of item.

**Column H, Cost breakdown - Equipment:** The equipment costs incorporated into the total cost of item. This amount shall include rates for both Bidder owned equipment and leased equipment.

**Column H, Cost breakdown - Subcontractor:** The Subcontractor costs incorporated into the total cost of item.

**Column H, Cost breakdown - O & P:** The overhead and profit incorporated into the total cost of item. Mark ups for labor, materials, equipment, Subcontractors and other shall be included in this number.

**Column H, Cost breakdown - Other:** Other costs incorporated into the total cost of item. Include a brief description of these other costs on a separate sheet. The descriptions shall be keyed to the activity code and activity description.

**SECTION 00420****CERTIFICATION OF BIDDER'S EXPERIENCE AND QUALIFICATIONS**

The undersigned Bidder certifies that it is, at the time of bidding, and shall be, throughout the period of the Contract, licensed in the State of California to do the type of work described in the Contract Documents. Bidder further certifies that it is skilled and regularly engaged in the general class and type of work called for in the Contract Documents.

The Bidder represents that it is competent, knowledgeable, and has special skills and expertise on the nature, extent, and inherent conditions of the work to be performed. Bidder further acknowledges that there are certain peculiar and inherent conditions existent in the work which may create, during the construction program, unusual or peculiar unsafe conditions hazardous to persons and property. Bidder expressly acknowledges that it is aware of such peculiar risks and that it has the skill and experience to foresee and to adopt protective measures to adequately and safely perform the work with respect to such hazards.

The following statements as to the experience and financial qualifications of the bidder are to be submitted with the Contract Proposal, as a part thereof. The bidder guarantees the truthfulness and accuracy of the information.

1. The bidder has been engaged in business under the present business name for a minimum of 5 years.

☐ YES

☐ NO

**Enter California License Number** \_\_\_\_\_

2. The bidder has experience in work of a nature similar to that covered in the Contract Documents that extends over a period of 5 years.

☐ YES

☐ NO

3. The bidder, as a Contractor, has never failed to satisfactorily complete a contract, except as follows: (name any and all exceptions and reasons therefore).

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4. The following are the most recent Projects on which the Bidder has performed work of similar nature, size, complexity; and the names, addresses and phone numbers of the contracting agencies. Failure to provide this information with the Bid may render the Bid non-responsive and may be the basis for rejection of the Bid. WETA shall determine, at its

sole discretion, what Projects are of size and complexity similar to the Work. (Name at least three).

A. Project Name: \_\_\_\_\_

Location: \_\_\_\_\_ Owner: \_\_\_\_\_

Owner's Representative: \_\_\_\_\_

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

Nature of Bidder's participation: \_\_\_\_\_

Total Project cost: \_\_\_\_\_ Value of Bidder's work: \_\_\_\_\_

Completion date: \_\_\_\_\_ Completed on time? YES / NO

Bidder's Key Personnel:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

B. Project Name: \_\_\_\_\_

Location: \_\_\_\_\_ Owner: \_\_\_\_\_

Owner's Representative: \_\_\_\_\_

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

Nature of Bidder's participation: \_\_\_\_\_

Total Project cost: \_\_\_\_\_ Value of Bidder's work: \_\_\_\_\_

Completion date: \_\_\_\_\_ Completed on time? YES / NO

Bidder's Key Personnel:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

C. Project Name: \_\_\_\_\_

Location: \_\_\_\_\_ Owner: \_\_\_\_\_

Owner's Representative: \_\_\_\_\_

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

Nature of Bidder's participation: \_\_\_\_\_

Total Project cost: \_\_\_\_\_ Value of Bidder's work: \_\_\_\_\_



Completion date: \_\_\_\_\_ Completed on time? YES / NO

Bidder's Key Personnel:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

D. Project Name: \_\_\_\_\_

Location: \_\_\_\_\_ Owner: \_\_\_\_\_

Owner's Representative: \_\_\_\_\_

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

Nature of Bidder's participation: \_\_\_\_\_

Total Project cost: \_\_\_\_\_ Value of Bidder's work: \_\_\_\_\_

Completion date: \_\_\_\_\_ Completed on time? YES / NO

Bidder's Key Personnel:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

5. The following bidder's key personnel have worked on one or more of the above contracts and will also be assigned to this contract:

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Name: \_\_\_\_\_ Position: \_\_\_\_\_

6. Within the past 5 years, has your firm, or any firm with which any of your firm's owners, officers, directors or managing employees was associated, been disqualified, debarred, or otherwise prevented from bidding on, any Project for any reason?

☐ YES

☐ NO

If "Yes", provide the name of the firm, the name of the person who was associated with that firm (if applicable), the year of the incident, the name, address and telephone number of the owner and all relevant details about the incident.

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7. Within the last 5 years, has your firm, or any firm with which any of your firm's owners, officers, director or managing employees was associated, been found guilty of violating any federal, state or local law, rule or regulation related to conduct of business as a contractor, or a false claims act?

☐ YES

☐ NO

If "Yes", give the name of the firm, the name of the person associated with that firm (if applicable), the year of the incident, and provide all relevant details about the incident including, but not limited to, the law, rule or regulation which the firm was convicted of violating, and the outcome of any proceedings, including any fine, penalties or jail sentences that were imposed.

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8. Within the last five years, has any surety or financial institution experienced loss related to contracts performed by any firm with which any of your firm's owners, officers, director or managing employees were associated.

☐ YES

☐ NO

If "Yes", provide details including points of contact and phone numbers for the affected surety or financial institution.

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9. Within the last five years, has your firm, or any firm with which any of your firm's owners, officers, directors or managing employees was associated, been terminated for default or defaulted on a construction contract?

☐ YES

☐ NO

If "Yes", provide the name of the firm, the name of the person associated with that firm, the year of the default, the location of the Project, the full name and address of the owner of the Project, the full name and address of the general contractor, the value of the contract, and the reasons given for the default.

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10. Reference to banks related to the financial responsibility of bidder

Bank \_\_\_\_\_ Branch \_\_\_\_\_

Bank \_\_\_\_\_ Branch \_\_\_\_\_

11. Reference to surety companies related to the financial responsibility and general reliability of bidder.

Surety \_\_\_\_\_ Phone \_\_\_\_\_

Surety \_\_\_\_\_ Phone \_\_\_\_\_

12. CERTIFICATION

Name of Bidder: \_\_\_\_\_

Business Address: Street: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

Subscribed and sworn to before me

This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**[THIS PAGE INTENTIONALLY LEFT BLANK]**

**SECTION 00500**  
**FORM OF AGREEMENT**

This agreement, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between \_\_\_\_\_, hereinafter called '**CONTRACTOR**' and the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY, hereinafter called "**WETA**" or "**Owner**."

WITNESSETH, that the CONTRACTOR and Owner, for consideration hereinafter named, agree as follows:

**1. SCOPE OF WORK**

The CONTRACTOR shall perform all the Work, and furnish all the labor, materials, tools, supplies, equipment, superintendence and other services required to complete all of the Work that is described in the Specifications, Plans and other documents contained with the Contract Documents for WETA Contract No. \_\_\_\_\_, **TERMINAL DREDGING VALLEJO AND SOUTH SAN FRANCISCO**. The Contract Documents are defined below in Section 4.

**2. TIME OF COMPLETION**

The CONTRACTOR shall complete all Work under the Contract Documents within \_\_\_\_\_ calendar days of the effective date of the Notice to Proceed. The CONTRACTOR shall begin Work as of the effective date of the Notice to Proceed, and shall diligently prosecute all of the Work under this Contract in all parts and requirements as defined in the Contract Documents. Attention is directed to Section 01001 TIME FOR COMPLETION, LIQUIDATED DAMAGES, CONTRACTOR'S LICENSE, of the Contract Documents regarding the time of completion and Liquidated Damages.

**3. CONTRACT PRICE**

The CONTRACTOR shall faithfully perform all of the Work hereunder for the Grand Total Bid Price accepted by Owner, \_\_\_\_\_, payable by Owner to the CONTRACTOR at the time and in the manner provided in the Contract Documents.

**4. COMPONENT PARTS**

This Contract shall consist of this document and all of the Contract Documents, which are incorporated herein and made a part hereof. The Contract Documents include all of the following:

Contract Documents: Those documents that form the basis of the Contract, including, but not limited to:

- 1) the Invitation for Bids;
- 2) Instructions to Bidders;
- 3) Bid Forms (as accepted by WETA);
- 4) Schedule of Bid Prices (as accepted by WETA);
- 5) Addenda;

- 6) Form of Agreement, including any Amendments (as executed by the parties);
- 7) Contract Bonds;
- 8) General Provisions, and Supplemental Conditions;
- 9) General Requirements in Division 1;
- 10) Technical Specifications;
- 11) Appendices, including Certificates of Insurance, Buy America Certification, Non-Collusion Affidavit, Lobbying Certification, DBE/SBE Certifications, Prime Contractor and Subcontractor Supplier Report;
- 12) Contract Drawings;
- 13) Permits from other agencies;
- 14) Change Orders issued after the execution of the Contract.

## **5. PREVAILING WAGE SCALE**

Reference is made to the requirements on the general prevailing wage rates set forth in the Contract Documents. A copy of such rates may be reviewed at WETA's Central Office. Those rates are hereby specified as the minimum rates of prevailing wage to be paid workers under this Contract.

## **6. SERVICE OF NOTICE**

Any notice required or permitted to be given under this Contract shall be deemed given when personally delivered to recipient thereof or mailed by registered or certified mail, return receipt requested, postage pre-paid, to the appropriate address specified in his/her bid, and in the case of WETA, at Pier 9, Suite 111, The Embarcadero, San Francisco, CA 94111, Attention: WETA Operations Manager, or at any other address which either party may subsequently designate in writing to the other party.

## **7. GOVERNING LAW**

This Contract shall be governed and construed in accordance with the laws of the State of California. Any action relating to this Contract shall be instituted and prosecuted in a court of competent jurisdiction in the State of California. Each party hereby appoints the party listed opposite its name to act as its initial agent for service of process relating to any such action:

**WETA:**      **Attention:** WETA Manager, Operations  
SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY  
Pier 9, Suite 111, The Embarcadero,  
San Francisco, CA 94111  
(415) 364-3192

**CONTRACTOR:**

**Attention:** \_\_\_\_\_  
(CONTRACTOR's Name) \_\_\_\_\_  
(Street Address) \_\_\_\_\_  
(City, State, Zip) \_\_\_\_\_  
(Telephone number) \_\_\_\_\_

Each such agent is hereby authorized and directed to accept service of process in any such action on behalf of his principal until such time as his successor shall have been appointed by his principal and notice thereof has been delivered to the other party in the manner provided herein for the giving of notice.

IN WITNESS WHEREOF, WETA has caused these presents to be executed by WETA's officer thereunto duly authorized, and CONTRACTOR has subscribed same, all on the day and year first above written.

**FOR THE CONTRACTOR:**

Name under which business is conducted: \_\_\_\_\_

Business Address: \_\_\_\_\_

State \_\_\_\_\_ Zip Code \_\_\_\_\_ Telephone \_\_\_\_\_

Type of business organization: \_\_\_\_\_

\*If a Corporation, incorporated under the laws of the State of: \_\_\_\_\_

California Public Works Contractor (PWC) Number: \_\_\_\_\_

The undersigned certify that they sign this Contract with full and proper authorization to do so.

By: \_\_\_\_\_ Print \_\_\_\_\_

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

By:\* \_\_\_\_\_ Print \_\_\_\_\_

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

**SAN FRANCISCO BAY AREA WATER  
EMERGENCY TRANSPORTATION AUTHORITY:**

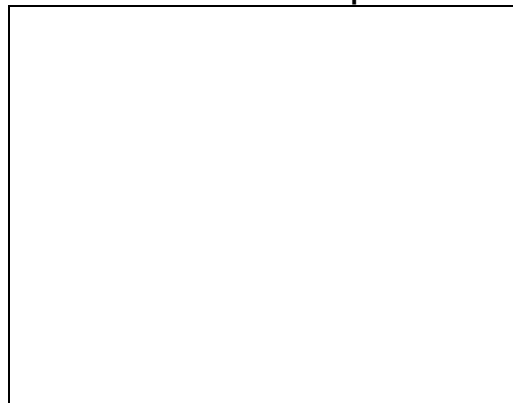
By: \_\_\_\_\_  
Manager, Operations

By: \_\_\_\_\_  
Executive Director

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Attorney for WETA

**CONTRACTOR's Corporate Seal:**



\*If the CONTRACTOR is a Corporation, this Contract *must be executed by two corporate officers*, consisting of:

- (1) the President, Vice President, or Chair of the Board, *and*
- (2) the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer. Alternatively, this Contract may be executed by a single officer or a person other than an officer provided that evidence satisfactory to WETA is provided demonstrating that such an individual is authorized to bind the corporation (e.g. a copy of a certified resolution from the corporation's board or a copy of the corporation's bylaws).



**SECTION 00600****CONTRACT BONDS****PART 1 - GENERAL**

A. The Bidder to whom the Contract is awarded shall furnish the following Contract Bonds:

1. Bid Guaranty Bond no less than ten percent (10%) of the value of the bid or, alternatively, by a certified or cashier's check, payable to the Owner in the sum of at least ten percent (10%) of the total amount of the bid price.
2. Performance Bond, in an amount not less than One Hundred Percent (100%) of the Contract Price, to secure faithful performance of the Contract, including, but not limited to, the warranty obligations following Acceptance of the Work by Owner.
3. Payment Bond, in an amount not less than One Hundred Percent (100%) of the Contract Price to secure payment of all claims of laborers, mechanics, or materialmen, Subcontractors or other persons named in Civil Code Section 9100 for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract.

B. All alterations, extensions of time, extra and additional Work and other changes authorized by the Contract Documents may be made without securing the consent of the surety or sureties on the Contract Bonds.

## ATTACHMENT \_\_\_\_

## SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

## TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT

## BID GUARANTY BOND

**Recitals:**

1. \_\_\_\_\_ "Bidder", has submitted a bid to the San Francisco Bay Area Water Emergency Transportation Authority, "WETA", for the **TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT** in accordance with an Invitation for Bid dated \_\_\_\_\_
2. \_\_\_\_\_ a \_\_\_\_\_ corporation, hereafter called "Surety", is the surety of this Bond.

**Agreement:**

We, Contractor, as principal, and Surety, as surety, jointly and severally agree and state as follows:

1. The amount of the obligation of this bond is \$\_\_\_\_\_ and is 10% of the amount of Bidder's Bid, including bid alternates, and inures to the benefit of WETA. The condition of this obligation is such that, whereas Bidder has submitted the above-mentioned bid to WETA, for Work specified as follows, and for which Bids are to be opened: **TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT**.
2. This Bond is exonerated by (1) WETA rejecting said Bid or, in the alternate, (2) if said Bid is accepted, Contractor executes the Agreement and furnishes the Bonds as required in said agreement, otherwise it remains in full force and effect for the recovery of loss, damage and expense of WETA resulting from failure of Contractor to act as agreed to in its Bid.
3. Surety, for value received, stipulates and agrees that its obligations hereunder shall in no way be impaired or affected by any extension of time within which WETA may accept the Bid and waives notice of any such extension.
4. This Bond is binding on our heirs, executors, administrators, successors and assigns.

Dated: \_\_\_\_\_

Principle

Contractor

\_\_\_\_\_.

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

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

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

[NOTE: Signatures of those executing for the surety must be notarized.]

## ATTACHMENT \_\_\_\_

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**  
**TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT**  
**PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that,

WHEREAS THE SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY (herein after referred to as "**WETA**") and \_\_\_\_\_

(herein after referred to as "**Principal**") have entered into a contract for the construction and delivery of the TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO Project and; WHEREAS, under the terms of said Contract, Principal is required to furnish a bond securing payment of claims:

NOW, THEREFORE, we, the Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto WETA in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00) lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that if said Principal or any of its Subcontractors fails to pay all just claims for labor performed and materials, equipment, and supplies furnished upon or for the Work under said Contract, whether said labor be performed and said materials, equipment, and supplies be furnished under the original Contract, any subcontract, or any duly authorized modifications thereto, or amounts due an express trust fund to which a portion of a laborer's total compensation is to be paid pursuant to an applicable employment agreement or a collective bargaining agreement for the provision of benefits, including, but not limited to, employer payments described in Section 1773.1 of the Labor Code and regulations thereunder, or amounts due under the Unemployment Insurance Code with respect to Work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the California Employment Development Department from the wages of employees of the Principal or its Subcontractors pursuant to Section 13020 of the California Unemployment Insurance Code, with respect to such Work and labor, the Surety will pay for the same and also will pay, in case amount not exceeding the amount hereinabove set forth and also will pay, in case suit is brought upon this bond, a reasonable attorney's fee, to be fixed by the Court.

This bond will inure to the benefit of any of the persons providing labor, materials, equipment and supplies, and any express trust fund meeting the requirements above, so as to give a right of action to such persons or their assigns if any suit is brought upon this bond.

The liability of the Principal and Surety hereunder is governed by the laws of the State of California.

The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the Work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligations on this bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the Work or to the Specifications.

IN WITNESS WHEREOF, the above bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the name and corporate seal of each corporate body

being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

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NOTE:

To be considered complete, both the Principal and Surety must sign this Payment Bond. In addition, the Surety's signature must be notarized and a copy of the Surety's Power of Attorney must be attached.

**Principal:** \_\_\_\_\_  
 By: \_\_\_\_\_  
 By: \_\_\_\_\_  
**Surety:** \_\_\_\_\_  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 By: \_\_\_\_\_  
 By: \_\_\_\_\_



## ATTACHMENT \_\_\_\_

**SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY**  
**TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT**  
**PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS, that,

WHEREAS SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY (hereinafter referred to as “WETA” or “Owner”) has entered into a Contract with \_\_\_\_\_

(herein after referred to as “Principal”) for TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO PROJECT CONTRACT (the “Contract”); and

WHEREAS said Principal is required under the terms of said Contract to furnish a bond of faithful performance of said Contract,

NOW, THEREFORE, we, the undersigned Principal, and \_\_\_\_\_, as Surety, are held and firmly bound unto WETA, in the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States, to be paid to WETA or its successors and assigns; for which payment, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above-bound Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions and agreements in the Contract during the original term and any extensions thereof as may be granted by Owner, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal’s 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, defend, protect, and hold harmless Owner as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

No extension of time, change, alteration, modification, or addition to the Contract, or of the Work required thereunder, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

Whenever Principal shall be and declared by Owner to be in default under the Contract, Surety shall promptly remedy the default, or shall promptly do one of the following at Owner’s election:

1. Undertake through its agents or independent Contractors, reasonably acceptable to Owner, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, and the payment of Liquidated Damages.

2. Reimburse Owner for all costs Owner incurs in completing the Contract, and in correcting, repairing or replacing any defects in materials or workmanship and/or materials and workmanship which do not conform to the specifications in the Contract.

Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the others.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Owner or its successors or assigns.

In the event suit is brought upon this bond by Owner, Surety shall pay reasonable attorney's fees and costs incurred by Owner in such suit.

IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their seals this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, the name and corporate seal of each corporate party being hereto affixed and these presents duly executed by its undersigned representative, pursuant to authority of its governing body.

(Principal)

By \_\_\_\_\_

By \_\_\_\_\_

(Surety)

(Address)

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

*Note:*

*To be executed by Principal and Surety with acknowledgment and notarial seal attached.*

**SECTION 00700****GENERAL PROVISIONS**

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## PART 1 - GENERAL PROVISIONS

### 1.01 GLOSSARY OF ABBREVIATIONS, TERMS, AND DEFINITIONS

A. Whenever the following abbreviations and terms, or pronouns in place of them, appear in the Contract Documents, the intent and meaning shall be interpreted as provided in this Section. Working titles having a masculine gender, such as "**workman**" and "**flagman**" and the pronoun "**he**," are used for the sake of brevity, and are intended to refer to persons of either sex.

#### B. Abbreviations

|          |   |
|----------|---|
| AL       | Allowance   |
| BCDC     | San Francisco Bay Conservation and Development Commission   |
| Cal-OSHA | California Occupational Safety and Health Administration  |
| CAMUTCD  | California Manual on Uniform Traffic Control Devices  |
| CFR      | Code of Federal Regulations   |
| CPM      | Critical Path Method  |
| CY       | Cubic Yard  |
| DCA      | Dredging Contractors of America   |
| DFG:     | The California Department of Fish and Game.   |
| DOL      | United States Department of Labor   |
| DOT      | United States Department of Transportation  |
| DSMP     | USACE/DCA Dredging Safety Management Program  |
| EA       | Each  |
| EM       | U.S. Army Corps of Engineers Engineer Manual  |
| EPA      | United States Environmental Protection Agency   |
| Est.     | Estimated   |
| FAR      | Federal Acquisition Regulations   |
| FCN      | Field Change Notice   |
| FTA      | Federal Transit Administration  |
| HR       | Hour  |
| IFB      | Invitation for Bid  |
| LF       | Lineal Foot   |
| LS       | Lump Sum  |
| Misc.    | Miscellaneous   |
| MLLW     | Mean Lower Low Water  |
| MO       | Month   |
| NEMA     | National Electrical Manufacturers' Association  |
| NTP      | Notice to Proceed   |
| ODR      | Owner's Designated Representative   |
| OSHA     | United States Department of Labor, Occupational Safety and Health Administration and Occupational Safety and Health Act |
| PacBell  | Pacific Bell  |
| PEI      | Porcelain Enamel Institute  |
| RFC      | Request for Change  |
| RFI      | Request for Information   |
| RFQ      | Request for Quotation   |
| RS       | Reference Specifications, "Standard Specifications for Public Works Construction," commonly known as the "Green Book"   |
| RWQCB    | San Francisco Bay Area Regional Water Quality Control Board   |
| SMS      | Safety Management System  |
| SY       | Square Yard   |
| UL       | Underwriters' Laboratory  |
| USA      | Underground Service Alert   |
| USACE    | United States Army Corps of Engineers   |

USDOT      United States Department of Transportation  
WETA      San Francisco Bay Area Water Emergency Transportation Authority

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### C. Definitions and Terms

**Acceptance:** Documentation attesting to the act of an authorized representative of the Owner by which all Work under the Contract, or a specified portion thereof, is identified as having been completed satisfactorily.

**Access Channel:** Channel that connects terminal to open Bay.

**Accident Prevention Program or APP:** See Section 01700.

**Activity:** See Section 01324. Same as Task.

**Addendum or Addenda:** Written interpretations or revisions to any of the Contract Documents issued by the Owner before the bid opening.

**Amendment or Amendments:** Amendments to the Contract entered into between the Owner and Contractor.

**Application for Payment:** Contractor's request for payment under Contract terms.

**Approved Change Order:** See Change Order definition.

**Approved Equal Procedure:** See Section 01630. **As Approved:** The words "as approved," unless otherwise qualified, shall be understood to be followed by the words "by the Owner's Designated Representative for conformance with the Contract Documents."

**Architect/Engineer of Record:** Professional architect or engineer designated for a particular Project responsible for signing and sealing the permit drawings, interpretation of the drawings where ambiguities exist, review of requests for information, design change requests and Shop Drawings, resolution of errors and omission, and finalization of as-built drawings.

**Assessment:** A cost imposed on the Contractor for non-compliance with certain contractual requirements.

**As Shown and As Indicated:** The words "as shown" and "as indicated" shall be understood to be followed by the words "by the Contract Documents" as appropriate.

**Baseline CPM Schedule:** See Section 01324

**Beneficial Occupancy:** The taking possession of a portion of the Work by the Owner for its use and/or occupancy on other than a temporary or emergency basis.

**Bidder:** Any individual, firm, partnership, corporation or combination thereof, submitting a bid for the Work contemplated, acting directly or through a duly authorized representative. After execution of the Contract, Bidder shall be known as Contractor.

**Bid Forms:** The approved forms upon which the Owner requires that each Bidder submit its bid with regard to the Contract.

**Bid Guaranty, Bid Guaranty Bond or Bidder's Bond:** The cashier's or certified check or Bidder's Bond, accompanying the bid submitted by the Bidder, as a guaranty that the Bidder will enter into an agreement with the Owner for the performance of the Work, if the Contract is awarded to him, and the Bidder will submit the required Contract Bonds and Certificates of Insurance. Also referred to as the Bidder's Security.

Board, Board Members, Board of Directors or Directors: The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority, the Owner.

California Department of Transportation or Caltrans: The California Department of Transportation.

Change Notice: A notice issued during the course of the Project, informing the Contractor of a change to the Work required under the Contract. The Change Notice is the Owner's mechanism for initiating a Contract Change Order.

Change Order: A written order to the Contractor directing an addition, deletion or revision in the Work, or an adjustment in the Contract Price or Contract Time provided in the Contract Documents and issued after the effective date of the Contract. A Change Order will not become effective until approved in writing and signed by the Owner, hereinafter referred to as an Approved Change Order. An approved Change Order signed by the Contractor is hereinafter referred to as an Executed Change Order.

Construction Schedule: A list or graphic display of construction activities required for completing the Work, in a format required by the Contract Documents. The duration, start and finish date, and sequence of the significant activities, critical path, float and milestones must be indicated in the Construction Schedule.

Contract: The written agreement covering the performance of the Work and the furnishing of labor, materials, tools and equipment in the construction of the Work. The Contract is a part of the Contract Documents and will include all approved Change Orders issued after the Contract is executed by the parties.

Contract Bonds: The Performance and Payment Bonds to be provided by Contractor, and if applicable, the Bid Guaranty Bond to be provided by Bidder.

Contract Documents: Those documents that form the basis of the Contract, including, but not limited to, the Technical Proposal, Bid Form, Invitation for Bid, Instructions to Bidders, Proposal Forms, General Provisions, Special Provisions, Supplemental General Provisions, Division 1, Technical Specifications, Contract Drawings, Addenda, Contract, permits from other agencies, and all Change Orders issued after the execution of the Contract. Contract Documents does not include any minutes that Owner may issue to record and state the results of the pre-bid conference described in Section 00200 (Instructions To Bidders) hereof.

Contract Drawings: The plans identified in the Contract, showing the character, dimensions, and details of the Work.

Contract Price: The total compensation to be paid to the Contractor in accordance with the terms of the Contract.

Contract Time: The number of calendar days, or portion thereof, allowed for completion of the Work, including all authorized time extensions. The effective date for commencement of the Work specified in the Notice to Proceed shall define the beginning of the Contract Time.

Contract Sum: See Section 01770.

Contractor: The individual, firm, partnership, corporation, joint venture or other legal entity that has contracted with the Owner to perform the Work. The term "prime contractor" shall mean Contractor.

Contractor's Solid Debris Management Plan: See Section 02482

Critical Path Method or CPM: See Section 01324.

Days: Unless otherwise stated, "days" shall mean calendar days.

Detailed Project Baseline Schedule: See Section 01324.

Disposal Site Verification Log: See Section 02482.

Dredge Operations Daily Reports: See Section 02482. Consists of a Daily Dredging Report and Leverman's Shift Log for each calendar day's activity on each dredge being operated.

Dredging Operations Plan: See Section 02482.

Eelgrass Mitigation Plan: See Section 02482.

Electronic Positioning Data Records: See Section 02482.

Emergency: Any sudden generally unforeseen occurrence (such as a fire, flood, storm, earthquake, epidemic, civil disorder or other natural and/or man-made disaster) that has the potential to: (a) adversely affect the safety of life, the Work, and/or adjacent property; (b) interrupt contracts essential to the provision of daily transit service; and/or (c) cause catastrophic failure of revenue-producing equipment and/or facilities.

Environmental Protection Plan: See Section 02482.

Executed Change Order: See Change Order definition.

Executive Director: Executive Director of the Owner, the San Francisco Bay Area Water Emergency Transportation Authority.

Field Change Notice or FCN: A written directive issued by the Owner to the Contractor ordering a minor addition, deletion, modification, or revision to the Work.

Final Acceptance: Contractor's written request to Owner for final Acceptance of the Work.

Float: See Section 01324.

Force Account: Payment by force account shall mean payment on the basis of the Contractor's time and materials.

General Provisions. The provisions of Section 00700.

General Requirements: The provisions of Division 1, as may be amended by the Owner.

Inspector: A representative of the Permitting Agency responsible for verification of the construction activities on site.

Installation, Install: Completely assembling, erecting, and/or connecting materials, parts, components, supplies, and related equipment specified or required for the completion of the Work.

Invitation for Bids or IFB: This Invitation for Bids.

Legal Holidays: Those days designated as State holidays by the Government Code or declared by the Board, or otherwise specified in the Contract Documents.

**Liquidated Damages:** The amount prescribed in the Contract Documents to be paid to the Owner or to be deducted from any payment due or to become due the Contractor for each calendar days delay in completing the Work beyond the time allowed in the Contract Documents.

**Mean Lower Low Water or MLLW:** See Section 02482.

**Network:** See Section 01324.

**NOAA Fisheries:** National Oceanic and Atmospheric Administration, Fisheries Service.

**Notice of Completion:** A document recorded by the Owner with the County Recorder signifying completion of a work of improvement.

**Notice Inviting Bids:** The provisions of Section 00100.

**Notice to Proceed or NTP:** A written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence to run, and also identifying the Owner's Designated Representative for the Project.

**Notice of Termination:** Written notice from the Owner to the Contractor and its Surety terminating the Contract, or a portion thereof, either for convenience of the Owner or for default due to the Contractor's failure to perform its contractual obligations.

**Or Equal:** The term "or equal" shall mean that the "equal" product is the same or better than the product named in function, performance, reliability, quality and general configuration as approved by Owner. Owner will make determination of equality in reference to the Project design requirements. Such equivalent products shall not be purchased or installed by the Contractor without written acknowledgment of the Owner.

**Owner or WETA:** The San Francisco Bay Area Water Emergency Transportation Authority or any of its successors or assigns, acting through the Owner's Designated Representative.

**Owner's Designated Representative(s):** The individual(s) or firm(s) designated by Owner to act as the final authority on all Contract administration and management issues for the Project on Owner's behalf. The Owner's Designated Representative will be identified in the Notice to Proceed for the Project, and may be an architect, engineer, construction manager, or any other consultant or employee of Owner's choosing. The Owner's Designated Representative may delegate specific administrative, technical or management functions to other consultants or Owner employees at its discretion.

**Payment Bond:** Bond in an amount not less than One Hundred Percent (100%) of the Contract Price to secure payment of all claims of laborers, mechanics, or materialmen, Subcontractors or other persons named in California Civil Code Section 3181 for costs of materials, equipment, supplies, and labor furnished in the course of the performance of the Contract.

**Performance Bond:** Bond in amount not less than One Hundred Percent (100%) of the Contract Price, made by a surety admitted in the State of California, to secure faithful performance of the Contract, including, but not limited to, the warranty obligations following Acceptance of the Work by Owner.

**Permitting Agency:** Any government agency having jurisdiction over the Project and requiring permits of any kind.

**Plans:** Refer to Contract Drawings.

Precedence Diagramming Method or PDM: See Section 01324.

Product Data: Illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product, or system for a portion of the Work.

Professional Engineer: An engineer licensed by the Board of Registration for Professional Engineers, State of California.

Project: The TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO Project.

Project Manager: Contractor's designated Project manager.

Project Manual: See Section 01770.

Protest Procedures: Procedures for Contractor's lodging protest with Owner.

Project Record Documents: See Section 01770.

Project Schedule: See Section 01324.

Provide: The term "provide" shall be understood to mean "furnish and install, complete and in place."

Punch List: See Section 01770.

Quality Audit: The process by which the Owner's Designated Representative may independently verify that Quality Control measures are being taken in accordance with applicable requirements.

Quality Control: The process by which the Contractor and each Subcontractor measures and evaluates the Work it performs in order to meet the required contractual and statutory quality standards.

Quality Surveillance: The process by which the Owner's Designated Representative observes the Contractor to ensure that quality-control and quality-assurance measures are taken by the Contractor and its Subcontractors.

Registered Professional Engineer: A registered professional engineer retained by the Owner.

Request for Change or RFC: A document initiated by the Contractor requesting that a Change Order be issued.

Request for Information or RFI: A document issued by the Contractor requesting information concerning the Contract Documents.

Request for Quotation or RFQ: A document issued by the Owner that requests the Contractor to provide a quotation concerning a proposed change to the Work.

Safety and Emergency Response Plan: See Section 02482.

Safety Officer. Contractors designated safety officer for Work.

Salvage: To save any removed item. The salvaged item shall be reused in the Work or delivered and stockpiled for the Owner or others as specified in the Contract Documents.



San Francisco Bay Conservation and Development Commission or BCD: The San Francisco Bay Conservation and Development Commission.

Schedule of Values: The breakdown of the Contract Bid Price that will serve as the basis for Contractor's applications for payment. Any lump-sum item included within the Contract Price will be apportioned among values relating to specific components of the Work covered by said lump-sum item.

Shop Drawings: Drawings, plans, diagrams, schedules and other data specifically prepared and submitted to the Owner by the Contractor, showing in detail: (a) the proposed fabrication and assembly of a special component of the Work; and (b) the installation (form, fit and attachment details) of a special component of the Work. Shop Drawings shall be deemed to include Working Drawings, Product Data, literature, and applicable performance and test data.

Site Superintendent: Contractor's designated superintendent on the Work site.

Solid Debris Management Plan: See Section 02482.

Specifications: Refer to Divisions 2 and 3.

Standard Drawings: Drawings for particular construction components which are generic and will remain the same from project to project.

Standard Specifications: Specifications issued and updated by Caltrans.

State: State of California.

Subcontractor or Subawardee: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, engaged by the Contractor to furnish services, labor, equipment and materials for a portion of the Work.

Submittal Schedule: See Section 01300.

Submittal or Submittals: Those documents required to be submitted by the Contractor for review by Owner in accordance to the Contract.

Substantial Completion: The Work (or designated portion) is sufficiently complete, in accordance with the Contract Documents, so that the Owner can safely and conveniently occupy or utilize the Work (or such designated portion) for the use for which it is intended, and as needed for the Owner to conduct its operation.

Supplemental or Supplementary Conditions: Additional requirements that are applicable to the Contract as set forth in Division 0 (Bidding and Contract Requirements), Sections 00800 (Supplemental General Provisions) through 00860 (Insurance Requirements), as may be amended by Owner.

Supplier: Any individual, firm, partnership, corporation, joint venture, or combination thereof, other than employees of the Contractor, that supplies a tangible product as a portion of the Work, with services usually limited to delivery and/or required testing, and with manufacturing, fabrication, or production facilities located off the Work Site.

Task: See Section 01324. Same as Activity Technical Specifications or Technical and Performance Specifications: Technical details, requirements, and descriptions of Work to be performed under the Contract. The Technical Specifications comprise Divisions 2 through 16 as applicable of the Contract Documents, as may be amended by Owner.

TERMINAL MAINTENANCE DREDGING VALLEJO AND SOUTH SAN FRANCISCO Project: The Project that is the subject of the IFB.

Time of Award: Refer to Instructions to Bidders

Time Impact Analysis: See Section 01324.

Unbalanced Bid Price. Any Bid Price that does not include a reasonably proportionate allocation of indirect costs and profit to each bid item indicated in the form.

Underground Service Alert: Refer to Part 10, 10.01 SUBSURFACE EXCAVATIONS, NOTIFICATION of the General Provisions.

Unit Price: The value established for a single item of work or group of items commonly regarded as a single entity, that is inclusive of all fundamental, direct and incidental costs and exclusive only of costs associated with any other unit price and any lump-sum price.

U.S. Army Corps of Engineers, the Corps of Engineers or USACE: The United States Army Corps of Engineers.

Vessel Traffic Control Log: See Section 02482.

Vessel Traffic Control Service, Vessel Traffic Service or VTCS: The USCG's Vessel Traffic Control Service.

Waste Management Plan: See Section 02482.

Work: The sum total of productive and operative efforts used to generate the results specified, indicated in or reasonably inferable from the Contract Documents, including the furnishing of all labor, materials, and equipment.

Work Site: The property on which the Work will be performed, including all staging areas, as defined by the Contract Documents.

Work Week: Seven consecutive twenty four (24) hour days.

Working Day: A calendar day scheduled for active performance of Contract requirements.

Working Drawings: Original drawings prepared by the Contractor and/or its Subcontractors or Suppliers, of any tier, illustrating Work required for construction that will not become an integral part of the completed Work. This includes, but is not limited to, drawings for temporary structures such as decking, bulkheads, excavation supports, utility support, groundwater control, forming, falsework, access roads, staging areas, and staging plans. A Working Drawing is one type of Shop Drawing.

## **1.02 INTENT OF THE CONTRACT DOCUMENTS**

A. The Contract Documents are complementary, and what is called for by one shall be as binding as if called for by all. The intent of the Contract Documents is to describe a functionally complete Project to be constructed. When the Contract Documents describe portions of the Work in general terms, but not in complete detail, it is understood that the best general practice shall be followed and only materials and workmanship of the best standard quality shall be used. Any Work, materials or equipment that are customarily provided, or that are reasonably inferable from the Contract Documents as being required to produce the intended result, shall be supplied whether or not

specifically called for. When words, which have a well-known technical or trade meaning are used to describe work, materials or equipment, such words shall be interpreted in accordance with that meaning.

B. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect on the first published date of the Notice Inviting Bids, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of Owner or Contractor, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to Owner, or Owner's Designated Representative, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the other provisions of the Contract Documents.

C. The Contract Documents are divided into parts, divisions, sections and articles for convenient organization and reference. Generally, there has been no attempt to divide the specification sections into work performed by the various building trades, work by separate Subcontractors, or work required for separate facilities in the Project.

### **1.03 EXAMINATION AND VERIFICATION OF CONTRACT DOCUMENTS**

A. Before execution of the Contract, the Contractor shall thoroughly examine and become familiar with all of the various parts of the Contract Documents and shall determine the nature and location of the Work, the general and local conditions (including applicable laws) and all other matters which can in any way affect the cost, progress or performance of the Work under this Contract. Failure to make an examination necessary for this determination shall not release the Contractor from the obligations of the Contract. No oral agreement or conversation with any officer, or employee of the Owner, or with Owner's Designated Representative either before or after the execution of the Contract, shall affect or modify any of the terms or obligations contained in the Contract Documents.

### **1.04 CONTRACT DRAWINGS**

A. The Contract Drawings consist of general drawings and show such plans, elevations, sections, details and schedules as are necessary to give a graphic and pictorial description of the contemplated construction. All authorized alterations affecting the requirements and information given on the Contract Drawings shall be in writing.

B. Owner will furnish up to five (5) sets full size and ten (10) sets of half size of the Contract Drawings[?], or in any combination thereof, to the Contractor. Contractor may purchase additional sets of the Contract Drawings from Owner at Contractor's cost.

### **1.05 COORDINATION AND INTERPRETATION OF CONTRACT DOCUMENTS**

A. In the event of inconsistencies between requirements contained in different components of the Contract Documents, the precedence (highest to lowest precedence) of the Contract Documents shall be as follows to resolve the conflicts.

1. Change Orders
2. The Contract (including Addenda and Amendments)
3. The Supplemental General Provisions (Sections 00820 through 00880)
4. Division 1
5. Special Provisions
6. The General Provisions

7. The remainder of Division 0 sections
8. The Technical Specifications (Divisions 2 through 16); Contract Drawings; Appendices and Standard Drawings

B. In the event of any doubt or question arising concerning the true meaning of the Contract Documents or should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents, the Contractor shall submit a Request for Information ("RFI") to the Owner for such further written explanations as may be reasonably necessary and shall conform to the written explanation given as if part of the Contract Documents. The decision of the Owner in such cases shall be final.

Contractor shall anticipate that it will be necessary to prepare and submit RFIs regarding the Contract Documents. The Owner will respond to each RFI by no later than fourteen (14) days after receipt of the RFI, unless the RFI is of significant complexity. Furthermore, in the event that there are numerous RFIs pending, Contractor shall cooperate with Owner in establishing a priority for responding to the RFIs, and potentially some RFIs may be responded to beyond the fourteen (14) day period.

Each RFI prepared by Contractor shall be full and complete. Contractor shall prepare RFIs so as to not cause any delay to the progress of the Work and to not cause any impact to Contractor's labor productivity in the field. Contractor shall not assert any claims for delay or interference against Owner if Contractor fails to timely submit any RFI to Owner, after consideration of the response period allowed for Owner.

The response to an RFI shall not, by itself, constitute a writing that authorizes Contractor to perform any Work that causes an adjustment to either the Contract Time or Contract Price. If Contractor believes that any response to any RFI should constitute a compensable change, Contractor shall so notify Owner via a Request for Change, as described in Part 6, CHANGES IN THE WORK herein. Contractor's failure to provide the required written notice shall constitute a waiver of Contractor's right to seek a compensable change based on the RFI response.

C. The Contractor shall examine all Contract Documents; shall verify all figures in the Contract Documents before laying out the Work; shall promptly notify the Owner of all errors, inconsistencies, and/or omissions that it discovers; and, in instances where such non-conformities are discovered, shall obtain specific instructions in writing from the Owner before proceeding with the Work. Contractor's performance of any Work affected by such non-conformities prior to the Owner's decision shall be at the Contractor's risk. Any Work that is customarily provided or that is reasonably inferable shall not relieve the Contractor from performing such work at no additional expense and/or delay, and such Work shall be performed as if fully set forth in the Contract Documents.

#### **1.06 PRODUCT REFERENCES AND STANDARDS**

A. When descriptive catalog designations, including manufacturer's name, product brand name or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications in effect as of the first published date of the Notice Inviting Bids, except as may be otherwise stated.

B. Where references are made to standard specifications (such as RS - standard specifications for Public Works Construction [the Greenbook], or the State of California, Department of Transportation [2006 Standard Specifications (US Customary), As Amended May 2, 2008], the following definitions shall apply:

1. All references to the "City," "County," "State," "Agency," or "Department" in the context of ownership shall mean the Owner.

2. All references to the "Engineer" in the context of provider of compliance judgment shall mean the Owner's Designated Representative. For those aspects of the construction subject to supervision or oversight by a Registered Professional Engineer, shall mean a Registered Professional Engineer retained by the Owner.
3. All references to the "Agent" shall mean Owner.
4. All references to the "plan(s)" shall mean the Contract Drawings.

#### **END OF PART 1**

### **PART 2 - OWNER**

#### **2.01 PERSONAL LIABILITY**

A. Neither the Owner's Board Members, Executive Director, Secretary, Owner's Designated Representative, Officers, Agents, Representatives nor Employees shall be personally responsible for any liability arising under or by virtue of this Contract.

#### **2.02 AUTHORITY OF THE OWNER AND THE OWNER'S DESIGNATED REPRESENTATIVE**

A. The Owner has the final authority in all matters affecting the Work covered by the Contract Documents.

B. With respect to Contractor's performance of the Work, the ODR shall have the authority to enforce compliance with the Contract Documents. In accordance with the Contract Documents, the Contractor shall promptly comply with all instructions from ODR, and the ODR shall have the authority to enforce and make effective such decisions and orders in the event the Contractor fails to promptly carry out same.

C. On all questions relating to Contractor's use of certain materials or equipment, the decision of the ODR is final and binding, and shall be a condition precedent to any payment under the Contract Documents.

#### **2.03 RIGHTS-OF-WAY**

A. To the extent indicated in the Contract Plans, the Owner will provide the rights-of-way over private lands or the site to enable Contractor to perform its work. Contractor shall be solely responsible for securing any additional rights-of-way desired by the Contractor. The Owner will not be a party to nor assume any liability for any separate agreements reached between Contractor and any third parties with respect to these additional rights-of-way. The Contractor shall produce evidence to Owner that agreements are in place with said third parties before the Contractor uses those areas covered by the agreements. Any damage to such private lands caused by Contractor's operations shall be the sole responsibility of Contractor.

#### **2.04 OWNER'S RIGHT TO STOP WORK**

A. If the Contractor fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may, in writing, order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The Contractor shall immediately comply with Owner's written order to stop the Work. Contractor shall resume Work as and when ordered to do so by the Owner. Any stoppage of the Work under this section shall be at Contractor's expense, and Contractor shall have no claim against the Owner based on Contractor's failure to perform the Work in accordance with the Contract Documents.

In addition to Owner's right to stop Work, Owner may order Contractor to submit to Owner, at no additional cost to Owner, additional information concerning Contractor's planned Work if Contractor

fails to promptly correct Work that is not in accordance with the requirements of the Contract Documents or persistently fails to carry out Work in accordance with the Contract Documents. The additional information ordered by Owner may include, but is not limited to, preparation of Submittals or Working Drawings not otherwise required to be submitted under the Contract Documents.

In the event the Owner discovers that the Contractor has created an unsafe condition, Owner may arrange for other work forces to secure the Work site. (Such remedial Work will be at the sole discretion of the Owner.) If this action is required, the Owner may unilaterally terminate Work under the Contract, and will pay only for the quantities of Work actually performed, less the cost of Owner's remedial Work. In the event that Work is not halted, the Contractor must take immediate steps to correct the situation. There will be no extra payment for Work required to correct unsafe conditions.

The right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction or derogation of Owner's other rights under the Contract Documents. The Owner's right to stop the Work shall not relieve the Contractor of any of his responsibilities under or pursuant to the Contract Documents.

## **END OF PART 2**

### **PART 3 - CONTRACTOR**

#### **3.01 INDEPENDENT CONTRACTOR STATUS**

A. The Contractor shall independently perform all Work required by the Contract Documents and shall not be considered as an agent or employee of the Owner, nor shall the Contractor's Subcontractors or employees be considered as subagents of the Owner.

B. The Contractor and the Contractor's Subcontractors shall be licensed to perform the Work in accordance with the laws of the State of California.

#### **3.02 CONSTRUCTION PROCEDURES AND SUPERVISION**

##### **A. Health and Safety Plan**

Contractor shall designate a safety officer and have in place a health and safety plan in accordance with the laws of State of California and conduct safety meetings and document them in accordance to the law. Contractor shall have the safety record available for inspection during working hours and shall submit job site safety meeting reports with Payment application.

##### **B. Supervision**

Contractor shall assign both a Project Manager and Site Superintendent to the Project. The Site Superintendent shall be assigned full time. Both individuals must be approved by the Owner and not changed without written approval by the Owner. Owner reserves the right to require the Contractor to release these individuals at Owner's sole discretion and hire suitable replacements.

##### **C. Special Inspections**

Contractor shall hire an independent testing and inspection agency acceptable to the permitting agencies and the Owner to perform all special inspections called for by the Permitting Agency. Required inspection reports must accompany the Application for Payment for the Work.

D. Beginning of Work

. Notice to Proceed ("NTP") will be issued after execution of the Contract and upon Owner's determination that it is appropriate for the Contract Time to commence.

Within fifteen (15) days after the effective date contained in the Notice to Proceed, and subject to the requirements stated elsewhere in the Contract Documents regarding, among other things, the submittal of a Baseline CPM Schedule, the Contractor shall commence Work at the site and shall diligently and continuously prosecute the Work to final completion within the time limit provided in the Contract Documents. Contractor shall also achieve any and all Contract milestones as described elsewhere in the Contract Documents.

The Contractor shall notify the Owner, in writing, of his intent to begin Work at the site.

The Contractor is not authorized to perform any Work until he has received a Notice to Proceed from the Owner. Should the Contractor begin Work in advance of receiving the Notice to Proceed, such Work shall be considered as having been done by Contractor at Contractor's own risk and as a volunteer.

E. Order of Work

When required by the Contract Documents, the Contractor shall follow the sequence of operations as set forth therein.

Full compensation for conforming to such requirements will be considered as included in the prices paid for the various Contract items of work, and no additional compensation will be allowed therefore.

F. Disposal of Material Outside the Work Site

Unless otherwise stated elsewhere in the Contract Documents, the Contractor shall, at his own cost and expense, make his own arrangements for disposing of materials outside the Work Site.

When any material is to be disposed of outside the Work Site, the Contractor shall first obtain written permission from the Owner to dispose of the material at the intended location. Owner's approval will be contingent upon Contractor obtaining a written permit from the property owner on whose property the disposal is to be made. Prior to the disposal of any material at the intended location, Contractor shall submit said permit or a certified copy thereof to Owner, together with a written release from the property owner absolving the Owner from any and all responsibility related to the disposal of material on said property.

Disposal of all Hazardous Materials must be performed in accordance with all applicable federal, state and local laws and regulations. Copies of a required regulatory documentation including copies of final manifests shall be supplied to the Owner

G. Access to the Work

The Contractor shall satisfy himself that the jurisdictions through which his operations and haul routes pass will permit such operations with respect to the type of vehicle, laden weights, frequency and dimensions of loads, hours of operation and required traffic control. All necessary permits, licenses or bonds shall be obtained and paid for by the Contractor.

#### H. Temporary Utilities

The Contractor shall make his own arrangements with utility companies for any temporary services he may require in performance of the Work and shall pay all costs of these services directly to these utility organizations.

#### I. Non-Owner Owned Facilities

The Contractor shall protect from damage those non-Owner owned facilities (e.g., utilities) that are to remain in place, be installed, relocated or otherwise arranged.

Contractor's attention is directed to the possible existence of facilities not shown, and of facilities in a location different from that which is indicated. The Contractor shall take steps to ascertain the exact location of all facilities prior to doing any Work, which may damage such facilities or interfere with their service. Where the location of a facility is indicated or inferred from the presence of visible facilities such as buildings, meters and junction boxes, the Contractor shall make such excavations and explorations as are necessary to ascertain the correct location. Unless provided for elsewhere in the Contract Documents, the cost of such excavations and explorations will be considered as a part of the cost of other items of Work and no additional payment will be made. Such excavations and exploratory Work shall not entitle the Contractor to an extension of time.

If the Contractor discovers underground facilities not indicated or inferred, from the Contract Documents, the Contractor shall immediately give the Owner's Designated Representative written notification of the existence of those facilities. The Contractor shall determine the exact location of the underground facilities and the cost of the Work will be paid for in accordance with the Contract documents. The underground facilities shall be protected from damage as directed by the Owner's Designated Representative and the cost of that work will be paid for as extra work. The Contractor shall, if directed by the Owner's Designated Representative, repair any damage, which may occur to the underground facilities. The cost of that repair work, not due to the failure of the Contractor to exercise reasonable care, will be paid for as extra work. Damage due to the Contractor's failure to exercise reasonable care shall be repaired at the Contractor's cost and expense.

Where it is determined by the Owner that the rearrangement of an underground facility, the existence of which is not shown on the Contract Drawings, is essential in order to accommodate the Work, the Owner will provide for the rearrangement of such facility by other forces or, when so ordered by Change Order, such rearrangement shall be performed by the Contractor and will be paid for as provided under a Change Order.

The Contractor shall be responsible for the maintenance of all utility facilities placed by him in temporary locations, and all utilities within the construction area not required to be relocated but which are required to be shored or supported during the construction period. The cost of such maintenance shall be borne by the Contractor, and no other compensation shall be due the Contractor for this Work.

The cost of providing and maintaining all necessary or required temporary structures, of making any necessary repairs, replacements, or similar operations, or furnishing indemnity or other bonds, if required, and all costs required by this Section shall be paid by the Contractor and shall be included in the prices bid in the schedule for other items of work.

#### J. Lines and Grades

Contractor shall perform all construction staking using a land surveyor licensed in the State of California. Contractor shall provide a staking plan prior to commencement of work for Owner's review and maintain monuments, stakes, and marks, and shall update the plan as necessary. The Owner's Designated Representative may verify the field condition. Errors or inconsistencies in the Contract



Documents discovered by the Contractor shall be reported to the Owner's Designated Representative within 24 hours.

K. Archaeological Discoveries

Upon discovery of prehistoric or historic artifacts, or other indicators or examples of cultural resources discovered during the course of site preparation, grading, excavation, construction or other development activities, all operations within 50 feet of the find shall cease until such time as the Owner provides the services of a qualified archaeologist to evaluate the finds and recommend appropriate action.

Prehistoric materials can include flaked stone tools (e.g. Projectile points, knives and choppers) or tool making debris of obsidian, chert, quartzite and other materials; culturally darkened soil (i.e. midden, which often contains heat affected rock, ash and charcoal, shellfish remains, and cultural materials); and stone milling equipment such as mortars, pestles and hand stones. Historic material may include wood, stone, concrete or adobe footings, walls and other structural remains; debris filled wells or privies; and deposits of wood, metal, glass ceramics and other refuse.

L. Conformity with Contract Documents

Work and materials shall conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, required by the Contract Documents. Although measurement, sampling and testing may be considered evidence as to such conformity, the Owner shall be the sole judge as to whether the Work or materials deviate from the Contract Documents. At its option, Owner may elect to accept deviations from the Contract Documents with appropriate backcharge Assessments against the Contractor, and, if such an election is made, Owner will provided written notice to Contractor of such Acceptance.

### **3.03 LABOR AND MATERIALS**

A. Labor Code Requirements

At his own cost and expense, Contractor shall comply with all laws, rules and regulations that pertain to Contractor's work force. Attention is directed to the following requirements of the California Labor Code:

1. Hours of Labor

Eight hours labor constitutes a legal day's work. The Contractor or Subcontractor shall, as a penalty to the State or political subdivision on whose behalf the Contract is made or awarded, forfeit \$25 for each worker employed in the performance of the Contract by the Contractor or any Subcontractor under him for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of the Labor Code Section 1813. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of the Labor Code and notwithstanding any stipulation inserted in any contract pursuant to the requirements of these sections, work performed by employees of the Contractor or Subcontractor in excess of 8 hours per day and 40 hours during any one week shall be permitted upon compensation for all hours worked in excess of 8 hours per day and in excess of 40 hours during any one week at not less than 1½ times the basic rate of pay, as provided for in Section 1815. In addition, Contractor/Subcontractor may be required to pay double the basic rate of pay for all hours worked in excess of 12 hours in any workday and under other circumstances. (See California Code of Regulations title 8, sections 16100(c)(6), 16200(a)(3)(F) and applicable prevailing wage determinations.)

## 2. Labor Non-Discrimination

Section 1735 of the Labor Code states that the Contractor shall not discriminate against any employee who is employed upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex or age of such persons, except as provided in Section 12940 of the Government Code.

## 3. Prevailing Wages

See Section 00840 (Payment of Prevailing Wages).

## 4. Payroll Records

Contractor and each subcontractor shall submit electronic certified payroll records to the California Labor Commissioner in the manner and format set forth in California Labor Code section 1771.4.

The Contractor's attention is directed to the following provisions of Labor Code Section 1776. The Contractor shall be responsible for compliance with these provisions by his Subcontractors.

(a) Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

(1) The information contained in the payroll record is true and correct.

(2) The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

(b) The payroll records enumerated under subdivision (a) shall be certified and shall be available for inspection at all reasonable hours at the principal office of the contractor on the following basis:

(1) A certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.

(2) A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract and the Division of Labor Standards Enforcement of the Department of Industrial Relations.

(3) A certified copy of all payroll records enumerated in subdivision (a) shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by the contractor, subcontractors, and the entity through which the request was made. The public may not be given access to the records at the principal office of the contractor.

(c) Unless required to be furnished directly to the Labor Commissioner in accordance with paragraph (3) of subdivision (a) of Section 1771.4, the certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division. The payroll records may consist of printouts of payroll data that are maintained as computer records, if the printouts contain the same information as the forms provided by the division and the printouts are verified in the manner specified in subdivision (a).

(d) A contractor or subcontractor shall file a certified copy of the records enumerated in subdivision (a) with the entity that requested the records within 10 days after receipt of a written request.

(e) Except as provided in subdivision (f), any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body or the Division of Labor Standards Enforcement shall be marked or obliterated to prevent disclosure of an individual's name, address, and social security number. The name and address of the contractor awarded the contract or the subcontractor performing the contract shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number.

(f) (1) Notwithstanding any other provision of law, agencies that are included in the Joint Enforcement Strike Force on the Underground Economy established pursuant to Section 329 of the Unemployment Insurance Code and other law enforcement agencies investigating violations of law shall, upon request, be provided non-redacted copies of certified payroll records. Any copies of records or certified payroll made available for inspection and furnished upon request to the public by an agency included in the Joint Enforcement Strike Force on the Underground Economy or to a law enforcement agency investigating a violation of law shall be marked or redacted to prevent disclosure of an individual's name, address, and social security number.

(2) An employer shall not be liable for damages in a civil action for any reasonable act or omission taken in good faith in compliance with this subdivision.

(g) The contractor shall inform the body awarding the contract of the location of the records enumerated under subdivision (a), including the street address, city, and county, and shall, within five working days, provide a notice of a change of location and address.

(h) The contractor or subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated in subdivision (a). In the event that the contractor or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. A contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

(i) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section.

(j) The director shall adopt rules consistent with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) governing the release of these records, including the establishment of reasonable fees to be charged for reproducing copies of records required by this section.

*(Amended by Stats. 2014, Ch. 28, Sec. 71. Effective June 20, 2014.)*

The Contractor and each Subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the Contract. (See 49 CFR, Section 18.36(i))

## 5. Apprentices

The Contractor shall fully comply with the requirements of Sections 1777.5 and 1777.6 of the California Labor Code, copies of which follow, and the regulations of the California Apprenticeship Council. In accordance with Section 1777.5, the Contractor shall secure the necessary certificates and shall contribute to the apprenticeship fund or funds, as provided for therein. The Contractor shall require each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the Work to comply fully with Sections 1777.5 and 1777.6 of the Labor Code. Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the State Division of Apprenticeship Standards and its branch offices.

### **Labor Code Section 1777.5.**

(a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to

the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1 to 5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1 to 5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1 to 5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1 to 5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002–03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section 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).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

*(Amended by Stats. 2014, Ch. 890, Sec. 1. Effective January 1, 2015.)*

#### **Labor Code Section 1777.6.**

An employer or a labor union shall not refuse to accept otherwise qualified employees as registered apprentices on any public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as provided in Section 3077 of this code and Section 12940 of the Government Code.

*(Amended by Stats. 2004, Ch. 788, Sec. 15. Effective January 1, 2005.)*

### **3.04 GUARANTY OF WORK**

A. Notwithstanding inspections and Acceptance by the Owner of Work furnished under the Contract Documents, the Contractor warrants to the Owner that all materials and equipment furnished will be of good quality and new, that the Work will be free from defects in material or workmanship, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

This warranty by the Contractor is in addition to any warranties or guarantees required elsewhere in the Contract Documents. This warranty shall be in effect notwithstanding any disclaimers, or limiting or conditional terms contained in such separate warranties furnished by manufacturers or Suppliers.

Contractor agrees to correct all defective Work discovered by Owner during a period of one (1) year after the Acceptance of the Contract by Owner or Relief from Maintenance whichever occurs first, or for such periods of time as set forth elsewhere in the Contract Documents. In addition to making such corrections, repairs and/or replacements of any defective Work, Contractor shall correct, repair and/or replace any components of the Work that are damaged as a result of such defective materials, equipment and/or workmanship. Such corrective work shall be at the sole expense of Contractor and shall be performed in a timely manner at the reasonable convenience of Owner.

All warranties set forth in the Contract Documents shall be deemed cumulative and not alternative or exclusive. Nothing contained in this Section shall be construed to establish a period of limitation with respect to any other obligation, which Contractor has under the Contract Documents or under any separate warranty or guaranty required thereby. The establishment of a specific warranty period relates only to the specific obligation of Contractor to correct defective Work, and it has no relationship to the time within which its obligation to comply with the Contract Documents or applicable provision of law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish Contractor's liability with respect to its obligations other than specifically to correct the Work. Without limiting the foregoing, it is understood and agreed that Contractor shall remain response for latent defects with its work, regardless of the expiration of any warranty period set forth in the Contract Documents.

### **3.05 PAYMENT OF TAXES**

A. Contractor shall pay all taxes and duties applicable to and assessable against any Work, equipment, materials, services, processes, and operations incidental to or involved in the Contract, including but not limited to, retail sales and use, transportation, export, import, business, and special taxes. The Contractor is responsible for ascertaining and acquainting itself with such taxes and making all necessary arrangements to pay them. The Contractor will maintain records that are auditable records, and these records shall be subject to Owner's review to verify that Contractor's tax payments are current at all times.

B. The Contract Price paid for the Work shall include full compensation for all taxes, which the Contractor is required to pay, whether imposed by Federal, State or local government, including, without being limited to, Federal excise tax. No tax-exemption certificate nor any document designed to exempt the Contractor from payment of any tax will be furnished to the Contractor by the Owner, as to any tax on labor, services, materials, transportation, or any other items furnished pursuant to the Contract.

C. The Contractor shall withhold and pay any and all sales and use taxes, withholding taxes, whether Federal, State or local, Social Security taxes, State Unemployment Insurance charges and all other taxes which are now or hereafter may be required to be paid or withheld under any laws.

### **3.06 REGISTRATION, PERMITS, AND LICENSES**

A. The Contractor acknowledges and agrees that, prior to the submission of its bid for the Work, it fully familiarized itself with the requirements of all applicable federal, state, county, and municipal laws, codes, rules, and regulations, as well as the conditions of any required licenses and permits.

B. The Contractor shall procure all permits and licenses, including any applicable building permits, (except those procured or to be procured by the Owner which are listed elsewhere in the Contract Documents), pay all charges and fees, and give all required notices necessary and incidental to the prosecution of the Work.

C. The Environmental Quality Act (Public Resources Code, Section 21000 to 21177) may be applicable to permits, licenses and other authorizations which the Contractor must obtain from State or local agencies in connection with performing the Work. The Contractor shall comply with the provisions of that Act in obtaining such permits, licenses and other authorizations, and all permits, licenses and other authorizations shall be obtained in sufficient time to prevent delays to the Work.

D. The Contractor shall procure all building permits required in order to perform the Work, and shall procure a Certificate of Occupancy as a condition of final completion (if required by the local jurisdiction).

E. The Contractor hereby certifies that it is eligible to bid or work on, or be awarded a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code, and that it shall not subcontract with a subcontractor ineligible to bid or work on, or be awarded a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

F. Contractors and subcontractors must be registered with the Department of Industrial Relations (DIR) at the time of bid, or else the bid may be rejected as non-responsive. (See Labor Code sections 1725.5 and 1771.1.) Each bidder must submit proof of contractor registration with DIR (e.g. a hard copy of the relevant page of the DIR's database found at: <https://efiling.dir.ca.gov/PWCR/Search>). This Contract is subject to monitoring and enforcement by the DIR pursuant to Labor Code Section 1771.4.

### **3.07 SUPERINTENDENCE BY THE CONTRACTOR**

A. The Contractor shall supervise and direct the Work, which shall be performed in accordance with the requirements of the Contract Documents. The Contractor shall be solely responsible for implementation of all construction means, methods, techniques, sequences, and procedures and for coordination of all portions of the Work under the Contract. The Contractor shall be solely responsible for the safety of its employees, Subcontractors of any tier, Suppliers, visitors to the Contractor, and other third parties associated with the Contractor.

B. Before issuance of the NTP, the Contractor shall designate, in writing, the Project Manager, Site Superintendent and Safety Officer for Contractor on the Project. The Owner must approve each of these three positions before issuance of NTP. Instances of misconduct, Contract non-compliance, unsatisfactory performance, or incompetence by these personnel shall be grounds for the Owner to direct Contractor to dismiss them from the Project; Contractor shall immediately comply with Owner's request, at no cost to the Owner, and shall designate a replacement according to the above designation procedure.



A Superintendent shall be assigned to the site full time and the Project Manager shall be present at the Work Site whenever actions of the elements necessitate his or her presence to take measures necessary to assure Contract compliance and to protect the Work, persons or property. Any order or communication given to the Project Manager or Site Superintendent shall be deemed delivered to the Contractor.

C. Additional requirements for superintendence or Project staffing may be included in Division 1.

D. In the event the Contractor does not assign a full time Project Manager to the Work Site as required in the Contract Documents, the Owner may deduct from any progress payment due the costs plus markups for the times the Project Manager is away from the Work Site, plus the cost of any additional monitoring and reporting performed by the Owner. The Owner may also suspend the Work for cause if the Project Manager or Site Superintendent is not present at the Work Site, with no cost, claim, or damages accruing to the Owner for such action. Suspension of work shall mean an order by the Owner to cease all construction activities.

E. When the Contractor has more than one construction Contract with the Owner, each Contract shall be independent of all others as to Field Offices, Field Staff, and Superintendence.

### **3.08 CONSTRUCTION SCHEDULE AND COMMENCEMENT OF WORK**

A. Attention is directed to Division 1 for specific requirements concerning the Construction Schedule and Commencement of the Work.

### **3.09 DOCUMENTS ON WORK SITE**

A. The Contractor shall keep one copy of all Contract Documents (including Change Orders), approved Shop Drawings, correspondence, meeting minutes, approved progress payments, and all other records relating to the Work at the Work Site. These records shall be maintained in good order, and they shall be available to the Owner and its authorized representatives for review, inspection and copying.

### **3.10 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES, SUBSTITUTIONS**

A. Provision regarding Shop Drawings, Product Data and samples are addressed in Division 1 of the Contract Documents.

B. Substitutions During Construction

Contractor shall have followed the Approved Equal Procedure set forth in the Instructions to Bidders to obtain Owner approval for any proposed substitution. However, upon the showing by Contractor of changed circumstances subsequent to the bid opening that, in the sole discretion of Owner, justifies consideration of substitutions during construction, the Contractor may use the substitution procedure as set forth below.

For convenience in designation in the Contract Documents, certain articles or materials to be incorporated in the Work may be designated under a trade name or the name of a manufacturer and his catalog information. Except in those instances where the product is designated to match others in use in a particular improvement, either completed or in the course of completion, the use of an alternative article or material which is of equal quality and of the required characteristics for the purpose intended will be permitted, subject to the following requirements:

1. The Contractor shall submit his request in writing for an alternative article or material. Such request shall be made in ample time to permit review and approval without delaying the Work.

Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price based on any Contractor-proposed substitution.

2. No such request will be considered unless accompanied by complete information and descriptive data necessary to determine whether the offered materials, articles, or equipment is equal to the specification in the Contract Documents. Samples shall be provided when requested by the Owner. The Contractor shall satisfy the Owner as to the equal quality, suitability or performance of the offered materials, articles or equipment. In the event that the Owner rejects the use of such alternative materials, articles or equipment, then one of the particular products designated by brand name will be furnished.

3. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor, and he shall furnish all information necessary as required by the Owner. The Owner shall be the sole judge as to the quality and suitability of alternative articles or materials and his decisions shall be final. Where use of an alternative material involves redesign of, or changes to, other parts of the Work, the cost and the time required to effect such redesign or changes will be considered in evaluating the suitability of the alternative material. Cost of redesign by the Owner will be borne by the Contractor.

4. Whenever classification, rating or other certification by a body such as UL or NEMA is a part of the specification for any material, Contractor's request for use of alternative articles or materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with the Contract Documents. The cost of all testing required to prove equality of the material proposed shall be borne by the Contractor. Approval of an alternative shall be only for the characteristics or use named in such approval, and shall not be used to change or modify any requirement of the Contract Documents.

### **3.11 WORK SITE MAINTENANCE**

#### **A. Air Pollution Control**

The Contractor shall comply with all air pollution control rules, regulations, ordinances and statutes which apply to the Work, including any air pollution control rules, regulations, ordinances and statutes specified in Section 11017 of the Government Code.

Material to be disposed of shall not be burned inside or outside the Work Site with the exception of incineration at a licensed hazardous waste facility.

#### **B. Water Pollution Control**

The Contractor shall exercise every reasonable precaution to protect streams, lakes, reservoirs, bays and coastal waters from pollution by fuels, oils, bitumen, calcium chloride and other harmful materials and shall conduct and schedule his operations so as to avoid or minimize muddying and silting of said streams, lakes, reservoirs, bays and coastal waters. Care shall be exercised to preserve roadside vegetation beyond the limits of construction.

Water pollution control work is intended to provide prevention, control, and abatement of water pollution to streams, waterways and other bodies of water, and shall conform to the requirements, which may be shown elsewhere in the Contract Documents.

#### **C. Sound & Light Control Requirements**

The Contractor shall comply with all applicable local, state and federal rules and regulations regarding sound control, noise level, and light control.

Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. The muffler shall be in good working condition. No internal combustion engine shall be operated on the Project without said muffler.

D. Use of Pesticides

The Contractor shall comply with all local, state and federal rules and regulations of the Department of Food and Agriculture, the Department of Health, the Department of Industrial Relations and all other agencies, which govern the use of pesticides required in the performance of the Work.

Pesticides include but shall not be limited to herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliants, desiccants, soil sterilants, and repellents.

Any substance or mixture of substances intended for preventing, repelling, mitigating or destroying weeds, insects, diseases, rodents or nematodes and any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant shall be considered as pesticide.

E. Weight Limitations

Unless expressly permitted elsewhere in the Contract Documents, the Contractor shall not operate construction equipment or vehicles of any kind which, laden or unladen, exceed the maximum weight limits set forth in Division 15 of the Vehicle Code over completed or existing base, surfacing, pavement or structures.

### **3.12 ACCESS TO WORK**

A. Observation of Construction

The Owner, and all of its authorized representatives, shall at all times have safe access to the Work, and shall be furnished with every reasonable facility for ascertaining that the workmanship and materials are in accordance with the requirements and intentions of the Contract Documents. All Work done and all materials furnished shall be subject to the Owner's Designated Representative's (ODR) on-site and off-site observation.

The observation and/or approvals of the workmanship or materials by the ODR shall not relieve the Contractor of any obligations to fulfill the requirements of the Contract Documents. Workmanship and materials not meeting such requirements shall be corrected, and unsuitable Work or material may be rejected, notwithstanding that such Work or materials have been previously observed and/or approved by the Owner, or that payment therefor has been included in a progress estimate.

The ODR may order re-examination of questioned Work at any time before final Acceptance. If so ordered, the Contractor shall uncover the Work. If such work is found to be in accordance with the Contract Documents, the Owner will pay for the cost of uncovering, removing, recovering and replacing the parts removed; but if such Work so exposed or examined is not in accordance with the Contract Documents, the uncovering, removal, recovering and replacement shall be at the Contractor's expense. Work, which has been covered prior to observation by the Owner, does not qualify as re-examined work; the Owner may order such Work uncovered for observation without payment of any costs.

### **3.13 INDEMNIFICATION**

A. Contractor shall defend, indemnify, and hold harmless the San Francisco Bay Area Water Emergency Transportation Authority, the City of Vallejo, the San Mateo County Harbor District, and

their respective directors, officers, employees, and agents, including the Owner's Designated Representative, and the successors and assigns of any of them (collectively referred to as "**Indemnities**") from and against all claims, demands, liability, suits, actions, costs or expenses for any and all loss or damage, including, but not limited to, personal injury, property damage, or economic loss, arising out of or resulting from allegations of (i) Contractor's use of Owner's property or any activities or Work performed hereunder by Contractor; (ii) Contractor's performance of the Work under the Contract; or (iii) Contractor's breach of any provision of the Contract. The duty of Contractor to indemnify and save harmless includes the duties to defend as set forth in Section 2778 of the Civil Code. The only exception to these provisions is that Contractor's obligations under this section will not apply to the extent that the claims, demands, liability, suits, actions, costs or expenses are caused by Indemnities' active negligence, willful misconduct or criminal acts. Contractor waives any and all rights to any type of express or implied indemnity against Indemnities. This indemnity shall survive termination or Acceptance of the Contract.

Any person, firm or corporation that Contractor authorizes to Work on Owner's property, including Subcontractors, shall be deemed to be an agent of the Contractor for purposes herein, shall be subject to all the applicable terms herein, and shall be within the scope of Contractor's indemnity obligation described herein.

### **END OF PART 3**

## **PART 4 - SUBCONTRACTORS**

### **4.01 SUBCONTRACTING**

A. The Contractor shall give his personal attention to the fulfillment of the Contract Documents and shall keep all Work under his control.

No Subcontractor will be recognized as such and nothing in the Contract Documents shall create any contractual relationship between the Owner and any Subcontractor. The Contractor is as fully responsible to the Owner for the acts and omissions of his Subcontractors of any tier as the Contractor for the acts and omissions of persons or entities directly employs him.

When a portion of the Work, which has been subcontracted by the Contractor, is not being prosecuted in a manner satisfactory to the Owner, the Subcontractor shall be removed immediately upon the request of the Owner, and shall not again be employed with respect to the Work.

The on-site production of materials produced by other than the Contractor's own forces shall be considered as subcontracted. The erection, establishment or reopening of on-site plants for production of materials and the operation thereof in the production of materials for use on the Work shall conform to the requirements relating to labor set forth in the Contract Documents.

B. The Contractor shall also be responsible for coordinating the Work performed by Subcontractors and Suppliers.

C. Approval of Substitutions of Subcontractor:

1. The Contractor shall notify the Owner in writing of any request to substitute a Subcontractor in place of a Subcontractor listed in Contractor's Bid Forms. Prior to such substitution, for Work that is greater than or equal to one-half of one percent (0.5%) of the Contract Price or if the Contractor proposes to substitute a DBE firm, the Contractor shall secure the written approval of the Owner. The Contractor shall submit the following information in a form similar to the Bid/Submittal Form entitled, "Subcontractor/Subconsultant/Supplier Report" contained in the Contractor's Bid Forms.

The Owner will review the information submitted relative to each Subcontractor in accordance with the requirements of the Subletting and Subcontracting Fair Practices Act and transmit written notification to the Contractor concerning its decision regarding approval of the proposed substitution. Information submitted by the Contractor shall include at least the following:

- (a) Name of the Subcontractor
- (b) Location and Phone Number of Place of Business
- (c) Contact Person
- (d) Contractor's License(s) number and expiration date
- (e) DBE/MBE/WBE/Local Owned, status (if applicable)
- (f) The portion of the Work that will be performed by each Subcontractor and its dollar value
- (g) Reason(s) for the proposed substitution

#### **END OF PART 4**

### **PART 5 - COORDINATION AND ACCESS**

#### **5.01 GENERAL**

A. The Contractor acknowledges that the Owner may award, or has already awarded, other construction contracts for additional work or may perform additional work with its own forces and that such work may affect the Work under this Contract. Additionally the Contractor acknowledges that the State and other public agencies and private entities may be granted a right-of-entry by Owner for the purpose of constructing facilities within and adjacent to the Work Site. It is the obligation of the Contractor to coordinate its Work with the work of others working within or adjacent to the Owner's property.

During the performance of its Work, the Contractor shall not have exclusive access to or use of the work areas. The Owner may also require that certain facilities and areas be used concurrently by the Contractor and by other contractors working in the area. When two or more contractors are employed on related or adjacent Owner work, each shall conduct his operations in such a manner as not to cause any unnecessary delay or hindrance to the other. Each contractor shall be responsible to the other for all damage to any work, to persons or property caused to the other by his operations, and for loss caused the other due to any unnecessary delays or failure to finish the Work within the time specified for completion.

B. If any part of the Contractor's Work depends on the work of any other contractor and/or the Owner for proper execution and/or results, the Contractor shall promptly notify the Owner of any discrepancies and/or defects in said other work that would render its work unsuitable for proper execution and/or results prior to proceeding with the Contractor's own Work. If it becomes necessary, the Owner will resolve coordination and access problems.

C. Contractor and its representative in charge of the Work shall familiarize themselves with Owner's property and Work Site, and adjacent surroundings in the vicinity of said Work, and any private or public operations on adjoining properties.

#### **END OF PART 5**

## **PART 6 - CHANGES IN THE WORK**

### **6.01 CHANGES**

#### **A. General:**

1. The Owner may make at any time, and without notice to Contractor's surety and without invalidating the Contract, alterations, deviations, additions to or deletions of the Contract Documents, and may increase or decrease the quantity of any item or portion of the Work, or delete any item or portion of the Work, and may require extra work, as determined by the Owner to be necessary or advisable. All such changes shall be performed under the terms of the Contract Documents.

Any changes will be set forth in a written Contract Change Order issued by the Owner. The Contract Change Order will specify:

- (1) the Work to be done in connection with the change to be made;
- (2) the amount, if any, of the adjustment of the Contract Price, and the basis for compensation for the changed work ordered; and
- (3) The extent, if any, of the adjustment in the Contract Time.

A Contract Change Order shall not become effective until an authorized representative of the Owner has signed it. Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered work, unless otherwise provided in the approved Contract Change Order.

#### **B. Contractor-Initiated Changes**

1. Request for Change ("RFC"): A RFC is a document initiated by the Contractor and submitted to the Owner identifying Contractor's proposed revisions to the Contract Documents. The Contractor's RFC may request a revision to the Contract Time, Contract Price and/or Construction Schedule. The RFC shall be based on a material and significant change to the requirements of the Contract Documents; however, in no event may Contractor submit a RFC for a change that was caused by Contractor's failure to comply with the Contract Documents in the performance of the Work under the Contract.

The Owner will issue a written decision concerning the RFC. Contractor's RFC must be supported by sufficient documentation submitted by Contractor to support the costs and/or time requested by the RFC. Any RFC approved by the Owner will result in a Contract Change Order, and Contractor shall not proceed with the proposed RFC work until the Owner has issued a Contract Change Order.

If the Contractor's RFC is denied by the Owner and the Contractor disagrees with the Assessment and still believes that a revision to the Contract Time, Contract Price, and/or Construction Schedule is warranted, the Contractor may submit a claim pursuant to Part 7, "Dispute Resolution" of these General Provisions.

Unless otherwise allowed by the Owner, the costs associated with implementing an approved RFC shall be the responsibility of the Contractor. Such costs shall include coordination with all Subcontractors, and delays and disruption arising from the incorporation of the change or alternative into the Work.

C. Owner Initiated Changes

1. Change Notice: The Owner may issue a Change Notice at any time during the course of the Project, informing the Contractor of a change to the Work required under the Contract. The Change Notice is the Owner's mechanism for initiating a Contract Change Order, and may be presented in different ways. The Change Notice may: 1) notify the Contractor of the impending issuance of an approved Contract Change Order issued unilaterally by the Owner without input from the Contractor and without an adjustment of the Contract Price; 2) notify the Contractor of the impending issuance of an approved Contract Change Order issued unilaterally by the Owner and authorizing additional payment on a Force Account basis; or 3) seek the Contractor's input regarding an adjustment to the Contract Price based on the change to the Work through a Request for Quotation.

2. Request for Quotations: The Owner may issue a Request for Quotation ("RFQ"), which requests the Contractor to provide a quotation concerning a proposed change. RFQ's will be numbered sequentially, specifying the time required for the Contractor to respond with a proposal. A RFQ shall not be considered as authorization to proceed with any change, nor shall such request justify any delay in executing existing Work. Contractor shall, upon receipt of a RFQ, promptly, within the time frame specified in the RFQ, provide quotations for increases or decreases in the Contract Price and the Contract Time resulting from the proposed change. Quotations shall be in the form specified by the Owner and shall include substantiating documentation with an itemized breakdown of Contractor and Subcontractor costs to perform the change, including labor, materials, rentals, services, overhead and profit as set forth in this Contract. The cost of preparing such quotations is included in the Contract Price, and Contractor shall not be entitled to any additional compensation for preparing them.

3. Approved Contract Change Order: A Contract Change Order shall not be effective unless signed by an appropriately authorized representative of the Owner, at which time it is considered an approved Contract Change Order. Upon receipt of an approved Contract Change Order, the Contractor shall promptly proceed with the ordered Work.

In the event Contractor disagrees with the terms of an approved Contract Change Order, it may submit a written protest within ten (10) days of receipt of the approved Contract Change Order pursuant to the "Protest Procedures" delineated later in this Part of the General Provisions.

4. Executed Contract Change Order: A Contract Change Order signed by both parties is an executed Contract Change Order. By signing the Contract Change Order, the Contractor agrees that the specified compensation constitutes full compensation for the changed Work, including payment for interruption, disruption, acceleration, extended overhead, delay or any other "impact" claim or "ripple effect" claim. Contractor specifically understands and agrees that its execution of the Contract Change Order shall constitute a waiver of any right for Contractor to claim any additional compensation with respect to the subject matter of the Contract Change Order.

5. Field Change Notice: A Field Change Notice ("FCN") is a written directive issued by the Owner's Designated Representative ordering a minor addition, deletion, modification, or revision to the Work which does not constitute a change in Contract Documents and cannot be handled through a Change Notice or Request for Change process due to the urgent nature of the Work. Upon receipt of the FCN, the Contractor shall promptly proceed with the Work set forth in the notice. The FCN may include the method of payment for the affected Work. To the extent a FCN requires a change to the Contract Documents, the Owner will issue a Contract Change Order to incorporate the change.

A FCN may include a not-to-exceed cost. The Contractor and Owner's Designated Representative shall, on a daily basis, diligently monitor the costs associated with the FCN and inform the Owner's Designated Representative when such costs are within twenty five percent (25%) of the not-to-

exceed amount stipulated in the FCN. When such costs are within twenty five percent (25%) of the not-to-exceed amount, the Owner's Designated Representative and Contractor's representative shall review the balance of the Work to be completed and all anticipated costs. If the Owner's Designated Representative and Contractor are in agreement, a revised FCN will be issued with a revised not-to-exceed amount. A Change Order will be processed in case there is a cost or schedule impact or the Work will be handled through Force Account at Owner's discretion.

D. Continuance of Construction:

Any disagreement by the Contractor with the Owner's determination of the need for, or amount of, an adjustment in Contract Price or Contract Time associated with an approved Contract Change Order (or disagreement by the Contractor with the Owner's determination that a change has not occurred and no Contract Change Order is needed) shall not, under any circumstances, relieve the Contractor from its obligation to promptly begin and diligently prosecute the Work, including the change that is described in the approved Contract Change Order. Should such disagreement occur, the Contractor's attention is directed to the provisions relating to Protest Procedures set forth elsewhere in these General Provisions.

E. Differing Site Conditions

Within no later than twenty-four (24) hours of discovery of any purported differing site conditions and before such conditions are disturbed, the Contractor shall notify the Owner in writing of: (1) material that the Contractor believes may be hazardous waste, as defined in California Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II or Class III disposal site in accordance with provisions of existing law, (2) subsurface or latent physical conditions at the site differing materially from information made available to the Contractor before the submission of its Bid Forms, or (3) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

In the event conditions as described in (1), (2) or (3) above are discovered, the Contractor shall continue to diligently prosecute the Work in the other portions of the site not affected by such conditions. The Contractor shall also use its best efforts to prevent and/or minimize delays or disruptions to the affected portions of the Work.

The Owner will promptly investigate the purported differing site conditions. If the Owner finds that such conditions do materially differ from conditions observed during the site visit or from representations made in the Contract Documents, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work under this Contract, an equitable adjustment shall be made and the Contract will be modified in accordance with the Change Order procedures set forth herein. In the event of any dispute between the Owner and the Contractor over the significance or existence of the changed conditions, the Contractor shall not be excused from the scheduled completion date set forth herein, but shall retain such rights as provided elsewhere in these Contract Documents.

No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required by this Section. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this Contract.

F. Contract Price Adjustment

If a Contract Change Order provides for an adjustment to the Contract Price, the increased amount owed to Contractor, or the credit due the Owner, shall be determined by one of the following methods, or a combination thereof, as determined by the Owner and at its sole discretion:



1. Unit Prices. The Unit Prices set forth in the Contractor's Bid Schedule Prices will be utilized where they are applicable. If the actual quantities of an item of work are greater or lesser than the Owner's Designated Representative's Estimate of quantity for such item of Work by more than twenty five percent (25%) within a Project segment, such that the application of Unit Prices in the Bid Form will cause substantial inequity to the Owner or Contractor, the Unit Prices will be adjusted by mutual agreement or, based on verifiable documentation made available by either party or, in the absence of agreement, documentation as determined by the Owner in the same manner as if the Work that is greater or less than twenty five percent (25%) of the estimated quantities were to be paid for on a Force Account basis. Owner's determination shall be subject to protest by the Contractor pursuant to the provisions relating to "Protest Procedure" set forth elsewhere in the Contract Documents.

Unit prices for new items included in the Contract Change Order shall be as mutually agreed upon or, in the absence of agreement, as determined by the Owner in the same manner if the Work were to be paid for on a Force Account basis. Owner's determination shall be subject to protest by the Contractor pursuant to the provisions relating to Protest Procedure set forth elsewhere in the Contract Documents.

2. Eliminated Items. The Owner reserves the right to delete any bid item of Work in its entirety. The Owner makes no representation that any work under a bid item of Work will be performed, and all work may be subject to a Contract Change Order that deletes such work. Bid items are distinct and severable from the other bid items, and Contractor shall not be entitled to any anticipated profit, unabsorbed overhead, or other indirect expense attributable to the deleted item, except as provided immediately below with regard to Force Account mark-ups on the direct and verifiable costs incurred prior to the Owner's order the deletes the Work.

Should any bid item of Work be eliminated in its entirety and not accounted for in Sub-paragraph 1 above and, in the absence of an executed Contract Change Order covering such elimination, payment will be made to the Contractor for actual direct and verifiable costs incurred in connection with such eliminated bid item if incurred prior to the date of notification in writing by the Owner of such elimination. If acceptable material is ordered by the Contractor for the eliminated item prior to the date of notification of such elimination by the Owner, and if orders for such material cannot be canceled, it will be paid for at the actual direct and verifiable cost to the Contractor. Actual direct costs shall include documented vendor shipping fees, Supplier restocking fees, if applicable, and Contractor handling costs directly related to the eliminated item(s). In such case, the material paid for shall become the property of the Owner and the actual cost of any further handling will be paid for. If the material is returnable to the vendor and if the Owner so directs, the material shall be returned and the Contractor will be paid for the actual direct cost of charges made by the vendor for returning the material. The actual direct cost of handling returned material will also be paid for. The actual direct and verifiable costs to be paid by the Owner as provided herein will be computed in the same manner as if the Work were to be paid for on a Force Account basis, including the application of Force Account mark-ups to said costs.

3. Changes in Character of Work. If an order by the Owner's Designated Representative materially changes the character of the Work from that indicated in the original Contract Documents, and if the change materially increases or decreases the actual unit cost of performing changed item as compared to the estimated unit cost of performing the Work in accordance with the plans and specifications originally applicable thereto, an adjustment in compensation therefor will be made in accordance with the following:

The basis of such adjustment in compensation will be the difference between (i) an estimate of the reasonable unit cost to perform the Work under the bid item or portion thereof involved in the change as originally planned and (ii) the actual unit cost of performing the Work of said item or portion thereof involved in the change, as changed. Actual unit costs will be determined by the Owner's Designated Representative in the same manner as if the Work were to be paid for on a

Force Account basis or such adjustment will be as agreed to by the Contractor and the Owner's Designated Representative. Any such adjustment will apply only to the portion of the Work of said item actually changed in character. At the option of the Owner's Designated Representative, the Work of said item or portion of item, which is changed in character, will be paid for by Force Account.

If the compensation for an item of work is adjusted under this Section "Changes in Character of Work," the costs recognized in determining such adjustment shall be excluded from consideration in making and adjustment for such item of work under Section 6.01.F.1. "Unit Prices."

Failure of the Owner's Designated Representative to recognize a change in character of the Work at the time the Approved Change Order is issued shall in no way be construed as relieving the Contractor of his duty and responsibility of filing a written protest pursuant to Section 6.01.G. Protest Procedure.

Under no circumstances will work, that is considered to be a change in character, commence until the Owner's Designated Representative and the Contractor agree on a lump sum, Unit Price amount, or other price adjustment. No work shall commence until a Change Order is executed, or an FCN is issued directing the Contractor to perform the Work. However, the Contractor shall diligently prosecute all portions of the Work that are not affected by the pending Change Order and shall use its best efforts to prevent and/or minimize delays or disruptions (if any) to the entire work caused by the pending Change Order.

Under no circumstance shall Contractor be entitled to claim a Change in the Character of Work to compensate for errors or deficiencies in Contractor's original estimate for the Work or to seek additional compensation for extra costs attributable to its own mismanagement or supervision of the Work.

4. Extra Work. New and unforeseen work will be classed as extra work when determined by the Owner that such work is not covered by any of the various items for which there is a bid price or by combinations of such items. In the event portions of such work are determined by the Owner to be covered by some of the various items for which there is a bid price or combinations of such items, the remaining portion of such work will be classed as extra work.

The Contractor shall perform such extra work and furnish labor, material, and equipment therefor upon receipt of an approved Contract Change Order, and in the absence of such approved Contract Change Order, Contractor shall not be entitled to payment for such extra work. Payment for extra work required to be performed pursuant to the provisions in this section, in the absence of an executed Contract Change Order, will be made by Force Account.

#### G. Change Order Protest Procedure

1. If the Contractor disagrees with any terms or conditions set forth in an approved Contract Change Order, he shall submit a written protest to the Owner within ten (10) days after receipt of such approved Contract Change Order, but in no event after commencement of the Work covered by such approved Contract Change Order. The protest shall state Contractor's points of disagreement with respect to the Change Order, including any and all specific references to portions of the Contract Document at issue. The Contractor's protest shall also propose a modification of the items with which Contractor does not agree. If a written protest is not submitted within the time period set forth herein, payment will be made as described in the approved Contract Change Order. Contractor's failure to timely submit a written protest shall constitute a waiver of Contractor's right to claim any additional compensation beyond the amount stated in the approved Contract Change Order for the changed work. Approved Contract Change Orders which are not protested within such time period will be considered as executed Contract Change Orders, and payment made thereunder will constitute full compensation for all work resulting from the change.

2. When the protest of an approved Contract Change Order relates to compensation, the Contractor shall keep full and complete records of the Work that is the subject of the protest. Contractor shall make all cost data pertaining to changed work available to the ODR upon request. The Contractor shall submit substantiating cost data with the protest Contractor's failure to submit cost data shall constitute a waiver of Contractor's right to claim any additional compensation for the disputed work.

3. The Contractor shall cooperate with the Owner's Designated Representative to reach agreement at the earliest practical date with respect to the disputed work. If an agreement has been reached, a revised Contract Change Order will be approved by the Owner and issued to the Contractor for signature. Unless and until the Owner and Contractor agree upon the terms of compensation incorporated in a revised executed Contract Change Order, the compensation shall be as specified under the protested approved Contract Change Order.

4. When the protest of an approved Contract Change Order relates to an adjustment of Contract Time for the completion of the Work, those disputes will be determined in accordance with the provisions of "Delays and Extensions of Time" elsewhere in these Contract Documents.

5. If the Contractor's protest is denied by the Owner and the Contractor disagrees with the Assessment wishes to pursue the dispute further, the Contractor may submit a claim pursuant to Part 7, Dispute Resolution of these General Provisions.

#### H. Force Account Payment

When Work performed pursuant to a Change Order is to be paid for on a Force Account basis, the Contractor's labor, materials and equipment used in the performance of such Work shall be subject to the approval of the Owner, and the compensation will be determined as set forth below in this section.

##### 1. Work Performed by Contractor

The Contractor will be paid the direct costs for labor, materials and equipment used in performing the Work determined as hereafter provided.

In addition to the total of the direct costs, which will be computed as provided below in Sections (1) "Labor," (2) "Materials," and (3) "Equipment Rental," Contractor will be entitled to markup of 15 percent to the cost of labor, 10 percent to the cost of materials, and 5 percent to rented equipment.

The above markups shall constitute full compensation, covering the costs of all supervision, overhead, profit and any other general expense not specifically designated as a direct cost in Sections (1), (2) and (3) below. The total payment made as provided above (i.e., direct cost plus applicable markups) shall be deemed to be the actual cost of such work and shall constitute full compensation therefor. Contractor specifically understands and agrees that such payment shall include any Contractor costs for interruption, disruption, and acceleration, extended overhead, Change Order management, delay or other impact claim or ripple effect claim.

When work paid for on a Force Account basis is performed by forces other than the Contractor's own forces, the Contractor's maximum mark-up for its own account shall be fifteen percent (15%) of the labor costs. The maximum allowable mark-ups for the Subcontractors' costs shall be fifteen percent (15%) to the cost of labor, ten percent (10%) to the cost of materials, and five percent (5%) to rented equipment. However, in the event that any Force Account work is also performed by subtier Subcontractors, the Contractor shall reach agreement with such Subcontractors or other subtier Subcontractors as to an equitable distribution of the total mark-up payments to be made by the Owner for such Force Account work. The Owner shall not be obligated to make any additional

payment for Force Account mark-ups by reason of the performance of the Force Account work by subtier Subcontractors.

(1) Labor. The Contractor will be paid the cost of labor for the workmen (including foremen when authorized by the Owner's Designated Representative), used in the actual and direct performance of the Work. All labor costs associated with overhead, whether field or home office, are specifically excluded herein, as those labor costs are covered by the above mark-ups. The cost of labor, whether the employer is the Contractor, Subcontractor or other forces, will be the sum of the following:

(a) Actual Wages. The actual wages paid shall include any employer payments to or on behalf of the workmen for health and welfare, pension, vacation and similar purposes.

(b) Labor Surcharge. To the actual wages, as defined in Section (a), will be added a labor surcharge set forth in the California Department of Transportation publication entitled Labor Surcharge and Equipment Rental Rates, which is in effect on the date upon which the Work is accomplished. Said labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual wages as defined in Section (a) and subsistence and travel allowance as specified in Section (c). Labor rates submitted for work under time and materials shall include the labor surcharge.

(c) Subsistence and Travel Allowance. The actual subsistence and travel allowance paid to such workmen. No markup will be allowed on subsistence and travel expense.

(2) Materials. The Owner reserves the right to furnish such materials as it deems advisable, and the Contractor shall have no claims for costs and markup on such materials. Only materials furnished by the Contractor and necessarily used in the performance of the Work will be paid for. The cost of such materials will be the cost to the purchaser, whether Contractor, Subcontractor or other forces, from the Supplier thereof, except, as the following are applicable:

(a) If a cash or trade discount by the actual Supplier is offered or available to the Contractor or Subcontractor, it shall be credited to the Owner notwithstanding the fact that such discount may not have been taken.

(b) If materials are procured by the Contractor or Subcontractor by any method which is not a direct purchase from and a direct billing by the actual Supplier to such purchaser, the cost of such materials shall be deemed to be the price paid to the actual Supplier as determined by the Owner plus the actual costs, if any, incurred in the handling of such materials.

(c) If the materials are obtained from a supply or source owned wholly or in part by the Contractor or Subcontractor, the cost of such materials shall not exceed the price paid by the purchaser for similar materials furnished from said source on Bid items or the current wholesale price for such materials delivered to the job site, less any discounts as provided in Section 6.01.H.1.(2)(a), whichever is lower.

(d) If the cost of such materials is, in the opinion of the Owner, excessive, then the cost of such material shall be deemed to be the lowest current wholesale price at which such materials were available in the quantities concerned delivered to the job site, less any discounts as provided in Section 6.01.H.1.(2)(a).

(e) If the Contractor does not furnish satisfactory evidence of the cost of such materials from the actual Supplier thereof within sixty (60) days after the date of delivery of the materials or within fifteen (15) days after Acceptance of the Contract, whichever occurs first, the Owner reserves the right to establish the cost of such materials at the lowest current wholesale prices at which such

materials were available in the quantities concerned delivered to the location of the Work, less any discounts as provided in Section 6.01.H.1.(2)(a).

(3) Equipment. Within fifteen (15) days after Notice to Proceed is issued to the Contractor, the Contractor shall submit a list of equipment intended to be used on the Contract for review and approval by the Owner. The equipment list will identify all pieces of the equipment to be used on the Project and will include the make, model number, serial number and all attachments for each piece of equipment. The equipment submittal will include hourly rates (excluding operators) for (i) equipment operated for forty (40) hours and less per week; (ii) equipment operated for more than forty (40) hours per week; and (iii) equipment not operated and on standby. In determining a suitable rental rate for equipment, the Owner's Designated Representative shall take into consideration the applicable Schedule of Equipment Rates issued by Contractor, as well as Contractor's proposed rate(s) and supporting documentation. Standby rates will apply for equipment operating over eight (8) hours in any given twelve (12) hour shift.

Equipment located at a Work Site and utilized on non-Force Account work shall not be eligible for standby payment, and shall be charged on a Force Account basis only when solely performing pre-approved Force Account work tasks.

If it is deemed necessary by the Owner to use equipment not listed in the approved Equipment Submittal, outside rentals may be utilized. Contractor shall provide copies of invoicing from the rental agency as part of the Force Account documentation. If the equipment is used on Contract work during the same rental period, only that portion, based on the actual hours of operation, will be applied to the Force Account work.

The rental rates paid as above provided shall include the cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, ownership, depreciation, storage, insurance and all incidentals.

Operators of rented equipment will be paid for as provided in Section (1), Labor.

All equipment shall, in the opinion of the Owner's Designated Representative, be in good working condition and suitable for the purpose for which the equipment is to be used. Prior to beginning Force Account work, the Owner and Contractor shall agree on all equipment to be used for the Work described in the daily time and material form.

Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$1000 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefor.

No payment will be made on a Force Account basis for equipment that is inoperative due to breakdown, servicing or repair or is not functioning according to the manufacturer's performance standards or is not being operated by a qualified operator.

For the use of equipment not listed on the approved Equipment Submittal that is moved in on the Work and used exclusively for extra work to be paid for on a Force Account basis, the Contractor will be paid at the actual rental rates verified by the Contractor or rates charged for similar equipment listed in the Equipment Submittal. The cost of transporting the equipment to the location of the Work and its return to its original location, will be paid in accordance with the following provisions. The original location of the equipment to be hauled to the location of the Work will be agreed to by the Owner in advance. The Owner will pay the costs of loading and unloading such equipment. The cost of transporting equipment in low bed trailers shall not exceed the hourly rates charged by established haulers. The cost of transporting equipment shall not exceed the applicable minimum established rates of the Public Utilities Commission.

Equipment charges shall begin at the time the equipment is unloaded at the site of the extra work, shall include each day of the Work Week that the equipment is at the site of the extra work, excluding Legal Holidays, unless the equipment is used to perform the extra work on such days, and shall terminate at the end of the day on which the Owner directs the Contractor to discontinue the use of such equipment.

Equipment operated less than thirty (30) minutes shall be considered to be one-half (1/2) hour of operation charged accordingly.

Should the Contractor desire the return of the equipment to a location other than its original location, the Owner will pay the cost of transportation in accordance with the above provisions; provided such payment shall not exceed the cost of moving the equipment to the Work.

Payment for transporting, and loading and unloading equipment, as above provided, will not be made if the equipment is used on the Work in any other way than upon extra work paid for on a Force Account basis.

When extra work, other than Work specifically designated as extra work in the Contract Documents, is to be paid for on a Force Account basis and the Owner determines that such extra work requires the Contractor to move on to the Work Site equipment which could not reasonably have been expected to be needed in the performance of the Contract, the Owner may authorize payment for the use of such equipment at equipment rental rates in excess of those listed as applicable for the use of such equipment subject to the following conditions:

- (a) The Owner shall specifically approve the necessity for the use of particular equipment on such Work,
- (b) The Contractor shall establish to the satisfaction of the Owner that such equipment cannot be obtained from his normal equipment source or sources and those of his Subcontractors,
- (c) The Contractor shall establish to the satisfaction of the Owner that the proposed equipment rental rate for such equipment from his proposed source is reasonable and appropriate for the expected period of use.
- (d) The Owner shall approve the equipment source and the equipment rental rate to be paid by the Owner before the Contractor begins Work involving the use of said equipment.

## 2. Work Performed by Special Forces or Other Special Services

When the Owner's Designated Representative and the Contractor, by agreement, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of his Subcontractors, such service or extra work item may be performed by a specialist. Invoices for such service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, materials and equipment rental costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.

In those instances wherein a Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the job site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing.

To the specialist invoice price, less a credit to the Owner for any cash or trade discount offered or available, whether or not such discount may have been taken, will be added 5 percent in lieu of the

percentages provided in, "Force Account Payment, Work Performed by Contractor" elsewhere in these General Provisions.

### 3. Records

The Contractor shall maintain his records in such a manner as to provide a clear distinction between the direct costs of extra work paid for on a Force Account basis and the costs of other operations.

From the above records, the Contractor shall furnish the Owner completed daily extra work reports, on forms furnished by the Owner, for each day's extra work to be paid for on a Force Account basis. The daily extra work reports shall itemize the materials used, and shall cover the direct cost of labor and the charges for equipment rental, whether furnished by the Contractor, Subcontractor, or other forces, except for charges described in Section 2, "Work Performed by Special Forces or Other Special Services." The daily extra work reports shall provide names or identifications and classifications of workmen, the hourly rate of pay and hours worked, and also the size, type and identification number of equipment, and hours operated. Daily extra work and Force Account reports (actual or claimed) shall be signed by both the Owner's and Contractor's representatives within twenty-four (24) hours of the performance of the Work.

Valid copies of vendor's invoices shall substantiate material charges. Such invoices shall be submitted with the daily extra work reports, or if not available, they shall be submitted with subsequent daily extra work reports. Should said vendor's invoices not be submitted within sixty (60) days after the date of delivery of the material or within fifteen (15) days after the Acceptance of the Contract, whichever occurs first, the Owner reserves the right to establish the cost of such materials at the lowest current wholesale prices at which said materials were available in the quantities concerned delivered to the location of work less any discounts as provided in Section 6.01.H.1.(2)(a).

The Contractor or his authorized representative shall sign said daily extra work reports.

The Owner will compare his records with the completed daily extra work reports furnished by the Contractor and make any necessary adjustments. When these daily extra work reports are agreed upon and signed by both parties, said reports shall become the basis of payment for the Work performed, but shall not preclude subsequent adjustment based on a later audit by the Owner.

## **END OF PART 6**

## **PART 7 - DISPUTE RESOLUTION**

### **7.01 TIMELY NOTICE OF CLAIM**

A. Contractor shall be solely responsible for providing written notice to Owner of any claims for additional compensation and/or time in accordance with the provisions of the Contract Documents. It is Owner's intent to investigate and attempt to resolve any Contractor claims before the Contractor has performed any disputed Work. In addition, Owner desires to mitigate its responsibility (if any) for any Contractor claims before the disputed Work is performed. Therefore, Contractor's failure to provide written notice within the time limitations set forth below shall constitute a waiver of Contractor's claims for additional compensation and/or time.

### **7.02 NOTICE OF CLAIM PROCEDURE**

Compliance with all change order procedures is a prerequisite to filing a Public Contract Code Claim pursuant to this section. Claims must be submitted no later than (a) 30 days after change order procedures are complete and the Contractor has notified the General Manager in writing that

the work is being performed, or that the determination direction is being complied with under protest or (b) 30 days after the occurrence of the event giving rise to the claim.

In accordance with the procedures set forth in Public Contract Code sections 9204 and 20104-20104.6, a Contractor may submit a claim by registered or certified mail with return receipt requested, for one or more of the following: (a) a time extension, including, without limitation, for relief from damages or penalties for delay assessed by the Owner; (b) payment by the Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract and payment for which is not otherwise expressly provided or to which the Contractor is not otherwise entitled; or (c) payment of an amount that is disputed by the Owner.

The Contractor shall furnish reasonable documentation to support the claim, including but not limited to: 1) a clear, concise recital of the basis upon which the claim is asserted, including a designation of the provisions of the Contract Documents upon which the claim is based, 2) a statement as to the amount of time and/or compensation sought pursuant to the claim; 3) whether the Contractor's claim arises from an ongoing occurrence, and if so a description of the specific Work activities affected by the claim, 4) a time impact analysis in the event that Contractor requests a time extension, 5) full and complete cost records supporting the amount of any claim for additional compensation, and 6) a notarized certification by the Contractor as follows: "Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the information contained herein is a true, accurate and complete statement of all features relating to the claim asserted." Failure by the Contractor to provide sufficient documentation will result in denial of the claim. The Owner reserves the right to request additional documentation, or clarification of the documentation provided.

Upon receipt of a claim, the Owner will conduct a reasonable review and provide a written statement to the Contractor identifying what portion of the claim is disputed and what portion is undisputed within 45 days of receipt of the claim. The Owner and Contractor may, by mutual agreement, extend the 45 day time period. For any undisputed portion of a claim, the Owner must make payment within 60 days of its issuance of the written statement.

If the Contractor disputes the Owner's written statement, or if the Owner fails to respond, the Contractor may demand an informal conference to meet and confer for settlement of the issues in dispute. The Owner will then schedule the meet and confer conference within 30 days of the demand. Within 10 business days following the meet and confer conference, the Owner will provide a written statement identifying the portion of the claim that remain in dispute. Any payment due on an undisputed portion of the claim will be made within 60 days of the meet and confer conference.

After the meet and confer conference, any disputed portion of the claim shall be submitted to non-binding mediation. Alternatively, upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. If mediation is unsuccessful, the parts of the claim that remain in dispute shall be subject to applicable procedures set forth below.

Failure of a public entity to respond to a claim within the time periods described above shall result in the claim being deemed rejected in its entirety. Additionally, amounts not paid in a timely manner shall bear interest at 7 percent per year.

In the event that the mediation is unsuccessful, Contractor must file a government claim pursuant to Government Code section 910 et seq. in order to initiate a civil action.

In any civil action filed to resolve claims, the court shall submit the matter to nonbinding mediation within 60 days following the filing or responsive pleading, provided that the parties have not already participated in mediation of the claim as outlined above. If the matter remains in dispute after



nonbinding mediation, the court shall submit the matter to judicial arbitration pursuant to code of civil procedure section 1141.10 et seq. If the matter remains in dispute after judicial arbitration, the owner or the contractor may request a trial de novo. All claims are subject to the provisions of public contract code sections 9201-9204.

### **7.03 THIRD PARTY CLAIMS**

Pursuant to Public Contracts Code Section 9201, the Owner shall have full authority to compromise or otherwise settle any claim relating to the Agreement at any time. The Owner will provide for timely notification to the Contractor of the receipt of any third-party claim, relating to the Agreement. Notice shall be in writing and will be provided within thirty (30) days. The Owner shall be entitled to recover its reasonable costs incurred in providing such notification.

### **END OF PART 7**

**PART 8 - TIME****8.01 DELAYS AND EXTENSIONS TO THE WORK**

A. Contractor must complete all Work within the time specified in Division 1 of these Contract Documents. The Contractor will be granted an extension of time and will not be assessed Liquidated Damages or the cost of engineering and inspection for any delay in substantially completing the Work (or parts thereof) beyond the time set forth in the Special Provisions elsewhere in the Contract Documents, provided that such delay was caused by unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include acts of public enemy, fire, floods, abnormal weather (as described below), tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes and freight embargoes fire, changes made pursuant to the provisions of "Changes in Work" elsewhere in the Contract Documents or acts or neglect of the Owner not contemplated by the Contract Documents. In all cases, any extension of time is conditioned on the following:

1. That the cause is not due to the fault or negligence of the Contractor, and the Contractor has taken reasonable precautions to prevent the delays and minimize the effects thereof; and
2. That the Contractor notifies the Owner's Designated Representative in writing within three (3) days from the beginning of such delay specifying the nature of the delay and the measures that have been or will be taken to prevent or minimize the delay. Failure to submit written notice within this time period shall constitute an absolute waiver of any claim for a time extension.

B. No extension of time will be granted for a delay caused by a shortage of materials, unless the Contractor furnishes to the Owner documentary proof that he has diligently made every effort to obtain such materials from all known sources within reasonable reach of the Work and further proof, in the form of schedule data as required in Project Scheduling Requirements elsewhere in the Contract Documents, that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire Work which could not be compensated for by revising the sequence of the Contractor's operations. Only the physical shortage of material will be considered as a cause for extension of time, and no consideration will be given to any claim that material could not be obtained at a reasonable, practical or economical cost or price, unless it is shown to the satisfaction of the Owner that such material could have been obtained only at exorbitant prices entirely out of line with current rates, taking into account the quantities involved and the usual practices in obtaining such quantities.

C. The term "shortage of materials," as used in this section, shall apply only to materials, articles, parts or equipment which are standard items and shall not apply to materials, parts, articles or equipment which are processed, made, constructed, fabricated or manufactured to meet the specific requirements of the Contract Documents.

D. No extensions of time will be granted for delays that have no measurable impact on the completion of the Work (or parts thereof) under the Contract Documents. When extensions of time are granted, they will be limited to the period equivalent to the actual number of days lost on the critical path or controlling operations of the Construction Schedule, taking into account the extent to which that delay could be decreased by reasonable mitigation measures by the Contractor. All requests for extensions of time must be supported with a critical path analysis showing the critical path and impacts to it. Contractor's failure to submit this analysis will be sufficient cause for denial of any request for a time extension.

E. Within a reasonable period of time after the Contractor submits the notice and information required by this section, the Owner will determine whether an extension of time is justified and, if so, the number of days for the extension.

F. Abnormal weather is not valid for a time extension under the Contract.

G. Any Contractor claim for damages or additional compensation based on delay shall be limited to only those circumstances where the Contractor has fulfilled each of the following three (3) requirements:

1. Contractor has established its entitlement to a time extension pursuant to the provisions described above regarding delay and extensions to the Work.

2. The delay was caused solely by the Owner by Owner's issuance of changes made pursuant to the provisions of Changes in Work elsewhere in these General Provisions or by or acts or neglect of the Owner.

3. The delay was unreasonable under the circumstances and not within the contemplation of the parties.

It is expressly understood and agreed that delays caused by the Owner will be non-compensable when there are concurrent delays caused by the Contractor. Also, Contractor shall have no entitlement to additional compensation for any delay where there have been concurrent delays caused by non-compensable delays, including, but not limited to, fire, floods, tidal waves, earthquakes, epidemics, quarantine restrictions, strikes, labor disputes and freight embargoes.

In the event that the Contractor submits a claim for additional costs associated with overhead, the Contractor shall, within sixty (60) calendar days of the Owner's Designated Representative's written request, submit to the Owner's Designated Representative an audit examination and report performed by an independent Certified Public Accountant of the Contractor's actual unanticipated overhead costs. The independent Certified Public Accountant's audit examination shall be performed in conformance with the requirements of the American Institute of Certified Public Accountants Attestation Standards. The audit examination and report shall depict the Contractor's Project and company-wide financial records and shall specify the actual overall average daily rates for both field and home office overhead for the entire duration of the Project, and whether the costs have been properly allocated. The rates of field and home office overhead shall exclude all unallowable costs as determined in the Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31. The audit examination shall determine if the rates of field and home office overhead:

4. are allowable in conformance with the requirements of the Federal Acquisition Regulations, 48 CFR, Chapter 1, Part 31;

5. are adequately supported by reliable documentation; and

6. related solely to the Project under examination.

Upon the Owner's Designated Representative's written request, the Contractor shall make its financial records available for audit by the Owner for the purpose of verifying the actual rate of overhead specified in the audit submitted by the Contractor. The overhead specified in the audit, submitted by the Contractor, will be subject to approval by the Owner's Designated Representative.

H. Right of Way Delays. If, through the failure of the Owner to acquire or clear the right of way as specified in the Contract Documents, the Contractor sustains loss which could not have been avoided by the judicious handling of its Work, Contractor will be entitled to such amount as the Owner may find

to be fair and reasonable for such part of the Contractor's actual loss, as, in the opinion of the Owner was unavoidable, determined as follows:

Compensation for idle time of equipment will be determined in the same manner as determinations are made for equipment used in the performance of extra work paid for on a Force Account basis with the following exceptions:

1. The time for which such compensation will be paid will be the actual normal working hours during which such delay conditions exists, but in no case will exceed 8 hours in any one day.
2. The days for which compensation will be paid will be each calendar day of the Work Week, and Legal Holidays, during the existence of such delay, except that when rental of the equipment is paid for under the provisions in "Force Account Payment – Equipment", no payment will be made for right of way delays in accordance with the provisions in this section.

Actual loss shall be understood to include no items of expense other than idle time of personnel, cost of extra moving of equipment, and cost of longer hauls. Compensation for idle time of equipment will be determined as provided in this section, "Delays and Time Extensions," and compensation for idle time of personnel will be determined pursuant to "Force Account – Labor" elsewhere in the Contract Documents, and no markup will be added in either case for overhead and profit. The cost of extra moving of equipment and the cost of longer hauls will be paid for as extra work as provided pursuant to "Changes to the Work" elsewhere in the Contract Documents.

In addition to the compensation described above, if performance of the Contractor's Work is delayed as a result of the failure of the Owner to acquire or clear right of way, an extension of time determined pursuant to the provisions in "Delays and Extensions to the Work," will be granted.

## **8.02 LIQUIDATED DAMAGES**

A. It is agreed by the parties to the Contract that in case all the Work called for under the Contract in all parts and requirements is not completed within the number of calendar days as set forth in Division 1, damage will be sustained by the Owner, and that it is and will be impracticable and extremely difficult to ascertain and determine the actual damage which the Owner will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the Owner, the sum set forth in Division 1 per day for each and every calendar days delay in completing the Work in excess of the number of calendar days prescribed and the number of additional calendar days, if any, authorized by Contract Change Order; and the Contractor agrees to pay said Liquidated Damages herein provided for, and further agrees that the Owner may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

B. Contractor's attention is directed to Section 01001 in Division 1 of these Contract Documents addressing "Liquidated Damages" regarding payment of Liquidated Damages in the event of a delay in the completion of the Work.

## **END OF PART 8**

## **PART 9 - PAYMENTS AND COMPLETION**

### **9.01 SCOPE OF PAYMENT**

A. In consideration for the satisfactory performance of Work under the Contract Documents, Owner shall pay Contractor the Contract Price identified in the Contract. The Contract Price may not be changed except as specified in the Contract Documents.

If the payment clause in the Contract Documents relating to any Unit Price in the bid schedule requires that said Unit Price cover and be considered compensation for certain work or material essential to the item, this same work or material will not also be measured nor paid for under any other pay item which may appear elsewhere in the Contract Documents.

### **9.02 PROGRESS PAYMENTS**

A. Within fifteen (15) days after the effective date in the Notice to Proceed, but in any event prior to the Contractor's first Application for Payment, Contractor shall submit to Owner a detailed Schedule of Values on the Schedule of Values form provided in section 00410 above.

Upon its approval, the Schedule of Values will form a basis for determining the compensation payable to Contractor based on his actual progress of Work with respect to each Lump Sum Bid Item. The Owner prior to any progress payment being made must approve the Schedule of Values.

At the Owner's Designated Representative's discretion the approved Schedule of Values may be used as the basis of calculating the adjustment in compensation for a lump sum bid item due to changes ordered by the Owner's Designated Representative. When an ordered change increases or decreases the quantities shown in an approved Schedule of Values, at the Owner's Designated Representative's discretion, the adjustment in compensation may be determined in the same manner specified for increases and decreases in the quantity of a bid item of work in accordance with Section 6.01.F.1. Unit Prices of the General Provisions.

B. On a monthly basis, Contractor shall submit Applications for Payment in the form required by the Owner. Contractor's Applications shall be based on the Schedule of Values and on the Unit Prices submitted in Contractor's Bid Forms. These applications shall be supported by documentation specified in Division 1. The Contractor shall certify that the Work for which payment is requested has been accomplished. When requested by Owner, Contractor shall submit receipts, invoices and other documentation that the Owner requires to be furnished for purpose of evaluating the application.

PDF invoices should be emailed to the WETA project manager, with cc to payables@watertransit.org. No hard copy invoices are required if WETA acknowledges receipt of the email invoice.

C. Pursuant to Public Contract Code Section 20104.50, Owner will pay Contractor within thirty (30) days of its receipt of an undisputed and properly submitted Application for Payment, after deducting all previous payments, retention, and other sums as described in the Contract Documents. Within seven (7) days of its receipt of Contractor's Application for Payment, Owner will determine whether it complies with the provisions of the Contract Documents. As appropriate, Owner will return the application to the Contractor accompanied by a document prepared by Owner setting forth the reasons for the rejection. Thereafter, Contractor shall correct and resubmit the Application for Payment. Progress payments may be withheld for Work that is not performed in accordance with the Contract Documents.

D. The Owner may deduct the following from each progress payment:

1. An amount equal to one hundred percent (100%) of the amount claimed under any stop notice or other lien filed against the Contractor, plus an amount to provide for the reasonable cost of any litigation thereunder.
2. Any Liquidated Damages or Assessments that have accrued as of the date of the application for payment.
3. Any sums expended by the Owner in performing any of the Contractor's obligations under the Contract that the Contractor has failed to perform.
4. Any other sums that the Owner is entitled to recover from the Contractor under the terms of the Contract including damages to Owner property.
5. Any sums associated with Contractor not staffing the Project with Project representatives as required in the Special Provisions of the Contract Documents.
6. The failure of the Owner to deduct any of the above identified sums from a progress payment shall not constitute a waiver of the Owner's right to such sums.

### **9.03 RETENTION ON PROGRESS PAYMENTS**

- A. From each progress payment estimate, five percent (5%) will be deducted and held in retention by the Owner, the remainder less any deductions described above will be paid to the Contractor as progress payments.

At any time after fifty percent (50%) of the Work has been completed (as determined by the progress payments made), if the Owner's Designated Representative finds, in his sole discretion, that satisfactory progress is being made, the Owner may, but is under no obligation to reduce the total retainage from each previous and future progress payment to not less than three (3) percent of the total amount of the progress payment. Any such reduction will only be made upon the written request of the Contractor and shall be approved in writing by the surety on the Performance Bond and by the surety on the Payment Bond. The approval of the surety shall be submitted to the Owner's Designated Representative. The signature of the person executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing the person to give that consent must either accompany the document or be on file with the Owner.

Pursuant to Public Contract Code Section 22300, the successful Bidder may submit securities in lieu of retention payments by the Owner. Upon Contractor's request, Owner will make payment of funds withheld from progress payments, pursuant to the requirements of California Public Contract Code Section 22300, if Contractor deposits in escrow with Owner or with a bank acceptable to Owner, securities eligible for investment under California Government Code Section 53601/16430, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and Owner, upon the following conditions:

1. Contractor shall bear the expenses of Owner and the escrow agent in connection with the escrow deposit made.
2. Securities or certificates of deposit to be placed in escrow shall be of a value at least equivalent to the amounts of retention to be paid to Contractor pursuant to this section.
3. Contractor shall enter into an escrow agreement satisfactory to Owner, which agreement shall be substantially similar to the form provided in California Public Contract Code Section 22300.
4. Contractor shall obtain the written consent of the surety to such agreement.

#### **9.04 RELIEF FROM MAINTENANCE AND BENEFICIAL OCCUPANCY**

##### **A. Relief from Maintenance**

1. Attention is directed to Responsibility for Work and Materials contained elsewhere in these General Provisions regarding Contractor's responsibility to rebuild, replace, repair or restore the Work in the event of any injury, loss or damage to same. Upon written request by the Contractor, Owner may relieve the Contractor of the responsibility to maintain and protect certain portions of the Work which have been completed in all respects in accordance with the requirements of this Contract ("Relief from Maintenance"). Portions of the Work, for which the Contractor may be granted Relief from Maintenance, shall be identified in Section 01001, Time of Completion, Liquidated Damages and Contractor's Licenses.

2. Relief from Maintenance, if granted, and the scope thereof shall be documented in writing. After Owner's granting of Relief from Maintenance, Contractor shall still be obligated to perform warranty work with respect to the portions of the Work covered by the Relief from Maintenance. In addition, Owner's granting of Relief from Maintenance shall not be construed as an acceptance by the Owner of any latent defects discovered with regard to Contractor's work. Furthermore, Contractor's obligations under Section 3.13, Indemnification, shall still remain applicable after Owner's grant of Relief from Maintenance.

3. With respect to any portion of the Work covered by an Owner's granting of Relief from Maintenance, the warranty periods called for with respect to in the Contract Documents shall not commence until the date of Relief from Maintenance.

##### **B. Beneficial Occupancy**

1. The Owner may at any time notify the Contractor in writing that it intends to take Beneficial Occupancy of any portion of the Work even though the Work may not be Substantially Complete. Unless the reason for Owner's taking Beneficial Occupancy is that the Contractor has not completed the Work (or portions thereof) in accordance with the Contract Time (in such event Paragraph 3, below, applies), Owner's Beneficial Occupancy shall relieve the Contractor from its responsibility for maintenance, loss or damage to that portion of the Work for which the Owner has taken Beneficial Occupancy other than that resulting from the Contractor's act or omission, negligence willful misconduct or breach of warranty.

2. Should the Work (or portion thereof) not be completed in accordance with the Construction Schedule within the Contract Time (as adjusted under the terms of the Contract Documents), the Owner shall have the right, but not the obligation, to take Beneficial Occupancy of the Work. In such event, Contractor shall not be entitled to any additional compensation on account of said occupancy by Owner, nor shall Contractor be relieved of any of its responsibilities under the Contract Documents, including, without limitation, Contractor's obligation to complete the Work in accordance with the Construction Schedule.

3. Beneficial Occupancy shall not be deemed an Acceptance of the Work. Within a reasonable time after Owner provides notice that it intends to take Beneficial Occupancy, the Contractor and the Owner shall make an inspection of that portion of the Work to determine its status of completion and will prepare a list of the items remaining to be completed or corrected before the Work has achieved Final Completion. During any Beneficial Occupancy of the Work, the Owner shall allow the Contractor reasonable access to complete or correct items on the list and to complete other related Work.

4. Owner's Beneficial Occupancy shall not relieve the Contractor of his responsibility to maintain all insurance and bonds required under the Contract Documents until the entire Project is accepted by the Owner.

**9.05 TITLE**

A. Title to Work for which progress or other payments have been made shall pass to the Owner at the time of payment. To the extent that title has not previously been vested in the Owner by reason of progress payments, full title shall pass to the Owner at time of delivery or completion of the Work. Work to which the Owner has received title by reason of progress payments shall be segregated from other Contractor and/or Subcontractor materials related to the Work and clearly identified as Owner property. Contractor will undertake to promptly file or record as applicable any forms necessary to insure such title against claims of any third party.

B. The title transferred as above shall in each case be good and free and clear from any and all security interests, liens, and/or other encumbrances. The Contractor shall not pledge or otherwise encumber any item in any manner that would result in any lien, security interest, charge, and/or claim against said items.

C. The transfer of title as specified above shall not be deemed as an Acceptance of the Work by the Owner, nor relieve the Contractor from its obligation to perform the Work in accordance with the Contract Documents. Contractor shall still be obligated to protect the work from damage until Owner's Acceptance of work.

**9.06 FINAL INSPECTION AND ACCEPTANCE OF THE WORK**

A. When Contractor believes that the entire Work is fully and finally completed, including the satisfactory completion of inspections, tests, and documentation specified in the Contract Documents and the completion of all punch list and clean-up items, the Contractor shall submit to the Owner a written request for final Acceptance of the Work ("Final Acceptance") within fifteen (15) days thereafter, specifying that the Work is fully and finally completed and the date on which it was completed. Within fifteen (15) days after receipt of the request for Final Acceptance, the Owner will inspect the Work and will either:

1. Reject the request for Final Acceptance, specifying the defective and/or uncompleted portions of the Work, or
2. Issue an executed Notice of Final Acceptance and record a Notice of Completion with the County Recorder.

B. If the Owner rejects the request for Final Acceptance; the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall again submit a written request for Final Acceptance of the Work, specifying a new date based on the date the defective and/or uncompleted portions of the Work were corrected. Thereafter, the foregoing procedure shall apply successively until Owner has verified that the Work is fully and finally completed and given the Contractor an executed Notice of Final Acceptance. Immediately upon and after such formal written Final Acceptance by the Owner, the Contractor will be relieved of the duty of maintaining the Work as a whole.

All warranties commence upon Final Acceptance of the Work or Relief from Maintenance, whichever occurs first.

Owner's Final Acceptance of the Work shall not be construed as an acceptance by the Owner of any latent defects discovered with regard to Contractor's work. Furthermore, Contractor's obligations under Section 3.13, Indemnification, shall still remain applicable after Owner's grant of Final Acceptance of the Work.



C. Record Documents and Operation and Maintenance Manuals.

Prior to issuance of the Notice of Final Acceptance by the Owner, the Contractor shall submit to the Owner the Record Documents and Operation and Maintenance Manuals as specified under Division 1.

**9.07 FINAL PAYMENT AND CLAIMS**

A. Final payment will be made only after Contractor has achieved Final Completion of the Work pursuant to the provisions of the section titled Final Inspection and Acceptance of the Work contained elsewhere in the Contract Documents.

B. Before final payment can be made, the Contractor shall have furnished the Owner with the following:

1. All As-Built drawings, catalogues, instruction sheets and information, in both electronic and hard copy format, as required by the Contract Documents.

2. One signed copy of the Release as discussed below in this section and on a form furnished by the Owner.

C. Within thirty (30) days of the date of the Owner's Notice of Final Acceptance, the Contractor shall prepare and submit a proposed Final Invoice, showing the proposed total amount due the Contractor, segregated by Bid item quantities, Change Order Work, and other basis for payments; deductions made or to be made for prior payment; and amounts previously retained. Prior invoices and payments shall be subject to correction in the proposed Invoice for Final Payment. Payments to the Contractor will be made only for the actual quantities of the Contract items of work constructed in accordance with the Contract Documents.

Submitted with Contractor's proposed Final Invoice shall be his final documentation with respect to any claims that the Contractor has elected to continue to pursue; if there are no such claims, Contractor shall include a statement that there are no outstanding claims regarding the Work. The Owner shall consider no Claim filed with the proposed Final Invoice unless the Contractor has fully complied with the conditions of the Notice of Potential Claims, Protest Procedures and Delays and Extensions of Time sections of the Contract Documents.

D. The Owner will review the Contractor's proposed Final Invoice and necessary changes or corrections will be forwarded to the Contractor. Within ten (10) days thereafter, the Contractor shall submit a revised proposed Final Invoice incorporating changes or corrections made by the Owner together with any new claims resulting therefrom. Upon approval by the Owner, the corrected proposed Final Invoice will become the approved Final Invoice.

E. If no claims are submitted with the proposed Final Invoice, and agreements are reached on all questions regarding the proposed Final Invoice, the Owner in exchange for an executed release, satisfactory in form and substance to the Owner as provided below, will pay the entire sum found due on the approved application. However, the Owner will withhold sums sufficient to pay all unsettled claims for which stop notices have been filed pursuant to Section 3179 et seq. of the California Civil Code, together with the reasonable cost of any litigation thereunder.

F. If the Contractor does submit claims with the proposed Final Invoice, then upon final determination of all the Contractor's claims, the Owner will pay the entire sum found due upon the final invoice, including the amount, if any, allowed on claims, except that the Owner will withhold sums sufficient to pay all unsettled claims for which stop notices have been filed pursuant to Section 9300 et seq. and 9350 et seq. of the California Civil Code, together with the reasonable cost of any litigation thereunder.

Claims filed by the Contractor shall be fully supported and made in sufficient detail to enable Owner to ascertain whether the basis and amount of said claims are valid. If additional information or details are required by the Owner to determine the validity of the claims, Contractor shall furnish such further information or details so that Owner receives the information or details no later than seven (7) days after receipt of the written request from the Owner. Failure to submit such information and details to the Owner within the time specified will be sufficient cause for denying the claim.

Contractor shall maintain and submit full and complete records of the costs and additional time incurred for the Work for which a claim for additional compensation is made. Owner or its designated claim investigator shall have access to any additional records as may be required by the Owner to determine the facts and contentions involved in the claims. Failure to permit access shall be sufficient cause for denying the claims.

A notarized certificate indicating the following language shall accompany claims submitted by the Contractor:

Under the penalty of perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et seq., the undersigned hereby certifies that the claim submitted herewith for additional compensation and time, if any, made with respect to the Work on this Contract is a true and accurate statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract between Contractor and Owner.

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Name

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Title

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Date

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Notary

Failure to submit the notarized certificate will be sufficient cause for denying the claim.

Any claim for overhead type expenses or costs, in addition to being certified as stated above, shall be supported by an audit report of an independent Certified Public Accountant. Any such overhead claim shall also be subject to audit by the Owner, and Contractor shall provide all records requested by the Owner in performing the audit.

Any costs or expenses incurred by the Owner in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the Owner, shall be to the extent allowed under the California False Claims Act, or other applicable law.

G. The release from the Contractor shall be from any and all claims arising from the Work under and in connection with the Agreement and shall release and waive any claims against the Owner. The release shall be accompanied by a certification by the Contractor.

1. That it has resolved any claims made by Subcontractors, Suppliers and other against the Contractor or the Work.

2. That it has no reason to believe that any party has a valid claim against the Contractor or the Project which has not been communicated in writing by the Contractor to the Owner with the certification; and

3. That all warranties and guarantees are in full force and effect. The release and the certification shall survive Final Payment.

H. Final payment will be made within thirty (30) days after receipt of an approved final invoice and other required Submittals referenced above and determination of all Contractor's claims, or 60 days after Acceptance of the Work by the Owner, whichever is later, provided, however, that if an approved final invoice has not been submitted within 60 days after Acceptance of the Work by the Owner, the Owner may elect to make payment of sums not in dispute without prejudice to the right of either the Owner or the Contractor in connection with such disputed sums.

The Owner may withhold from the Final Payment an amount not to exceed one hundred fifty percent (150%) of any amount in dispute between the Owner and the Contractor.

I. The making of final payment shall not operate to release the Contractor or his sureties from obligations arising under this Contract, the Contract bonds and warranties as herein provided. Specifically, the making of final payment shall not constitute a waiver and release of claims by the Owner arising from

1. Unsettled or future liens,
2. Failure of the Work to comply with the requirements of the Contract Documents,
3. The terms of any warranties required by or contained in the Contract Documents,
4. The right to any insurance proceeds or the right to make any insurance or bond claims,
5. Any claims with respect to Contractor's obligation of indemnity with respect to claims, asserted by third parties, or
6. Any latent deficiencies with the Work or Contractor's fraud.

#### **9.08 STOP NOTICES**

A. The Owner will retain and withhold from payment to the Contractor sufficient sums to cover stop notices filed pursuant to Section 3179 et seq. of the California Civil Code, including an amount to provide for the reasonable cost of any litigation thereunder.

### **END OF PART 9**

## **PART 10 - PROTECTION OF PERSONS AND PROPERTY**

### **10.01 SUBSURFACE EXCAVATIONS, NOTIFICATION**

The Contractor shall contact the regional notification center, Underground Service Alert, and schedule his Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Without limiting the foregoing, Contractor's attention is directed to Government Code Sections 4216 to 4216.9, and in particular Sections 4216.2(a)(1) and 4216.2(c) respectively, which provide, in part:

"Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center, at least two working days, but not more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated . . .

The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.

### **10.02 HAZARDOUS CHEMICALS AND WASTES**

A. The Contractor shall bear full and exclusive responsibility for any release of hazardous or non-hazardous chemicals or substances during the course of the Work. The Contractor shall immediately report any such release to the Owner. The Contractor shall be solely responsible for all claims and expenses associated with the response to, removal and remediation of the release, including, without limit, payment of any fines or penalties levied against the Owner by any agency as a result of such release and shall hold harmless, indemnify and defend the Owner from any claims arising from such release. For purposes of this section only, the term "claims" shall include:

1. All notices, orders, directives, administrative or judicial proceedings, fines, penalties, fees or charges imposed by any governmental agency with jurisdiction, and
2. Any claim, cause of action, or administrative or judicial proceeding brought against the Owner, its directors, employees, and agents for any loss, cost (including reasonable attorney's fees), damage or liability, sustained or suffered by any person or entity, including the Owner.

If the performance of the Work creates any hazardous wastes, those wastes shall be properly disposed of according to federal, state and local laws, at the expense of the Contractor. The Contractor shall dispose of the wastes under its own EPA Generator Number. In no event shall the Owner be identified as the generator. The Contractor shall notify the Owner of any such hazardous wastes and the Owner reserves the right to a copy of the results of any tests conducted on the wastes and, at its cost, to perform additional tests or examine those wastes, prior to its disposition. The Contractor shall hold harmless, indemnify and defend the Owner from any claims arising from the disposal of the hazardous wastes, regardless of the absence of negligence or other malfeasance by Contractor. Disposal of all Hazardous Materials must be performed in accordance with all applicable federal, state and local laws and regulations. Copies of a required regulatory documentation including copies of final manifests shall be supplied to the Owner.

### **10.03 PUBLIC SAFETY**

A. The Contractor shall assume all responsibility for public safety during the performance of its Work, and all costs arising therefrom shall be included in the Contract Price. Whenever the Contractor's operations create a condition hazardous to traffic or to the public, he shall furnish, erect and maintain, at his expense, such fences, barricades, lights, signs and other devices and take such other protective measures as are necessary to prevent accidents or damage or injury to the public. The Contractor shall establish the pedestrian detours with comparable lighting to the original pedestrian areas. The Contractor shall arrange for such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions affecting traffic. For Work in a public right-of-way, the Contractor shall comply with the rules and regulations of the State, County or local agency that owns the right-of-way.

B. The Contractor shall promptly and fully comply with and carry out, and shall without separate charge required to the Owner, all safety and first aid requirements prescribed by all applicable federal, state and local laws and regulations, rules and orders. The Work shall be done in a safe manner; and Contractor shall safeguard the safety and health of its employees, Subcontractors, and the people of local communities. Contractor shall also be responsible for ensuring that its Subcontractors comply with the provisions of this section.

Upon the failure of the Contractor to comply with any of the requirements of this section, the Owner shall have the authority, but not the duty, to stop the Work until such failure is remedied. Contractor shall not be entitled to an adjustment of the Contract Time or an increase in the Contract Price due to any such suspensions.

C. When required by the Contract Documents, the Contractor shall construct, maintain and remove detours for the use of public traffic, without additional cost to the Owner, unless separate payment is specified in the Special Provisions.

The failure or refusal of the Contractor to construct and maintain detours at the proper time shall be sufficient cause for closing down the work until such detours are in satisfactory condition for use by public traffic.

D. Due care shall be exercised to avoid injury to existing improvements or facilities, utility facilities, adjacent property and trees, shrubs and other plants that are not to be removed.

Trees, shrubs and other plants that are not to be removed, and pole lines, fences, signs, survey markers and monuments, buildings and structures, conduits, pipe lines, sewer and waterlines, highway facilities, and any other improvements or facilities, under or above ground, that are within or adjacent to the work limit line shall be protected from injury or damage, and the Contractor shall provide and install suitable safeguards to protect such objects from injury or damage. If such objects are injured or damaged by reason of the Contractor's operations, they shall be replaced or restored at the Contractor's expense. The facilities shall be replaced or restored to a condition as good as when the Contractor entered upon the Work Site, or as good as required by the Contract Documents if any such objects are a part of the Work. The Owner may make or cause to be made such temporary repairs as are necessary to restore to service any damaged facility. The cost of such repairs shall be borne by the Contractor, and the costs may be deducted from any monies due or to become due to the Contractor under the Contract.

The fact that any underground facility is not shown on the Contract Plans shall not relieve the Contractor of his responsibility pursuant to "Non-Owner Facilities," elsewhere in the Contract Documents. It shall be the Contractor's responsibility, pursuant thereto, to ascertain the location of such underground improvements or facilities, which may be subject to damage by reason of his operations.

Full compensation for furnishing all labor, materials, tools, equipment and incidentals, and for doing all the Work involved in protecting or repairing property as specified in this section, shall be considered as included in the prices paid for the various Contract items of work and no additional compensation will be allowed.

#### **10.04 EMERGENCIES**

In an Emergency affecting the safety of life, the Work, or adjoining property, the Contractor, without special instructions or authorization from the Owner, shall act at his discretion to prevent such threatened loss or injury. In such an Emergency, the Contractor may perform such additional work as is reasonably required. Any compensation claimed by the Contractor on account of Work performed pursuant to an Emergency shall be determined in accordance with the provisions relating to Force Account payment contained elsewhere in the Contract Documents.

### **END OF PART 10**

## **PART 11 - MISCELLANEOUS PROVISIONS**

### **11.01 LAWS TO BE OBSERVED**

The Contractor shall keep himself fully informed concerning all requirements of law, including but not limited to all state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the Work, the materials used in the Work, or which in any way affect the conduct of the Work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Contract Documents for the Work in relation to any such requirements, the Contractor shall immediately report the same to the Owner in writing.

The laws of the State of California shall govern the Contract Documents.

If any part of the Contract Documents is declared invalid by a court of law, such decision will not affect the validity of the remaining portion, which shall remain in full force.

### **11.02 RIGHTS IN LAND AND IMPROVEMENTS**

The Contractor shall make no arrangements with any person or entity to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between the Owner and any third-party owner, former owner or tenant of such land, structure or buildings. The Contractor shall not occupy Owner-owned property outside the limit of the Work shown on the Contract Drawings unless he obtains prior approval.

### **11.03 ANTITRUST CLAIMS**

The Contractor's attention is directed to the following provision of Public Contract Code Section 7103.5(b), which shall be applicable to the Contractor and his Subcontractors:

In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 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 public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

#### **11.04 THIRD PARTY RIGHTS**

No provisions of the Contract Documents shall in any way inure to the benefit of any third party (including the public at large) so as to constitute such person a third party beneficiary of the Contract or of any one or more of the terms and conditions of the Contract or otherwise give rise to any cause of action in any person not a party to the Contract, except as expressly provided elsewhere in the Contract Documents.

#### **11.05 ASSIGNMENT**

A. The performance of the Contract may not be assigned except upon the written consent of the Owner. Consent will not be given to any proposed assignment, which would relieve the original Contractor or his surety of their responsibilities under the Contract, nor will the Owner consent to any assignment of a part of the Work under the Contract.

B. The Contractor may assign monies due or to become due him under the Contract and such assignment will be recognized by the Owner, if given proper notice thereof, to the extent permitted by law, but any assignment of monies shall be subject to all proper set-offs in favor of the Owner and to all deductions provided for in the Contract, and particularly all money withheld, whether assigned or not, shall be subject to being used by the Owner for the completion of the Work in the event that the Contractor should be in default therein.

#### **11.06 RIGHTS TO DRAWINGS, TECHNICAL DATA AND PATENTS AND OTHER INTELLECTUAL PROPERTY**

A. Shop Drawings and Working Drawings submitted to the Owner by the Contractor, Subcontractor or any lower tier Subcontractor pursuant to the Contract, are the property of the Owner and the Owner may use, and disclose in any manner and for any purpose, Shop Drawings and Working Drawings delivered under the Contract.

B. Technical Data including manuals or instructional materials, computer or microprocessor software which are delivered or submitted to the Owner by the Contractor, Subcontractor, or any lower tier Subcontractor pursuant to the Contract are the property of the Owner, and the Owner may use or disclose same in any manner and for any purpose.

C. Patents, copyrights and other intellectual property. The Contractor shall assume all costs arising from the use of patented, copyrighted and other protected materials, equipment, devices or processes, used on or incorporated in the Work and shall indemnify and save harmless the Owner, and its duly authorized representatives, from all suits at law, or actions of every nature for, or on account of, the use of patented, copyrighted or other protected materials, equipment, devices or processes. In case such materials, equipment, devices or processes are held to constitute an infringement and their use enjoined, the Contractor, at his expense, shall:

1. Secure for the Owner the right to continue using said materials, equipment, devices or processes by suspension of the injunction or by procuring a license or licenses, or
2. Replace such materials, equipment, devices or processes, or

3. Modify them so that they become non-infringing or remove the enjoined materials, equipment, devices or processes and refund the sums paid as required without prejudice to any other rights of the Owner.

#### **11.07 GRATUITIES AND CONFLICT OF INTEREST**

A. The Contractor shall not offer or provide gratuities in the form of gifts, entertainment, loans, meals, rewards, and/or services to representatives of Owner, including but not limited to, employees, agents, any Engineers or Architects of Record, Owner's Designated Representative, Inspectors and/or testing agencies retained by Owner. If it is found that the Contractor has violated this provision, the Contract may be subject to termination for default as defined elsewhere in these General Provisions.

B. During the term of the Contract and until the final payment has been made to the Contractor, the Contractor shall not employ or compensate in any manner whatsoever, the Owner's employees and authorized representatives, agents, any Engineers or Architects of Record, Owner's Designated Representative, Inspectors and/or testing agencies retained by Owner. Any exceptions to the employment or compensation to any of the above named parties must be made in writing by the Owner. If the Contractor offers or provides employment or compensation to those named above during the term of the Contract, the Contract may be subject to termination for default.

#### **11.08 PROHIBITED INTERESTS**

No member, officer or employee of the Owner during his or her tenure or for one year after that tenure shall have any interest, direct or indirect, in this Contract or proceeds under this Contract.

#### **11.09 RECORDS**

The Contractor will keep full and detailed accounts and exercise controls as may be necessary for proper financial management under this Contract. The Owner, the State Auditor General, and their authorized representatives will have the right during normal business hours to audit and copy the Contractor's documents related to this Project including, but not limited to, records, books, estimates, correspondence, instructions, drawings, receipts and invoices for materials, supplies and equipment, temporary facilities, contracts, purchase orders, vouchers, memorandums, change orders and all substantiating documentation, certified payroll, and other data relating to the cost of Work. The Contractor shall also provide such assistance as may be required in the course of such audit or inspection. The Contractor will preserve all Project records for a period of at least 3 years after final payment, or for such longer period as may be required by law. The Contractor will incorporate this Section into all subcontracts and require subcontractors to keep detailed and accurate accounting records for their portion of the Work for a period of at least 3 years, or for such longer period as may be required by law. This provision is in addition to the requirements of Part 2.08 of Section 00820

### **END OF PART 11**

## **PART 12 - TERMINATION OF THE CONTRACT**

### **12.01 TERMINATION OF CONTRACT FOR CAUSE**

- A. An "Event of Default" as referred to in this section shall occur if the Contractor:



1. Fails to maintain progress of the Work in accordance with the requirements of the Contract Documents; or
2. Fails to prosecute the Work or any of its components in accordance with the Contract Documents; or
3. Persistently or repeatedly fails or refuses to supply sufficient properly skilled workmen or proper material to permit the performance of the Work in accordance with the Contract Documents; or
4. Fails to make prompt payment to Subcontractors or Suppliers in accordance with the respective agreements between the Contractor and Subcontractor and Contractor and Supplier; or
5. Fails to comply with applicable laws, ordinances or rules, regulations or orders of a public authority having jurisdiction over the Work; or
6. Abandons, assigns or sublets the Contract without approval of the Owner; or
7. Becomes bankrupt or is subject to appointment of a receiver on behalf of Contractor; or
8. Otherwise is guilty of a breach of a provision of the Contract Documents.

B. Upon the Owner's reasonable belief that there has been an Event of Default by Contractor, Owner may elect to give the Contractor written notice thereof. The Contractor thereafter shall cure the default as soon as possible and in no event after ten (10) days from Contractor's receipt of Owner's written notice.

C. If the Contractor does not timely cure its default, the Owner may, without waiver of any of its other rights and remedies, elect to terminate the Contract, or portion thereof.

Upon the Owner's election to terminate the Contract, or portion thereof, the Owner shall have the right to complete the Work, or the portion involved, by whatever means and methods it deems expedient, including the hiring of others on such terms as the Owner deems advisable. The Owner shall have the right to take possession of the Contractor's materials, plant, tools, equipment and property of any kind provided by or on behalf of the Contractor for the purpose of the Work, or a portion of them, without being responsible to the Contractor for fair wear and tear. The Contractor shall have no rights in such property during its use by the Owner. The Owner shall not be required to obtain the lowest prices for completing the Work or a portion of it but shall make such expenditures as, in the Owner's sole judgment, best accomplish such completion.

The expense of completing such Work or portion thereof, together with a reasonable charge for engineering, managerial and administrative services, as certified by the Owner, shall be charged to the Contractor, and the expense so charged shall be deducted by the Owner out of such moneys as may be due or may at any time thereafter become due to the Contractor. In case such expense is more than the sum which otherwise would have been payable to the Contractor under the Contract, then the Contractor or his surety or sureties shall promptly pay the amount of such excess so due. When the Owner terminates the Contract under this section, the Contractor shall not be entitled to receive any further payments until the Work is completed and there has been a final settlement of costs of completing the Work covered by such notice of default.

D. The Owner will issue to the Contractor a written notice specifying that the Contract, or portion thereof, is terminated. Upon receipt of said written notice and, except as otherwise directed in writing by the Owner, the Contractor shall:

1. Stop all Work under the Contract; or if partial termination, stop Work relating to the terminated portion of the Contract;
  2. Perform Work the Owner deems necessary to secure the Work Site for termination including measures to leave the worksite in a safe condition.
  3. Remove equipment from the site of Work, as specified by the Owner.
  4. Take such action as is reasonably necessary to protect materials from damage.
  5. Notify all Subcontractors and Suppliers that the Contract or portion thereof is being terminated and that their contracts or orders are not to be further performed unless otherwise authorized in writing by the Owner.
  6. Provide the Owner with an inventory list of all materials previously produced, purchased or ordered from Suppliers for use in the Work and not yet used in the Work, including its storage location, and such other information as the Owner may request;
  7. Dispose of materials not used in the Work as directed by the Owner's Designated Representative. It shall be the Contractor's responsibility to provide the Owner (a) with good title to all materials purchased by the Owner hereunder, including materials for which partial payment has been made by Owner and (b) with bills of sale or other documents of title for such materials;
  8. Subject to the prior written approval of the Owner, settle all outstanding liabilities and all claims arising out of subcontracts or orders for materials terminated hereunder. To the extent directed by the Owner, the Contractor shall assign to the Owner all rights, title and interests of the Contractor under subcontracts or orders for materials terminated hereunder. Owner shall be at liberty to negotiate with and engage any Subcontractors who had contracted with Contractor for the Work.
  9. Furnish the Owner with the documentation required to be furnished by the Contractor under the provisions of the Contract Documents, including, on projects as to which federal funds are involved, all documentation required under the federal requirements included in the Contract; and
  10. Take such other actions as the Owner may direct.
- E. If only a portion of the Work has been terminated, Contractor shall perform the remainder of the Work in conformity with the Contract Documents and in such a manner as not to interfere with Owner or others in their performance and completion of the portion of the Work which was terminated.
- F. Owner may recover from Contractor the amount of any loss or damage, including consequential damages, suffered or incurred as a result of Contractor's default.

## **12.02 TERMINATION FOR CONVENIENCE OF THE OWNER**

A. The Owner may terminate the Contract, in whole or in part, at any time and for any reason, whenever the Owner shall determine that such termination is in the best interests of the Owner. Any termination which is not based on the circumstances set forth in Section 12.01 (Termination of Contract for Cause) above shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective. In such event, Contractor shall be paid for all actual substantiated direct costs of materials furnished and Work performed up to the date of termination and such additional compensation as the Owner deems proper and reasonable to effect termination.

B. Upon Contractor's receipt of a written Notice of Termination for convenience, the Contractor shall cease Work as to those portions of the Project so terminated and shall undertake the steps outlined in Section 12.01 (Termination of Contract for Cause) above.

C. In the event that the Owner terminates this Contract under Section 12.01 (Termination of Contract for Cause) above and it is determined for any reason that there was not sufficient cause to do so, the Owner's termination automatically will convert to a termination for convenience under this Section and the terms and conditions outlined in this Section automatically will be applied to effectuate the Contract termination. Thus, damages to which a Contractor may be entitled as a result of an improper default termination will be limited to the amounts provided for in this section.

## **END OF PART 12**

### **PART 13 - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM**

#### **13.01 DBE PROGRAM INFORMATION**

WETA is committed to and has adopted a Diversity Program for Contracts for the participation of DBEs in WETA contracting opportunities in accordance with Federal Regulation 49 CFR, Part 26, effective March 4, 1999 as may be amended (the "DBE Program"), the terms and conditions of which are incorporated by this reference. WETA's DBE Program is available at [www.sanfranciscobayferry.com/weta/publications](http://www.sanfranciscobayferry.com/weta/publications).

It is the policy of WETA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of US DOT assisted contracts and to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to WETA's construction, procurement and professional services activities. To this end, WETA has developed procedures to remove barriers to DBE and SBE participation in the bidding and award process and to assist DBEs and SBEs to develop and compete successfully outside the DBE Program. In connection with the performance of the Contract, the consultant will cooperate with WETA in meeting these commitments and objectives. WETA reserves the right to require that the consultant provide additional DBE or SBE information.

Pursuant to 49 CFR § 26.13 and as a material term of any agreement with the Authority, the consultant hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subconsultants in the performance of the Contract:

The consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the consultant or subcontractor/subconsultant to carry out these requirements is a material breach of the contract that may result in the termination of contract or such other remedy as the Authority deems appropriate.

By submitting a Statement of Qualifications, the Offeror is deemed to have made the foregoing assurance and to be bound by its terms. In addition, please fill out all applicable DBE/SBE forms and review WETA's DBE Program.

For DBE or SBE questions or assistance, contact Lauren Duran Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

**13.02 CONTRACT COMPLIANCE**

A. Substitution of Subcontractors. The Contractor shall not terminate a DBE Subcontractor for convenience and then perform the work with its own forces. The Contractor must make sufficient good-faith efforts to substitute another DBE for an original DBE Subcontractor to achieve the proposed Contract DBE participation when the original DBE Subcontractor is terminated or fails to complete the work on the Contract. The Contractor shall notify the Owner in writing of any request to substitute a DBE Subcontractor and provide appropriate documentation substantiating the substitution. Any substitution of a DBE on this Contract is subject to the written approval of the Owner.

B. Prompt Payments to Subcontractors. The Owner shall make progress payments within 30 days after receipt of an undisputed and properly submitted payment request from the Contractor. The Contractor shall pay any Subcontractors approved by the Owner for work that has been satisfactorily performed no later than thirty (30) days from the date of the Contractor's receipt of progress payments by the Owner. Within 60 days after the date of completion of the Work, the retention withheld by the Owner shall be released. In the event of a dispute between the Owner and the Contractor, the Owner may withhold from the final payment an amount not to exceed 150 percent of the disputed amount. Within seven days from the time that all or any portion of the retention proceeds are received by the Contractor, the Contractor shall pay each of its Subcontractors from whom retention has been withheld, each Subcontractor's share of the retention received. However, if a retention payment received by the Contractor is specifically designated for a particular Subcontractor, payment of the retention shall be made to the designated Subcontractor, if the payment is consistent with the terms of the Subcontract. The Contractor may withhold from a Subcontractor its portion of the retention proceeds if a bona fide dispute exists between the Subcontractor and the Contractor. The amount withheld from the retention payment shall not exceed 150 percent of the estimated value of the disputed amount.

C. Reporting Requirements. The Contractor shall maintain records of all DBE participation in the performance of the Contract, including subcontracts entered into with certified DBEs and all materials purchased from certified DBEs.

The Contractor shall complete and submit on a quarterly basis the Owner's Progress Payment/DBE Utilization Report, in a form to be provided by the Owner (see Bid Forms), showing the name, address, total dollar amount requested for payment and the total dollar amount actually paid to each DBE performing work on the Contract. Upon completion of the Contract, the Contractor shall submit a final Progress Payment/DBE Utilization Report Form within thirty (30) days.

D. Administrative Remedies. In the event the Contractor fails to comply with the DBE requirements of this Contract in any way, Owner reserves the right to implement administrative remedies that may include, but are not limited to, withholding of progress payments and Contract retentions and termination of the Contract in whole or in part.

**END OF PART 13**

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**SECTION 00750****SPECIAL PROVISIONS**

These Special Provision modify individual General Provisions, as indicated below. In the event of discrepancy between a Special Provisions and General provision, the Special Provision shall control.

**SP3.02.M Documentation of Work Site and Adjacent Property**

The following new paragraph shall be added to the end of GP3.02:

M. Contractor shall photograph, videotape or otherwise document, in a manner acceptable to the ODR, the conditions of the Work Site and areas adjacent to the Work Site including areas through which the Contractor's equipment will pass during conduct of the Work. Said documentation shall be submitted in accordance with Section 01300, no later than 15 calendar days following Design Phase Notice to Proceed. The documentation shall be in CD ROM format, readable by readily available off the shelf software.

**SP5.01.A Coordination and Access**

The shoreline property which is the site of the Vallejo Ferry Terminal is owned by the City of Vallejo. In addition, the site is managed by WETA. Accordingly, both the City and WETA have access rights to the site of the Work being performed under this Contract, and Contractor shall coordinate its Work to accommodate any site visits by the City or WETA. Contractor shall not interfere with ferry operations of the Vallejo Ferry. All Contractor equipment shall be clear of the ferry terminal facilities and approaches to allow uninterrupted ferry service.

The South San Francisco Ferry Terminal is part of the Oyster Marina is owned by the San Mateo County Harbor District. In addition, the ferry site is managed by WETA. Accordingly, both the District and WETA have access rights to the site of the Work being performed under this Contract, and Contractor shall coordinate its Work to accommodate any site visits by the City or WETA. Contractor shall not interfere with ferry operations of the South San Francisco Ferry. The South San Francisco ferry service operates five days a week, Monday-Friday. Ferry operating hours in the Oyster Point Marina are approximately 7:10AM to 9:15AM and 4:00PM to 7:15PM weekdays. All Contractor equipment shall be clear of the ferry terminal facilities and approaches to allow uninterrupted ferry service. Temporary mooring of dredging equipment on the east side of the ferry landing may be allowed provided it does not interfere with ferry operation to the west ferry landing or block marina berths. The WETA Central Bay Operations Manager will provide a more detailed schedule of ferry boat arrivals and departures.

**SP8.01.F Abnormal Weather Conditions**

No time extensions shall be granted for this Project based on abnormal weather conditions, including rain delays.

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**SECTION 00800****SUPPLEMENTAL GENERAL PROVISIONS**

The following Sections are supplemental to the General Provisions, Section 00700.

| <b><u>SECTION</u></b> | <b><u>DESCRIPTION</u></b>          |
|-----------------------|------------------------------------|
| <b>00820</b>          | <b>FEDERAL REQUIREMENTS</b>        |
| <b>00840</b>          | <b>PAYMENT OF PREVAILING WAGES</b> |
| <b>00860</b>          | <b>INSURANCE REQUIREMENTS</b>      |

**END OF SECTION**



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**SECTION 00820****FEDERAL REQUIREMENTS****PART 1 - FEDERAL REQUIREMENTS****1.01 GENERAL**

This Project will be financed in part by the Federal Transit Administration (“FTA”). Accordingly, the federal contract provisions, as required by the FTA, must be complied with in the performance of this Contract. To the extent the Contract provisions required by the FTA, and State law are inconsistent, the Contractor is responsible for complying with the more-comprehensive or stricter requirements.

**PART 2 - FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS****2.01 FLY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “**Fly America Act**”) in accordance with 41 CFR Part 301 - 10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this Section in all subcontracts that may involve international air transportation.

**2.02 BUY AMERICA REQUIREMENTS**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded Projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 66 1.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

All Bidders must submit the appropriate Buy America certification to WETA with their bids, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier Subcontractors.

**2.03 CARGO PREFERENCE REQUIREMENTS**

The Contractor agrees: (a) to use privately owned United States Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract by ocean vessels to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to WETA (through the Contractor in the case of a Subcontractor’s bill-of-lading); and (c) to include these

requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, Material, or commodities by ocean vessel.

#### **2.04 SEISMIC SAFETY**

The Contractor agrees that any new building or additions to an existing building will be designed and constructed in accordance with the standards for seismic safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations, and with the certification of compliance issued on the Project.

#### **2.05 ENERGY CONSERVATION**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.).

#### **2.06 ENVIRONMENTAL REQUIREMENTS**

The Contractor and any Subcontractor or third-party contractor under this Contract shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

A. Environmental Protection. The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.

B. Air Quality. The Contractor shall to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to Owner, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

C. Clean Water. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Contractor agrees to report each violation to Owner, to FTA and the appropriate EPA Regional Office. The Contractor shall include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FTA.

D. Use of Public Lands. The Contractor shall ensure that no publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, state, or local significance as determined by the Federal, state, or local officials having jurisdiction thereof, or any land from a historic site of national, state, or local significance may be used under this Contract unless the FTA makes the specific findings required by 49 U.S.C. § 303.

E. Historic Preservation. The Contractor shall assist the Federal Government in complying with section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f, involving historic and archaeological preservation.

F. Mitigation of Adverse Environmental Effects. The Contractor shall take all reasonable steps to minimize adverse environmental effects in accordance with 49 U.S.C. § 5324(b), and all other applicable Federal laws and regulations, specifically the procedures of 23 C.F.R. Part 771 and 49 C.F.R. Part 622.\*\*\*

## **2.07 LOBBYING**

Contractor shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Contractor shall certify that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures shall be forwarded to Owner. Contractor shall ensure that all of its Subcontractors under this Contract shall certify the same. Prior to execution of this Agreement, Bidder shall submit the "Certification for Federal Aid Contracts," included in the Contract Documents. Owner is responsible for keeping the certification of the Bidder, who is in turn responsible for keeping the certification forms of Subcontractors.

## **2.08 ACCESS TO RECORDS AND REPORTS**

Contractor shall provide all authorized representatives of Owner, the FTA, and the Comptroller General of the United States access to any books, documents, papers and records of the Bidder which are directly pertinent to this Contract for the purposes of making audits, copies, examinations, excerpts and transcriptions. Contractor also agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain the same until Owner, the FTA, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. This provision is in addition to the requirements of Part 11.09 of Section 00700.

## **2.09 FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Agreement (Form FTA MA (23) dated October 1, 2016) between Owner and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

## **2.10 DAVIS-BACON ACT REQUIREMENTS**

### **A. Minimum Wages**

1. All laborers and mechanics employed or working upon the site of any qualifying construction work under the Contract (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)], the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section I (b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Subsection (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred

during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which such work is performed. The wage determination and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its Subcontractors at the Work Site in a prominent and accessible place where it can be easily seen by the workers.

2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination.

(a) The contracting officer shall approve an additional classification and wage rate and fringe benefits required only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to Subsections (A)(4)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

**B. Withholding**

Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, Owner may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

**C. Payrolls and Basic Records**

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1 (b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to Owner. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR Part 5.5(a)(3) , except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number).

This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Owner if the agency is a party to the contract, but the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to

require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(a) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under §5.5(a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under §5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(b) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (C)(2)(a) of this Section.

(c) The falsification of any of the above certifications may subject the Contractor or Subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

3. The Contractor or Subcontractor shall make the records required under paragraph (C)(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours at the Work Site. If the Contractor or Subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### D. Apprentices and Trainees

##### 1. Apprentices

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be

eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 2. Trainees

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

## 3. Equal Employment Opportunity

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR Part 30.

## E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.



F. Subcontracts

The Contractor or Subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any Subcontractor or lower Subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract and for debarment as a contractor and a Subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this Contract shall be subcontracted to person or firm ineligible for an award of a government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**2.11 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

A. Overtime

Neither the Contractor nor its Subcontractors may permit any laborer or mechanic in any workweek in which he or she is employed on such work under this Contract to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; Liability for Unpaid Wages; Liquidated Damages

In the event of any violation of the clause set forth in paragraph (A) of this Section the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages required. In addition, Contractor and Subcontractor shall be liable to the United States for Liquidated Damages. Such Liquidated Damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard

workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A) of this Section.

C. Withholding for Unpaid Wages and Liquidated Damages

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

D. Subcontracts

The Contractor shall insert in any subcontract the clauses set forth in this Section and also a clause requiring the Subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any Subcontractor or lower tier Subcontractor with the clauses set forth in this Section.

E. Payrolls and Basic Records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe, benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits, the Contractor employ apprentices or trainees under approved programs, it shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

## **2.12 VETERANS EMPLOYMENT**

a. To the extent practicable, Contractor agrees that it: 1) Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and 2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

b. Contractor also assures that its sub-contractors: 1) Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and 2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any

racial or ethnic minority, female, an individual with a disability, or a former employee. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

## **2.13 NO GOVERNMENT OBLIGATION TO THIRD PARTIES**

A. WETA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to Owner, Contractor, or any other party (whether or not a party to that Contract) pertaining to any matter resulting from the underlying Contract.

B. The Contractor agrees to include the clause set forth subsection A of this Section 2.13 in any subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that such clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

## **2.14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS**

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, and pertaining to the underlying Contract or the FTA assisted Project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a Project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

## **2.15 PRIVACY ACT**

The following requirements apply to Contractor and any of its employees that may administer any system of records on behalf of the Federal Government under any contract:

A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying Contract.

B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

## **2.16 CIVIL RIGHTS REQUIREMENTS**

### **A. Nondiscrimination**

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

### **B. Equal Employment Opportunity**

The following equal employment opportunity requirements apply to this Contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act; as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (“**U.S. DOL**”) regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 113 75, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.

During the performance of this Contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

(e) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto,

and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Contractor will include the portion of the sentence immediately preceding paragraph (a) and the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempt by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or vendor as a result of such direction by the administering agency the Contractor may request the United States to enter into such litigation to protect the interests of the United States. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## 2. Age

In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## 3. Disabilities

In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

## 4. Access Requirements for Individuals with Disabilities

The Contractor agrees to comply with the requirements of 49 U.S.C. § 5301(d) which expresses the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement those policies. Contractor also agrees to comply with all applicable requirements of the Americans with Disabilities Act of 1990 ("**ADA**"), 42 U.S.C. §§ 12101, et seq., and 49 U.S.C. § 322; § 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; § 16 of the Federal Transit Act, as amended; 49 U.S.C. App. § 612; and the following federal regulations, including any amendments thereto:

(a) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(b) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

- (c) Joint U.S. Architectural and Transportation Barriers Compliance Board/U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (d) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (e) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (f) U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (g) U.S. Equal Employment Opportunity Commission, "Regulations in Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (h) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- (i) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- (j) Any other implementing federal regulations and requirements.

5. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **2.17 DEBARMENT AND SUSPENSION**

This Contract is a covered transaction for purposes of 2 CFR Part 180. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 180.935.

The Contractor is required to comply with 2 CFR 180, Subpart C and must include the requirement to comply with 2CFR 180, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Owner. If it is later determined that the Bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder or proposer agrees to comply with the requirements of 2 CFR 180, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

## **2.18 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by U.S. DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220. 1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The

Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Owner requests which would cause Owner to be in violation of the FTA terms and conditions.

## **2.19 DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

WETA is committed to and has adopted a DBE Program for the participation of DBEs in WETA contracting opportunities in accordance with Federal Regulation 49 CFR, Part 26, effective March 4, 1999 as may be amended (the "DBE Program"), the terms and conditions of which are incorporated by this reference. WETA's DBE Program is available at [www.watertransit.org](http://www.watertransit.org).

It is the policy of WETA to ensure nondiscrimination on the basis of race, color, sex, or national origin in the award and administration of US DOT assisted contracts and to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to WETA's construction, procurement and professional services activities. To this end, WETA has developed procedures to remove barriers to DBE and SBE participation in the bidding and award process and to assist DBEs and SBEs to develop and compete successfully outside the DBE Program. In connection with the performance of the Contract, the consultant will cooperate with WETA in meeting these commitments and objectives. WETA reserves the right to require that the consultant provide additional DBE or SBE information.

Pursuant to 49 CFR § 26.13 and as a material term of any agreement with the Authority, the consultant hereby makes the following assurance and agrees to include this assurance in any agreements it makes with subconsultants in the performance of the Contract:

The consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the consultant or subcontractor/subconsultant to carry out these requirements is a material breach of the contract that may result in the termination of contract or such other remedy as the Authority deems appropriate.

For DBE or SBE questions or assistance, contact Lauren Duran Gularte, DBE Program Administrator at (415) 364-3188 or by email at [gularte@watertransit.org](mailto:gularte@watertransit.org).

**END OF SECTION 00820**

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**SECTION 00840****PAYMENT OF PREVAILING WAGES****1.01 PREVAILING WAGES**

This Contract will be subject to both federal and state prevailing wage laws. The federal requirements ("Davis-Bacon Act") are included in Section 00820 of these Supplemental General Provisions. The State requirements are set forth below in Section 1.02 (California Prevailing Wage Requirements). To the extent the contract provisions required by the FTA and State law are inconsistent, the Contractor is responsible for complying with the more comprehensive or stricter requirements.

**1.02 CALIFORNIA PREVAILING WAGE REQUIREMENTS****A. General**

The Contractor and any Subcontractor shall comply with Labor Code Sections 1770 to 1780, inclusive. Pursuant to Section 1775, the Contractor and any Subcontractor shall, as a penalty, forfeit to the State or political subdivision not more than \$200 for each calendar day, or portion thereof, for each worker paid less than the prevailing rate as determined by the Director of Industrial Relations for the work or craft in which the worker is employed under the Contract by him or by any subcontractor under it in violation of the revisions of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. In addition to said penalty and pursuant to Section 1775, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the stipulated prevailing wage rate shall be paid to each worker by Contractor. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of whether the failure to pay the correct rate of per diem wages was due to the Contractor's good-faith mistake, and on the previous record of the Contractor or Subcontractor in meeting their respective prevailing wage obligations. In addition to said penalty, the difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the Contractor or Subcontractor.

If a worker employed by a Subcontractor on a public works Project is not paid at least the general prevailing per diem wages by the Subcontractor, the Contractor shall not be liable for the penalties described above unless the Contractor had knowledge of that failure of the Subcontractor to pay the specified prevailing rate of wages to those workers or unless the Contractor fails to comply with all of the following requirements:

1. The contract executed between the Contractor and the Subcontractor for the performance of work on the public works Project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code.
2. The Contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the Subcontractor to the employees, by periodic review of the certified payroll records of the Subcontractor.
3. Upon becoming aware of the Subcontractor's failure to pay at least the specified prevailing rate of wages to the Subcontractor's workers, the Contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the Subcontractor for work performed on the public work Project.
4. Prior to making final payment to the Subcontractor for work performed on the public works Project, the Contractor shall obtain an affidavit signed under penalty of perjury from the Subcontractor

that the Subcontractor has paid at least the specified general prevailing rate of per diem wages to the Subcontractor's employees on the public works Project and any amount due pursuant to 1813 of the Labor Code.

Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify the Contractor on a public works Project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a Subcontractor on that public works Project to pay workers at least the general prevailing rate per diem wages.

Pursuant to the provisions of Section 1773 of the Labor Code, the Owner has obtained the general prevailing rate of wages applicable to categories of workers the Owner anticipates will be utilized for this Project for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned, or if no collective bargaining applies, those holidays identified in Government Code Section 6700. See 1.05 below for prevailing wage rates for this Project. In the event that the Contractor intends to utilize categories of workers different from, or in addition to, those anticipated by the Owner, it shall be Contractor's responsibility to bring such categories of workers to the Owner's attention immediately, and to obtain the appropriate wage rate from the Department of Industrial Relations (with the Owner's assistance if necessary). (See Title 8 California Code of Regulations Section 16202.)

The Contractor shall post general prevailing wage rates at a prominent place at the site of the work.

Pursuant to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204, changes in general prevailing wage determinations shall apply to the Project only if issued by the Director of Industrial Relations prior to the Owner's bid issuance date.

### **1.03 FUTURE WAGE INCREASES**

The Owner will not recognize any claim for additional compensation based on the payment by the Contractor of any increased wage rate required during the term of the Contract to the State prevailing wage rate, or the federal minimum wage rate. The possibility of wage increases during the course of the Contract is one of the elements to be considered by the Contractor in determining the bid, and such wage increases will not, under any circumstances, be considered as the basis of a claim against the awarding body with regard to the Contract.

### **1.04 COORDINATION WITH CALIFORNIA PREVAILING WAGES**

When both California and Federal prevailing wage rates apply, the Contractor and any Subcontractors shall pay their workers the higher of the two rates. The Contractor and any Subcontractors shall insert this clause in any lower-tier contract.

### **1.05 GENERAL WAGE DETERMINATIONS**

The prevailing wage rate can be reviewed at the Pier 9, Suite 111, The Embarcadero, San Francisco, CA 94111, San Francisco, CA, or can be obtained by writing the Prevailing Wage Unit, Division of Labor Statistics and Research, Department of Industrial Relations, Office of Policy, Research and Legislation, PO Box 420603, San Francisco, CA 94142. The wage rates can be obtained at the following websites:

State: <http://www.dir.ca.gov/OPRL/PWD/Index.html>

Federal: <http://www.gpo.gov/davisbacon/CA.html>

**SECTION 00860****INSURANCE REQUIREMENTS****PART 1 - INSURANCE REQUIREMENTS****1.1 GENERAL**

- A. The insurance requirements specified in this section shall cover Contractor's own liability and any liability arising out of work or services performed under this Agreement by any subcontractors, subconsultants, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations (hereinafter collectively referred to as "Agents") that Contractor authorizes to work under this Agreement. Contractor is required to procure and maintain at its sole cost and expense the insurance coverages subject to all of the requirements set forth below. Such insurance shall remain in full force and effect throughout the term of this Agreement
- B. Contractor is also required to assess the risks associated with work to be performed by Agents under subcontract and to include in every subcontract the requirement that the Agent maintain adequate insurance coverages with appropriate limits and endorsements to cover such risks; the limit for the Commercial General Liability insurance in each subcontract shall not be less than \$1 million. To the extent that any Agent does not procure and maintain such insurance coverage, Contractor shall be responsible for said coverage and assume any and all costs and expenses that may be incurred in securing said coverage or in fulfilling Contractor's indemnity obligation as to itself or any of its Agents in the absence of coverage. In the event Contractor or its Agents procure Excess or Umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that the Contractor's insurance be primary without any right of contribution from WETA. Prior to beginning work under this contract, Contractor shall provide WETA with satisfactory evidence of compliance with the insurance requirements of this section.

**1.2 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE**

- A. Workers Compensation with Statutory Limits, as required by Section 3700 *et seq.* of the California Labor Code, or any subsequent amendments or successor acts thereto governing the liability of employers to their employees.
- B. U.S. Longshoreman and Harbor Workers (USL&H) coverage if the Contract involves work on or adjacent to navigable water, as defined by the U.S. Department of Labor. If USL&H coverage applies, the Contract requires proof of insurance coverage in compliance with statutory requirements of the Longshoreman and Harbor Workers' Compensation Act (administered by the U.S. Department of Labor).
- C. Employer's Liability coverage with minimum limits of \$5 million. Non-construction professional services sub-consultants/subcontractors shall have Employer's Liability coverage with limits of \$1 million.
- D. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:

- Waiver of Subrogation.

### 1.3 COMMERCIAL GENERAL LIABILITY INSURANCE

Commercial General Liability (or Marine General Liability) insurance for bodily injury and property damage coverage with a combined single limit for bodily injury and property damage of at least \$5 million per occurrence or claim and a general aggregate limit of at least \$5 million. Such insurance shall be an occurrence policy form and cover all of Contractor's operations both at and away from the project site. Such insurance shall not have any exclusion for Cross Liability or Cross-Suits. In addition, for any construction and public works projects, the insurance shall not have any exclusion for Explosion, Collapse and Underground perils (XCU).

- A. This insurance shall include coverage for, but not be limited to:
  - Premises and operations.
  - Products and completed operations.
  - Use of non-owned watercraft.
  - Personal injury.
  - Advertising injury.
- B. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Separation of Insureds Clause.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

E. Products and completed operations insurance shall be maintained for three (3) years following termination of this Agreement.

### 1.4 BUSINESS AUTOMOBILE LIABILITY

- A. Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$5 million per accident or loss. Non-construction professional services sub-consultants/subcontractors shall have Business Automobile Liability insurance providing bodily injury and property damage coverage with a combined single limit of at least \$2 million per accident or loss.
- B. This insurance shall include coverage for, but not be limited to:
  - All Owned vehicles.
  - Non-owned vehicles.
  - Hired or rental vehicles.
- C. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:

- Additional Insured.
- Primary and Non-Contributory wording.
- Waiver of Subrogation.
- Separation of interests or Severability Clause

## **1.5 PROPERTY INSURANCE**

- A. Property insurance with Special Form coverage including theft, but excluding earthquake, with limits at least equal to the replacement cost of the property described below.
- B. This insurance shall include coverage for, but not be limited to:
  - Contractor's own business personal property and equipment to be used in performance of this Agreement.
  - Materials or property to be purchased and/or installed on behalf of WETA, if any.
  - Builder's Risk for property in the course of construction on an "all risk" basis for the full replacement cost of materials, supplies, all property to be incorporated into the finished Work, and completed Work in an amount not less than the full completed value of the covered structure or the replacement value of alterations or additions. WETA shall be named as a loss payee and losses will be payable to both Contractor and WETA, as their interests may appear.
- C. Such insurance shall include the following endorsement as further detailed in the Endorsements Section below:
  - Waiver of Subrogation.

## **1.6 PROFESSIONAL LIABILITY INSURANCE**

- A. A professional liability policy covering errors and omissions and the resulting damages including, but not limited to, economic loss to WETA and having minimum limits of liability of \$2 million per claim or occurrence and \$2 million annual aggregate.
- B. The policy shall be written on a claims made form and include coverage for all services and work performed under this Agreement.
- C. Permittee shall use its reasonable efforts to cause such professional liability insurance to have an inception date or a retroactive date coinciding with or prior to the date such consultant's services are first performed and to cause coverage to continue uninterrupted until at least five (5) years after the date such work or services are accepted.
- D. Waiver of subrogation in favor of WETA.

## **1.7 CONTRACTOR'S POLLUTION LIABILITY and/or ENVIRONMENTAL LIABILITY INSURANCE**

- A. Contractors' Pollution Liability insurance for bodily injury and property damage coverage shall be written on a claims made form with a combined single limit for bodily injury and

property damage of at least \$5 million per occurrence or claim and a general aggregate limit of at least \$5 million. The policy shall also cover economic loss to WETA, the City of Vallejo and San Mateo County Harbor District. If Contractor disposes of Hazardous Materials under this Agreement, Contractor shall designate the disposal site and provide a certificate of insurance from the disposal facility to the Authority.

- B. If the Contract involves marine activities or work from boat, vessel or floating platform, Contractor shall provide pollution insurance to satisfy U.S. Coast Guard requirements as respects the Federal Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended.
- C. The Contractor's Business Automobile Liability Coverage shall also be extended to cover pollution liability during loading; unloading and while in transit including, but not limited to, the perils of collision and upset. Coverage may be provided by endorsement to the general liability and automobile policies or by a separate policy.
- D. This insurance shall include coverage for, but not be limited to:
  - Sudden and accidental discharges.
  - Gradual discharges.
  - Clean-up of pollutants and disposal thereof.
- E. Mold, asbestos or lead, if an abatement contract. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Separation of Insureds Clause.
  - Primary and Non-Contributory wording.
  - Waiver of Subrogation.

#### **1.8 HULL AND MACHINERY INSURANCE**

- A. If the Contract involves marine activities or work from boat, vessel, skiff, floating platform, or any other equipment that floats, Contractor shall provide coverage at Market Value of vessel on American Institute Hull Clauses, 6/2/77 form.

#### **1.9 PROTECTION AND INDEMNITY (INCLUDING JONES ACT)**

- A. If the Contract involves marine activities, or work from a boat, vessel, skiff, floating platform, or any other equipment that floats, Contractor shall provide Protection & Indemnity coverage including injury to a crew (Jones Act) and passengers; Protection & Indemnity, SP 38 or SP 23 for \$5 million combined single limit per occurrence.
- B. Such insurance shall include the following endorsements as further detailed in the Endorsements Section below:
  - Additional Insured.
  - Primary and Non-Contributory wording.

- Waiver of Subrogation.
- Separation of Interests or Severability Clause

## 1.10 GENERAL INSURANCE REQUIREMENTS

### A. ENDORSEMENTS

- i. Additional Insured. The referenced policies and any Excess or Umbrella policies shall include as Additional Insureds (1) the San Francisco Bay Area Water Emergency Transportation Authority, the City of Vallejo and San Mateo County Harbor District and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
- ii. Waiver of Subrogation. The referenced policies and any Excess or Umbrella policies shall contain a waiver of subrogation in favor of (1) the San Francisco Bay Area Water Emergency Transportation, the City of Vallejo and San Mateo County Harbor District and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
- iii. [Reserved]
- iv. Primary Insurance. The referenced policies and any Excess or Umbrella policies shall indicate that they are primary to any other insurance and the insurance company(ies) providing such policy(ies) shall be liable there under for the full amount of any loss or claim, up to and including the total limit of liability, without right of contribution from any of the insurance effected or which may be effected by the San Francisco Bay Area Water Emergency Transportation Authority, the City of Vallejo and San Mateo County Harbor District and their respective directors, officers, employees, volunteers and agents while acting in such capacity, and their successors or assignees, as they now, or as they may hereafter be constituted, singly, jointly or severally.
- v. Separation of Insureds. The referenced policies shall contain Separation of Insureds Clause and stipulate that inclusion of WETA, the City of Vallejo and San Mateo County Harbor District as Additional Insureds shall not in any way affect existing rights either as respects any claim, demand, suit or judgment made, brought or recovered against the Contractor. The purpose of this coverage is to protect Contractor and WETA in the same manner as though a separate policy had been issued to each, but nothing in said policy shall operate to increase the insurance company's liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been liable if only one interest had been named as an insured.

### B. EVIDENCE OF INSURANCE

- i. All Coverages. Prior to commencing work or entering onto the Property, Contractor shall provide WETA, the City of Vallejo and San Mateo County Harbor District with a certificate of insurance and Additional Insured endorsements evidencing coverage, and upon request, a certified duplicate original of the policy. The certificate shall also show that the Contractors' policy(ies) will not be cancelled without 30 days' prior written notice to WETA.

- ii. Failure to maintain insurance. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of the agreement.

- iii. [Reserved]

C. GENERAL PROVISIONS

- i. Notice of Cancellation. The policies will be endorsed "to endeavor to provide thirty (30) days prior written notice prior to any cancellation, nonrenewal or modification of insurance coverage" to WETA.
- ii. Acceptable Insurers. All policies will be issued by insurers acceptable to WETA with a Best's Rating of A- 8 or better).
- iii. Self-insurance. Upon evidence of financial capacity satisfactory to WETA, Contractor's agreement to waive subrogation against both WETA respecting any and all claims that may arise, Contractor's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance.
- iv. Failure to Maintain Insurance. All insurance specified above shall remain in force until all work to be performed is satisfactorily completed, all of Contractor's personnel and equipment have been removed from WETA and the work has been formally accepted. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.
- v. Regulatory Compliance. In addition to the requirements described above, Contractor shall comply with additional coverages required by the United States Department of Transportation, the Environmental Protection Agency, and/or related State or local laws, rules and regulations.
- vi. Claims Made Coverage. Professional and Contractors Pollution Liability insurance specified above shall be provided on a claim-made basis and in addition to coverage requirements above, such policies shall provide that:
  - Policy retroactive date coincides with or precedes the Contractor's start of work (including subsequent policies purchased as renewals or replacements).
  - Contractor shall maintain similar insurance for at least five (5) years following project completion, including the requirement of adding all additional insureds.
  - If insurance is terminated for any reason, Contractor agrees to purchase an extended reporting provision of at least five (5) years to report claims arising from Work performed under this Contract.
  - Policy allows for reporting of circumstances or incidents that might give rise to future claims.
- vii. Deductibles and Retentions. Contractor shall be responsible for payment of any deductible or retention on Contractor's policies without right of contribution from WETA. Deductible and retention provisions shall not contain any restrictions as to



how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable to WETA.

In the event WETA seeks coverage as an additional insured under any Contractor policy that contains a deductible or self-insured retention, Contractor shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act or omission of Contractor, subcontractor, sub-consultant, or any of their officers, directors, employees, agents, or suppliers, even if Contractor or subcontractor is not a named defendant in the lawsuit.

- viii. Reporting of Incidents, Losses or Claims.** The Contractor agrees to immediately notify WETA Manager of Planning and Development, at (415) 364-3182 following any accident or injury, which occurs in connection with the Work under this Contract. In addition, the Contractor shall provide a detailed written report of the accident or injury to WETA within seven (7) days of its occurrence.

**END OF SECTION & VOLUME 1**