

CONSTRUCTION SERVICES INVITATION FOR BIDS

for

**SHOREWAY ENVIRONMENTAL CENTER MATERIAL RECOVERY FACILITY
IPS CONQUEST BALER STEEL RELINING PROJECT**

at

225 SHOREWAY ROAD, SAN CARLOS, CA 94070

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

South Bayside Waste Management Authority
610 Elm Street
Suite 202
San Carlos, CA 94070

Notice Date: Friday, April 24, 2020

Bid Due Date: Monday, May 8, 2020, 4:00 PM PDT

Contract Number: 20200528.1

DOCUMENT 00 0115

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END OF DOCUMENT

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NOTICE INVITING BIDS

ARTICLE 1 INVITATION TO BID

- 1.01 Notice Inviting Bids:** Owner will receive emailed Bids sent to bids@rethinkwaste.org, until 4:00 PM PDT on Friday, May 8, 2020 for the following public work:

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING

225 SHOREWAY ROAD, SAN CARLOS, CA 94070

- 1.02 Project Description:** Material Recovery Facility IPS Conquest Baler Steel Relining Work, which entails disassembling and rebuilding the steel liner and related components needing repair in the MRF IPS Conquest-100 Baler; time is of the essence for this Project, the work must be completed within 4 Days from the date when Contract Time commences to run.
- 1.03 Procurement of Bidding Documents:** Bidding Documents contain the full description of the Work.
For online viewing, please go to <https://rethinkwaste.org/about/rfps-rfqs/>.
Bidder is responsible for printing any and all of Bidding Documents.
- 1.04 Instructions:** Bidders shall refer to Document 00 2115 (Instructions to Bidders) for required documents and items to be submitted via email as per the time and date set forth in Paragraph 1.01 above.
- 1.05 Pre-Bid Conference Call:** Owner may conduct a Pre-Bid Conference Call at 1:00 PM PDT on Tuesday May 5, 2020 via Zoom, if requested at least one business day in advance by potential Bidder(s). If the Call is requested, information about the Call will be posted at the website given in Paragraph 1.03 in advance of the Call.
- 1.06 Bid Preparation Cost:** Bidders are solely responsible for the cost of preparing their Bids.
- 1.07 Reservation of Rights:** Owner specifically reserves the right, in its sole discretion, to reject any or all Bids, to re-bid, or to waive inconsequential defects in bidding not involving time, price or quality of the work. Owner may reject any and all Bids and waive any minor irregularities in the Bids.

ARTICLE 2 LEGAL REQUIREMENTS

- 2.01 Required Contractor's License(s):** A California B contractor's license is required to bid this contract. Joint ventures must secure a joint venture license prior to award of this Contract. Specialty work may require a specialty contractor's license held by Bidder or a listed subcontractor. A City of San Carlos Business License (or other applicable city license if work is performed in another jurisdiction) is required throughout the duration of the contract.

2.02 Required Contractor and Subcontractor DIR Registration

- A. Owner shall accept Bids only from Bidders that (along with all Subcontractors listed in Document 00 4330, Subcontractor List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
- B. Subject to Labor Code Sections 1771.1(c) and (d), any Bid not complying with paragraph 2.02A above shall be returned and not considered; provided that if Bidder is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section 1771.1(a)), Owner may accept a non-complying Bid provided that Bidder and all listed Subcontractors are registered at the time of Contract award.

2.03 Substitutions: Bidders must base their bids on products and systems specified in Contract Documents or listed by name in Addenda. Except as provided below, Owner will consider substitution requests only for “or approved equal items.” Bidders wanting to use “or approved equal items” may submit request on form to be obtained from Owner no later than 7 days after issuance of Notice of Award.

2.04 Substitution of Securities: Owner will permit the successful bidder to substitute securities for any retention monies withheld to ensure performance of the contract, in accordance with Public Contract Code Section 22300.

2.05 Prevailing Wage Laws: The successful Bidder must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, may be obtained from the California Department of Industrial Relations website [<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>] and are deemed included in the Bidding Documents. Upon request, Owner will make available copies to any interested party. Also, the successful Bidder shall post the applicable prevailing wage rates at the Site.

2.06 Prevailing Wage Monitoring: This Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.

Dated: _____

By: _____
Joe LaMariana
Executive Director

Published: _____

Cyndi Urman
Office Manager/Board Secretary

END OF DOCUMENT

DOCUMENT 00 2115

INSTRUCTIONS TO BIDDERS

Bids are requested by Owner, for a general construction contract, or work described in general, as set forth in Document 00 1115 (Notice Inviting Bids), and the following additional terms.

ARTICLE 1 - PROCEDURES FOR SUBMISSION OF BIDS

1.01 Pre-Bid Conference Call

- A. Owner may conduct Pre-Bid Conference Call at the date, time and location indicated in Document 00 1115 (Notice Inviting Bids), to consider such matters as Bidders may request.
- B. The Site Visit may be the Bidders' only opportunity to talk with Owner staff directly about conditions at the Site.
- C. Owner will issue Minutes of the Pre-Bid Conference Call, which shall constitute the sole and exclusive record and statement of the results of the Pre-Bid Conference Call. The Minutes issued by Owner are not a Contract Document.

1.02 Required Pre-Bid Investigations

- A. Prior to submission of Bid, Bidder must conduct a careful examination of Bidding Documents and understand the nature, extent, and location of Work to be performed.
- B. Invasive testing will only be allowed with Owner's written approval and under such conditions as Owner may determine in its sole discretion.
- C. Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work), as well as applicable environmental assessment information (if any) regarding the Project, by giving Owner reasonable advanced notice. Owner will make copies available for a fee. A Bidder must give five (5) days advanced notice if copies are desired.

1.03 Bidder Questions and Answers

- A. Bidders must direct all questions about the meaning or intent of Bidding Documents to Owner via email to bids@rethinkwaste.org, to be received by 3:00 PM PDT Monday, May 4 2020. Interpretations or clarifications considered necessary by Owner in response to such questions will be issued by Addendum posted on the Owner's RFP website <https://rethinkwaste.org/about/rfps-rfqs/> within two business days of that date.
- B. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect, and Bidders shall not rely on oral statements.

1.04 Addenda

- A. Addenda may also be issued to modify the Bidding Documents as deemed advisable by Owner. Addenda shall be acknowledged by number in Document 00 4115 (Bid Form) and shall be part of the Contract Documents. A complete listing of Addenda may be secured from Owner.

ARTICLE 2 - RECEIPT OF BIDS

2.01 Date and Time

- A. Emailed Bids will be received by the Owner until the date and time indicated in Document 00 1115 (Notice Inviting Bids). Owner shall reject all Bids received after the specified time. Bidders must submit Bids in accordance with this Document 00 2115.

2.02 Required Contents of Bid

- A. Document 00 4115 (Bid Form). Bidders must submit Bids on Document 00 4115 (Bid Form) in accordance with the provisions of Document 00 4115. Bidders must complete all Bid items and supply all information required by Bid documents and specifications.
- B. Document 00 4315 (Bond Accompanying Bid). Any Bidder whose Bid equals or exceeds \$5,000 must submit Document 00 4315 (Bond Accompanying Bid) accompanied by a cashier's check, certified check (certified without qualification and drawn on a solvent bank of the State of California or a National Bank doing business in the State of California), or completed form of Document 00 4315 of not less than 10% of the base Bid, payable to Owner and completed in accordance with the provisions of Document 00 4315. Document 00 4325 (Bidder Registration Form). Bidders must submit Document 00 4325 (Bidder Registration Form), completed in accordance with the provisions of Document 00 4325.
- C. Document 00 4330 (Subcontractors List). Bidders must submit Document 00 4330 (Subcontractors List) completed in accordance with the provisions of Document 00 4330. The Subcontractors List must include the names of all subcontractors for those subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total Bid amount. Any violation of this requirement may result in a Bid being deemed non-responsive and not being considered.
- D. Document 00 4519 (Non-Collusion Affidavit). Bidders must submit Document 00 4519 (Non-Collusion Affidavit) completed in accordance with the provisions of Document 00 4519.
- E. Document 00 4545 (Bidder Certifications). Bidders must submit Document 00 4545 (Bidder Certifications) completed in accordance with the provisions of Document 00 4545.

ARTICLE 3 - BID OPENING AND EVALUATION

3.01 Electronic Bid Opening and Announcement

- A. All Bidders and members of the public may view bid results at the website <https://rethinkwaste.org/about/rfps-rfqs/> by 5:00 PM EDT on the day of the bid deadline, with bids being opened right after that 4:00 PM EDT, Friday May 8th deadline. Owner reserves the right to change the originally scheduled Bid date and time to a later date and time by issuing an electronic Addendum to that effect. Any and all Bids received by the Owner on or before the deadline shall be accepted on the date scheduled for the opening of Bids.
- B. The online presentation of Bids received by the Owner shall include the announcement of the name of each Bidder and the total amount of each Bidder's Bid, and any other information as the Owner may deem appropriate. The Owner may note any Bid irregularity at the time of announcement.

3.02 Determination of Apparent Low Bidder

- A. Owner will initially evaluate Bids for responsiveness, and determine an Apparent Low Bidder as specified herein and in Document 00 1115 (Notice Inviting Bids) and Document 00 4115 (Bid Form).
- B. Apparent Low Bid will be determined solely on the total amount of all Bid items based on terms contained in Document 00 1115 (Notice Inviting Bids) and Document 00 4115 (Bid Form). All Bidders are required to submit Bids on all Bid items (including any alternates).
- C. Owner will evaluate the Apparent Low Bidder for responsiveness and for responsibility.

- D. If Apparent Low Bidder is determined to be non-responsive or non-responsible, then Owner may proceed to the next Apparent Low Bidder's Bid pursuant to any procedures determined in its reasonable discretion, and proceed for all purposes as if this Apparent Low Bidder were the original Apparent Low Bidder.

3.03 Evaluation of Bids

- A. Bids must be full, complete, clearly written and using the required forms. Bidder's failure to submit all required documents strictly as required entitles Owner to reject the Bid as non-responsive. All Bidders must submit Bids containing each of the fully executed documents supplied in this Project Manual.
- B. In evaluating Bids, Owner will consider Bidders' qualifications, whether or not the Bids comply with the prescribed requirements, unit prices, and other data, as may be requested in Document 00 4113 (Bid Form) or prior to the Notice of Award.
- C. Owner may conduct reasonable investigations and reference checks of Bidder and other persons and organizations as Owner deems necessary to assist in the evaluation of any Bid and to establish Bidder's responsibility, qualifications, financial ability, and capability to perform the Work in accordance with the Contract Documents to Owner's satisfaction within the prescribed time. Submission of a Bid constitutes Bidder's consent to the foregoing.
- D. Owner shall have the right to consider information provided by sources other than Bidder. Owner shall also have the right to communicate directly with Bidder's surety regarding Bidder's bonds.
- E. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. Discrepancies between written words and figures will be resolved in favor of the words.
- F. Bids shall be deemed to include the emailed responses of the Bidder to any questions or requests for information of Owner made as part of Bid evaluation process after submission of Bid.

3.04 Reservation of Rights

- A. Owner reserves the right to:
 - 1. Reject any or all nonconforming, non-responsive, unbalanced, or conditional Bids; and
 - 2. To reject the Bid of any Bidder as non-responsive as a result of any error or omission in the Bid.
- B. If Owner believes that it would not be in the best interest of Project to make an award to that Bidder, whether because the Bid is not responsive, the Bidder is unqualified or of doubtful financial ability, or fails to meet any other pertinent standard or criteria established by Owner.
- C. For purposes of this paragraph, an "unbalanced Bid" is one having nominal prices for some Bid items and enhanced prices for other Bid items.
- D. Owner may retain Bid securities and Bid bonds of other than the Apparent Low Bidder for a period of 90 Days after award or full execution of the Contract, whichever first occurs.
- E. Owner may reject any or all Bids and waive any informalities or minor irregularities in the Bids. Owner also reserves the right, in its discretion, to reject any or all Bids and to re-Bid the Project.

3.05 Required Contractor and Subcontractor Registration

- A. Owner shall accept Bids only from Bidders that (along with all Subcontractors listed in Document 00 4330, Subcontractors List) are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5.
- B. Subject to Labor Code Sections 1771.1(c) and (d), any Bid not complying with paragraph 3.04.A, above, shall not be considered; provided that if Bidder is a joint venture (Business & Professions Code Section 7029.1) or if federal funds are involved in the Contract (Labor Code Section

1771.1(a)), Owner may accept a non-complying Bid provided that Bidder and all listed Subcontractors are registered at the time of Contract award.

ARTICLE 4 MANDATORY BID PROTEST PROCEDURES

4.01 Submission of Bid Protest

- A. Any Bid protest in connection with the construction contract or work described in general in Document 00 1115 (Notice Inviting Bids) must be submitted via email to bids@rethinkwaste.org, before 5:00 P.M. of the fifth Business Day following opening of Bids.
- B. The initial protest document must contain a complete statement of the basis for the protest.
- C. The protest must refer to the specific portion of the document that forms the basis for the protest.
- D. The protest must include the name, address, telephone number and email address of the person representing the protesting party.
- E. Only Bidders who the Owner otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, Owner may evaluate all information contained in any protesting Bidder's Bid, and conduct the same investigation and evaluation as Owner is entitled to take regarding an Apparent Low Bidder.
- F. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

4.02 Exclusive Remedy

- A. The procedure and time limits set forth in this paragraph are mandatory and are Bidder's sole and exclusive remedy in the event of Bid protest. Bidder's failure to comply with these procedures shall constitute a waiver of any right to further pursue the Bid protest, including filing a Government Code Claim or legal proceedings. A Bidder may not rely on a protest submitted by another Bidder, but must timely pursue its own protest.

ARTICLE 5 AWARD AND EXECUTION OF CONTRACT

5.01 Notice of Award and Submittal of Executed Contract Documents

- A. If Contract is to be awarded, it will be awarded to the lowest responsible responsive Bidder. Owner will issue Document 00 5105 Notice of Award. Such Award, if made, will be made within ninety (90) days after the opening of the Bid Proposals.
- B. Successful Bidder must execute and submit to Owner the "Required Contract Documents and Proof of Insurance" set forth below, by 5:00 p.m. of the 10th Business Day following the Notice of Award.

5.02 Required Contract Documents and Proof of Insurance

- A. Document 00 5205 (Construction Services Agreement), fully executed by successful Bidder. Submit via email one original, bearing an original signature on the signature page and initials on each page.
- B. Insurance certificates and endorsements required by Document 00 5205 Appendix C: Submit one original set.
- C. If Contract Sum exceeds (or is expected to exceed) \$25,000, Construction Performance Bond in form provided at Document 00 5205 Appendix D, fully executed by successful Bidder and surety, in the amount set forth therein. Submit one original.
- D. If Contract Sum exceeds (or is expected to exceed) \$25,000, Construction Labor and Material Payment Bond in form provided at Document 00 5205 Appendix E, fully executed by successful Bidder and surety, in the amount set forth therein. Submit one original.
- E. Any other items identified by Owner in Document 00 5105 (Notice of Award).

5.03 Failure to Execute and Deliver Documents:

- A. If Bidder to whom Contract is awarded, within the period described in this Document 00 2115, fails or neglects to execute and deliver all required Contract Documents and file all required bonds, insurance certificates, and other documents, Owner may, in its sole discretion, rescind the award, recover on Bidder's surety bond, or deposit Bidder's cashier's check or certified check for collection, and retain the proceeds thereof as liquidated damages for Bidder's failure to enter into the Contract Documents. Bidder agrees that calculating the damages Owner may suffer as a result of Bidder's failure to execute and deliver all required Contract Documents would be extremely difficult and impractical and that the amount of Bidder's required Bid security shall be the agreed and presumed amount of Owner's damages.
- B. Upon such failure to timely deliver all required Contract Documents as set forth herein, Owner may determine the next Apparent Low Bidder and proceed accordingly. Such Award, if made, will be made within sixty (60) days after the opening of the Bid Proposals.

ARTICLE 6 GENERAL CONDITIONS AND REQUIREMENTS

6.01 Modification of Commencement of Work:

- A. Owner expressly reserves the right to modify the date for the Commencement of Work under the Contract and to independently perform and complete work related to Project. Owner accepts no responsibility to Contractor for any delays attributed to its need to complete independent work at the Site.
- B. Owner shall have the right to communicate directly with Apparent Low Bidder's proposed performance bond surety, to confirm the performance bond. Owner may elect to extend the time to receive faithful performance and labor and material payment bonds.

6.02 Conformed Project Manual:

- A. Following Award of Contract, Owner may prepare a conformed Project Manual reflecting Addenda issued during bidding, which will, failing objection, constitute the approved Project Manual.

6.03 Payment Bond:

- A. If the Project described in Document 00 1115 (Notice Inviting Bids) involves an expenditure in excess of twenty-five thousand dollars (\$25,000), the successful Bidder must file a payment bond with and approved by Owner prior to entering upon the performance of the Work, in accordance with Civil Code Section 9550, *et seq.*

6.04 Wage Rates:

- A. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, may be obtained from the California Department of Industrial Relations website (<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>) and are deemed included in the Bidding Documents. Upon request, Owner will make available copies to any interested party. Also, Contractor shall post the applicable prevailing wage rates at the Site.

6.05 Withdrawal of Bids:

- A. Bidders may withdraw their Bids at any time prior to the Bid opening time fixed in this Document 00 2115, only by emailed request for the withdrawal of Bid sent to bids@rethinkwaste.org. Bidder or its duly authorized representative shall execute request to withdraw Bid.

6.06 Ineligible Contractors and Subcontractors:

- A. Owner shall not accept a Bid from a Bidder who is ineligible to bid or work on, or be awarded, a public works project pursuant to Labor Code Section 1777.1 or 1777.7. Bidders and the Contractor who is awarded the project contract shall not utilize, or allow work by, any subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Labor Code Section 1777.1 or 1777.7. (See Public Contract Code Section 6109.) The California Division of Labor Standards Enforcement publishes a list of debarred contractors and subcontractors on the Internet at www.dir.ca.gov/DLSE/debar.html.

6.07 Public Records Act Requests:

- A. In accordance with the Public Records Act, Owner will make available to the public all correspondence and written questions submitted during the Bid period, all Bid submissions opened in accordance with the procedures set forth herein, and all subsequent Bid evaluation information. Except as otherwise require by law, Owner will not disclose trade secrets or proprietary financial information submitted by Bidders that has been designated as confidential by Bidder.
- B. Upon a request for records regarding this Bid, Owner will notify the Bidder involved, within 10 Days from receipt of the request, when the records will be made available for inspection. If the Bidder timely identifies any "proprietary, trade secret, or confidential commercial or financial" information that Bidder determines is not subject to public disclosure, and requests that Owner refuse to comply with the records request, Bidder will, at its sole expense, take all appropriate legal action and defend Owner's refusal to produce the information in all forums; otherwise Owner will make such information available to the extent require by applicable law, without restriction.
- C. Information disclosed in the Bid and the attendant submissions are the property of Owner unless Bidder makes specific reference to data that is considered proprietary.

6.08 Substitutions:

- A. Bidders must base their Bids on products and systems specified in the Contract Documents or listed by name in Addenda. Substitutions are permitted only as provided in the Contract Documents

6.09 Definitions:

- A. All abbreviations and definitions of terms used in this Document 00 2115 are set forth in Document 00 5205 (Construction Services Agreement).

END OF DOCUMENT

GEOTECHNICAL DATA AND EXISTING CONDITIONS

ARTICLE 1 REPORTS AND INFORMATION ON EXISTING CONDITIONS

1.01 Inspection of Reports:

- A. Owner, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, information regarding Underground Facilities, and hazardous material surveys or information (collectively, **Existing Conditions Data**.)
- B. Bidders may inspect Geotechnical and Existing Conditions Data. These documents are available for review at the address identified therein. Copies may be obtained for the cost of reproduction and handling upon Bidder's payment for the costs.
- C. Existing Conditions Data is for information only and does not describe labor, materials or equipment furnished by Contractor, but rather, information regarding conditions of the work. Such Existing Conditions Data is not a Contract Document.

ARTICLE 2 USE OF EXISTING CONDITIONS DATA

2.01 Above-Ground Existing Conditions:

- A. Owner makes no warranty or representation of existing aboveground conditions, as-built conditions, or other aboveground actual conditions verifiable by reasonable independent investigation. These conditions are verifiable by Bidder by the performance of its own independent investigation that Bidder must perform prior to bidding and Bidder must not rely on the information supplied by Owner regarding existing conditions.
- B. Bidder represents and agrees that in submitting its Bid, it is not relying on any information regarding above-ground existing conditions supplied by Owner.

2.02 Underground Facilities:

- A. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to Owner by others (e.g., the builders of such Underground Facilities or others).
- B. Owner assumes responsibility for only the general accuracy, completeness or thoroughness of information regarding Underground Facilities that are owned by Owner. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it herein and discrepancies were not apparent. Bidder is solely responsible for any interpretation or conclusion drawn from this information. Owner is not responsible for information regarding Underground Facilities owned by others.

2.03 Hazardous Materials Surveys:

- A. Bidders may rely on this data and information for general accuracy regarding the locations of potentially hazardous materials subject of the Work. Owner does not warrant and makes no representation regarding the completeness or thoroughness of any data or information regarding existing conditions or hazardous materials including, but not limited to, quantities, characteristics, volumes, or associated structural features. Bidder represents and agrees that in submitting a Bid it is not relying on any such data, information or deductions.
- B. Data and information regarding the locations of hazardous materials are not part of Contract Documents.

2.04 Geotechnical Data:

- A. Bidder may rely upon the general accuracy of the "technical data" contained in the geotechnical reports and drawings identified above, but only insofar as it relates to subsurface conditions,

provided Bidder has conducted the independent investigation required of it and discrepancies were not apparent.

- B. The term “**technical data**” shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration. The term “technical data” does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures. The term “technical data” shall not include the location of Underground Facilities.
- C. Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder is solely responsible for any interpretation or conclusion drawn from any “technical data” or any other data, interpretations, opinions, or information contained in supplied geotechnical data.
- D. Except as expressly set forth in this Document 00 3135, Owner does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data.
- E. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by Owner, except as specifically set forth herein.

ARTICLE 3 INVESTIGATIONS

3.01 Required Investigations:

- A. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance, or furnishing of Work, or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction Bidder is to employ and the safety precautions and programs incident thereto or that Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of the Contract Documents.
- B. Bidders shall advise Owner in writing during the Bid period of any questions, suppositions, inferences or deductions Bidders may have for Owner’s review and response.
- C. Owner has provided time in the period prior to bidding for Bidder to perform these investigations.

3.02 Access to Site for Investigations:

- A. During the Pre-Bid Site Visit(s), Owner will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Bidder deems necessary for submission of a Bid, provided that invasive testing will be permitted only to the extent (and upon conditions identified in) provided in Document 00 2115 (Instructions to Bidders).

END OF DOCUMENT

DOCUMENT 00 4115

BID FORM

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

THIS BID IS SUBMITTED BY:

(Firm/Company Name)

Re: MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING PROJECT at 225 SHOREWAY ROAD, SAN CARLOS, CA 94070, Contract Number 20200528.1

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with the **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY** in the form included in the Contract Documents, Document 00 5205 (Construction Services Agreement), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00 1115 (Notice Inviting Bids), and Document 00 2115 (Instructions to Bidders) including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 60 Days after the day of Bid opening, unless there is a bid protest, then 90 days after the day of bid opening.
3. In submitting this Bid, Bidder represents that Bidder has examined all of the Contract Documents, performed all necessary Pre-Bid investigations, received the Pre-Bid Call minutes (if any), and received the following Addenda:

Addendum Number	<u>ADDENDUM DATE</u>	Signature of Bidder

4. Based on the foregoing, Bidder proposes and agrees to fully perform the Work within the time stated and in strict accordance with the Contract Documents for the following sums of money listed in the following Schedule of Bid Prices:

SCHEDULE OF BID PRICES

All Bid items, including lump sums, unit prices and alternates (if any), must be filled in completely. Bid items are described in Contract Documents. Quote in figures only, unless words are specifically requested.

ITEM	DESCRIPTION	ESTIMATED QUANTITY	UNIT	UNIT PRICE	TOTAL
1.				\$	\$
2.				\$	\$
3.				\$	\$
4.	All Work of Contract Documents other than Work separately provided for under other Bid items			\$	\$
<u>TOTAL</u>				TOTAL BID PRICE	\$

Total Bid Price:

(Indicate Bid Price in Words)

ALTERNATE NO.	DESCRIPTION	ALTERNATE PRICE (\$)
1		\$
2		\$

5. The undersigned acknowledges that the Apparent Low Bidder will be determined as provided in Documents 00 1115 (Notice to Bidders) and Document 00 2115 (Instruction to Bidders).
6. Subcontractors for work are listed on Document 00 4330 (Subcontractors List), submitted herewith.
7. The undersigned Bidder understands that Owner reserves the right to reject this Bid.
8. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Award, is emailed to the undersigned Bidder within the time described in Paragraph 2 of this Document 00 4115 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00 2115 (Instructions to Bidders) within the times specified therein.
9. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below.
10. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00 2115 (Instructions to Bidders), in the amount of ten percent (10%) of the Total Bid Price and made payable to the **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**.
11. The undersigned Bidder agrees to commence Work on the date established in, and to complete all Work within the time specified in, Document 00 5205 (Construction Services Agreement).
12. The undersigned Bidder agrees that, liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00 5205 (Construction Services Agreement) shall be as set forth in Document 00 5205.
13. The names of all persons interested in the foregoing Bid as principals are: _____

IMPORTANT NOTICE:

If Bidder or other interested person is a corporation, give the legal name of corporation, state where incorporated, and names of president and secretary thereof. If a partnership, give name of the firm and names of all individual co-partners composing the firm. If Bidder or other interested person is an individual, give first and last names in full.

NAME OF BIDDER: _____

licensed in accordance with an act for the registration of Contractors, and with CSLB license number: _____ Expiration: _____, and DIR registration number: _____ Expiration: _____.

(Place of Incorporation, if Applicable) (Principal)

(Principal)

(Principal)

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(Signature of Bidder)

NOTE: If Bidder is a corporation, set forth the legal name of the corporation together with the signature of the officer or officers authorized to sign contracts on behalf of the corporation. If Bidder is a partnership, set forth the name of the firm together with the signature of the partner or partners authorized to sign contracts on behalf of the partnership.

Business Address: _____

Contractor's Representative(s): _____
(Name/Title)

(Name/Title)

(Name/Title)

Officers Authorized to Sign Contracts _____
(Name/Title)

(Name/Title)

(Name/Title)

Telephone Number(s):

(Area Code)

(Number)

(Area Code)

(Number)

Email Addresses:

Fax Number(s):

(Area Code)

(Number)

(Area Code)

(Number)

Date of Bid:

END OF DOCUMENT

DOCUMENT 00 4315

BOND ACCOMPANYING BID

KNOW ALL BY THESE PRESENTS:

That the undersigned

(Name of Contractor)

as Principal and the undersigned as Surety are held and firmly bound unto Owner, **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a California Joint Powers Authority**, as obligee, in the penal sum of **(Dollar Amount In Words)** _____

Dollars (\$ _____) lawful money of the United States of America being at least ten percent (10%) of the aggregate amount of said Principal's base Bid, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns, jointly and severally, firmly by these presents.

WHEREAS, said Principal is submitting a Bid for Owner's Project MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING at 225 SHOREWAY ROAD, SAN CARLOS, CA 94070.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by the said Principal be accepted and the Agreement be awarded to said Principal and said Principal shall, within the required periods, enter into the Agreement so awarded and provide any required Construction Performance Bond, Construction Labor and Material Payment Bond, insurance certificates, and all other endorsements, forms, and documents required under Document 00 2115 (Instructions to Bidders), then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument this _____ day of _____, 20____.
(Month)

(Corporate Seal)

By _____
Principal

By _____
Surety

(Corporate Seal)

By _____
Attorney in Fact

END OF DOCUMENT

DOCUMENT 00 4325

BIDDER REGISTRATION FORM

INDEPENDENT CONTRACTOR REGISTRATION

Contractor's License # (CSLB) And Expiration Date _____

Contractor's CA Dep't of Industrial Relations # and Expiration Date _____

Date: _____ Fed I.D. # _____

Full Corporate Name of Company: _____

Street Address: _____

Mailing Address: _____

Phone: _____ Fax: _____ Email address: _____

Name of Principal Contact: _____

Type of Business: _____ Sole Proprietor _____ Partnership
 _____ Non-Profit 501(c)(3) _____ Corporation
 _____ other (please explain: _____)

INSURANCE

Workers' Compensation:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

General Liability:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

A.M. Best Rating: _____

Automobile Liability:

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

A.M. Best Rating: _____

All-risk Course of Construction (if Required by Document 00 5205 Informal Construction Services Agreement, Appendix A):

Carrier: _____

Address: _____

Phone and Fax: _____

Policy Number: _____

Policy Limits: \$ _____

A.M. Best Rating: _____

BIDDER CERTIFIES, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IS CURRENT AND ACCURATE AND AUTHORIZES OWNER, AND ITS AGENTS AND REPRESENTATIVES TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.

SIGNATURE

DATE

SAFETY EXPERIENCE

The following statements as to the Bidder's safety experience are submitted with the Bid, as part thereof, and the Bidder guarantees the truthfulness and accuracy of all information.

1. List Bidder's interstate Experience Modification Rate for the last three years.

[20__] _____ [20__] _____ [20__] _____

2. Use Bidder's last year's Cal/OSHA 300/301 log to fill in the following number of injuries and illnesses:

a. Number of lost workday cases _____

b. Number of medical treatment cases _____

c. Number of fatalities _____

3. Employee hours worked last year _____

4. State the name of Bidder's safety engineer/manager:

Attach a resume or outline of this individual's safety and health qualifications and experience.

I CERTIFY, UNDER PENALTY OF PERJURY, THAT THE FOREGOING INFORMATION IS CURRENT AND ACCURATE AND I AUTHORIZE OWNER, AND ITS AGENTS AND REPRESENTATIVES TO OBTAIN A CREDIT REPORT AND/OR VERIFY ANY OF THE ABOVE INFORMATION.

BIDDER:

By: _____
Signature

Its: _____
Title

Date _____

END OF DOCUMENT

DOCUMENT 00 4330

SUBCONTRACTORS LIST

The Subcontractors List must include the names of all subcontractors for those subcontractors who will perform any portion of Work, including labor, rendering of service, or specially fabricating and installing a portion of the Work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total Bid amount.

Name of Subcontractor and Location of Place of Business	Description of Work	Subcontractor's CSLB License No.	DIR Registration Number*

(Bidder to attach additional sheets if necessary)

* Pursuant to Division 2, Part 7, Chapter 1 (commencing with section 1720) of the California Labor Code.

END OF DOCUMENT

DOCUMENT 00 4519

NON-COLLUSION AFFIDAVIT

PUBLIC CONTRACT CODE SECTION 7106

NON-COLLUSION AFFIDAVIT TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

_____, being first duly sworn,
(Name of Principal of Bidder)

deposes and says that he or she is _____
(Office of Affiant)

of _____, the party
(Name of Bidder)

making the foregoing Bid, that the Bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the Bid is genuine and not collusive or sham; that Bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham Bid, and has not directly or indirectly colluded, conspired, connived or agreed with any bidder or anyone else to put in a sham Bid, or that anyone shall refrain from bidding, and that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication or conference with anyone to fix the Bid price of 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, or to secure any advantage against Owner, or anyone interested in the proposed contract; that all statements contained in the Bid are true; and further, that Bidder has not, directly or indirectly, submitted its Bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company, association, organization, Bid depository, or to any member or agent thereof to effectuate a collusive or sham Bid.

Executed under penalty of perjury under the laws of the State of California:

_____,
(Name of Bidder)

_____,
(Signature of Principal)

Subscribed and sworn before me _____

This _____ day of _____, 201__

Notary Public of the State of _____

In and for the County of _____

My Commission expires _____ (Seal)

NOTE: If Bidder is a partnership or a joint venture, this affidavit must be signed and sworn to by every member of the partnership or venture.

NOTE: If Bidder [including any partner or venturer of a partnership or joint venture] is a corporation, this affidavit must be signed by the Chairman, President, or Vice President and by the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.

NOTE: If Bidder's affidavit on this form is made outside the State of California, the official position of the person taking such affidavit shall be certified according to law.

END OF DOCUMENT

DOCUMENT 00 4545

BIDDER CERTIFICATIONS

TO BE EXECUTED BY ALL BIDDERS AND SUBMITTED WITH BID

The undersigned Bidder certifies to Owner as set forth in sections 1 through 7 below.

1. STATEMENT OF CONVICTIONS

By my signature hereunder, I hereby swear, under penalty of perjury, that no more than one final, unappealable finding of contempt of court by a Federal Court has been issued against Bidder within the past two years because of failure to comply with an order of a Federal Court or to comply with an order of the National Labor Relations Board.

2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE

By my signature hereunder, as the Contractor, I certify that I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this Contract.

3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS

By my signature hereunder, as the Contractor, I certify that I am aware of the provisions of Labor Code Section 1773, which requires the payment of prevailing wage on public projects. Also, that the Contractor and any subcontractors under the Contractor shall comply with Labor Code Section 1776, regarding wage records, and with Labor Code Section 1777.5, regarding the employment and training of apprentices. It is the Contractor's responsibility to ensure compliance by any and all subcontractors performing work under this Contract.

4. CERTIFICATION OF COMPLIANCE WITH PUBLIC WORKS CHAPTER OF LABOR CODE

By my signature hereunder, as the Contractor, I certify that I am aware of Sections 1777.1 and 1777.7 of the California Labor Code and Contractor and Subcontractors and am eligible to bid and work on public works projects.

5. CERTIFICATION OF NON-DISCRIMINATION

By my signature hereunder, as the Contractor, I certify that there will be no discrimination in employment with regard to race, color, religion, gender, sexual orientation, age or national origin; that all federal, state, and local directives and executive orders regarding non-discrimination in employment will be complied with; and that the principal of equal opportunity in employment will be demonstrated positively and aggressively.

6. CERTIFICATION OF NON-DISQUALIFICATION

By my signature hereunder, as the Contractor, I swear, under penalty of perjury, that the below indicated Bidder, any officer of Bidder, or any employee of Bidder who has a proprietary interest in such Bidder, has never been disqualified, removed, or otherwise prevented from bidding on, or completing a Federal, State, or local government project because of a violation of law or safety regulation, except as indicated on the separate sheet attached hereto entitled "Previous Disqualifications." If a statement of "Previous Disqualifications" is attached, please explain the circumstances.

7. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT

By my signature hereunder, as the Contractor, pursuant to Labor Code Section 2810(a), I certify that, if awarded the Contract based on the undersigned's Bid, the Contract will include funds sufficient to allow the Contractor to comply with all applicable local, state, and federal laws or regulations governing the labor or services to be provided. I understand that Owner will be relying on this certification if it awards the Contract to the undersigned.

BIDDER:

(Name of Bidder)

Date: _____, [20__]

By: _____

(Signature)

Name: _____

(Print Name)

Its: _____

(Title)

END OF DOCUMENT

DOCUMENT 00 5105

NOTICE OF AWARD

Dated _____

TO: _____

ADDRESS: _____

CONTRACT NO.: 20200528.1

CONTRACT FOR: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING
PROJECT AT 225 SHOREWAY ROAD, SAN CARLOS, CA 94070**

The Contract Sum of your Agreement is _____
(Amount in Words)

Dollars (\$ _____)

1. Two copies of the proposed Contract Documents listed below accompany this Notice of Award.
2. You must comply with the following conditions precedent by **5:00 p.m. PDT** of the **10th Business Day** following the date of this Notice of Award, that is, by **[Day of the Week, Month Day, 202_]**.
 - a. Deliver to Owner 2 fully executed counterparts of Document 00 5205 (Construction Services Agreement). Each copy of Document 00 5205 must bear your original signature on the signature page and your initials on each page.
 - b. Deliver to Owner one original set of the insurance certificates with endorsements required by Document 00 5205 Appendix C.
 - c. If your Contract Sum exceeds (or is expected to exceed) \$25,000, deliver to Owner one original Construction Performance Bond in form attached to Document 00 5205 as Appendix D, executed by you and your surety.
 - d. If your Contract Sum exceeds (or is expected to exceed) \$25,000, deliver to Owner one original Construction Labor and Material Payment Bond in form attached to Document 00 5205 as Appendix E, executed by you and your surety.
3. Failure to comply with these conditions within the time specified will entitle Owner to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.
4. Within **21 Days** after you comply with the conditions in Paragraph 2 of this Document 00 5105, Owner will return to you one fully signed counterpart of Document 00 5205 (Informal Construction Services Agreement) with 1 copy of the Project Manual (including Specifications and Drawings).
5. Questions regarding bonds and insurance, and other topics, may be directed to bids@rethinkwaste.org.
6. Upon commencement of the Work, you and each of your Subcontractors shall certify and provide Owner copies of payroll records in accordance with Labor Code Section 1776.

**OWNER: SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY**

By: _____

(Title)

(Print Name)

By: _____
Attorney for Owner

(Print Name)

ATTEST: _____
Board Secretary

(Print Name)

AUTHORIZED BY BOARD RESOLUTION:

NO: _____

ADOPTED: _____, [20__]

[Copy of Resolution Attached]

END OF DOCUMENT

DOCUMENT 00 5205
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
610 Elm Street, Suite 202, San Carlos, CA 94070

CONSTRUCTION SERVICES AGREEMENT

MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING PROJECT

Contract No. 20200528.1

DATE: _____

1. IDENTIFICATION OF CONTRACTOR:

CONTRACTOR: _____

CSLB LICENSE NO: _____

DIR REGISTRATION NO: _____

2. SCOPE OF THE WORK

See Scope of Work attached as Appendix A.

3. COMPENSATION FOR WORK. Contractor's total compensation for the Work performed under this Agreement (**Contract Sum**) is \$_____, to be paid as per attached schedule of rates and charges, up to a guaranteed not-to-exceed amount of \$_____. All payments shall be subject to a five percent (5%) retention.

4. SCHEDULE OF PERFORMANCE FOR THE WORK. Contractor shall commence and complete the Work by the following dates:

Commencement Date shall be on the date established in the Notice to Proceed. Owner reserves the right to modify or alter the Commencement Date of the Work.

Final Completion Date: Within 4 calendar days of Commencement Date.

4.01 Liquidated Damage Amounts.

A. As liquidated damages for delay Contractor shall pay Owner Two Thousand dollars (\$2,000.00) for each Day that expires after the time specified herein for Contractor to achieve Final Completion of the entire Work, until achieved.

4.02 Scope of Liquidated Damages

A. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.

B. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or

costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

5. CONTRACTOR'S DUTY. Contractor agrees to perform all of the Work required for the Project, as specified in the Contract Documents, all of which are fully incorporated herein. Contractor shall provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including, but not limited to, provision of all necessary labor, materials, equipment, transportation, and utilities, unless otherwise specified in the Contract Documents. Contractor also agrees to use its best efforts to complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.

6. CONTRACT DOCUMENTS.

6.01 The Contract Documents (sometimes collectively referred to as "Agreement" or "Bid Documents") consist of the following documents which are on file with the Owner and are hereby incorporated by reference.

- A. Appendix A – Scope of Work
- B. Appendix B – General Conditions
- C. Appendix C – Insurance
- D. Appendix D – Construction Performance Bond
- E. Appendix E – Construction Labor and Materials Payment Bond
- F. Appendix F – Modification Procedures

6.02 The Contract Documents are the sole and exclusive provisions that govern the Work described herein. Any provision contained in any purchase order issued in connection with this Agreement or the Work described herein shall be null and void and shall have no force or effect.

6.03 Agreement number must appear on all invoices and correspondence. Send invoices in duplicate immediately upon performance of Work ordered hereon to:

**SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
ATTN: Executive Director
610 Elm Street, Suite 202
San Carlos, CA 94070**

7. AUTHORITY TO SIGN. The individuals executing this Agreement represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

IN WITNESS WHEREOF, the parties have caused this Construction Services Agreement to be executed the date and year first above written.

CONTRACTOR:

OWNER: South Bayside Waste
Management Authority

Signature

Signature

Print Name & Title

Date

Print Name & Title

Date

ATTORNEY FOR OWNER:

Signature

Print Name & Title

Date

Appendix A to Construction Services Agreement

SCOPE OF WORK

The Shoreway Environmental Center Material Recovery Facility (MRF) currently utilizes an IPS Conquest Baler to bale recyclable materials in preparation for transportation and off-site processing. This work entails complete relining of the IPS Conquest baler and resealing or hydraulic rams. The baler is 10 years old and this is the first time the baler is being relined. The work needs to be completed over one to two long-weekends in the month of June 2020. The baler will be made available on Thursday 5:00 PM PDT and must be made operational on Monday morning at 7:00 AM PDT. Upon the completion of work, the gap between the baler box, rams, and shear beam knife will be restored to factory specifications and tolerances.

Baler elements that need to be replaced in this work include:

- Baler Box Liners
- Gatherer Ram Liners
- Shear Beam Knife and Shims
- Both Hinged Side and Liners
- Main ram seal
- All associated bolts, shims and parts to complete the project.

Conditions and assumptions relating to Relining work:

- The Contractor can store materials at the Shoreway MRF
- The SBWMA has a forklift that can be used by the Contractor
- All tools need to be supplied by Contractor
- Facility Operator has Hot Work procedures that must be followed by the Contractor

The bidder shall state if their bid price includes or excludes the following items, and in any case provide a cost estimate for each of the below items.

- Additional Equipment Rental
- Parts Freight Cost
- Sales tax for County
- Hydraulic Oil to provide for Filtration to manufacturer's specifications
- Additional steel if needed

Appendix B to Construction Services Agreement

GENERAL CONDITIONS

ARTICLE 2 - INTERPRETATION OF CONTRACT DOCUMENTS

2.01 Interpretation Of Documents

- A. Contract Documents are complementary; what is called for by one is as binding as if called for by all.
- B. Individual Contract Documents subdivide at first level into Articles, and then into paragraphs.

2.02 Order Of Precedence Of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
 - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
 - 2. Agreement Form (Document 00 5205), and terms and conditions referenced therein;
 - 3. General Conditions;
 - 4. Division 01 General Requirements, if included;
 - 5. Drawings and Technical Specifications (Division 02 and above);
 - 6. Written words over figures, unless obviously incorrect;
 - 7. Figured dimensions over scaled dimensions;
 - 8. Large-scale Drawings over small-scale Drawings.
- B. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- C. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- D. All Technical Specifications included in the Project manual shall be included within the Contract Documents unless identified otherwise.

ARTICLE 3 - PRE-BID INVESTIGATIONS

3.01 Pre-Bid Investigations Required

- A. Prior to and as a condition of submitting a Bid and executing Document 00 5205 (Agreement), Contractor shall make reasonable efforts to investigate fully the Work of the Contract. Contractor shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. Contractor's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by Owner for contracting purposes or during Contractor's pre-bid investigations, of existing above ground and (to the extent applicable) below ground conditions (together, **Existing Conditions Data**), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear or be referenced in the Project Manual or the in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- C. Contractor's investigations shall consider fully the fact that Existing Conditions Data is in many cases based on information furnished to Owner by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor shall also: (i.) provide Owner with prompt written notice of all

conflicts, errors, ambiguities, or discrepancies of any type, that it discovered in or among the Contract Documents and the Existing Conditions Data, and (ii.) subject to Owner's approval, conduct any such additional or supplementary examinations, investigations, explorations, tests, studies and data compilations, concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which Contractor may deem necessary in order to perform and furnish the Work in accordance with the terms and conditions of Contract Documents.

- D. During performance of the Contract, Contractor will be charged with knowledge of all information that it should have learned in performing these pre-bid investigations and other obligations, and shall not be entitled to Change Orders (time or compensation) due to any information, error, inconsistency, omission, or conditions that Contractor should have known as a part of this Work. Contractor shall be responsible for the resultant losses, including, without limitation, the cost of correcting Defective Work.

3.02 Limited Reliance Permitted On Owner's Existing Conditions Data

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by Owner, such information has been compiled in good faith, however, Owner does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Contractor must independently verify such information as part of its pre-bid investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to Owner's attention through written question issued during the bid period. In executing Document 00 5205 (Agreement), Contractor shall rely on the results of its own independent investigation and shall not rely on Owner-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by Owner, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. Owner is not responsible for the completeness of any subsurface condition information, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, Owner is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

3.03 Pre-Bid Investigation Requirements For Excavation And Utilities Relocation Projects

- A. As part of its pre-bid investigations for Projects involving excavation and/or relocation of existing utilities, Contractor shall make reasonable efforts to verify information regarding Underground Facilities, including but not limited to, requesting additional information or verification of information as necessary.
- B. Because of the nature and location of Owner and the Project, the existence of Underground Facilities is deemed inherent in the Work of the Contract, as is the fact that Underground Facilities are not always accurately shown or completely shown on as-built records, both as to their depth and location. Contractor shall, therefore, take care to note the existence and potential existence of Underground Facilities, in particular, above and below grade structures, drainage lines, storm drains, sewers, water, gas, electrical, chemical, hot water, and other similar items and utilities. Contractor shall carefully consider all supplied information, request additional information Contractor may deem necessary, and visually inspect the Site for above ground indications of Underground Facilities (such as, for example not by way of limitation, the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site). Contractor shall also consider local underground conditions and typical practices for Underground Facilities, either through its own direct knowledge or through its subcontractors, and fully consider this knowledge in assessing the existing information and the reasonableness of its reliance.

ARTICLE 4 - SUBCONTRACTORS

4.01 Subcontractor Listing Law

- A. Contractor shall comply with the Subcontractor Listing law, Public Contract Code Section 4101, et seq. Contractor shall not substitute any other person or firm in place of any Subcontractor listed in the Bid except as may be allowed by law.
- B. Subcontractors shall not assign or transfer their subcontracts or permit them to be performed by any other contractor without Owner's written approval. At Owner's request, Contractor shall provide Owner with a complete copy of all executed subcontracts or final commercial agreements with Subcontractors and/or suppliers.

4.02 Subcontracts

- A. Subcontract agreements shall preserve and protect the rights of Owner under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (i) to be bound to the terms of Contract Documents and (ii) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward Owner under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- B. Contractor shall provide for the assignment to Owner of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge Owner as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

ARTICLE 5 - DRAWINGS AND SPECIFICATIONS

5.01 Intent Of Drawings And Specifications

- A. Contractor shall interpret words or phrases used to describe Work (including services), materials, or equipment that have well-known technical or construction industry or trade meaning in accordance with that meaning. Drawings' intent specifically includes the intent to depict construction that complies with all applicable laws, codes and standards.
- B. As part of the "**Work**," Contractor shall provide all labor, materials, equipment, machinery, tools, facilities, services, employee training and testing, hoisting facilities, Shop Drawings, storage, testing, security, transportation, disposal, the securing of all necessary or required field dimensions, the cutting or patching of existing materials, notices, permits, documents, reports, agreements and any other items required or necessary to timely and fully complete Work described and the results intended by Contract Documents and, in particular, Drawings and Specifications. Divisions and Specification Sections and the identification on any Drawings shall not control Contractor in dividing Work among Subcontractors or suppliers or delineating the Work to be performed by any specific trade.
- C. Contractor shall perform reasonably implied parts of Work as "**incidental work**" although absent from Drawings and Specifications. Incidental work includes any work not shown on Drawings or described in Specifications that is necessary or normally or customarily required as a part of the Work shown on Drawings or described in Specifications. Incidental work includes any work necessary or required to make each installation satisfactory, legally operable, functional, and consistent with the intent of Drawings and Specifications or the requirements of Contract Documents. Contractor shall perform incidental work without extra cost to Owner. Incidental work shall be treated as if fully described in Specifications and shown on Drawings, and the expense of incidental work shall be included in price Bid and Contract Sum.

5.02 Checking Of Drawings And Specifications

- A. Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all applicable field measurements. Contractor shall be responsible for any errors that might have been

avoided by such comparison. Figures shown on Drawings shall be followed; Contractor shall not scale measurements. Contractor shall promptly report to Owner, in writing, any conflict, error, ambiguity or discrepancy that Contractor may discover. Contractor shall obtain a written interpretation or clarification from Owner before proceeding with any Work affected thereby. Contractor shall provide Owner with a follow-up correspondence every ten Days until it receives a satisfactory interpretation or clarification.

5.03 Interpretation Of Drawings And Specifications

- A. A typical or representative detail on Drawings shall constitute the standard for workmanship and material throughout corresponding parts of Work. Where necessary, and where reasonably inferable from Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of Work. The details of such adaptation shall be subject to prior approval by Owner. Repetitive features shown in outline on Drawings shall be in exact accordance with corresponding features completely shown.
- B. Should any discrepancy appear or any misunderstanding arise as to the import of anything contained in Drawings and Specifications, or should Contractor have any questions or requests relating to Drawings or Specifications, Contractor shall refer the matter to Owner, in writing, with a copy to the Architect/Engineer. Owner will issue with reasonable promptness written responses, clarifications or interpretations as Owner may determine necessary, which shall be consistent with the intent of and be reasonably inferable from Contract Documents. Such written clarifications or interpretations shall be binding upon Contractor. If Contractor believes that a written response, clarification or interpretation justifies an adjustment in the Contract Sum or Contract Time, Contractor shall give Owner prompt written notice. If the parties are unable to agree to the amount or extent of the adjustment, if any, then Contractor shall perform the Work in conformance with Owner's response, clarification, or interpretation and may make a written claim for the adjustment as provided in Article 12.
- C. The following general specifications shall apply wherever in the Specifications, or in any directions given by Owner in accordance with or supplementing Specifications, it is provided that Contractor shall furnish materials or manufactured articles or shall do Work for which no detailed specifications are shown. Materials or manufactured articles shall be of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation. If not ordinarily carried in stock, the materials or manufactured articles shall conform to industry standards for first class materials or articles of the kind required, with due consideration of the use to which they are to be put. Work shall conform to the usual standards or codes, such as those cited herein, for first class work of the kind required. Contractor shall specify in writing to Owner, at least 10 Business Days prior to furnishing such materials or performing such Work, the materials to be used or Work to be performed under this Paragraph.

5.04 Use Of Drawings And Specifications.

- A. Drawings, Specifications and other Contract Documents were prepared for use for Work of Contract Documents only. No part of Contract Documents shall be used for any other construction or for any other purpose except with the written consent of Owner. Any unauthorized use of Contract Documents is prohibited and at the sole liability of the user.

ARTICLE 6 - COMMENCEMENT OF THE WORK

6.01 Submission Of Required Schedules

- A. Contractor shall submit to Owner in draft within the Bid documentation, and in final prior to the first payment application, the following schedules:
 - 1. Schedule of Values
 - 2. Progress Schedule, and
 - 3. Schedule of Submittals.
- B. No progress payment shall be due or owing to Contractor until such schedules are submitted to and acceptable to Owner and/or Architect/Engineer as meeting the requirements of the Contract

Documents. In Owner's sole discretion, Owner may elect to instead withhold a portion of any progress payment for unacceptable compliance with contract requirements for such schedules.

- C. Owner's acceptance of Contractor's schedules will not create any duty of care or impose on Owner any responsibility for the sequencing, scheduling or progress of Work nor will it interfere with or relieve Contractor from Contractor's full responsibility therefore.

6.02 Commencement Date Of Contract Time

- A. The Contract Time will commence to run on the 60th Day after the issuance of the Notice of Award or, if a Notice to Proceed is given, on the date indicated in the Notice to Proceed.
- B. Owner may give a Notice to Proceed at any time within 60 Days after the Notice of Award. Contractor shall not do any Work at the Site prior to the date on which the Contract Time commences to run.

ARTICLE 7 - CONTRACTOR'S ORGANIZATION AND EQUIPMENT

7.01 Contractor's Legal Address

- A. Address and facsimile number given in Contractor's Bid are hereby designated as Contractor's legal address and facsimile number. Contractor may change its legal address and facsimile number by notice in writing, delivered to Owner, which in conspicuous language advises Owner of a change in legal address or facsimile number, and which Owner accepts in writing. Delivery to Contractor's legal address or depositing in any post office or post office box regularly maintained by the United States Postal Service, in a wrapper with postage affixed, directed to Contractor at Contractor's legal address, or of any drawings, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon Contractor. Facsimile to Contractor's designated facsimile number of any letter, memorandum, or other communication on standard or legal sized paper, with proof of facsimile transmission, shall be deemed legal and sufficient service thereof upon Contractor.

7.02 Contractor's Superintendents Or Forepersons

- A. Contractor shall at all times be represented on Site by one or more superintendents or forepersons authorized and competent to receive and carry out any instructions that Owner may give, and shall be liable for faithful observance of instructions delivered to Contractor or to authorized representative or representatives on Site.

7.03 Proficiency In English

- A. Supervisors, security guards, safety personnel and employees who have unescorted access to the Site shall possess proficiency in the English language in order to understand, receive and carry out oral and written communications or instructions relating to their job functions, including safety and security requirements.

7.04 Contractor's And Subcontractors' Employees

- A. Contractor shall employ, and shall permit its Subcontractors to employ, only competent and skillful personnel to do Work. If Owner notifies Contractor that any of its employees, or any of its Subcontractors' employees on Work is incompetent, unfaithful, disorderly or profane, or fails to observe customary standards of conduct or refuses to carry out any provision of the Contract Documents, or uses threatening or abusive language to any person on Work representing Owner, or violates sanitary rules, or is otherwise unsatisfactory, and if Owner requests that such person be discharged from Work, then Contractor or its Subcontractor shall immediately discharge such person from Work and the discharged person shall not be re-employed on the Work except with consent of Owner.

7.05 Contractor's Use Of The Site

- A. Contractor shall not make any arrangements with any person 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 Owner and any Owner, former Owner or tenant of such land, structure or buildings. Contractor may not occupy Owner-owned

property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from Owner.

7.06 Contractor's Site Office

- A. Unless expressly provided otherwise in the Contract Documents, Contractor shall provide a site office staffed by a resident project manager or job superintendent.

ARTICLE 8 - OWNER'S ADMINISTRATION OF WORK

8.01 Owner's Representative(s)

- A. Owner's Representative(s) will have limited authority to act on behalf of Owner as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by Owner, Owner will issue all communications to Contractor through Owner's Representative, and Contractor shall issue all communications to Owner through Owner's Representative in a written document delivered to Owner.
- C. Should any direct communications between Contractor and Owner's consultants, architects or engineers not identified in the Bid Form occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to Owner.

8.02 Owner's Observation Of The Work

- A. Work shall be performed under Owner's general observation and administration. Contractor shall comply with Owner's directions and instructions in accordance with the terms of Contract Documents, but nothing contained in these General Conditions shall be taken to relieve Contractor of any obligations or liabilities under the Contract Documents. Owner's failure to review or, upon review, failure to object to any aspect of Work reviewed, shall not be deemed a waiver or approval of any non-conforming aspect of Work.
- B. Subject to those rights specifically reserved in the Contract Documents, Owner will not supervise, or direct, or have control over, or be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or Contractor's failure to comply with laws and regulations applicable to the furnishing or performance of Work. Owner will not be responsible for Contractor's failure to perform or furnish the Work in accordance with Contract Documents.

8.03 Consultant's Observation Of Work

- A. Owner may engage one or more of the following to assist in administering the Work: an Architect/Engineer, Project Manager, Construction Manager, or any other independent consultant (collectively for purposes of this Article 7, **Consultant**). If so engaged, Consultant will advise and consult with Owner, but will have authority to act on behalf of Owner only to extent provided in the Contract Documents or as set forth in writing by Owner. Consultant will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with Work. Consultant will not be responsible for or have control over the acts or omissions of Contractor, Subcontractors or their agents or employees, or any other persons performing Work.
- B. Consultant may review Contractor's Submittals, such as Shop Drawings, Product Data, and Samples, but only for conformance with design concept of Work and with information given in the Contract Documents.
- C. Consultant may visit the Site at intervals appropriate to stage of construction to become familiar generally with the progress and quality of Work and to determine in general if Work is proceeding in accordance with Contract Documents. Based on its observations, Consultant may recommend to Owner that it disapproves or rejects Work that Consultant believes to be Defective or will not produce a complete Project that conforms to Contract Documents, or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by Contract Documents. Consultant may also recommend to Owner special inspection or testing of Work, whether or not the Work is fabricated, installed, or completed.

- D. Consultant may conduct observations or inspections to recommend to Owner the dates that Contractor has achieved Substantial Completion and Final Completion, and will receive and forward to Owner for review written warranties and related documents required by Contract Documents.

8.04 Owner's And Consultant's Exercise Of Contract Responsibilities

- A. Owner, Consultant, and all Owner's representatives, in performing their duties and responsibilities under the Contract Documents, accept no duties, responsibilities or duty of care, nor may the same be implied or inferred, towards Contractor, any Subcontractor, sub-Subcontractor or supplier, except those set forth expressly in the Contract Documents.

8.05 Owner's Right Of Access To The Work

- A. During performance of Work, Owner, Consultant, and all Owner's representatives may at any time enter upon Work, shops or studios where any part of the Work may be in preparation, or factories where any materials for use in Work are being or are to be manufactured, and Contractor shall provide proper and safe facilities for this purpose, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as Owner's interests may require. Other contractors performing work for Owner may also enter upon Work for all purposes required by their respective contracts. Subject to the rights reserved in the Contract Documents, Contractor shall have sole care, custody, and control of the Site and its Work areas.

8.06 Owner's Right Of Separate Construction

- A. Owner may perform with its own forces, construction or operations related to the Project, or the Site during Contractor's operations. Owner may also award separate contracts in connection with other portions of the Project or other construction or operations, on the Site or areas contiguous to the Site, under conditions similar to these Contract Documents, or may have utility Owners perform other work.
- B. Contractor shall adjust its schedule and fully coordinate with and shall afford all other contractors, utility districts and Owner (if Owner is performing work with its own forces), proper and safe access to the Site, and reasonable opportunity for the installation and storage of their materials. Contractor shall ensure that the execution of its Work properly connects and coordinates with others' work, do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work, and shall cooperate with them to facilitate the progress of the Work.
- C. To the extent that any part of Contractor's Work is to interface with work performed or installed by other contractors or utility owners, Contractor shall inspect and measure the in-place work. Contractor shall promptly report to Owner in writing any defect in in-place work that will impede or increase the cost of Contractor's interface unless corrected.

ARTICLE 9 - CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK

9.01 Contractor To Supervise The Work

- A. Subject to those rights specifically reserved in the Contract Documents, Contractor shall supervise, direct, have control over, and be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without Owner's express written consent and, if applicable, payment of liquidated damages as required by Document 00 5205 (Agreement). The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.
- C. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and

procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.

- D. Contractor is fully responsible for Contractor's own acts and omissions. Contractor is responsible for all acts and omissions of its Subcontractors, suppliers, and other persons and organizations performing or furnishing any of the Work, labor, materials, or equipment under a direct or indirect contract with Contractor.
- E. Contractor shall conduct monthly Contractor Safety Committee meetings, and weekly toolbox safety talks.

9.02 Contractor To Maintain Cost Data

- A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide Owner with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide Owner with a copy of such report upon Owner's request.
- B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide Owner with copies for each Day Contractor works on the Project, to be delivered to Owner either the same Day or the following morning before starting work at the Site. Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. Owner shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including, without limitation, financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, Owner shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. Owner and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of the Government Code Section 8546.7. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

9.03 Contractor To Supply Sufficient Workers And Materials

- A. Unless otherwise required by Owner under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then Owner may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as Owner may consider necessary, at no cost to Owner. If Contractor does not comply with the notice within three Business Days of date of service thereof, Owner shall have the right (but not a duty) to provide materials and qualified workers to finish the Work or any affected portion of Work, as Owner may elect. Owner may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that Owner exercises this right. Owner will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. Owner will deduct from

funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of Owner from claims of others.

- C. Exercise by Owner of the rights conferred upon Owner in this subparagraph is entirely discretionary on the part of Owner. Owner shall have no duty or obligation to exercise the rights referred to in this subparagraph and its failure to exercise such rights shall not be deemed an approval of existing Work progress or a waiver or limitation of Owner's right to exercise such rights in other concurrent or future similar circumstances. (The rights conferred upon Owner under this subparagraph are, like all other such rights, cumulative to Owner's other rights under any provision of the Contract Documents.)

9.04 Contractor To Maintain Project Record Documents

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Contract Modifications, Change Orders, Work Directives, Force Account orders, and written interpretations and clarifications in good order and annotated to show all as-built changes made during construction. These Project Record Documents, together with all approved Samples and a counterpart of all approved Shop Drawings, shall be maintained and available to Owner for reference. Upon completion of the Work, Contractor shall deliver to Owner, the Project Record Documents, Samples and Shop Drawings and as-built drawings.
- B. Throughout Contractor's performance of the Work of the Project, Contractor shall maintain construction records to include: shop drawings; product data/material data sheets; samples; submittal; purchases; materials; equipment; inspections; applicable handbooks; applicable codes and standards; maintenance and operating manuals and instructions; RFI Log; Submittal Log; other related documents and revisions which arise out of the Construction Contracts. Contractor shall maintain records of principal building layout lines, elevations for the bottom of footings, floor levels, and key site elevations (certified by a qualified surveyor or professional engineer). Contractor shall make all records available to Owner. At the completion of the Project, Contractor shall deliver all such records to the Owner to have a complete set of record as-built drawings.

9.05 Contractor To Not Disrupt Owner Operation

- A. Contractor shall schedule and execute all Work in a manner that does not interfere with or disrupt Owner operations including, without limitation, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using Owner facilities or doing business with Owner. Contractor shall produce and supply coordination plans and requests to Owner, following Owner procedures, for all necessary interference of construction with Owner, which Owner will reasonably cooperate with.

9.06 Contractor To Provide Temporary Facilities And Controls

Unless expressly provided otherwise in the Contract Documents, Contractor shall provide all temporary utilities (including without limitation electricity, water, natural gas), lighting, heating, cooling and ventilating devices, telephone, sanitary facilities, barriers, fences and enclosures, tree and plant protection, fire protection, pollution, erosion, Storm Water Pollution Prevention controls, noise and traffic control, and any other necessary services required for construction, testing or completion of the Work.

ARTICLE 10 - WARRANTY, GUARANTY, AND INSPECTION OF WORK

10.01 Warranty And Guaranty

- A. General Representations and Warranties: Contractor represents and warrants that it is and will be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work including , without limitation, each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from

defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- B. Extended Warranties: Any warranty exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply Owner with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. Environmental and Toxics Warranty: The covenants, warranties and representations contained in this Paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, without limitation, Project completion. Contractor covenants, warrants and represents to Owner that:
 - 1. To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to Owner.
 - 2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
 - 3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to Owner.
 - 4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide Owner with copies thereof.

10.02 Inspection Of Work

- A. Work and materials, and manufacture and preparation of materials, from beginning of construction until Final Completion and acceptance of Work, shall be subject to inspection and rejection by Owner, its agents, representatives or independent contractors retained by Owner to perform inspection services, or governmental agencies with jurisdictional interests. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's Site safety procedures and program so that they may comply therewith as applicable. Upon request or where specified, Owner shall be afforded access for inspection at the source of supply, manufacture or assembly of any item of material or equipment, with reasonable accommodations supplied for making such inspections.
- B. Contractor shall furnish, in such quantities and sizes as may be required for proper examination and tests, Samples or test specimens of all materials to be used or offered for use in connection with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to Owner. Contractor shall submit all Samples in ample time to enable Owner to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

- C. Contractor shall give Owner timely notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- D. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish Owner with the required certificates of inspection, or approval. Owner will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- E. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of Owner, Contractor shall uncover the Work at Owner's request. Contractor shall bear the expense of uncovering Work and replacing Work. In any case where Contractor covers Work contrary to Owner's request, Contractor shall uncover Work for Owner's observation or inspection at Owner's request. Contractor shall bear the cost of uncovering Work.
- F. Whenever required by Owner, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, Owner, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- G. Inspection of the Work by or on behalf of Owner, or Owner's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by Owner, to perform Work in conformance with the Contract Documents and to immediately correct Defective Work immediately upon Contractor's knowledge.
- H. Any inspection, evaluation, or test performed by or on behalf of Owner relating to the Work is solely for the benefit of Owner, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by Owner, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.
- I. COSTS FOR TESTING: The cost of all testing will be borne by the Owner, except in the following instances: (1) The specifications for a specific project provide for Contractor furnished testing (i.e., up to the stated number of tests); (2) The Contractor shall assume all costs of retesting materials which fail to meet Contract requirements. Any costs due from the Contractor for testing will be charged against the Contract and deducted from monies due, or to become due, to the Contractor.
- J. TESTING BY CONTRACTOR
 - 1. Where these specifications require the Contractor to furnish test results, they shall be performed by an independent testing laboratory approved by the Owner.
 - 2. Laboratory test reports shall cite the contract requirements, the test of analysis procedures used, the actual test results, and include a statement that the item tested conforms or fails to conform to the specification requirements.
 - 3. All test reports shall be signed by a representative of the testing laboratory authorized to sign certified test reports.

4. Original copies of test reports shall be mailed directly to the Owner from the approved testing laboratory.

K. **COST OF OVERTIME CONSTRUCTION INSPECTION:** Overtime construction work performed at the option of, or for the convenience of, the Contractor will be inspected by Owner and, as required, city building officials at the expense of the Contractor. For any such overtime beyond the regular 8-hour day and for any time worked on Saturday, Sunday, or holidays, the charges for city personnel will be as published by the city.

10.03 Correction Of Defective Work

- A. Owner may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Also, if Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, Owner may direct Contractor to perform the Work in accordance with the Contract Documents, correct or replace any such Defective Work, or stop any portion of Work.
- B. Owner may correct and remedy the Defective Work or perform any other work, corrective or otherwise, if, after five Days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work; or provide a plan for correction of Defective Work acceptable to Owner; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, its representatives, agents, employees, and other contractors and consultants' access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by Owner in exercising rights and remedies under this Paragraph. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from monies due Contractor, all such claims, costs, losses and damages caused by or resulting from exercising its rights and remedies. If Contractor disagrees with Owner's calculations, it may make a claim as provided in Article 12 of this Document.
- D. These Owner rights and remedies are entirely discretionary on the part of Owner, and shall not give rise to any duty on the part of Owner to exercise the rights for the benefit of Contractor or any other party. Owner's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.

10.04 Acceptance of Defective Work

- A. Owner may in its sole discretion elect to accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to Owner's evaluation of and determination to accept such Defective Work. If Owner accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, Owner may deduct from monies due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with Owner's calculations, Contractor may make a claim as provided in Article 12 of this Document. If Owner accepts any Defective Work after final payment, Contractor shall pay to Owner, an appropriate amount as determined by Owner.

10.05 Rights Upon Inspection, Correction Or Acceptance

- A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by Owner of its rights and remedies under this Article. Where Owner exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, without limitation, the right to terminate Contractor's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Observation or inspection by Owner or its authorized agents or representatives shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive Owner's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless Owner agrees otherwise in writing.

10.06 Proof Of Compliance Of Contract Provisions

- A. In order that Owner may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of Work and materials, Contractor shall at any time, when requested, submit to Owner properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.
- B. Before commencing any portion of Work, Contractor shall inform Owner in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to Owner a reasonable time in advance of time at which Contractor proposes to begin Work, so that Owner may complete necessary preliminary work without inconvenience or delay to Contractor.

10.07 Correction Period And Project Warranty Period:

- A. If within one year after the date of Final Acceptance, or such longer period of time as may be prescribed by laws, regulations or by the terms of Contract Documents or any extended warranty or guaranty, any Work (completed or incomplete) is found to be Defective, Contractor shall promptly without cost to Owner and in accordance with Owner's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by Owner and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, Owner shall have all rights and remedies granted by law.
- B. In special circumstances where a part of the Work is occupied or a particular item of equipment is placed in continuous service before Final Acceptance of all the Work, the correction period for that part of Work or that item may start to run from an earlier date if so provided by Change Order.
- C. Where Defective Work or rejected Work (and damage to other Work resulting therefrom) has been corrected, removed, or replaced under this Paragraph after the commencement of the correction period, the correction period hereunder with respect to such Work shall be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.

10.08 No Waiver

- A. Neither recordation of Final Acceptance nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by Owner shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to Owner, Owner shall have right to operate and use materials or

equipment until said materials and equipment can, without damage to Owner, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.

- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to Owner for damages sustained as result of latent defects in materials or equipment caused by negligence of Contractor, its agents, suppliers, employees, or Subcontractors.

ARTICLE 11 - MODIFICATIONS OF CONTRACT DOCUMENTS

11.01 Owner's Right To Direct Changed Work.

- A. Owner may, without notice to the sureties and without invalidating the Contract, make changes in the Work (**Changed Work**) including, without limitation: alterations, deviations, additions to, or deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, Owner reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such Owner-furnished labor, materials, and equipment.
- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Contractor and Owner may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as Owner may direct (with Contractor retaining its rights under Article 12 herein).

11.02 Required Documentation For Changed Work

- A. Changes affecting the Contract Time or Contract Sum of the Work shall be set forth in a written Change Order or Change Directive that shall specify:
 - 1. The Work performed in connection with the change to be made;
 - 2. The amount of the adjustment of the Contract Sum, if any, and the basis for compensation for the Work ordered; and
 - 3. The extent of the adjustment in the Contract Time, if any.
- B. A Change Order or Change Directive will become effective when signed by Owner, notwithstanding that Contractor has not signed it. A Change Order will become effective without Contractor's signature, provided Owner indicates same thereon (by indicating it as a "unilateral change order").
- C. All changes in any plans and specifications approved by any authority with jurisdiction may also require addenda or change orders approved by that authority.
- D. Where Owner requests, a performance bond rider covering the changed Work must be executed and delivered to Owner before proceeding with the changed Work or shortly in time thereafter.

11.03 Procedures And Pricing Of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Modification Procedures.

ARTICLE 12 - TIME ALLOWANCES

12.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.
- B. Float. Float shall be treated as a Project resource. Contractor shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.
- C. Time extensions will not be granted unless substantiated by the Critical Path Method (**CPM**) Schedule, and then not until the CPM project float becomes zero. If Contractor fails to submit a TIE

within the required time period, then Contractor shall be deemed to have agreed that there is no time impact and that Contractor has irrevocably waived its rights to any additional Contract Time.

12.02 Excusable Delay And Inexcusable Delay Defined.

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
1. Changes in the Work ordered by Owner (**Changes**”);
 2. Acts or neglect by Owner, Architect, any Owner Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including, without limitation, pre-bid investigations) (**Acts or Neglect**); or
 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God (together, “force majeure events”), provided damages resulting therefrom are not the result of Contractor’s failure to protect the Work as required by Contract Documents (**Force Majeure**).
- B. Inexcusable Delay. Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a cause that is within Contractor’s risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.

12.03 Notice Of Delay

- A. Within seven Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify Owner in writing, by submitting a notice of delay that shall describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor shall submit a TIE within ten days of the notice of delay. Owner will determine all claims and adjustments in the Contract Time. No claim for an adjustment in the Contract Time will be valid and such claim will be waived if not submitted in accordance with the requirements of this subparagraph. In cases of substantial compliance with the seven-day notice requirement here (but not to exceed twenty-one days from the beginning of the delay event), Owner may in its sole discretion recognize a claim for delay accompanied with the proper TIE, provided Contractor also shows good faith and a manifest lack of prejudice to Owner from the late notice.

12.04 Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Sum in addition to Contract Time for:
1. Excusable delay caused solely by Changes in the Work ordered by Owner, as provided above, and/or
 2. Excusable delay caused solely by Acts or Neglect by Owner or other person, as provided above.

12.05 Non-Compensable Time Extensions

- A. Subject to other applicable provisions of the Contract Documents, Contractor may be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for
1. Periods of excusable delay caused solely by weather or Force Majeure events as provided above in this Article, or
 2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or inexcusable, such as: acts or neglect of Contractor, Subcontractors or others for whom Contractor is responsible; other acts, omissions and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided above in this Article.

12.06 Adverse Weather

- A. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds the parameters listed or referenced immediately below in this subparagraph and Contractor proves that adverse weather actually caused delays to work on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
- B. Claims for extension of time for rain delay will not be granted unless the number of days work is prevented by rain exceeds 100% of the historical average number of rain days for the period of the Contract Time, based on the records of the National Oceanic & Atmospheric Administration (NOAA) weather station in San Mateo, California or that closest to the Project Site, as measured and reported by NOAA. (For example, for California, Oregon and Washington, these figures are contained in the “>=0.10 inch” column at the applicable weather station’s “General Climate Summary Table” for “Precipitation” at <http://www.wrcc.dri.edu/climate-summaries/>), pro-rated in the individual month Contractor starts and finishes Work. Delays due to adverse weather conditions will not be allowed for weather conditions that fall within these parameters.
- C. In order to qualify as an adverse weather delay with respect to the foregoing parameters, (i.) daily rainfall must exceed 0.1 inch, and/or (ii.) daily snowfall must exceed 1.0 inch or more, at the NOAA station located in San Mateo, California or that closest to the Project site, as measured and reported by NOAA. Notwithstanding these allowances, Contractor shall at all times employ all available mitigation measures to enable Work to continue, Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for Owner to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.

Normal number of rain days for which rainfall has exceeded 0.1 inches in San Mateo, CA is as follows:

Jan	Feb	Mar	April	May	June	July	Aug	Sept	Oct	Nov	Dec
8	6	6	3	1	0	0	0	0	2	4	6

- D. Contractor shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Contractor shall notify Owner and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float available to either Owner or Contractor.
- E. Adverse weather delay for precipitation shall be recognized for the actual period of time Contractor proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Contractor’s progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves to Owner’s satisfaction that precipitation exceeding the specified parameters causes delay to Contractor for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
- F. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to Owner representative and the Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Contractor responsible, at no increase in Contract Sum, for corrections Owner may require. Commencement of Work constitutes acceptance of surface.

12.07 Liquidated Damages

- A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that Owner will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed

- beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
- B. Contractor and Owner agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by Owner because of a delay in completion of all or any part of the Work. Contractor and Owner agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by Owner, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
 - C. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by Owner as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from Owner (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. Owner may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.
 - D. Contractor and Owner agree that the Contractor's Key Personnel were a material factor in Owner's assessment of Contractor's experience and the adequacy of Contractor's supervisory personnel. Accordingly, Contractor and Owner agree that Contractor shall not remove, reassign or make changes to any of the Key Personnel without Owner's prior written approval. In the event that any Key Personnel leaves the Project, is reassigned and/or is removed and replaced by Contractor before Project Final Completion, for any reason whatsoever, Contractor agrees to pay Owner liquidated damages as set forth in the Agreement (Document 00 5205), unless Contractor can demonstrate to Owner's satisfaction that the Key Personnel were reassigned and/or removed and replaced for reasons beyond Contractor's control.

ARTICLE 13 - CLAIMS BY CONTRACTOR

13.01 Obligation to File Claims for Disputed Work

- A. Should it appear to Contractor that the Work to be performed or any of the matters relative to the Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, then Contractor shall first follow procedures set forth in the Contract Documents (including, without limitation, Paragraphs 11.03, 11.04, 13.03 and 13.04 of this Document and Modification Procedures.) If a dispute remains, then Contractor shall give written notice to Owner that expressly invokes this Article 12. Owner shall decide the issue in writing within 15 days; and Owner's written decision shall be final and conclusive. If Contractor disagrees with Owner's decision, or if Contractor contends that Owner failed to provide a decision timely, then Contractor's SOLE AND EXCLUSIVE REMEDY is to promptly file a written claim setting forth Contractor's position as required herein.

13.02 Form And Contents Of Claim

- A. Contractor's written claim must identify itself as a "**Claim**" under this Article 12 and must include the following: (i) a narrative of pertinent events; (ii) citation to contract provisions; (iii) theory of entitlement; (iv) complete pricing of all cost impacts; (v) a time impact analysis of all time delays that shows actual time impact on the critical path; (vi) documentation supporting items (i) through (v); and (vii) a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to Owner within thirty (30) calendar days of receiving Owner's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Modification Procedures, and must be updated monthly as to cost and entitlement if a continuing claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a claim. Contractor shall bear all costs incurred in the preparation and submission of a claim.

13.03 Administration During/After Claim Submission

- A. Owner may render a final determination based on the Claim or may in its discretion conduct an administrative hearing on Contractor's claim, in which case Contractor shall appear, participate, answer questions and inquiries, and present any further evidence or analysis requested by Owner prior to rendering a final determination. Should Owner take no action on the Claim within 45 days of submission, it shall be deemed denied.
- B. Notwithstanding and pending the resolution of any claim or dispute, Contractor shall diligently prosecute the disputed work to final completion in accordance with Owner's determination.
- C. After their submission, claims less than \$375,000 shall also be subject to the Local Agency Disputes Act.

13.04 Compliance

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Government Code Section 930.2, shall constitute a condition precedent to submission of a valid Government Code Claim under the Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.03 above of the claims asserted. No suit may be brought against Owner arising out of or in connection with the Project unless and until Contractor presents to Owner a statutory Government Code Claim, in accordance with Government Code Sections 910, *et seq.* Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.
- B. Failure to submit and administer claims as required in Article 12 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.
- C. Owner shall not be deemed to waive any provision under this Article 12, if at Owner's sole discretion, a claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both Owner and Contractor; oral or implied modifications shall be ineffective.

ARTICLE 14 - UNDERGROUND CONDITIONS

14.01 Contractor To Locate Underground Facilities.

- A. During construction, Contractor shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, 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 no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which 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."
- B. Contractor shall contact Underground Service Alert (USA), and schedule the 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. Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide Owner with copies of all USA records secured by Contractor. Contractor shall advise Owner of any conflict between information provided in Document 00 3135 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Contractor's excavation shall be subject to and comply with the Contract Documents.

- C. Contractor shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Document 00 3135 (Geotechnical Data and Existing Conditions), the Drawings or that provided by USA records. Contractor shall immediately secure all such available information and notify Owner and the utility owner, in writing, of its discovery.

14.02 Contractor To Protect Underground Facilities.

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor's operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Underground Facilities Data. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to Owner for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor's attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document.
- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by Owner for bidding or in information on file at USA or otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven Days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give written notice to that owner and to Owner. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
- D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, without limitation, information made available for bidding and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, without limitation, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with Government Code Section 4215, as between Owner and Contractor, Owner will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding. Owner will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for bidding with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of Owner or the utility to provide for removal or relocation of such utility facilities.

14.03 Concealed Or Unknown Conditions

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to Owner promptly before conditions are disturbed, except in an

emergency as set forth in this Document, and in no event later than seven Days after first observance of:

1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Contractor's Notice of Differing Site Conditions under this Paragraph, Owner will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, Owner will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If Owner determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, Owner will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document.)
- C. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Contractor knew or should have known of the existence of such conditions at the time Contractor submitted its Bid, failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.
- D. Regarding Underground Facilities, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by Owner only where the Underground Facility:
1. Was not shown or indicated in the Contract Documents or in the information supplied for bidding purposes or in information on file at USA; and
 2. Contractor did not know of it; and
 3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor.)
- E. Contractor shall bear the risk that Underground Facilities not owned or built by Owner may differ in nature or locations shown in information made available by Owner for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations on Owner's Project, and Contractor is to apply its skill and industry to verify the information available.
- F. Contractor's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Contractor's or its subcontractor's bid amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Contractor excavates in an area unexpected, then such costs would be recoverable entirely; while if Contractor extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

14.04 Notice Of Hazardous Waste Or Materials Conditions

- A. Contractor shall give a written Notice of Hazardous Materials Condition to Owner promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document), and in no event later than 24 hours after first observance of any:

1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law (**hazardous material**); or
 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site (**other materials**).
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Contractor's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
 3. Contractor failed to give the written notice within the required timeframe set forth below.
- E. If Owner determines that conditions involve hazardous materials or other materials and that a change in Contract Document terms is justified, Owner will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If Owner determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, Owner will notify Contractor in writing, stating the reasons for its determination.
- F. In addition to the parties' other rights under this Document, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, Owner may order the disputed portion of Work deleted from the Work, or performed by others, or Owner may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.
- G. If Contractor does not agree with any Owner determination of any adjustment in the Contract Sum or Contract Time under this Article, Contractor may make a claim as provided in Article 12 of this Document.

ARTICLE 15 - LEGAL AND MISCELLANEOUS

15.01 Laws And Regulations

- A. Contractor shall keep fully informed of and shall comply with all laws, ordinances, regulations and orders of any properly constituted authority affecting the Contract Documents, Work and persons connected with Work, and shall protect and indemnify Owner and its officers, employees, consultants and agents against any claim or liability, including attorney's fees, arising from or based on violation of law, ordinance, regulation or order, whether by Contractor or by Subcontractors, employees or agents. Authorized persons may at any time enter upon any part of Work to ascertain compliance of all applicable laws, ordinances, regulations and orders.

15.02 Permits And Taxes

- A. Contractor shall procure all permits and licenses applicable to the Work (including environmental matters to the extent applicable); pay all charges and fees, including fees for street opening permits; comply with, implement and acknowledge effectiveness of all permits; initiate and cooperate in securing all required notifications or approvals therefore; and give all notices necessary and incident to due and lawful prosecution of Work, unless otherwise provided herein. Owner will pay applicable building permits, sanitation and water fees for the completed construction, except as otherwise provided in the Contract Documents. Contractor shall pay all sales and/or use taxes levied on materials, supplies, or equipment purchased and used on or incorporated into Work, and all other taxes properly assessed against equipment or other property used in connection with Work, without any increase in the Contract Sum. Contractor shall make necessary arrangements with proper authorities having jurisdiction over roads, streets, pipelines, navigable waterways, railroads, and other works in advance of operations, even where Owner may have already obtained permits for the Work.

15.03 Communications And Information Distribution

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Contractor may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which Owner will review consistent with these stated objectives, and accept or reject in its sole discretion.
- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.
- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of PDF copies of required correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to Owner's and Contractor's Project Representative. Owner reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between Owner and Contractor shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

15.04 Suspension Of Work

- A. Owner may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as Owner may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Modification Procedures. No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible.

15.05 Termination Of Contract For Cause

- A. The Contractor shall be in default of the Contract Documents and Owner may terminate the Contractor's right to proceed under the Contract Documents, for cause, in whole or in part, should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from Owner to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide Owner within the

ten (10) day period with a written plan acceptable to Owner that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written plan).

- B. In the event of termination by Owner for cause as provided herein, the Contractor shall deliver to Owner possession of the Work in its then condition including, without limitation, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which Owner may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate Owner for all loss, cost, damage, expense, and/or liability suffered by Owner as a result of such termination and/or failure to comply with the Contract Documents.
- C. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

15.06 Termination Of Contract For Convenience

- A. Owner may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever Owner shall determine that termination is in Owner's best interest. Termination shall be effected by Owner delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.
- B. Contractor shall comply strictly with Owner's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, Owner shall retain all rights under the Contract Documents including, without limitation, claims, indemnities, or setoffs.
- D. Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination.

15.07 Contingent Assignment Of Subcontracts

- A. Contractor hereby assigns to Owner each Subcontract for a portion of the Work, provided that:
 - 1. The assignment is effective only after Owner's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein.
 - 2. The assignment is effective only for the Subcontracts which Owner expressly accepts by notifying the Subcontractor in writing;
 - 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Construction Performance Bond provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
 - 4. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in this Document), sign all instruments and take all actions

reasonably requested by Owner to evidence and confirm the effectiveness of the assignment in Owner; and

5. Nothing in this Paragraph shall modify or limit any of Contractor's obligations to Owner arising from acts or omissions occurring before the effectiveness of any Subcontract assignment including, without limitation, all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

15.08 Remedies And Contract Integration

- A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between Owner and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located. All Owner remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances Owner shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders, shall represent the entire and integrated agreement between Owner and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. Owner and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other information, which shall be inadmissible in any proceeding to enforce these documents.
- C. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- D. Neither acceptance of the whole or any part of Work by Owner nor any verbal statements on behalf of Owner or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to Owner herein nor any right to damages provided in the Contract Documents.

15.09 Interpretation.

- A. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (i) Project Manager or any Owner's representative and Contractor; (ii) Owner and/or its Representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (iii) between any persons or entities other than Owner and Contractor.

15.010 Patents

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless Owner and each of its officers, employees, consultants and agents including, without limitation, the Board and each Owner's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

15.011 Substitution For Patented And Specified Articles

- A. Except as noted specifically in the instructions to Bidders or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of Owner, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting a substitution request as provided in Document 00 2115 (Instructions to Bidders). A substitution will be approved only if it is a true "or equal" item in every aspect of its design and quality including, without limitation, its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

15.12 Interest Of Public Officers

- A. No representative, officer, or employee of Owner no member of the governing body of the locality in which the Project is situated, no member of the locality in which Owner was activated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the Project, during the tenure of the official or for one year thereafter, shall, as principal, agent, attorney or otherwise, be directly or indirectly interested, in the Contract Documents or the proceeds thereof.

15.13 Limit Of Liability

- A. OWNER, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, WITHOUT LIMITATION, PROJECT MANAGER AND EACH OTHER OWNER REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

ARTICLE 16 - WORKING CONDITIONS AND PREVAILING WAGES

16.01 Use Of Site/Sanitary Rules

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to Owner's approval.
- B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by Owner, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility

for any damage to any such land or area, any improvement located thereon, or to Owner or occupant thereof resulting from the performance of Work.

- C. During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall clean the site, remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by Owner at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

16.02 Protection Of Work, Persons, And Property

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by Owner, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.
- B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify Owners of adjacent property and of Underground Facilities and utility Owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Contractor shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. Owner and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- D. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. Owner may, at its option, retain such moneys due under the Contract Documents as Owner deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and Owner receives satisfactory evidence to that effect.
- F. Work within the right-of-way lines shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Contractor before executing the work within such right-of-ways.

16.03 Responsibility For Safety And Health

- A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and Owner's safety regulations as amended from time to time. Contractor shall comply with all Owner directions regarding protective clothing and gear.

- B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify Owner, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, Owner-designated routes for ingress and egress thereto, and any other Owner-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

16.04 Emergencies

- A. In emergencies affecting the safety or protection of persons or Work or property at the Site or adjacent thereto, Contractor, without special instruction or authorization from Owner, is obligated to act to prevent threat and damage, injury or loss, until directed otherwise by Owner. Contractor shall give Owner prompt written notice if Contractor believes that any significant changes in Work or variations from Contract Documents have been caused thereby. If Owner determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Change Order or Construction Change Directive will be issued to document the consequences of such action.

16.05 Use Of Roadways And Walkways

- A. Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for vehicular or pedestrian traffic. Before beginning any interference and only with Owner's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

16.06 Nondiscrimination

- A. No person or entity shall discriminate in the employment of persons upon public works because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sexual preference, or gender of such persons, except as provided in Government Code Section 12940. Every contractor for public works violating the provisions of Labor Code Section 1735 is subject to all the penalties imposed for a violation of Chapter 1, Part 7, Division 2 of the California Labor Code.

16.07 Prevailing Wages And Working Hours

- A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (i) work of a similar character in the locality in which the Work is performed and (ii) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and Owner to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- B. Contractor shall forfeit, as a penalty to Owner, \$200.00 for each laborer, worker, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, worker or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the Labor Code. The sums and amounts that are forfeited pursuant to this Paragraph and the terms of the Labor Code shall be withheld and retained from payments due to Contractor under the

Contract Documents, pursuant to this Document and the Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by Owner. The Labor Commissioner pursuant to Labor Code Section 1775 shall determine the final amount of forfeiture.

- C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the Labor Code.
- D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, Labor Code Sections 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Sections 1810-1815.
 - 1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any worker employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
 - 2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection Owner and to the Division of Labor Standards Enforcement.
 - 3. Contractor or its Subcontractors shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor 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 Labor Code Sections 1810-1815.
 - 4. Work performed on the Project by employees of Contractor or its Subcontractors 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 at not less than 1 1/2 times the basic rate of pay.
- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776. Further, if this Contract is awarded on or after January 1, 2015, this Project is subject to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations.
 - 1. Contractor and Subcontractors must 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 Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
 - 2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.
 - a. Contractor shall inform Owner of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
 - b. Contractor or Subcontractor has 10 days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to Owner on whose behalf the contract is made or awarded, forfeit \$100.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty

assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.

3. With each application for payment, Contractor shall also deliver certified payrolls to Owner as set forth above in this Document (General Conditions), and (if this Contract is awarded on or after April 1, 2015 or continues on or after January 1, 2016, or the Labor Commissioner otherwise directs) concurrently therewith (but in no event less frequently than monthly) directly to the Labor Commissioner in the format prescribed by the Labor Commissioner.
4. Contractor shall post all jobsite notices if and when prescribed by regulation.

16.08 Environmental Controls

- A. Contractor shall comply with all rules, regulations, ordinances, and statutes that apply to any Work performed under the Contract Documents including, without limitation, any toxic, water, stormwater management and soil pollution controls and air pollution controls specified in Government Code Section 11017. Contractor shall be responsible for insuring that Contractor's Employees, Subcontractors, and the public are protected from exposure to airborne hazards or contaminated water, soil, or other toxic materials used during or generated by activities on the Site or associated with the Project.

16.09 Shoring Safety Plan

- A. Any conflict between this Paragraph and the Technical Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five Days in advance of any excavation five feet or more in depth, Contractor shall submit to Owner a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by Labor Code Section 6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.
- C. During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. Owner's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this Paragraph.
- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

END OF DOCUMENT

Appendix C to Construction Services Agreement

INSURANCE

1. Commercial General Liability Insurance, written on an “occurrence” basis, which shall provide coverage for bodily injury, death and property damage resulting from operations, liability for slander, false arrest and invasion of privacy, blanket contractual liability, broad form endorsement, and completed operations, personal and advertising liability, with limits of not less than **\$1,000,000** general aggregate and **\$1,000,000** each occurrence, subject to a deductible of not more than **\$1,000** payable by Contractor.
2. Business Automobile Liability Insurance with limits not less than **\$1,000,000** each occurrence including coverage for owned, non-owned and hired vehicles, subject to a deductible of not more than **\$1,000** payable by Contractor.
3. Workers’ Compensation Employers’ Liability limits not less than **\$1,000,000** each accident, **\$1,000,000** per disease and **\$1,000,000** aggregate. Contractor’s Workers’ Compensation Insurance policy shall contain a Waiver of Subrogation in favor of the South Bayside Waste Management Authority, its officers, directors, officials, agents, employees and volunteers. In the event Contractor is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations Administration of Self-Insurance, State of California.
4. Builder’s Risk Insurance including, without limitation, coverage against loss or damage to the Work by fire, lightning, wind, hail, aircraft, riot, vehicle damage, explosion, smoke, falling objects, vandalism, malicious mischief, collapse, and other such hazards as are normally covered by such coverage. Such insurance shall be in amount equal to the replacement cost (without deduction for depreciation and subject to stipulated value in lieu of average clause) of all construction constituting any part of the Work, excluding the cost of excavations, of grading and filling of the land, and except that such insurance may be subject to deductible clauses not to exceed **\$10,000** for any one loss. Such insurance will not cover loss or damage to Contractor’s equipment, scaffolding or other materials not to be consumed in the construction of the Work. The insurer shall waive all rights of subrogation against Owner.
5. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to the Owner as an additional insured. The requirements for coverage and limits shall be the greater of either the minimum coverage and limits specified in this Agreement or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured.
6. In addition to any provisions required in clauses 1-5 above, insurance policies in Appendix C shall contain an endorsement containing the following terms (excluding Workers Compensation insurance with respect to paragraph 6.01 below):
 - 6.01 South Bayside Waste Management Authority, its officers, directors, officials, agents, employees, and volunteers, shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.
 - 6.02 The policies shall apply separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company’s liability.
 - 6.03 Written notice of cancellation, non-renewal or of any material change in the policies shall be mailed to Owner thirty (30) days in advance of the effective date thereof.
 - 6.04 Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds other than Contractor shall be called upon to contribute to a loss covered by insurance for the named insured.

7. Certificates of Insurance and Endorsements shall have clearly typed thereon the Project Name, shall clearly describe the coverage and shall contain a provision requiring the mailing of written notices of cancellation described in clause 6.03 above.
8. All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) must be duly licensed to do business in the State of California and (other than for workers' compensation) must have an A. M. Best Company rating of **A-**, **VII** or better. Required minimum amounts of insurance may be increased should conditions of Work, in the opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.
9. The insurance coverage limits may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Owner, to the extent required by this Agreement, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.
10. All self-insured retentions (SIR) must be disclosed to Owner for approval and shall not reduce the limits of liability coverage. Policies containing and SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or Owner.
11. Contractor agrees to include with all subcontractors in their subcontracts the same requirements and provisions of this Agreement that is required of Contractor including, without limitation, the indemnity and insurance requirements to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Contractor shall agree to be bound to Contractor and Owner in the same manner and to the same extent as Contractor is bound to Owner under this Contract and its accompanying documents. Subcontractors shall further agree to include these same provisions with any lower tier subcontractors. A copy of the indemnity and insurance provisions of this Agreement will be furnished to the Subcontractor upon request. Contractor shall require all subcontractors to provide a valid Certificate of Insurance and the required endorsements included in the subcontract agreement, and will provide proof of compliance to the Owner prior to commencement of any work by the subcontractor.
12. Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five (5) years following completion of this project or service. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, Owner at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Appendix D to Construction Services Agreement

CONSTRUCTION PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **South Bayside Waste Management Authority**, a California Joint Powers Authority (**Owner**), has awarded to **(Name of Contractor)** _____ as Principal a Construction Services Agreement dated the _____ day of _____, 20____ (**Agreement**), titled MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING PROJECT in the amount of \$ _____, which Agreement is by this reference made a part hereof, for the work described as follows:

Disassemble and rebuild the steel liner and related components needing repair in the MRF IPS
Conquest-100 Baler.

2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement, guaranteeing the faithful performance thereof;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM to be paid to Owner or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, shall promptly and faithfully perform the covenants, conditions, and agreements of the Agreement 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 Agreement, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Agreement 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 Agreement, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.
5. No extension of time, change, alteration, modification, or addition to the Agreement, 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.
6. Whenever Principal shall be and declared by Owner in default under the Agreement, Surety shall promptly remedy the default, or shall promptly:
 - 6.01 Undertake through its agents or independent contractors, reasonably acceptable to Owner, to complete the Agreement in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
 - 6.02 Obtain a bid or bids for completing the Agreement in accordance with its terms and conditions, and, upon determination by Owner of the lowest responsible bidder, reasonably acceptable to Owner, arrange for a contract between such bidder and Owner and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Agreement including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount

payable by Owner to the Principal under the Agreement and any amendments thereto, less the amount Owner paid to Principal.

7. Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Agreement, 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. Surety may not use Contractor to complete the Agreement absent Owner's written consent.
8. 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.
9. Surety may join in any proceedings brought under the Agreement and shall be bound by any judgment.
10. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

Appendix E to Construction Services Agreement

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1. THAT WHEREAS, **South Bayside Waste Management Authority**, a California Joint Powers Authority (**Owner**) has awarded to **(Name of Contractor)** _____ as Principal a Construction Services Agreement, dated the _____ day of _____, 20 ____ (**Agreement**), titled MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING PROJECT located at 225 SHOREWAY ROAD, SAN CARLOS, CA 94070 in the amount of \$ _____, which Agreement is by this reference made a part hereof, for the work described as follows:

Disassemble and rebuild the steel liner and related components needing repair in the MRF IPS Conquest-100 Baler.
2. AND WHEREAS, Principal is required to furnish a bond in connection with the Agreement to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;
3. NOW, THEREFORE, we, the undersigned Principal and _____ as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT SUM (\$ _____), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.
4. THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by Owner, or its subcontractors shall fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Agreement, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to California Unemployment Insurance Code Section 13020 with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.
5. This bond shall inure to the benefit of any of the persons named in California Civil Code Section 9100, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.
6. Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Agreement, or to the work to be performed thereunder.
7. Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with the Agreement; 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 other.
8. Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 20____.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature

Signature

Name

Name

Title

Title

Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

END OF DOCUMENT

Appendix F to Construction Services Agreement

MODIFICATION PROCEDURES

PART 1 – GENERAL

1.02 SUMMARY

- A. Section includes requirements that supplement the paragraphs of General Conditions.
- B. Description of procedures for modifying the Contract Documents and determining costs for changes in Contract Sum or Contract Time.

1.03 PROCEDURES FOR CONTRACTOR INITIATED CHANGE ORDER

A. Contractor-Initiated Change Proposal Request (CPR) and Procedures:

- (1) Contractor may initiate changes by submitting a Change Proposal Request (**CPR**).
- (2) Whenever Contractor elects or is entitled to submit a CPR, Contractor shall prepare and submit to Owner for consideration a CPR using the Cost Proposal Form attached to the Modification Procedures or otherwise included in this Project Manual. All CPR's must contain a complete breakdown of costs of credits, deducts and extras; itemizing labor, materials, equipment, markup, bonds, insurance and taxes; and any requested changes to Contract Time. All Subcontractor Work shall be so indicated. Individual entries on the CPR form shall include applicable Schedule of Values code, with all amounts determined as provided herein. After receipt of a CPR with a detailed breakdown, Owner will act promptly thereon.
- (3) If Owner accepts a CPR, Owner will prepare a Change Order for Owner and Contractor signatures.
- (4) If CPR is not acceptable to Owner because it does not agree with Contractor's proposed cost and/or time, Owner will provide comments thereto. Contractor will then, within seven (7) Days (except as otherwise provided herein), submit a revised CPR.
- (5) When necessity to proceed with a change does not allow Owner sufficient time to conduct a proper check of a CPR (or revised CPR), Owner may issue a Change Directive (**CD**) as provided below.

B. Contractor-Initiated Request for Information (RFI) Procedures, Requirements and Limitations:

- (1) Contractor may submit RFI's for clarifications in Owner-prepared Contract Documents, which may result in the Contractor submitting a CPR.
- (2) Whenever Contractor requires information regarding the Project or Owner-prepared Contract Documents, or receives a request for such information from a Subcontractor, Contractor may prepare and deliver an RFI to Owner. Contractor shall use RFI format provided on approval by Owner. Contractor shall not issue an RFI to Owner solely to clarify Contractor-prepared Construction Documents. Contractor must submit time critical RFIs at least 30 days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
- (3) Contractor shall be responsible for its costs to implement and administer RFIs throughout the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation for the effort required to submit the RFIs. Contractor shall be responsible for Owner's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by Owner; at Owner discretion, such costs may be deducted from progress payments or final payment.
- (4) Owner will respond within ten (10) days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.

- (5) If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
- (6) If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating it is a follow-up RFI) to Owner clarifying original RFI. Additionally, Owner may return RFI requesting additional information should original RFI be inadequate in describing condition.

C. Time Requirements:

- (1) If Contractor believes that an Owner response to an RFI, submittal or other Owner direction, results in change in Contract Sum or Contract Time, Contractor shall notify Owner with the issuance of a preliminary CPR within 10 Days after receiving Owner's response or direction, and in no event after starting the disputed work or later than the time allowed under Article 12 of General Conditions. If Contractor also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CPR, then Contractor shall submit the TIE required in these Contract Documents, concurrently with the CPR and in no event later than 10 Days after providing the notice of delay.
- (2) If Contractor requires more time to accurately identify the required changes to the Contract Sum or Contract Time, Contractor may submit an updated and final CPR and TIE within 14 days of submitting the preliminary CPR.
- (3) If Owner agrees with Contractor's CPR and/or TIE, then Owner will prepare a Change Order for Owner and Contractor signatures. If Owner disagrees with Contractor, then Contractor may give notice of potential claim as provided in Article 12 of General Conditions, and proceed thereunder.
- (4) Contractor must submit all CPR's (preliminary and final), notices of potential claim and Claims, and TIE's within the required time periods. Any failure to do so waives Contractor's right to submit a CPR or file a Claim.

D. Cost Estimate Information:

- (1) Contractor and subcontractors shall, upon Owner's request, permit inspection of the original unaltered cost estimates, subcontract agreements, purchase orders relating to the change, and documents substantiating all costs associated with its CPR or Claims arising from changes in the Work.

1.04 PROCEDURES FOR OWNER INITIATED CHANGE ORDERS

A. Owner Initiated Change Directives (CD):

- (1) Owner may, by Change Directive (**CD**) or initially by Instruction Bulletin or by following the procedures for disputed work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
- (2) If at any time Owner believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, or at any other time, Owner may issue a CD with its recommended cost and/or time adjustment (if any). Upon receipt of CD, Contractor shall promptly proceed with the change of Work involved and respond to Owner within ten (10) Days.
- (3) Contractor's response must be any one of following:
 - a. Return CD signed, thereby accepting Owner response, including adjustment to time and cost (if any).
 - b. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if Owner so requests.
 - c. Give notice of intent to submit a claim as described in Article 12 of General Conditions, and submit its claim as provided therein.
- (4) If CPR or the CD provides for an adjustment to any Contract Sum, the adjustment shall be based on one of the following methods:

- a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
 - b. Contractor to proceed on cost reimbursable (force account) basis while negotiating towards a firm price.
 - c. Cost to be determined in a manner agreed.
- (5) Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum or the method for determining them. Such agreement shall be effective immediately and shall be finalized as a Change Order. Where Owner authorizes CD work on a time and materials basis up to a maximum amount, then Contractor shall promptly advise Owner upon reaching 75% of such maximum amount, otherwise Contractor shall accept fully the risk of completing the CD work without exceeding such maximum amount.
 - (6) If Contractor does not respond promptly or disagrees with the method for adjustment (or non-adjustment) in the Contract Sum, the method and the adjustment shall be determined by Owner on the basis of the Contract Documents and the reasonable expenditures and savings of those performing the Work attributable to the change. If the parties still do not agree on the proper adjustment due to a Change Directive, Contractor may file a Claim per Article 12 of General Conditions and/or Owner may direct the changed work through a unilateral change order. Contractor shall keep and present an itemized accounting in a manner consistent with the SOV, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided herein.
 - (7) Pending final determination of cost to Owner, Contractor may include amounts not in dispute in its Applications for Payment. The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Markup shall be figured on the basis of net increase, if any, with respect to that change.

B. Owner Initiated Change Order (CO) or Request for Proposal (RFP):

- (1) Owner may initiate changes in the Work or Contract Time by issuing a Request for Proposal (RFP) or Change Order (CO) to Contractor.
- (2) Owner may issue an RFP to Contractor. Any RFP will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
- (3) In response to an RFP, Contractor shall furnish a Change Proposal Request (CPR) within twenty-one (21) Business Days of Owner's RFP. Upon approval of CPR, Owner may issue a Change Directive directing Contractor to proceed with extra Work.
- (4) If the parties agree on price and time for the work, the Owner will issue a Contact Change Order. If the parties do not agree on the price or time for a CPR, Owner may either issue a CD or decide the issue per Article 12 of General Conditions. Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.

1.05 PROCEDURES THAT APPLY TO CONTRACTOR- AND OWNER-INITIATED CHANGE ORDERS

A. Adjustment of Schedules to Reflect Change Orders or CDs:

- (1) Contractor shall revise Schedule of Values and Application for Payment forms to record each authorized Change Order or CD as a separate line item and adjust the Contract Sum as shown thereon prior to the next monthly pay period.
- (2) Contractor shall revise the Progress Schedules prior to the next monthly pay period, to reflect CO or CD.
- (3) Contractor shall enter changes in Project Record Documents prior to the next monthly pay period.

B. Required Documentation for Adjustments to Contract Amounts:

- (1) For all changes and cost adjustments requested, Contractor shall provide documentation of change in Contract Amounts asserted, with sufficient data to allow evaluation of the proposal.
- (2) In all requests for compensation, cost proposals, estimates, claims and any other calculation of costs made under the Contract Documents, Contractor shall breakout and quantify costs of labor, equipment and materials identified herein, for Contractor and subcontractors of any tier.
- (3) Contractor shall, on request, provide additional data to support computations for:
 - (a) Quantities of products, materials, labor and equipment.
 - (b) Taxes, insurance, and bonds.
 - (c) Justification for any change in Contract Time and new Progress Schedule showing revision due, if any.
 - (d) Credit for deletions from Contract, similarly documented.
- (4) Contractor shall support each claim or computation for additional cost, with additional information including:
 - (a) Origin and date of claim or request for additional compensation.
 - (b) Dates and times Work was performed and by whom.
 - (c) Time records and wage rates paid.
 - (d) Invoices and receipts for products, materials, equipment and subcontracts, similarly documented.
 - (e) Credit for deletions from Contract, similarly documented.

C. Responses and Disputes:

- (1) For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
- (2) For all disputes arising from the procedures herein, Contractor shall follow Article 12 of General Conditions.

1.06 COST DETERMINATION FOR CHANGES IN CONTRACT AMOUNTS

A. Calculation of Total Cost of Extra Work:

- (1) Total cost of changed Work, extra Work or of Work omitted shall be the sum of three components defined immediately below as: Component 1 (Direct Cost of Construction or Direct Costs); Component 2 (Markup); and, Component 3 (Bonds, Insurance, Taxes)
- (2) Component 1: Direct Costs of labor, equipment and materials, is calculated based upon actually incurred (or omitted) labor costs, equipment rental costs, and material costs, as defined herein;
- (3) Component 2: Markup on such actually incurred Direct Costs, is applied in the percentages identified below; and
- (4) Component 3: Actual additional costs for any additionally required bonds, insurance, and/or taxes by Contractor, Subcontractors, or other forces, defined herein, is calculated without markup.
- (5) All amounts payable to Subcontractors under Components 1, 2, and 3: must be earned under the terms of the applicable Subcontracts; must be properly requested, documented and permitted under the terms of the applicable subcontract(s) and Contract Documents; and shall be payable only if changed Work complies with terms of Contract Documents.

1.07 MEASUREMENT OF DIRECT COST OF CONSTRUCTION (COST COMPONENT 1)

A. Composition of Component 1 (Direct Cost of Construction):

- (1) Component 1 has three subcomponents, also referred to as labor, equipment, and materials (LEM):
 - (a) Labor (Component 1A)

- (b) Equipment (Component 1B)
- (c) Materials (Component 1C)

B. Measurement of Cost of Labor (Component 1A):

- (1) Cost of Labor shall be calculated as: Cost of labor for workers (including forepersons when authorized by Owner) used in actual and direct performance of the subject work, whether employer is Contractor, Subcontractor or other forces, in the sum of the following:
 - (a) Actual Wages: Actual wages paid shall include any employer payments to or on behalf of workers for health and welfare, pension, vacation, and similar purposes.
 - (b) Labor surcharge: Payments imposed by local, county, state, and federal laws and ordinances, and other payments made to, or on behalf of, workers, other than actual wages as defined, such as worker's compensation insurance. Such labor surcharge shall not exceed generally accepted standards in the State for labor rates in effect on date upon which extra Work is accomplished.
 - (c) Cost of labor shall include no other costs, fees or charges.
- (2) Labor cost for operators of equipment owned and operated by Contractor or any Subcontractor, shall be no more than rates of such labor established by collective bargaining agreements for type of worker and location of Work, whether or not owner-operator (i.e., Contractor or Subcontractor) is actually covered by such an agreement.
- (3) Cost of labor shall be recorded and documented in certified payroll records, maintained in the form customary and/or required in the State, and delivered to Owner weekly.

C. Measurement of Cost of Equipment (Component 1B):

- (1) Measurement of Component 1B (Cost of Equipment). Cost of Equipment shall be calculated as: Cost of equipment used in actual and direct performance of the subject work, whether by Contractor, Subcontractor or other forces. Cost of Equipment shall be calculated as herein described.
- (2) For rented equipment, cost will be based on actual rental invoices, appropriate for the use and duration of the work. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by Owner.
- (3) Equipment rental cost for Contractor or Subcontractor-owned equipment, shall be determined by reference to, and not in excess of, the generally accepted standards in the State for equipment rental rates in effect on date upon which extra Work is accomplished. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor or Subcontractor-owned equipment at rental rate listed in the most recent edition of the Caltrans Standard Schedules and Specifications, and absent a rental rate therein, then the Association of Equipment Distributors (**AED**) book.
- (4) In all cases, rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, and all incidentals.
- (5) Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.
- (6) For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by Owner. The following shall be used in computing rental time of equipment:
 - (a) When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.

- (b) When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
 - (c) Rates shall correspond to actual rates paid by Contractor, i.e., if Contractor pays lower weekly or monthly rates, then same shall be charged to Owner.
- (7) For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
- (a) Owner will pay for costs of loading and unloading equipment.
 - (b) Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
 - (c) Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission or appropriate State Dept. of Transportation.
 - (d) Owner will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
 - (e) Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which Owner directs Contractor to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and Owner legal holidays, unless equipment is used to perform extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.
- (8) Employee vehicles are not part of Component 1A, rather, are included within Component 2 (Markup).
- (9) Cost of Equipment shall include no other costs, fees or charges.

D. Measurement of Cost of Material (Component 1C):

- (1) Cost of Material shall be calculated as herein described. Cost of such materials will be cost to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable:
- (2) If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to Owner notwithstanding fact that such discount may not have been taken.
- (3) For materials salvaged upon completion of Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
- (4) If cost of a material is, in opinion of Owner, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned delivered to Site, less any discounts as provided in this Paragraph.
- (5) Cost of Material shall include no other costs, fees or charges.

1.08 MEASUREMENT AND PAYMENT OF MARKUP (COST COMPONENT 2)

A. Markup Percentages for Changed Work (Component 2):

- (1) Markup on Direct Cost of labor, materials and equipment for extra Work pursuant to the Contract Documents performed by Contractor shall be 15%.
- (2) When extra Work is performed by Subcontractors, regardless of the number of tiers, total Markup on Component 1 Direct Costs shall be 20%. Contractor and its Subcontractors shall divide the 20% as they may agree.
- (3) Under no circumstances shall the total Markup on any extra Work exceed 20%, stated as a percent of the Direct Cost of labor, equipment and materials. This limitation shall apply regardless of the actual number of subcontract tiers.
- (4) On proposals covering both increases and decreases in Contract Sum, Markup shall be allowed on the net increase only as determined above. When the net difference is a deletion,

no percentage for Markup shall be allowed, but rather an appropriate percentage deduction shall be issued in the amount of the net difference.

B. Measurement and Payment of Markup (Component 2):

- (1) Markup (Component 2) provides complete compensation to Contractor and all Subcontractors for:
 - (a) All Contractor and Subcontractor profit;
 - (b) All Contractor and Subcontractor home-office overhead;
 - (c) All Contractor and Subcontractor assumption of risk assigned to Contractor under the Contract Documents;
 - (d) Subject to the qualifications below regarding self-performed work, all General Conditions and General Requirements of Contractor (and, if applicable, Subcontractors).
- (2) Profit. Compensation for profit included within Component 2 (Markup), includes without limitation: Fees of all types, nature and description; and Profit and margins of all types, nature and description.
- (3) Home Office Expenses. Compensation for home office expenses included within Component 2 (Markup), includes without limitation: Salaries and other compensation of any type of Contractor's and Subcontractor's personnel (management, administrative and clerical), and all direct and indirect operating, travel, payroll, safety, storage, quality control, maintenance and overhead costs of any nature whatsoever, incurred by Contractor and Subcontractors at any location other than the Project specific site office, including without limitation, Contractor's principal or branch offices; insurance premiums other than those for Project specific insurance directed by the Owner in a change order; all hardware, software, supplies and support personnel necessary or convenient for Contractor's capture, documentation and maintenance of its costs and cost accounting data and cost accounting and control systems and work progress reporting.
- (4) Assumption of Risk. Compensation for Contractor's and Subcontractor's assumption of risk under the Contract Documents, included within Component 2 (Markup), includes, without limitation, loss, cost, damage, expense or liability resulting directly or indirectly from any of the following causes (**unallowable costs**), for Contractor and Subcontractors of any tier: noncompliance with the Contract Documents, fault or negligence, defective or non-conforming Work, by Contractor or any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents; cost overruns of any type; costs in excess of any lump sum, not to exceed amount or GMP; costs resulting from bid or "buy out" errors, unallocated scope, or incomplete transfer of scope or contract terms to Subcontractors; any costs incurred by Contractor relating to a Change in the Work without a Change Order or Change Directive in accordance with the Contract Documents; costs for work or materials for which no price is fixed in the Contract Documents, unless it is expressly specified that such work or material is to be paid for as extra work.
- (5) General Conditions and Division 1 General Requirements. Compensation for Contractor's (and, if applicable Subcontractors') General Conditions and General Requirements Costs included within Component 2 (Markup) includes compensation for: Contractor's direct costs, without overhead or profit, for salaries and related forms of compensation and employer's costs for labor and personnel costs, of Contractor's employees and subconsultant's employees (if any), while and only to the extent they are performing Work at the Project Site, and all "General Requirements Costs" below. Personnel and Work compensated by this Component include, without limitation: All required Project management responsibilities; all on-site services; monthly reporting and scheduling; routine field inspection of Work; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders and other supporting documentation as necessary; salaries of project superintendent, project engineers, project managers, safety manager, other manager, timekeeper, and secretaries; all cost estimates and updates thereto; development,

validation and updates to the project schedule; surveying; and estimating. General Requirements Costs included within Component 2 (Markup) include, without limitation: all scheduling hardware, software, licenses, equipment, materials and supplies; purchase, lease or rental, build out, procurement, supporting equipment and maintenance of temporary on-Site facilities, Project field and office trailers and other temporary facilities, office equipment and supporting utilities; platforms, fencing, cleanup and jobsite security; temporary roads, parking areas, temporary security or safety fencing and barricades, etc.; all Contractor's motor vehicles used by any Contractor's personnel, and all costs thereof; all health and safety requirements, required by law or Owner procedures; all surveying; all protection of Work; handling and disposal fees; final cleanup; repair or maintenance; other incidental Work; all items, activities and function similar to any of those described above; all travel, entertainment, lodging, board and the like.

- (6) Personnel compensated by the Markup Component do not include workers of foreman level or below in the case of self-performed work; rather, such personnel shall be treated as a Direct Cost of Construction. Costs compensated by Component 2 (Markup) do not include temporary measures specifically required by the changed work, not otherwise required or ongoing in the prosecution of the Work, that commence specifically to support the changed work and conclude with the completion of the changed work. Such costs shall be treated as Direct Costs of Construction. Examples of General Requirements costs that this component may not cover are the following: temporary barricades or fencing of specific areas required specifically for the changed work; cranes required specifically for the changed work; and extra security required specifically for the changed work.

1.09 MEASUREMENT AND PAYMENT OF BONDS, INSURANCE, TAXES (COMPONENT 3)

A. Measurement of Bonds, Insurance, Taxes (Component 3):

- (1) Component 3 (Bonds, Insurance, Taxes) consists of the cost of bonds, insurance and taxes, also referred to as **BIT**. All State sales and use taxes, applicable County and applicable sales taxes, shall be included. Federal and Excise tax shall not be included.
- (2) There is no markup on BIT.

1.010 EFFECT OF PAYMENT

A. Change Order Compensation is All Inclusive.

- (1) Except as provided expressly below regarding changes that extend the Contract Time, payment of calculated cost of extra work constitutes full and complete compensation for costs or expense arising from the extra Work, and is intended to be all inclusive.
- (2) Payment for Direct Cost of Construction (Component 1 or LEM) is intended to be all-inclusive. Any costs or risks not delineated within cost of labor, equipment or materials herein, shall be deemed to be within the costs and risks encompassed by the applicable Markups and unallowable in any separate amount.
- (3) Payment of Markup (Component 2) is intended to be all-inclusive. Contractor waives claims for any further or different payment of cost and risk items delineated herein, other than the allowable percentage markup on costs set forth in the Contract Documents; such separate, further or different cost or risk items shall be unallowable, waived and liquidated within the allowable percentage markup.
- (4) Contractor shall recover no other costs or markups on extra work of any type, nature or description.

B. Exception for Changes Extending the Contract Time.

- (1) Where a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct LEM costs, provided Contractor can demonstrate such additional costs are (i.) actually incurred performing the Work, (ii.) not compensated by Component 2 (Markup), and (iii) directly result from the extended Contract Time. Contractor shall make

such request and provide such documentation following all required procedures, documentation and time requirements in the Contract Documents, and subject to all contract limitations of liability. Contractor may not seek or recover such costs using formulas (e.g., Eichleay).

C. Limits of Liability/Accord and Satisfaction.

- (1) The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating Change Proposal Requests, Change Orders or CDs, or calculating claims and/or damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
- (2) Under no circumstances may Contractor claim or recover special, incidental or consequential damages against Owner, its representatives or agents, whether arising from breach of contract, negligence, strict liability or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
- (3) No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.
- (4) Accord and Satisfaction: Every Change Order and accepted CD shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractors) claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim. Contractor may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CD, and must also submit a Claim for the reserved disputed items pursuant to Article 12 of General Conditions no later than thirty (30) days after Contractor's first written notice of its intent to reserve rights. Execution of any Change Order or CD shall constitute Contractor's representation of its agreement with this provision.

1.10 MISCELLANEOUS REQUIREMENTS

A. Owner-Furnished Materials.

- (1) Owner reserves right to furnish materials as it deems advisable, and Contractor shall have no claims for costs and Markup on such materials.

B. Records And Certification.

- (1) All charges shall be recorded daily and summarized in Change Proposal Request form attached hereto. Contractor or authorized representative shall complete and sign form each day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; and a list by size type and identification number of equipment and hours operated.
- (2) Owner shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for modification of Contract, including CD Work. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to Article 12 of General Conditions.

END OF SECTION

[COST PROPOSAL FORM FOLLOWS ON NEXT PAGE]

COST PROPOSAL FORM

MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING PROJECT

Contract Number 20200528.1

Date: _____
 In Response To _____
 (RFP #, etc.)

To: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
 Attention: **Grant Ligon**
610 Elm Street, Suite 202, San Carlos, CA 94070
 Phone: (650) 610-1621
 Fax: (____) ____-_____

From: [Insert Contractor's Name/Address]

This Cost Proposal is in response to the above-referenced _____ [insert RFP, etc. as applicable].
 Brief description of change(s): _____

ITEM DESCRIPTION	PRIME CONTRACTOR	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
LABOR						
EQUIPMENT						
MATERIAL						
TOTAL DIRECT COST OF CONSTRUCTION (LEM)						
MARKUP FOR PRIME CONTRACTOR'S SELF-PERFORMED WORK (15%)						
MARKUP FOR SUBCONTRACTOR-PERFORMED WORK (20%)						
BONDS, INSURANCE AND TAXES						
GRAND TOTAL						
REQUESTED CHANGE IN CONTRACT TIME (DAYS) (Time Impact Evaluation Enclosed)						

By Contractor: _____

Signature: _____

Date: _____

DOCUMENT 00 5505

NOTICE TO PROCEED

Dated: _____, 202__

To: _____
(Contractor)

Address: _____

AGREEMENT FOR: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
MATERIAL RECOVERY FACILITY IPS CONQUEST BALER STEEL RELINING
PROJECT AT 225 SHOREWAY ROAD, SAN CARLOS CA 94070**

CONTRACT NO: 20200528.1

You are notified that the Contract Time under the above Agreement will commence to run on _____ [20__]. On that date, you are to start performing your obligations with respect to Work at the Site under the Agreement. In accordance with Document 00 5205 (Construction Services Agreement), the date of Final Completion for the entire Work is _____, [20__].

Before you may start any Work at the Site, you must:

1. Submit certified Safety Program and related information
2. Submit copies of applicable permits

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____

Its: _____

END OF DOCUMENT