



A Public Agency

SHOREWAY OPERATIONS AND CONTRACT MANAGEMENT

STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Senior Operations and Engineering Manager
Matt Southworth, Senior Facility Engineer
Joanne Nghiem, Senior Management Analyst
Date: June 23, 2022 Board of Directors Meeting
Subject: Resolution Approving Contract with Pacific Polymers, Inc. DBA American Foam Experts not-to-exceed \$80,120.83 for MRF Administration Office Building Roof Replacement

Recommendation

Staff recommends that the Board of Directors approve Resolution No. 2022-34 attached hereto authorizing the following action:

Approve contract with Pacific Polymers, Inc. DBA American Foam Experts not-to-exceed \$80,120.83 for the replacement of the MRF Administration Office Building roof.

Summary

Leaks in the MRF Administration Office Building roof have become a recurring problem, causing disruptions to the employees and operations. Leak repairs and water damage repairs are not sustainable for the long-term operation and use of the MRF Administration Office Building; therefore, staff is recommending replacing the current PVC membrane roof with a new spray foam roof. Staff solicited bids for this work using established public procurement procedures in May 2022. Three bids were received. Staff evaluated the submitted bids and determined the lowest responsive and responsible bidder was Pacific Polymers, Inc. DBA American Foam Experts (American Foam Experts), for a total bid amount of \$80,120.83, including a 30% contingency.

Background

The SBWMA's Materials Recovery Facility (MRF) building was originally built in 2009 and is comprised of two separated structures – a metal building roughly 70,000 square foot and a smaller Administration Office building (see shaded area in the attached MRF Building Roof Plan View). This project consists of replacing the Administration Office building roof. It is roughly 3,500 square feet and is separated from the metal building by a seismic joint. It currently has a PVC membrane roof that is prone to leaking.

Analysis

Staff with engagement from Legal Counsel (ADCL), prepared the invitation for bid (IFB) documents and publicly released them on May 12, 2022. A non-mandatory but highly recommended pre-bid site visit was held on May 17, 2022, in which two contractors attended. Staff performed extensive contractor outreach to more than 30 roofing contractors in the area and found that few contractors were interested in public works projects. One addendum was issued that revised the contingency (or allowance) from 10% to 30% and the bid period closed on May 25, 2022. Three bids were received: Advanced Foam Roofing with a total bid amount of \$75,600; Universal Coatings, Inc. with a total bid amount of \$87,000; American Foam Experts with a total bid amount of \$109,880. Staff evaluated the submitted documents and found that all three submitted bids were not responsive. Each bidder

based their bid price on a different square footage that did not match the contract specified scope of work of 3,500 square feet. In addition, Advanced Foam Roofing's bid price did not include any allowance and Universal Coatings, Inc. included a 10% allowance, which did not comply with the 30% allowance included in Addendum 1. American Foam Experts correctly included a 30% allowance. While all bids were not responsive and due to the urgency to replace the roof before the rainy season, staff accepted all three bids and the bids were evaluated by unit price per square foot (SF) of the bid amount without any allowance, see Table 1. Using this evaluative basis, Staff determined the lowest responsive and responsible bidder is \$17.61/SF and, therefore, recommends awarding the contract to American Foam Experts for a contract amount for a scope of work that is 3,500 SF. The contract sum is \$61,631.41 plus a 30% contingency for a guaranteed not-to-exceed amount of \$80,120.83.

Table 1. MRF Admin Office Building Roof Project Bid Results

Contractor	Total Bid Amount Submitted	Bid Amount (no allowance)	Unit (SF)	Unit Price (\$/SF)
American Foam Experts	\$109,880.00	\$84,523.08	4,800	\$17.61
Foam Roof Solutions	\$75,600.00	\$75,600.00	4,000	\$18.90
Universal Coatings, Inc.	\$87,000.00	\$79,090.91	4,450	\$17.77

Timing is critically important and the goal is to complete the work over the summer before the start of the rainy season. American Foam Experts has concurred and anticipates completing the work by early-August 2022, with a construction duration of approximately 2 weeks. Using this projected timeline, the completion of this work is expected before the wet weather historically hits our region in the late fall.

Fiscal Impact

The contract sum for Pacific Polymers, Inc. DBA American Foam Experts is an amount not-to-exceed \$80,120.83 including a 30% contingency. With board approval of today's agenda item 5C, *FY2022 Mid-Year Budget Adjustments and Tip Fee Projections*, a new capital line item of \$150,000 is being added to the FY2022 Mid-Year budget update to accommodate this project. The unused project balance will be included in the FY2023 budget planning process.

Attachments:

Resolution 2022-34

Exhibit A – Construction Services Agreement for the MRF Administration Office Building Roof Replacement

Attachment A – [Bid documents submitted by Pacific Polymers, Inc. DBA American Foam Experts – Available online only at www.rethinkwaste.org](http://www.rethinkwaste.org)

Attachment B – MRF Building Roof Plan View



RESOLUTION NO. 2022-34

**RESOLUTION OF THE SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY BOARD OF DIRECTORS
APPROVING CONTRACT WITH PACIFIC POLYMERS, INC. DBA AMERICAN FOAM
EXPERTS NOT-TO-EXCEED \$80,120.83 FOR MRF ADMINISTRATION OFFICE
BUILDING ROOF REPLACEMENT**

WHEREAS, the SBWMA owns the Shoreway Environmental Center and is responsible for maintaining the building and site in good working order and in compliance with regulations; and

WHEREAS, the MRF Administration Office Building needs the current PVC membrane roof replaced with a new spray foam roof; and

WHEREAS, the invitation for bid was issued in May 2022 and three bids were received; and

WHEREAS, staff determined Pacific Polymers, Inc. DBA American Foam Experts to be the lowest responsive and responsible bidder.

NOW, THEREFORE BE IT RESOLVED, that the South Bayside Waste Management Authority hereby approves awarding the contract not-to-exceed \$80,120.83 to Pacific Polymers, Inc. DBA American Foam Experts for replacement of the MRF Administration Office Building roof.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23rd day of June 2022, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				
Menlo Park									

I HEREBY CERTIFY that the foregoing Resolution No. 2022-34 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 23, 2022.

ATTEST:

Alicia Aguirre, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board

DOCUMENT 00 5105
SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
610 Elm Street, Suite 202, San Carlos, CA 94070

CONSTRUCTION SERVICES AGREEMENT

MRF ADMINISTRATION OFFICE BUILDING ROOF REPLACEMENT

DATE: June 24, 2022

1. IDENTIFICATION OF CONTRACTOR:

CONTRACTOR: Pacific Polymers, Inc. DBA American Foam Experts

LICENSE NO: 969486

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 \$ \$61,631.41, to be paid as lump sum with progress payments, plus a 30% contingency, for a guaranteed not-to-exceed amount of \$ \$80,120.83. 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.

Substantial Completion Date: Within 60 calendar days of Commencement Date.

Final Completion Date: Within 30 calendar days of Substantial Completion.

4.01 Liquidated Damage Amounts.

- A. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) for each Day that expires after the time specified herein for Contractor to achieve Substantial Completion of the entire Work, until achieved.
- B. As liquidated damages for delay Contractor shall pay Owner Five Hundred dollars (\$500.00) 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

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. TERMS AND CONDITIONS.

5.01 Contractor shall perform the Work in accordance with the terms and conditions of this Agreement and the following attachments (together, **Contract Documents**):

- 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 – Supplemental Conditions [NOT USED]

5.02 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.

5.03 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

CONTRACTOR:

Signature

Bobby Steps / President

Print Name & Title

6/15/2022

Date

OWNER: **South Bayside Waste Management Authority**

Signature

Print Name & Title

Date

Appendix A to Construction Services Agreement

SCOPE OF WORK

Background: The Materials Recovery Facility (MRF) building was originally built in 2009 and is a comprised of two separated structures – a metal building roughly 70,000 square foot and a smaller Administration Office building (see shaded area in the attached MRF Building Roof Plan View). This project consists of replacing the Administration Office building roof. It is roughly 3,500 square feet and is separated from the metal building by a seismic joint. It currently has a PVC membrane roof that is prone to leaking. The contractor will need to apply a new foam roof over top of the existing membrane or remove the membrane roof.

The attached photos of existing membrane roof provide detail of the structures and roof penetrations that will need to be worked around. There is access though a ladder and hatch to this second-floor roof area that is approximately 45 feet above grade. There is vehicle access up to the edge of the building and vehicles can be parked at the outside edge of the building to provide supplies via lift or through the building fire stairs and ladder hatch.

Tasks:

1. Removal of the existing PVC membrane roof material (approximately 96 feet by 37 feet).
2. Spray 2-inch foam roof.
3. Furnish and install new sealant where needed.
4. Paint foam with long lasting roofing paint.

Work and Contract Elements:

1. All labor is to be provided as Prevailing Wage.
2. Work is to be performed Monday – Friday standard work hours (7am – 5pm).
3. Area to receive new roof is the office portion of the Materials Recovery Facility (MRF) Building. The 70,000 square foot building is a metal roof building with a 3,500 square foot office section that is accessible through a building hatch and is 40 feet from the ground.
4. See attached roof drawings and photos.
5. Contractor will be provided material and equipment laydown area next to building.
6. All roofing to be completed according to Manufacturer's Specifications for Guarantee
7. All work to be completed in (1) installation.
8. New roof is to have a minimum 10-year warranty.
9. If repairs to the roof deck are needed, they will be addressed outside of the roof repair by the owner and are to be identified by the roofing contractor prior to installation so that they can be repaired by a general contractor.
10. Please provide notice of dates when work will be completed with likely installation duration and installation windows.

Exclusions:

1. Off-Hours I Overtime
2. Mock-ups; unless noted otherwise
3. Substrate preparation (beyond light sweeping)
4. Temporary power, water and sanitary facilities are available to contractor.
5. One mobilization for delivery and the work is assumed with an uninterrupted work schedule thereafter.

6. Uninhibited access shall be provided to perform roof repair work requires foot traffic to and from the repair area.
7. The quoted price shall include all applicable sales tax and freight.

Appendix B to Construction Services Agreement

GENERAL CONDITIONS

ARTICLE 1 TERMS OF PERFORMANCE

- 1.01 Construction Services Agreement (Agreement) Force and Effect.** The provisions of the Agreement and other Contract Documents constitute the entire agreement between the Contractor and Owner regarding the Work described herein. No representation, term or covenant not expressly specified in the Contract Documents shall, whether oral or written, be a part of this agreement. The Agreement and other Contract Documents shall govern the Work described herein (whenever performed), and shall supersede all other purchase orders and agreements between Contractor and Owner, and any proposal, with respect to the Work described herein.
- 1.02 No Modification or Waiver.** The Contract Documents may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by fully authorized representatives of Owner and Contractor. Contract Documents headings are for convenience only and do not affect the construction of the Contract Documents.
- 1.03 Performance of Work/No Assignment.** Time is of the essence in the performance of the Work. Contractor will perform the Work in a skillful and workmanlike manner; comply fully with criteria established by Owner, and with applicable laws, codes, and all applicable industry standards. Contractor shall maintain its work area in a clean and sanitary condition, clear debris and trash at the end of each work day, and shall not damage or disrupt any property unless specifically part of the scope of the Agreement. Contractor shall not contract any portion of the Work or otherwise assign the Agreement without prior written approval of Owner. (Contractor shall remain responsible for compliance with all terms of the Contract Documents, regardless of the terms of any such assignment.) The Contractor shall permit Owner (or its designees) access to the work area, Contractor's shop, or any other facility, to permit inspection of the Work at all times during construction and/or manufacture and fabrication. The granting of any progress payment, and any inspections, reviews, approvals or oral statements by any Owner representative, or certification by any governmental entity, shall in no way limit Contractor's obligations under the Contract Documents. Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require strict performance of any provision of the Contract Documents, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every provision hereof. Owner shall have, at all times, set-off rights with respect to any payment and Contractor's failure to perform the terms of the Contract Documents.
- 1.04 Change In Scope Of Work:** Any change in the scope of the Work, method of performance, nature of materials or price thereof, or any other matter materially affecting the performance or nature of the Work shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by Owner. Contractor specifically understands, acknowledges, and agrees that Owner shall have the right to request any alterations, deviations, reductions, or additions to the Project or Work, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide Owner with all information requested to substantiate the cost of the change order and to inform Owner whether the Work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Work. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

ARTICLE 2 LEGAL AND MISCELLANEOUS

- 2.01 Records and Payment Requests.**

- A. On a monthly basis, Contractor shall submit an application for payment based upon the estimated value for materials delivered or services performed under the Contract as of the date of submission ("Application for Payment"). Within thirty (30) days after Owner's approval of the Application for Payment, Contractor shall be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. Owner may withhold or deduct from any payment an amount necessary to protect Owner from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by Owner in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective Work not remedied; (4) stop payment notices as allowed by state law; (5) reasonable doubt that the Work can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the Work by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Owner during the prosecution of the Work; (9) erroneous or false estimates by the Contractor of the value of the Work performed; (10) any sums representing expenses, losses, or damages, as determined by Owner, incurred by Owner for which Contractor is liable under the Contract; and (11) any other sums which Owner is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by Owner to deduct any of these sums from a progress payment shall not constitute a waiver of Owner's right to such sums. Owner shall retain five percent (5%) from all amounts owing as retention. Retention shall be paid pursuant to Public Contract Code sections 7107, 7200 and 7201.
- B. Upon Owner's written request, Contractor shall make available to Owner, its authorized agents, officers, or employees, any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the Work or the expenditures and disbursement charged to Owner, and all correspondence, internal memoranda, calculations, books and accounts, records documenting its Work under the Agreement, and invoices, payrolls, timecards, records and all other data related to matters covered by the Agreement. Contractor shall furnish to Owner, its authorized agents, officers, or employees, such other evidence or information as Owner may require with regard to the Work or any such expenditure or disbursement charged by Contractor. Contractor shall maintain all such documents and records prepared by or furnished to Contractor during the course of performing the Work for at least five years following completion of the Work, except that all such items pertaining to hazardous materials shall be maintained for at least thirty (30) years. Contractor shall permit Owner to audit, examine and make copies, excerpts and transcripts from such records. The State of California or any federal agency having an interest in the subject of the Agreement shall have the same rights conferred to Owner by this section. Such rights shall be specifically enforceable.

2.02 Independent Contractor. Contractor is an independent Contractor and does not act as Owner's agent in any capacity, whatsoever. Contractor is not entitled to any benefits that Owner provides to Owner employees including, without limitation, insurance, worker's compensation benefits or payments, pension benefits, health benefits or insurance benefits. Terms within the Contract Documents regarding directives apply to and concern the result of the Contractor's provision of Work not the means, methods, or scheduling of the Contractor's Work. Contractor shall be solely responsible for the means, methods, techniques, sequences and procedures with respect to its provision of Work under the Contract Documents. Contractor shall pay all payroll taxes imposed by any governmental entity and will pay all other taxes not specifically identified in the Contract Documents as Owner's responsibility.

2.03 Indemnity/Liability.

- A. Contractor shall defend, indemnify, and save harmless, to the fullest extent permitted by law, the Owner and each of its officers, directors, representatives, consultants, agents and employees (the "Indemnified Parties:"), against all claims, suits, actions, loss, cost, damage, expense, and liability arising from or related to bodily injury to or death of any person or damage to any property, or resulting from any breach and/or Contractor's negligence in performing the Work pursuant to the

Contract Documents. Owner shall have the right to accept or reject any legal representation that Contractor proposes to defend Owner.

- B. Notwithstanding any provision of the Contract Documents, Owner shall not be liable to Contractor or anyone claiming under it, in contract or tort, for any special, consequential, indirect or incidental damages arising out of or in connection with the Contract Documents or the Work. Owner's rights and remedies, whether under the Agreement or other applicable law, shall be cumulative and not subject to limitation.
- C. Pursuant to Public Contract Code section 9201, Owner shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Contract. Owner shall be entitled to recover its reasonable costs incurred in providing said notification.
- D. Owner may retain so much of the moneys due the Contractor as shall be considered necessary, until disposition of any such suit, claims or actions for damages or until Owner has received written agreement from the Contractor that it will unconditionally defend the Indemnified Parties, and pay any damages due by reason of settlement or judgment.
- E. Contractor's obligations to defend, indemnify, and save harmless the Owner are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained within this Agreement. Contractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law.

2.04 Defective Work; Warranties. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices, all Contract Documents requirements, and all laws, codes, standards, licenses, and permits. Contractor warrants that all materials and equipment shall be new, of suitable grade of their respective kinds for their intended uses, and free from defects. Unless a longer warranty is called for elsewhere in the Contract Documents, Contractor hereby grants to Owner for a period of one year following the date of completion its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers. If either prior to completion of the Work, or within one year after completion, any Work (completed or incomplete) is found to violate any of the foregoing warranties (**Defective Work**), Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions, correct, remove and replace the Defective Work with conforming Work, and correct, remove and replace any damage to other Work or other property resulting therefrom. If Contractor fails to do so, Contractor shall pay all of the Owner's resulting claims, costs, losses and damages. 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.

2.05 Compliance with Laws; Conflict of Interests. Contractor agrees to comply with all applicable federal and state laws, regulations and policies, as amended, including those regarding discrimination, unfair labor practices, anti-kick-back, collusion, and the provisions of the Americans with Disability Act. Contractor, its officer, partners, associates, agents, and employees, shall not make, participate in making, or in anyway attempt to use the position afforded them by the Contract Documents to influence any governmental decision in which he or she knows or has reason to know that he or she has a financial interest under applicable state, federal and local conflict of interest regulations. Contractor warrants that no person or agency has been employed or retained to solicit or obtain the Agreement upon an agreement or understanding for a contingent fee, except a bona fide employee or agency.

2.06 Clean Up. Debris shall be removed from the Site. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

2.07 Protection Of Work And Property. Contractor shall erect and properly maintain at all times, as required by conditions and progress of the Work, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the Work. In an emergency affecting life and safety of life or of Work or of adjoining property, Contractor, without special instruction or authorization from Owner, is permitted to act at his discretion to prevent such threatened loss or injury.

- 2.08 Force Majeure.** Except as otherwise provided herein, Contractor shall be excused from performance hereunder during the time and to the extent that it is prevented from obtaining delivery, or performing by act of God, fire, strike, loss, or shortage of transportation facilities, lock out, commandeering of materials, products, plants, or facilities by the government, when satisfactory evidence thereof is presented to Owner, provided that it is satisfactorily established that the nonperformance is not due to the fault or neglect of the Contractor.
- 2.09 Correction Of Errors.** Contractor shall perform, at its own cost and expense and without reimbursement from Owner, any work necessary to correct errors or omissions which are caused by the Contractor's failure to comply with the standard of care required herein. Schedule delays resulting from unauthorized work shall be Contractor's responsibility.
- 2.10 No Relief From Obligations Based On Review By Other Persons.** Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents by act or omission of owner, Architect, Construction Manager, Inspectors, or other entities having jurisdiction including, but not limited to, administration of the Contract, review of submittals, or by tests, observation, inspection, or permit/interconnection approvals.
- 2.11 Owner's Right To Perform Work.** If the Contractor should neglect to prosecute the Work properly or fail to perform any provisions of this Contract, Owner, after forty-eight (48) hours' written notice to the Contractor, may make good such deficiencies, without prejudice to any other remedy it may have including, but not limited to, Owner hiring its own forces or another contractor to replace the Contractor's nonconforming Work, in which case Owner shall either issue a deductive Change Order, a Construction Change Directive, or invoice the Contractor for the cost of that work. Contractor shall pay any invoices within thirty (30) days of receipt of same or Owner may withhold those amounts from payment(s) to Contractor.
- 2.12 Termination; Suspension; Disputes; Claims.**
- A. If Contractor fails to perform the Services and Contractor's duties to the satisfaction of Owner, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, Owner shall have the right to terminate this Contract and/or Contractor's right to perform the Work of the Contract for cause effective immediately upon Owner giving written notice thereof to the Contractor. The Contractor and its performance bond surety, if any, shall be liable for all damages caused to Owner by reason of the Contractor's failure to perform and complete the Contract. Should Contractor be terminated for cause, and such termination is subsequently determined to be wrongful, such termination will be converted to a termination for convenience as provided herein.
 - B. Owner shall also have the right in its sole discretion to terminate the Contract and/or Contractor's right to perform the Work of the Contract for its own convenience upon Owner giving three (3) days' written notice thereof to the Contractor. In case of a termination for convenience, Contractor shall be paid for the actual cost for labor, materials, and services performed including, without limitation, Contractor's and its subcontractor(s)' mobilization and or demobilization costs, that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise (but Owner shall not compensate Contractor for costs, profit or overhead anticipated to be earned or incurred on Work terminated for Owner's convenience.). Termination shall have no effect upon any of the rights and obligations of the parties arising out of any transaction occurring prior to the effective date of termination.
 - C. In the event of any demand by Contractor for (A) a time extension including, without limitation, for relief from damages or penalties for delay assessed by Owner under the Contract, (B) payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to, or (C) an amount of payment disputed by Owner, the parties shall attempt to resolve the dispute by those procedures set forth in Public Contract Code section 9204 and/or Article 1.5 (commencing with section 20104) of Chapter 1, Part, 3, Division 2, of the Public Contract Code, if applicable, the provisions of which are each attached hereto and incorporated herein by this reference. If a claim, or any portion thereof, remains in dispute upon satisfaction of

all applicable dispute resolution requirements, the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against Owner. For purposes of those provisions, the running of the time within which a claim must be presented to Owner shall be tolled from the time the Contractor submits its written claim until the time the claim is denied, including any time utilized by any applicable meet and confer process. Pending resolution of the dispute, Contractor and its subcontractors shall continue to perform the Work under the Contract and shall not cause a delay of the Work, including the disputed work, during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement of Owner. Contractor's failure to continue Work during a dispute shall be a material breach of the Contract Documents

2.13 Execution; Venue; Limitations. The Agreement shall be deemed to have been executed in San Mateo County, California. Enforcement of the Contract Documents shall be governed by the laws of the State of California, excluding its conflict of laws rules. Except as expressly provided in the Contract Documents, nothing in the Contract Documents shall operate to confer rights or benefits on persons or entities not party to the Agreement. As between the parties to the Agreement, any applicable statute of limitations for any act or failure to act shall commence to run on the date of Owner's issuance of the final Certificate for Payment, or termination of the Contract Documents, whichever is earlier, except for latent defects, for which the statute of limitation shall begin running upon discovery of the defect and its cause.

2.14 Labor Code Requirements.

A. Contractor represents that Contractor and all Subcontractors shall not be presently debarred, suspended, proposed for disbarment, declared ineligible or excluded pursuant to either Labor Code section 1777.1 or Labor Code section 1777.7. The Contractor shall comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1 – 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with Owner or available online at <http://www.dir.ca.gov/>. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with Section 1720, and including Section 1735, 1777.5 and 1777.6, forbidding discrimination, and Sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

1. **Registration:** Contractor and its subcontractor(s) shall be registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 and in accordance with Labor Code section 1771.1.
2. **Registered Subcontractor List:** Within 30 days of the award of contract or prior to commencing the Work under this Contract, whichever occurs first, Contractor shall provide Owner all information required by Labor Code section 1773.3, as amended by Stats. 2017, Ch. 28, Sec. 21, for Company and all tiers of Subcontractors to enable Owner to provide notice to the Department of Industrial Relations (DIR) of the Contract (PWC-100 form). Contractor shall submit and maintain an updated Registered Subcontractor List including all Subcontractors of any tier furnishing labor, material, or equipment to the Project.
3. **Certified Payroll Records:** Contractor and its subcontractor(s) shall upload certified payroll records ("CPR") electronically using California Department of Industrial Relations' (DIR) eCPR System by uploading the CPRs by electronic XML file or entering each record manually using the DIR's iform (or current form) online directly to the DIR on no less than every 30 days while Work is being performed and within 30 days after the final day of Work performed on the Project, and within ten (10) days of any request by Owner or Labor Commissioner at <http://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> or

current application and URL, 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 the Contractor and/or each subcontractor in connection with the Work.

4. **Labor Compliance:** Contractor shall perform the Work of the Project while complying with all the applicable regulations, including section 16000, et seq., of Title 8 of the California Code of Regulations and is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations.
- B. If the Agreement exceeds \$2,000 and is funded with federal funds, then Contractor shall pay federal Davis Bacon wages and comply with applicable federal requirements.
- 2.15 **Mandatory Contractor and Subcontractor Registration.** Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
 - 2.16 **Worker's Compensation.** Pursuant to Labor Code Sections 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work.
 - 2.17 **Construction Performance Bond; Construction Labor and Materials Payment Bond; Securities in Lieu of Retention Escrow Account.**
 - A. If Contract Sum under the Agreement exceeds (or is expected to exceed) \$25,000, Contractor shall provide a construction performance bond in form attached hereto as Appendix D – Construction Performance Bond, and a construction labor and material payment bond, in accordance with Civil Code Section 9550 and in form attached hereto Appendix E – Construction Labor and Materials Payment Bond. Contractor may not substitute cash in lieu of the required bond(s).
 - B. If the Agreement specifies performance retention, Contractor may elect to substitute securities or direct payment to an escrow account, pursuant to Public Contract Code Section 22300 (incorporated herein by this reference).
 - 2.18 **Earthwork and Underground Facilities.** If the Work involves digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall notify Owner in writing of any material that Contractor believes may be hazardous waste that is required to be removed in accordance law, subsurface or latent physical conditions at the site differing from those indicated by information about the site made available to bidders prior to the deadline for submitting bids, or unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents, pursuant to Section 7104 of the Public Contract Code. For any Work involving trench shoring that costs in excess of \$25,000, Contractor shall submit and Owner (or a registered civil or structural engineer employed by Owner) must accept, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches, pursuant to Labor Code Section 6705. If such plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer. 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.

2.19 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 of the city and/or State 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.

2.20 Attorney Fees/Costs:

Should litigation be necessary to enforce any terms or provisions of this Contract, then each party shall bear its own litigation and collection expenses, witness fees, court costs and attorney's fees.

APPENDIX TO GENERAL CONDITIONS (Appendix B)

Public Contract Code section 9204

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2, Chapter 10 (commencing with Section 19100) of Part 2, and Article 1.5 (commencing with Section 20104) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) "Claim" means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) "Contractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3) (A) "Public entity" means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2) (A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on their own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2027, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2027, deletes or extends that date..

Public Contract Code sections 20104 – 20104.6

§ 20104.

(a) (1) This article applies to all public works claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between a contractor and a local agency.

(2) This article shall not apply to any claims resulting from a contract between a contractor and a public agency when the public agency has elected to resolve any disputes pursuant to Article 7.1 (commencing with Section 10240) of Chapter 1 of Part 2.

(b) (1) "Public work" means "public works contract" as defined in Section 1101 but does not include any work or improvement contracted for by the state or the Regents of the University of California.

(2) "Claim" means a separate demand by the contractor for (A) a time extension, (B) payment of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public work and payment of which is not otherwise expressly provided for or the claimant is not otherwise entitled to, or (C) an amount the payment of which is disputed by the local agency.

(c) The provisions of this article or a summary thereof shall be set forth in the plans or specifications for any work which may give rise to a claim under this article.

(d) This article applies only to contracts entered into on or after January 1, 1991.

§ 20104.2.

For any claim subject to this article, the following requirements apply:

(a) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing in this subdivision is intended to extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.

(b) (1) For claims of less than fifty thousand dollars (\$50,000), the local agency shall respond in writing to any written claim within 45 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 15 days after receipt of the further documentation or within a period of time no greater than that taken by the claimant in producing the additional information, whichever is greater.

(c) (1) For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), the local agency shall respond in writing to all written claims within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim the local agency may have against the claimant.

(2) If additional information is thereafter required, it shall be requested and provided pursuant to this subdivision, upon mutual agreement of the local agency and the claimant.

(3) The local agency's written response to the claim, as further documented, shall be submitted to the claimant within 30 days after receipt of the further documentation, or within a period of time no greater than that taken by the claimant in producing the additional information or requested documentation, whichever is greater.

(d) If the claimant disputes the local agency's written response, or the local agency fails to respond within the time prescribed, the claimant may so notify the local agency, in writing, either within 15 days of receipt of the local agency's response or within 15 days of the local agency's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the local agency shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(e) Following the meet and confer conference, if the claim or any portion remains in dispute, the claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

(f) This article does not apply to tort claims and nothing in this article is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.

§ 20104.4.

The following procedures are established for all civil actions filed to resolve claims subject to this article:

(a) Within 60 days, but no earlier than 30 days, following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.

(b) (1) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act (Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(2) Notwithstanding any other provision of law, upon stipulation of the parties, arbitrators appointed for purposes of this article shall be experienced in construction law, and, upon stipulation of the parties, mediators and arbitrators shall be paid necessary and reasonable hourly rates of pay not to exceed their customary rate, and such fees and expenses shall be paid equally by the parties, except in the case of arbitration where the arbitrator, for good cause, determines a different division. In no event shall these fees or expenses be paid by state or county funds.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, any party who after receiving an arbitration award requests a trial de novo but does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, pay the attorney's fees of the other party arising out of the trial de novo.

(c) The court may, upon request by any party, order any witnesses to participate in the mediation or arbitration process.

§ 20104.6.

(a) No local agency shall fail to pay money as to any portion of a claim which is undisputed except as otherwise provided in the contract.

(b) In any suit filed under Section 20104.4, the local agency shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

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, lightening, 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 Pacific Polymers, Inc. DBA American Foam Experts as Principal a Construction Services Agreement dated the 24th day of June, 20 22 (**Agreement**), titled THE MRF ADMINISTRATION OFFICE BUILDING ROOF REPLACEMENT PROJECT in the amount of \$ 61,631.41, which Agreement is by this reference made a part hereof, for the work described as follows:

Replacement of the existing PVC membrane roof over the administration office portion of the Materials Recovery Facility (MRF), approximately 3,500 square feet, with a new foam roof, as specified in the Scope of Work.

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

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

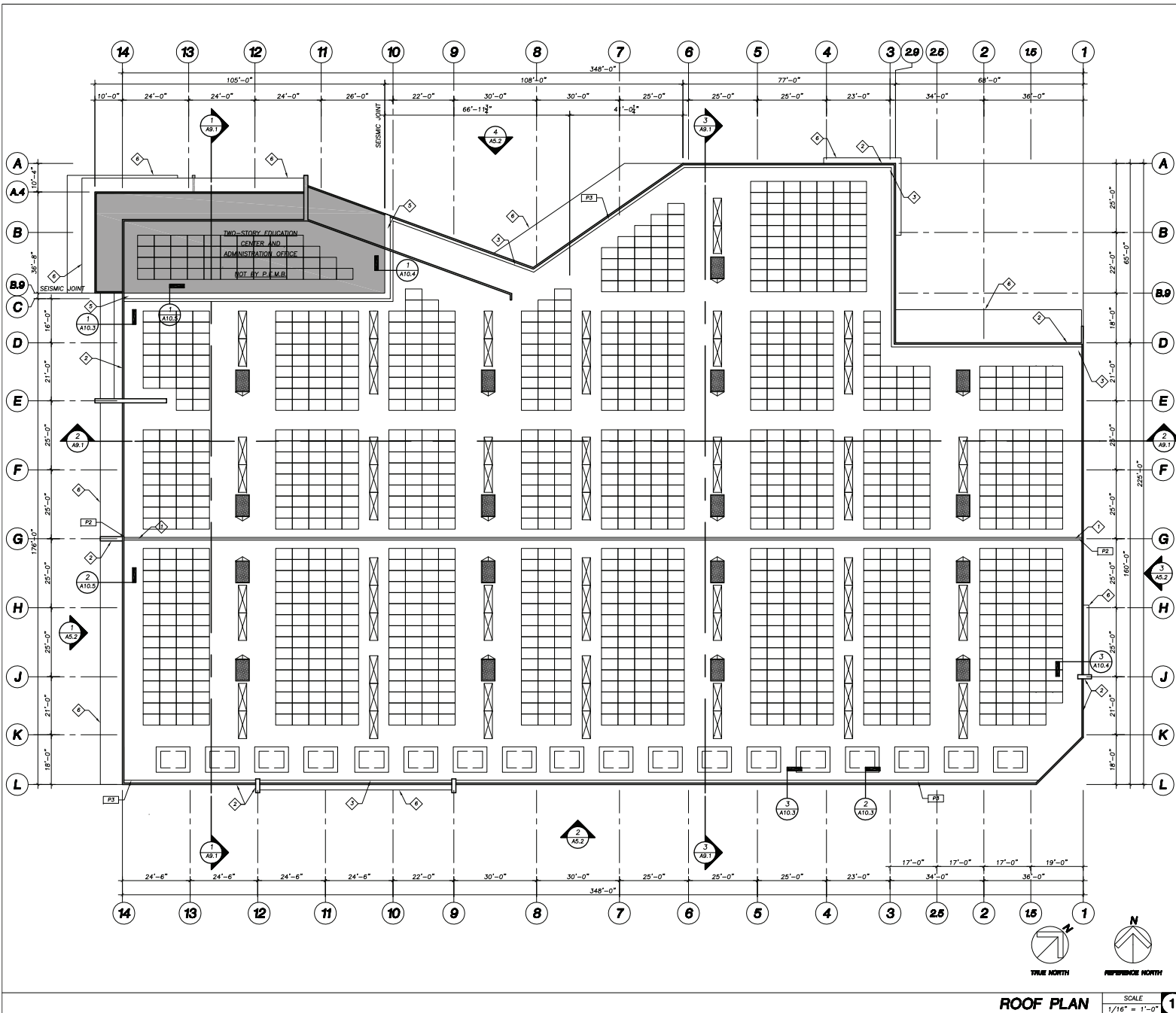
Street Address

Street Address

City, State, Zip Code

City, State, Zip Code

END OF DOCUMENT



KEYNOTES

- ◆ RIDGELINE
- ◆ PARAPET WITH CAP FLASHING
- ◆ DROP BOX WITH DOWNSPOUT & OVERFLOW
- ◆ FUTURE PHOTO VOLTAC PANELS
27,408 S.F. = 39% OF MRF ROOF AREA
- ◆ 18" SEISMIC JOINT
- ◆ CANOPY BELOW
- ◆ 5' x 6' SOLID COVER SMOKE VENT
- PEMB TO PROVIDE ROOF CURB
- ◆ 22 GA CRCKET

P.E.M.B. KEYNOTES

- [R1] 26 GA METAL ROOF PANEL, STANDARD PROFILE
COLOR: WHITE
- [R2] TRANSITION FLASHING
- [R3] METAL VALLEY GUTTER
- [R4] SMOKE VENT PER KEYNOTE ABOVE - P.E.M.B.
TO PROVIDE ROOF CURB (31 TOTAL VENTS)
- [R5] TRANSLUCENT LIGHT PANEL TO MATCH CONTOUR
OF METAL ROOF PANEL.
104 PANELS @ 30 S.F. EA = 3120 SF

NOTES

- ALL ITEMS IDENTIFIED BY KEYNOTES AT TOP ARE NOT COMPONENT PARTS OF PRE-ENGINEERED METAL BUILDING SYSTEM.
- ALL ITEMS IDENTIFIED BY P.E.M.B. KEYNOTES ARE COMPONENT PARTS OF PRE-ENGINEERED METAL BUILDING SYSTEM. REFER TO MANUFACTURER'S SPECIFICATIONS AND DRAWINGS FOR DETAILED INFORMATION, FINISHES, AND ALL STRUCTURAL COMPONENTS OF FRAMING.
- SHADED AREA NOT IN SCOPE OF PEMB CRITERIA.

LEGEND

- ◆ KEYNOTE - SEE ABOVE
- [R1] P.E.M.B. COMPONENT - SEE ABOVE
- [R4] SMOKE VENT - SEE KEYNOTES ABOVE
- [R5] TRANSLUCENT ROOF PANEL

KEYNOTES

- ◆ 1 AB.1
- ◆ 2 AB.1
- ◆ 3 AB.1
- ◆ 4 AS.2
- ◆ 1 AT0.3
- ◆ 2 AT0.3
- ◆ 1 AS.2
- ◆ 2 AS.2
- ◆ 3 AS.2
- ◆ 1 AT0.5
- ◆ 2 AT0.5

TRUE NORTH REFERENCE NORTH

ROOF PLAN SCALE: 1/16" = 1'-0"

**ARCHITECTS
ENGINEERS
PLANNERS**

J.R. Miller & Associates
2700 Saturn Street
Brea, CA 92821
tel. 714.524.1870
fax. 714.524.1878
www.jrma.com

Revision
▲ PEMB CRITERIA 00.00.00

**PROPOSED TRANSFER
STATION & MRF.
FOR:**

**SHOREWAY
ENVIRONMENTAL
CENTER**

225-233 SHOREWAY RD.
SAN CARLOS, CALIFORNIA

J.R. Miller & Associates shall retain all common law, statutory and other reserved rights, including the copyright for this document including repeated design and specifications.

MRF ROOF PLAN

04.01.2008 AS NOTED
DATE: SCALE:
DWN: CHK: AR

J.R.M.A. Project No.
3880

A4.2

STAFF REPORT

To: SBWMA Board Members
From: Hilary Gans, Senior Operations and Engineering Manager
Matt Southworth, Sr. Facility Engineer
Joanne Nghiem, Senior Management Analyst
Date: June 23, 2022 Board of Directors Meeting
Subject: Resolution Approving Contract with Zivko Corporation, Inc. dba Metal Building Company not-to-exceed \$319,506 for Shoreway Truck Maintenance Building Roof Replacement

Recommendation

Staff recommends that the Board of Directors approve Resolution No. 2022-35 attached hereto authorizing the following action:

Approve contract with Zivko Corporation, Inc. dba Metal Building Company not-to-exceed \$319,506 for the replacement of the Shoreway Truck Maintenance Building roof.

Summary

Due to the age of the Truck Maintenance Building roof, leaks have become a recurring problem causing disruptions to the employees and operations. Leak repairs and water damage repairs are not sustainable for the long-term operation and use of the Truck Maintenance Building; therefore, staff is recommending a like-kind replacement of the roof. The bid period occurred in May 2022. One bid was received by Zivko Corporation, Inc. dba Metal Building Company (Metal Building Company), the installer of the current roof, for a total bid amount of \$319,506, including a 10% contingency. Staff has evaluated the submitted bid and found the bidder responsive and responsible.

Background

The Truck Maintenance Building was originally built in the 1980s and is a 20,000 square foot multi-purpose metal building that is currently used by Recology for truck repair operations, parts storage, maintenance office area, driver dispatch offices, and a collection driver common area and restrooms. The roof is original to the building and is approximately 40 years old. Leaks and repairs to the roof have become a regular occurrence (there was damage to the dispatch offices in the winter of 2021 that entailed over \$30,000 in roof repairs and water damage repairs to the office areas). Staff has determined that the proper long term technical solution to these leaks is to replace the roof in its entirety rather than continuing emergency repairs in response to these seasonal failures.

Analysis

Resolution No. 2022-25 requesting release of bid documents for Shoreway Truck Maintenance Building Roof Replacement was approved at the April 28, 2022 Board Meeting, as the estimated project value was greater than \$200,000. Staff with engagement and process review from Legal Counsel (ADCL), prepared the invitation for bid (IFB) documents and publicly released them on May 12, 2022. A non-mandatory but highly recommended pre-bid site visit was held on May 17, 2022, in which two contractors attended, one of which is Metal Building Company, who installed the current roof. Staff performed extensive contractor outreach to more than 30 roofing contractors

in the area and found that few contractors are able to perform work on corrugated metal roofs. In addition, even fewer contractors were interested in public works projects. One addendum was issued and the bid period closed on May 27, 2022. One bid was received from Metal Building Company for a total bid amount of \$319,506, including a 10% contingency. Staff evaluated the submitted documents and found the bidder responsive and responsible and therefore recommends awarding the contract to Metal Building Company.

Timing is critically important and the goal is to complete the work over the summer before the start of the rainy season. Metal Building Company has concurred and anticipates completing the work by the end of August 2022, including a 2 week lead time for materials and a construction duration of 7-8 weeks. Using this projected timeline, the completion of this work is expected before the wet weather historically hits our region in the late fall.

Fiscal Impact

Bid received Metal Building Company of an amount not-to-exceed \$319,506 includes a 10% contingency. A new capital line item of \$350,000 is added to the FY2022 Mid-Year budget update. The project balance will be included in the FY2023 budget planning process.

Attachments:

Resolution 2022-35

Exhibit A – Contract documents for the Shoreway Truck Maintenance Building Roof Replacement project

Attachment A – [Bid documents submitted by Zivko Corporation, Inc. dba Metal Building Company – Available online only at www.rethinkwaste.org](http://www.rethinkwaste.org)



RESOLUTION NO. 2022-35

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING CONTRACT WITH ZIVKO CORPORATION, INC. DBA METAL BUILDING COMPANY NOT-TO-EXCEED \$319,506 FOR SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT

WHEREAS, the SBWMA owns the Shoreway Environmental Center and is responsible for maintaining the building and site in good working order and in compliance with regulations; and

WHEREAS, the Shoreway Truck Maintenance Building needs the original roof replaced with a new like-kind roof; and

WHEREAS, the invitation for bid was issued in May 2022 and one bid was received from Zivko Corporation, Inc. dba Metal Building Company; and

WHEREAS, staff determined Zivko Corporation, Inc. dba Metal Building Company to be the lowest responsive and responsible bidder.

NOW, THEREFORE BE IT RESOLVED, that the South Bayside Waste Management Authority hereby approves awarding the contract not-to-exceed \$319,506 to Zivko Corporation, Inc. dba Metal Building Company for replacement of the Shoreway Truck Maintenance Building roof.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23rd day of June 2022, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				
Menlo Park									

I HEREBY CERTIFY that the foregoing Resolution No. 2022-35 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 23, 2022.

ATTEST:

Alicia Aguirre, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board

DOCUMENT 00 5100

NOTICE OF AWARD

Dated June 24, 2022

TO: Zivko Corporation, Inc. dba Metal Building Company

ADDRESS: 9957 Medford Avenue #14A, Oakland, CA 94603

CONTRACT NO.: 2022-03

CONTRACT FOR: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT AT
333 SHOREWAY ROAD, SAN CARLOS, CA 94070**

The Contract Sum of your contract is three hundred and nineteen thousand and five hundred and six
(Amount in Words)
Dollars (\$ 319,506)

1. One copy 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. of the 20th Day following the date of this Notice of Award, that is, by Thursday, July 14, 2022.
 - a. Deliver to Owner one fully executed counterpart of Document 00 5200 (Agreement), bearing your original signature on the signature page and your initials on each page.
 - b. Deliver to Owner one originals of Document 00 6113.13 (Construction Performance Bond), executed by you and your surety.
 - c. Deliver to Owner one originals of Document 00 6113.16 (Construction Labor and Material Payment Bond), executed by you and your surety.
 - d. Deliver to Owner one fully executed Document 00 6290 Escrow Agreement For Security Deposit In Lieu of Retention.
 - e. Deliver to Owner one fully executed Document 00 6536 (Guaranty), bearing your original signature on the signature page and your initials on each page.
 - f. Deliver to Owner original set of the insurance certificates with endorsements required under Document 00 7316 (Supplementary Conditions – Insurance).
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 5100, Owner will return to you one fully signed counterpart of Document 00 5200 (Agreement) with one copy of the Project Manual (including Specifications and Drawings) and one sets of full-size Drawings.
5. Before you may start any Work at the Site, you must attend a pre-construction conference. The pre-construction conference may be arranged through bids@rethinkwaste.org, (650) 802-3500. Questions regarding bonds and insurance, and other items, may be directed to Staff at the same number.

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: _____
(Signature)

(Print Name)

(Title)

ATTEST: _____
Secretary

(Print Name)

AUTHORIZED BY BOARD RESOLUTION:

NO: _____

ADOPTED: _____, [20__]

[Copy of Resolution Attached]

END OF DOCUMENT

DOCUMENT 00 5200

AGREEMENT

THIS AGREEMENT, dated this 24th day of June, 2022, by and between Zivko Corporation, Inc. dba Metal Building Company whose place of business is located at 9957 Medford Avenue #14A, Oakland, CA 94603 (Contractor), and SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, a California Joint Powers Authority (Owner), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

WHEREAS, Owner, by its Resolution No. 2022-36 adopted on the 24th day of June 2022 awarded to Contractor the following Contract:

CONTRACT NUMBER 2022-03

SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT
at
333 SHOREWAY ROAD, SAN CARLOS, CA 94070

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, Contractor and Owner agree as follows:

ARTICLE 1 SCOPE OF WORK OF THE CONTRACT

1.01 Work of the Contract

A. Contractor shall complete all Work specified in the Contract Documents, in accordance with the Specifications, Drawings, and all other terms and conditions of the Contract Documents (Work).

1.02 Price for Completion of the Work

\$319,506.50 BRM 6/14/22

A. Owner shall pay Contractor the following Contract Sum (Contract Sum) for completion of Work in accordance with Contract Documents as set forth in Contractor's Bid, attached hereto.

B. The Contract Sum includes all allowances (if any). Any unused portion of the allowance will revert back to Owner documented by a deductive change order.

C. The Contract Sum is all inclusive and includes all Work; all federal, state, and local taxes on materials and equipment, and labor furnished by Contractor, its subcontractors, subconsultants, architects, engineers, and vendors or otherwise arising out of Contractor's performance of the Work, including any increases in any such taxes during the term of this Agreement; and any duties, fees, and royalties imposed with respect to any materials and equipment, labor or services. The taxes covered hereby include (but are not limited to) occupational, sales, use, excise, unemployment, FICA, and income taxes, customs, duties, and any and all other taxes on any item or service that is part of the Work, whether such taxes are normally included in the price of such item or service or are normally stated separately. Notwithstanding the foregoing, each party shall bear such state or local inventory, real property, personal property or fixtures taxes as may be properly assessed against it by applicable taxing authorities.

ARTICLE 2 COMMENCEMENT AND COMPLETION OF WORK

2.01 Commencement of Work

A. Contractor shall commence Work on the date established in the Notice to Proceed (Commencement Date). ± 7/7/22 - BRM 6/14/22

B. Owner reserves the right to modify or alter the Commencement Date.

2.02 Completion of Work

± 9/2/22 BRM 6/14/22

- A. Contractor shall achieve Substantial Completion of the entire Work within 90 Days from the Commencement Date.
- B. Contractor shall achieve Final Completion of the entire Work within 30 Days from the Substantial Completion Date.

ARTICLE 3 PROJECT REPRESENTATIVES

3.01 Owner's Project Manager

- A. Owner has designated Matt Southworth as its Project Manager to act as Owner's Representative in all matters relating to the Contract Documents. If Project Manager is an employee of Owner, Project Manager is the beneficiary of all Contractor obligations to Owner including, without limitation, all releases and indemnities.
- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of Owner, to accept work, and to make decisions or actions binding on Owner, and shall have sole signature authority on behalf of Owner.
- C. Owner may assign all or part of the Project Manager's rights, responsibilities and duties to a Construction Manager, or other Owner Representative.

3.02 Contractor's Project Manager and Other Key Personnel

- A. Contractor has designated Drezden Martin as its Project Manager to act as Contractor's Representative in all matters relating to the Contract Documents.
- B. Contractor has designated the following other Key Personnel for the Project:

<u>Name</u>	<u>Position</u>
<u>Mario Landeros</u>	Superintendent [See Doc. 00 7200 Para. 8.01.B]
_____	_____

ARTICLE 4 LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK

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 Substantial Completion of the entire Work, until achieved.
- B. 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. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7200 (General Conditions).

ARTICLE 5 LIQUIDATED DAMAGES FOR UNAUTHORIZED CHANGES OF KEY PERSONNEL

5.01 Liquidated Damage Amounts

- A. See Document 00 7200 (General Conditions) Paragraph 11.07.D for liquidated damages provisions pertaining to Key Personnel.

ARTICLE 6 CONTRACT DOCUMENTS

- (a) Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 5100	Notice of Award
Document 00 5200	Agreement
Document 00 5500	Notice to Proceed
Document 00 5600	Escrow Bid Documentation [NOT USED]
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6290	Escrow Agreement for Security Deposits
Document 00 6325	Substitution Request Form
Document 00 6340	Allowance Expenditure Directive
Document 00 6347	Daily Force Account Report [NOT USED]
Document 00 6363	Change Order Form
Document 00 6530	Agreement and Release of Any and All Claims
Document 00 6536	Guaranty
Document 00 7200	General Conditions
Document 00 7301	Supplementary Conditions [NOT USED]
Document 00 7316	Supplementary Conditions – Insurance and Indemnification
Document 00 7319	Supplementary Conditions – Hazardous Materials [NOT USED]
Document 00 7349	Labor Stabilization Agreement [NOT USED]
Document 00 7380	Apprenticeship Program
Document 00 9113	Addenda
Drawings, Table, Schedules, and technical Specifications listed in Document 00 0115 (if any)	

- (b) There are no Contract Documents other than those listed above. The Contract Documents may only be amended, modified or supplemented as provided in Document 00 7200 (General Conditions).

ARTICLE 7 MISCELLANEOUS

- 7.01 Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein.
- 7.02 It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of Owner or acting as an employee, agent, or representative of Owner, liable on this Agreement or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of Owner is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.
- 7.03 Pursuant to Labor Code Section 1771(a), Contractor represents that it and all of its Subcontractors are currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5. Contractor covenants that any additional or substitute Subcontractors will be similarly registered and qualified.
- 7.04 In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time Owner tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.05 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 Contract Documents, and shall be made available to any interested party on request. Pursuant to Labor Code Sections 1860 and 1861, in accordance with Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Labor Code Section 3700 that require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.

7.06 This Agreement and the Contract Documents shall be deemed to have been entered into in the City of San Carlos, California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of San Mateo, California.

IN WITNESS WHEREOF the parties have executed this Agreement in duplicate the day and year first above written.

CONTRACTOR: Zivko Corporation, Inc. dba Metal Building Company

By: [Signature]
(Signature)

By: [Signature]
(Signature)

Its: PRESIDENT
Title (If Corporation: Chairman, President or Vice President)

Its: CEO
Title (If Corporation: Secretary, Assistant Secretary, Chief Financial Officer or Assistant Treasurer)

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____
(Signature)

(Print Name)

(Title)

(Signatures continued on next page)

Attest: _____
Secretary

(Print Name)

APPROVED AS TO FORM AND LEGALITY
THIS __ DAY OF _____, [20__]

By: _____
Attorney for Owner

(Print Name)

RESOLUTION NO. _____

END OF DOCUMENT

DOCUMENT 00 5500
NOTICE TO PROCEED

Dated: _____, 20__

To: _____
(Contractor)

Address: _____

CONTRACT FOR: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY
SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT AT
333 SHOREWAY ROAD, SAN CARLOS, CA 94070**

CONTRACT NO: 2022-03

You are notified that the Contract Time under the above Contract 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 Contract Documents. In accordance with Article 2 of Document 00 5200 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are _____, [20__] and _____, [2022], respectively.

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

1. Contractor's Initial Contract Schedule.
2. Contractor's preliminary schedule of values for all of the Work.
3. Contractor's preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals.
4. Contractor's certified Safety Program and related information
5. Copies of applicable permits

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____ (Staff Signature)

Its: _____ (Name and Title)

END OF DOCUMENT

DOCUMENT 00 6113.13

CONSTRUCTION PERFORMANCE BOND

THIS CONSTRUCTION PERFORMANCE BOND (**Bond**) is dated _____, 20__ is in the amount of
\$319,506 (**Penal Sum**), which is 100% of the Contract Sum and is entered into by and
between the parties listed below to ensure the faithful performance of the Contract identified below. This
Bond consists of this page and the Bond Terms and Conditions, Paragraphs 1 through 14 attached to this
page. Any singular reference to _____ (**Contractor**),
_____ (**Surety**), South Bayside Waste Management Authority (**Owner**),
or other party shall be considered plural where applicable.

CONTRACTOR:

SURETY:

Address

Principal Place of Business

City/State/Zip

City/State/Zip

CONSTRUCTION CONTRACT:

Agreement for the SHOREWAY TRUCK MAINTENANCE
BUILDING ROOF REPLACEMENT, located at 333 SHOREWAY
ROAD, SAN CARLOS, CA 94070, dated June 24, 2022, in the
amount of \$319,506.

CONTRACTOR AS PRINCIPAL

SURETY

Company: (Corp. Seal)

Company: (Corp. Seal)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

BOND TERMS AND CONDITIONS

1. Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to Owner and the State of California for the complete and proper performance of the Construction Contract, which is incorporated herein by reference.
2. If Contractor completely and properly performs all of its obligations under the Construction Contract, Surety and Contractor shall have no obligation under this Bond.
3. If there is no Owner Default, Surety's obligation under this Bond shall arise after:
 - 3.1 Owner provides Surety with written notice that Owner has declared a Contractor Default under the Construction Contract pursuant to the terms of the Construction Contract; and
 - 3.2 Owner has agreed to pay the Balance of the Contract Sum:
 - 3.2.1 To Surety in accordance with the terms of this Bond and the Construction Contract;
or
 - 3.2.2 To a Contractor selected to perform the Construction Contract in accordance with the terms of this Bond and the Construction Contract.
4. When Owner has satisfied the conditions of Paragraph 3 above, Surety shall promptly (within 40 Days) and at Surety's expense elect to take one of the following actions:
 - 4.1 Arrange for Contractor, with consent of Owner, to perform and complete the Construction Contract (but Owner may withhold consent, in which case the Surety must elect an option described in Paragraphs 4.2, 4.3 or 4.4 below); or
 - 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors or Construction entities; provided, that Surety may not select Contractor as its agent or independent contractor or Contractor without Owner's consent; or
 - 4.3 Undertake to perform and complete the Construction Contract by obtaining bids from qualified contractors or Construction entities acceptable to Owner for a contract for performance and completion of the Construction Contract and, upon determination by Owner of the lowest responsive and responsible Bidder, arrange for a contract to be prepared for execution by Owner and the contractor or Contractor selected with Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract; and, if Surety's obligations defined in Paragraph 6 below, exceed the Balance of the Contract Sum, then Surety shall pay to Owner the amount of such excess; or
 - 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor or Contractor, and with reasonable promptness under the circumstances and, after investigation and consultation with Owner, determine in good faith its monetary obligation to Owner under Paragraph 6 below, for the performance and completion of the Construction Contract and, as soon as practicable after the amount is determined, tender payment therefor to Owner with full explanation of the payment's calculation. If Owner accepts Surety's tender under this Paragraph 4.4, Owner may still hold Surety liable for future damages then unknown or unliquidated resulting from the Contractor Default, as agreed by Owner and Surety at the time of tender. If Owner disputes the amount of Surety's tender

under this Paragraph 4.4, Owner may exercise all remedies available to it at law to enforce Surety's liability under Paragraphs 6 and 7 below.

5. At all times Owner shall be entitled to enforce any remedy available to Owner at law or under the Construction Contract including, without limitation, and by way of example only, rights to perform work, protect Work, mitigate damages, advance critical Work to mitigate schedule delay, and coordinate Work with other consultants or contractors.
6. If Surety elects to act under Paragraphs 4.1, 4.2 or 4.3 above, within the time period provided in Paragraph 4, above, and complies with its obligations under this Bond, Surety's obligations under this Bond are commensurate with Contractor's Construction Contract obligations. Surety's obligations include, but are not limited to:
 - 6.1 Contractor's obligations to complete the Construction Contract and correct Defective Work;
 - 6.2 Contractor's obligations to pay liquidated damages; and
 - 6.3 To the extent otherwise required of Contractor under the Construction Contract, Contractor's obligations to pay additional legal, design professional, and other costs not included within liquidated damages resulting from Contractor Default (but excluding attorney's fees incurred to enforce this Bond).
7. If Surety does not elect to act under Paragraphs 4.1, 4.2, 4.3, or 4.4, above, within the time period provided in Paragraph 4, above, or comply with its obligations under this Bond, then Surety shall be deemed to be in default on this Bond ten (10) Days after receipt of an additional written notice from Owner to Surety demanding that Surety perform its obligations under this Bond. Such Surety default shall be independent of the Contractor Default. To the extent Surety's independent default causes Owner to suffer damages including, but not limited to, delay damages, which are different from, or in addition to (but not duplicative of) damages that Owner is entitled to receive under the Construction Contract, Surety shall also be liable for such damages. In the event any Surety obligation following its independent default is inconsistent or conflicts with California Civil Code Section 2809, or any other law which either prohibits, restricts, limits or modifies in any way any obligation of a surety that is larger in amount or in any other respect more burdensome than that of the principal, Surety hereby waives the provisions of such laws to that extent.
8. If Surety elects to act under Paragraphs 4.1, 4.3 or 4.4 above, within the time period provided in Paragraph 4, above, and complies with all obligations under this Bond, Surety's monetary obligation under this Bond is limited to the Penal Sum.
9. No right of action shall accrue on this Bond to any person or entity other than Owner or its successors or assigns.
10. Surety hereby waives notice of any change, alteration or addition to the Construction Contract or to related subcontracts, design agreements, purchase orders and other obligations, including changes of time, and of any Owner action in accordance with Paragraph 5 above. Surety consents to all terms of the Construction Contract, including provisions on changes to the Contract. No extension of time, change, alteration, Modification, deletion, or addition to the Contract Documents, or of the Work (including services) required thereunder, or any Owner action in accordance with Paragraph 5 above shall release or exonerate Surety on this Bond or in any way affect the obligations of Surety on this Bond, unless such action is an Owner Default.
11. Any proceeding, legal or equitable, under this Bond shall be instituted in any court of competent jurisdiction where a proceeding is pending between Owner and Contractor regarding the Construction Contract, or in the courts of the County of San Mateo, or in a court of competent jurisdiction in the location in which the Work is located. Communications from Owner to Surety

under Paragraph 3.1 above shall be deemed to include the necessary agreements under Paragraph 3.2 above unless expressly stated otherwise.

12. All notices to Surety or Contractor shall be mailed or delivered (at the address set forth on the signature page of this Bond), and all notices to Owner shall be mailed or delivered as provided in Document 00 5200 (Agreement). Actual receipt of notice by Surety, Owner or Contractor, however accomplished, shall be sufficient compliance as of the date received at the foregoing addresses.
13. Any provision in this Bond conflicting with any statutory or regulatory requirement shall be deemed deleted herefrom and provisions conforming to such statutory requirement shall be deemed incorporated herein.
14. **Definitions**
 - 14.1 **Balance of the Contract Sum:** The total amount payable by Owner to Contractor pursuant to the terms of the Construction Contract after all proper adjustments have been made under the Construction Contract, for example, deductions for progress payments made, and increases/decreases for approved Modifications to the Construction Contract.
 - 14.2 **Construction Contract:** The agreement between Owner and Contractor identified on the signature page of this Bond, including all Contract Documents and changes thereto.
 - 14.3 **Contractor Default:** Material failure of Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract, limited to "default" or any other condition allowing a termination for cause as provided in Document 00 7200 (General Conditions).
 - 14.4 **Owner Default:** Material failure of Owner, which has neither been remedied nor waived, to pay Contractor progress payments due under the Construction Contract or to perform other material terms of the Construction Contract, if such failure is the cause of the asserted Contractor Default and is sufficient to justify Contractor termination of the Construction Contract.

END OF DOCUMENT

DOCUMENT 00 6113.16

CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

1.01 THAT WHEREAS, **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)** has awarded to Zivko Corporation, Inc. dba Metal Building Company as Principal, Contract Number 2022-03 dated the 24th day of June, 2022 (the **Contract**), titled THE SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT PROJECT in the amount of \$319,506, which Contract is by this reference made a part hereof, for the work of the following Contract:

Removal and replacement of a 24,000 square foot corrugated metal roof on the Shoreway Truck Maintenance Building.

1.02 AND WHEREAS, Principal is required to furnish a bond in connection with the Contract to secure the payment of claims of laborers, mechanics, material suppliers, and other persons as provided by law;

1.03 NOW, THEREFORE, we, the undersigned Principal and _____, as Surety, are held and firmly bound unto Owner in the sum of 100% OF THE CONTRACT PRICE \$_____, 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.

1.04 THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its 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 Contract, 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 Section 13020 of the State of California Unemployment Insurance Code 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.

1.05 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.

1.06 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 Contract, 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 Contract, or to the work to be performed thereunder.

1.07 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 Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

1.08 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

DOCUMENT 00 6290

ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION

California Public Contract Code Section 22300

THIS ESCROW AGREEMENT ("**Escrow Agreement**") is made and entered into this **24th** day of **June, 2022**, by and between **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY**, ("**Owner**"), whose address is **610 Elm Street, Suite 202, San Carlos, CA 94070**, Zivko Corporation, Inc. dba Metal Building Company ("**Contractor**"), whose principal place of business is located at **9957 Medford Avenue #14A, Oakland, CA 94603** and [] Owner, as escrow agent **OR [] (Name of Bank)** _____, a state or federally chartered bank in the State of California, whose place of business is located at (**Address**) _____ ("**Escrow Agent**").

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

1. Pursuant to California Public Contract Code Section 22300, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by Owner pursuant to Contract Number **2022-03** entered into between Owner and Contractor for **THE SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT PROJECT** located at **333 SHOREWAY ROAD, SAN CARLOS, CA 94070** in the amount of \$ 319,506 dated June 24, 2022 (the "**Contract**"). Alternatively, on written request of Contractor, Owner shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify Owner within ten Days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between Owner and Contractor. Securities shall be held in name of _____, and shall designate Contractor as the beneficial owner.
2. Owner shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified in Paragraph 1 of this Document 00 6290.
3. When Owner makes payment(s) of retention earned directly to Escrow Agent, Escrow Agent shall hold said payment(s) for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when Owner pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of Owner. Such expenses and payment terms shall be determined by Owner, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to Owner.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from Owner to Escrow Agent that Owner consents to withdrawal of amount sought to be withdrawn by Contractor.
7. Owner shall have the right to draw upon the securities in event of default by Contractor. Upon seven Days written notice to Escrow Agent from Owner of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by Owner.
8. Upon receipt of written notification from Owner certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract, Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees

and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

- 9. Escrow Agent shall rely on written notifications from Owner and Contractor pursuant to Paragraphs 5 through 8, inclusive, of this Document 00 6290 and Owner and Contractor shall hold Escrow Agent harmless from Escrow Agent's release and disbursement of securities and interest as set forth.
- 10. Names of persons who are authorized to give written notice or to receive written notice on behalf of Owner and on behalf of Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

ON BEHALF OF OWNER:

ON BEHALF OF CONTRACTOR:

Title

Name

Signature

Address

City/State/Zip Code

Title

Name

Signature

Address

City/State/Zip Code

ON BEHALF OF ESCROW AGENT:

Title

Name

Signature

Address

City/State/Zip Code

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

OWNER:

CONTRACTOR

**SOUTH BAYSIDE WASTE
MANAGEMENT AUTHORITY**

Title

Name

Signature

Title

Name

Signature

ATTEST

Signature

Print Name

Secretary

ESCROW AGENT

Title

Print Name

Signature

[IF REQUIRED] REVIEWED AS TO FORM:

Counsel for Owner

Print Name

Date

At the time the Escrow Account is opened, Owner and Contractor shall deliver to Escrow Agent a fully executed counterpart of this Document 00 6290.

END OF DOCUMENT

DOCUMENT 00 6325

SUBSTITUTION REQUEST FORM

To: **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY, Owner**
Phone Number (650) 802-3500

PROJECT: Shoreway Truck Maintenance Building Roof Replacement	Contractor:
Owner Project No: 2022-03	

Substitution Request By:	Firm:
-------------------------------------	--------------

Transmittal Record	Attn:	Firm:	Date Sent:	Date Rec'd:	Date Due:
Contractor to Owner					
Contractor to Architect					
Owner / Architect to Consultant					
Architect to Owner Representative					
Owner Representative to Contractor					

We hereby submit for your consideration the following product instead of the specified item for the Project:

Section / Drawing	Article	Specified Item
Proposed Substitution:		

We have (a) attached manufacturer's literature, including complete technical data and laboratory test results, if applicable, (b) attached an explanation of why proposed substitution is a true equivalent to specified item, (c) included complete information on changes to Contract Documents that the proposed substitution will require for its proper installation, and (d) filled in the blanks below:

Contractor to complete questions that follow and certifies to the accuracy of all answers:

A.	Does the substitution affect dimensions shown on Drawings? Yes ___ / No ___. If No, please explain proposed mitigation and why substitution is equivalent to originally specified item:
B.	Will the undersigned pay for changes to the building design, including engineering and detailing costs caused by the requested substitution? Yes ___ / No ___. If No, please state reasons explain why substitution is equivalent to originally specified item:
C.	What effect does the substitution have on other trades? No effect: ___ / Some effect___. If substitution will affect other trades, please explain the effect and why substitution is equivalent to originally specified item:
D.	Will substitution cause change to Project Schedule, or to critical delivery dates? Add? Shorten? If the substitution will add to schedule dates or affect critical activities, please explain why substitution is equivalent to originally specified item:
E.	Please describe differences between proposed substitution and specified item? Please explain and identify any and all differences, and please explain why substitution is equivalent to originally specified item:
F.	What is the Cost Differential to Contractor in original specified item and proposed substitution including all mark-ups? [If substitution requested during bid period, skip this question.]
G.	Are Manufacturer's guarantees for the proposed item the same as for item specified? Yes ____; No____. If No, please explain why substitution is equivalent to originally specified item:

H.	Contractor accepts full responsibility for delays caused by redesign of other items of the Work necessitated by substitution? Yes ___ / No ___. If No, please state reasons and explain why substitution is equivalent to originally specified item:
I.	Contractor states that the function, appearance and quality are equivalent or superior to the specified item? Yes ___ / No ___. If No, please explain why substitution is equivalent to originally specified item:

We certify that the function, appearance, and quality of the proposed substitution are equivalent or superior to those of the specified item, except as we may specifically state otherwise in this request.

Submitted by: _____ Signature: _____
Firm: _____ Date: _____
Address: _____ Phone/ Fax: _____
Remarks: _____

Consultant Response:
 Accepted
 Not Accepted
 Accepted As Noted
 Received Too Late

Remarks: _____

By: _____

Owner Representative Response:
 Accepted
 Not Accepted
 Accepted As Noted
 Received Too Late

Remarks: _____

By: _____

END OF DOCUMENT

ALLOWANCE EXPENDITURE DIRECTIVE FORM

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

ALLOWANCE EXPENDITURE DIRECTIVE NO. :

ALLOWANCE EXPENDITURE DIRECTIVE

Project: _____

Date: _____

Bid No.: _____

The following parties agree to the terms of this Allowance Expenditure Directive ("AED"):

Owner Name, Address, Telephone:

Contractor Name, Address, Telephone:

Reference	Description	Allowance Authorized for Expenditure
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$
Request for AED # Requested by: Performed by: Reason:	[Description of unforeseen item relating to Work] [Requester] [Performer] [Reason]	\$

Total Contract Allowance Amount:	\$
Amount of Previously Approved Allowance Expenditure Directive(s):	\$
Amount of this Allowance Expenditure Directive:	\$

The undersigned Contractor approves the foregoing release of allowance for completion of each specified item, and agrees to furnish all labor, materials and services and perform all work necessary to complete any additional work specified for the consideration stated therein ("**Work**"). Submission of sums which have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act set forth under Government Code section 12650, et seq.

This Allowance Expenditure Directive must be signed by an authorized Owner representative.

It is expressly understood that the authorized allowance expenditure granted herein represents a full accord and satisfaction for any and all cost impacts of the items herein, and Contractor waives any and all further compensation based on the items herein. The value of the extra work or changes expressly includes any and all of the Contractor's costs and expenses, and its subcontractors, both direct and indirect. Any costs, expenses, or damages not included are deemed waived.

Signatures:

<p>OWNER:</p> <p>SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>	<p>CONTRACTOR:</p> <p>_____</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>
<p>ARCHITECT:</p> <p>_____</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>	<p>PROJECT INSPECTOR:</p> <p>_____</p> <p>Date: _____</p> <p>By: _____ [Print Name and Title here]</p>

END OF DOCUMENT

CHANGE ORDER FORM

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

CHANGE ORDER NO.:

CHANGE ORDER

Project: _____
 Bid No.: _____

Date: _____

The following parties agree to the terms of this Change Order:

Owner: _____
 [Name / Address]

Contractor: _____
 [Name / Address]

Architect: _____
 [Name / Address]

Project Inspector: _____
 [Name / Address]

Reference	Description	Cost	Days Ext.
PCO # Requested by: Performed by: Reason:	[Description of change] [Requester] [Performer] [Reason]	\$	
PCO # Requested by: Performed by: Reason:	[Description of change] [Requester] [Performer] [Reason]	\$	
PCO # Requested by: Performed by: Reason:	[Description of change] [Requester] [Performer] [Reason]	\$	
Contract time will be adjusted as follows: Previous Completion Date: ___[Date] _____ [#] Calendar Days Extension (zero unless otherwise indicated) Current Completion Date: ___[Date]		Original Contract Amount:	\$
		Amount of Previously Approved Change Order(s):	\$
		Amount of this Change Order:	\$
		Contract Amount:	\$

DOCUMENT 00 6530

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS
[Public Contract Code Section 7100]

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (**Agreement and Release**), made and entered into this **24th** day of **June, 2022**, by and between **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)**, and **Zivko Corporation, Inc. dba Metal Building Company (Contractor)**, whose place of business is at **9957 Medford Avenue #14A, Oakland, CA 94603**.

RECITALS

- A. Owner and Contractor entered into Contract Number **2022-03** (the "**Contract**") for construction of Owner **SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT** located at **333 SHOREWAY ROAD, SAN CARLOS, CA 94070**.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between Owner and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ _____
Modified Contract Sum	\$ _____
Payment to Date	\$ _____
Liquidated Damages	\$ _____
Payment Due Contractor	\$ _____
- 2. Subject to the provisions of this Agreement and Release, Owner will forthwith pay to Contractor the sum of [_____ Dollars and _____ Cents (\$ _____)] under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with Owner as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against Owner arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 6530. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against Owner, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530. Nothing in this Agreement and Release shall limit or modify Contractor's continuing obligations described in Paragraph 6 of this Document 00 6530.
- 4. The following claims submitted under Document 00 7200 (General Conditions), Article 12, are disputed (**Disputed Claims**) and are specifically excluded from the operation of this Agreement and Release.

[Insert information in Chart below, affix attachment if necessary]

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

5. Consistent with California Public Contract Code Section 7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 6530, Contractor hereby releases and forever discharges Owner, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless Owner, any of the Owner's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 6530.
8. Contractor hereby waives the provisions of California Civil Code Section 1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.

11. All rights of Owner shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

***** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING *****

OWNER: SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

By: _____
Signature

Name: _____
Print

Its: _____
Title

ATTEST:

Secretary

Print

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

[CONTRACTOR]

By: _____
Signature

Name: _____
Print

Its: _____
Title

[IF REQUIRED] REVIEWED AS TO FORM:

Dated: _____, [20__]

By: _____
Counsel for Owner

Name: _____
Print

END OF DOCUMENT

DOCUMENT 00 6536

GUARANTY

TO: The **SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (Owner)**, for construction of the **SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT PROJECT**, located at **333 SHOREWAY ROAD, SAN CARLOS, CA 94070**.

The undersigned guarantees all construction performed on this Project and also guarantees all material and equipment incorporated therein.

- 1.01** Contractor hereby grants to Owner for a period of one (1) year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.
- 1.02** Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one (1) year, or longer if specified, from the date of Final Acceptance of the Work completed.
- 1.03** If within one (1) year after the date of Final Acceptance, or such other period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents or any extended warranty or guaranty, any Work 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 comply promptly 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.
- 1.04** Observation and inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.
- 1.05** This Guaranty is in addition to any other Contractor warranties contained in the Contract Documents, and not in lieu of, any and all other Contractor liability imposed under the Contract Documents or at law. In the event of any conflict or inconsistency between the terms of this Guaranty and any Contractor warranty or obligation Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the greater protection to Owner.

Date: _____, 20____

Contractor's name

By: _____
Signature

Print Name

Title

Street Address

City, State, Zip code

END OF DOCUMENT

DOCUMENT 00 7200

GENERAL CONDITIONS

Page

ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS 1
 1.01 Interpretation Of Documents 1
 1.02 Order Of Precedence Of Documents 1
ARTICLE 2 - PRE-BID INVESTIGATIONS 1
 2.01 Pre-Bid Investigations Required 1
 2.02 Limited Reliance Permitted On Owner’s Existing Conditions Data 2
 **2.03 Pre-Bid Investigation Requirements For Excavation And Utilities Relocation
 Projects** 2
ARTICLE 3 - SUBCONTRACTORS 3
 3.01 Subcontractor Listing Law 3
 3.02 Subcontracts 3
ARTICLE 4 - DRAWINGS AND SPECIFICATIONS 3
 4.01 Intent Of Drawings And Specifications 3
 4.02 Checking Of Drawings And Specifications 4
 4.03 Interpretation Of Drawings And Specifications 4
 4.04 Use Of Drawings And Specifications 4
ARTICLE 5 - COMMENCEMENT OF THE WORK 4
 5.01 Submission Of Required Schedules 4
 5.02 Commencement Date Of Contract Time 5
ARTICLE 6 - CONTRACTOR’S ORGANIZATION AND EQUIPMENT 5
 6.01 Contractor’s Legal Address 5
 6.02 Contractor’s Superintendents Or Forepersons 5
 6.03 Proficiency In English 5
 6.04 Contractor’s And Subcontractors’ Employees 5
 6.05 Contractor’s Use Of The Site 6
 6.06 Contractor’s Site Office 6
ARTICLE 7 - OWNER’S ADMINISTRATION OF WORK 6
 7.01 Owner’s Representative(s) 6
 7.02 Owner’s Observation Of The Work 6
 7.03 Consultant’s Observation Of Work 6
 7.04 Owner’s And Consultant’s Exercise Of Contract Responsibilities 7
 7.05 Owner’s Right Of Access To The Work 7
 7.06 Owner’s Right Of Separate Construction 7
ARTICLE 8 - CONTRACTOR’S PROSECUTION AND PROGRESS OF THE WORK 8
 8.01 Contractor To Supervise The Work 8

8.02	Contractor To Maintain Cost Data.....	8
8.03	Contractor To Supply Sufficient Workers And Materials.....	9
8.04	Contractor To Maintain Project Record Documents	9
8.05	Contractor To Not Disrupt Owner Operation	9
8.06	Contractor To Provide Temporary Facilities And Controls	10
ARTICLE 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK		10
9.01	Warranty And Guaranty.....	10
9.02	Inspection Of Work.....	11
9.03	Correction Of Defective Work.....	12
9.04	Acceptance of Defective Work	13
9.05	Rights Upon Inspection, Correction Or Acceptance.....	13
9.06	Proof Of Compliance Of Contract Provisions	13
9.07	Correction Period And Project Warranty Period:	13
9.08	No Waiver.....	14
ARTICLE 10 - MODIFICATIONS OF CONTRACT DOCUMENTS.....		14
10.01	Owner's Right To Direct Changed Work.....	14
10.02	Required Documentation For Changed Work.....	15
10.03	Procedures And Pricing Of Changed Work	15
ARTICLE 11 - TIME ALLOWANCES.....		15
11.01	Time Allowances	15
11.02	Excusable Delay And Inexcusable Delay Defined.....	15
11.03	Notice Of Delay.....	16
11.04	Compensable Time Extensions.....	16
11.05	Non-Compensable Time Extensions.....	17
11.06	Adverse Weather.....	17
11.07	Liquidated Damages	18
ARTICLE 12 - CLAIMS BY CONTRACTOR.....		19
12.01	Obligation to File Claims for Disputed Work	19
12.02	Duty to Perform during Claim Process.....	19
12.03	Definition of a Claim	19
12.04	Claims Presentation.....	19
12.05	Claim Resolution pursuant to Public Contract Code section 9204	20
12.06	Subcontractor Pass-Through Claims	21
12.07	Government Code Claim Act Claim	22
12.08	Claim Resolution pursuant to Public Contract Code section 20104, et seq.....	22
12.09	Compliance.....	23
ARTICLE 13 - UNDERGROUND CONDITIONS.....		23
13.01	Contractor To Locate Underground Facilities.....	23

13.02 Contractor To Protect Underground Facilities. 24

13.03 Concealed Or Unknown Conditions 25

13.04 Notice Of Hazardous Waste Or Materials Conditions 26

ARTICLE 14 - LEGAL AND MISCELLANEOUS 27

14.01 Laws And Regulations 27

14.02 Permits And Taxes 27

14.03 Communications And Information Distribution 27

14.04 Suspension Of Work 28

14.05 Termination Of Contract For Cause 28

14.06 Termination Of Contract For Convenience 29

14.07 Contingent Assignment Of Subcontracts 29

14.08 Remedies And Contract Integration (**) 30

14.09 Interpretation. 30

14.10 Patents 30

14.11 Substitution For Patented And Specified Articles 31

14.12 Interest Of Public Officers 31

14.13 Limit Of Liability 31

ARTICLE 15 - WORKING CONDITIONS AND PREVAILING WAGES 31

15.01 Use Of Site/Sanitary Rules 31

15.02 Protection Of Work, Persons, And Property 33

15.03 Responsibility For Safety And Health 33

15.04 Emergencies 34

15.05 Use Of Roadways And Walkways 34

15.06 Nondiscrimination 34

15.07 Prevailing Wages And Working Hours 34

15.08 Environmental Controls 36

15.09 Shoring Safety Plan 36

GENERAL CONDITIONS

ARTICLE 1 - INTERPRETATION OF CONTRACT DOCUMENTS

1.01 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.

1.02 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 Forms (Document 00 5200 and other 5000 and 6000 series Documents), and terms and conditions referenced therein;
 - 3. Supplementary General Conditions (Document 00 7301 and other 7300 series Documents), if included;
 - 4. General Conditions (Document 00 7200);
 - 5. Division 01 General Requirements, if included;
 - 6. Drawings and Technical Specifications (Division 02 and above);
 - 7. Written words over figures, unless obviously incorrect;
 - 8. Figured dimensions over scaled dimensions;
 - 9. 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 2 - PRE-BID INVESTIGATIONS

2.01 Pre-Bid Investigations Required

- A. Prior to and as a condition of submitting a Bid and executing Document 00 5200 (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.

2.02 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 5200 (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.)

2.03 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 3 - SUBCONTRACTORS

3.01 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.

3.02 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 4 - DRAWINGS AND SPECIFICATIONS

4.01 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.

4.02 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.

4.03 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.

4.04 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 5 - COMMENCEMENT OF THE WORK

5.01 Submission Of Required Schedules

- A. Contractor shall submit to Owner in draft for review and discussion at the Preconstruction Conference, 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.

5.02 Commencement Date Of Contract Time

- A. The Contract Time will commence to run on the 90th 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 90 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 6 - CONTRACTOR'S ORGANIZATION AND EQUIPMENT

6.01 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.

6.02 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.

6.03 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.

6.04 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.

6.05 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.

6.06 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 7 - OWNER'S ADMINISTRATION OF WORK

7.01 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 Article 2 of Document 00 5200 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to Owner.

7.02 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.

7.03 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.

7.04 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.

7.05 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.

7.06 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 8 - CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK

8.01 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 5200 (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.

8.02 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.

8.03 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.)

8.04 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 reports, 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.

8.05 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.

8.06 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 9 - WARRANTY, GUARANTY, AND INSPECTION OF WORK

9.01 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.

9.02 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.

9.03 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 (5) 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 00 7200.

- 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.

9.04 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 00 7200. If Owner accepts any Defective Work after final payment, Contractor shall pay to Owner, an appropriate amount as determined by Owner.

9.05 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.

9.06 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.

9.07 Correction Period And Project Warranty Period:

- A. If within one (1) 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.

9.08 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 10 - MODIFICATIONS OF CONTRACT DOCUMENTS

10.01 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).

10.02 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 Construction 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 Construction 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.

10.03 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 Section 01 2600 (Modification Procedures).

ARTICLE 11 - TIME ALLOWANCES

11.01 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 or slack is the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the schedule. Float or slack is not for the exclusive use of or benefit of either Owner or the Contractor, but its use shall be determined solely by Owner. 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 Time Impact Evaluation ("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.

11.02 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, pandemics, quarantine restrictions, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God as defined in Public Contract Code section 7105 (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.
- 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.

11.03 Notice Of Delay

- A. Within seven (7) Days of the beginning of any delay (excepting adverse weather delays), Contractor shall notify Owner in writing, by submitting a **"Notice of Delay"**, referencing this Article. that must describe the anticipated delays resulting from the delay event in question. If Contractor requests an extension of time, Contractor shall submit a TIE evidencing the impact to the Project's critical path within ten (10) days of the Notice of Delay. Owner will determine all claims and adjustments in the Contract Time, if any. 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 (7) day notice requirement here (but not to exceed twenty-one (21) 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.
- B. In the event the Contractor requests an extension of Contract Time for unavoidable delay, such request shall be submitted with full justification and documentation. If the Contractor fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work. Any claim for delay must include the following information as support, without limitation:
 - 1. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
 - 2. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. In particular, Contractor must show an actual impact to the schedule, after making a good faith effort to mitigate the delay by rescheduling the work, by providing an analysis of the schedule ("Time Impact Analysis"). Such Time Impact Analysis shall describe in detail the cause and effect of the delay and the impact on the critical dates in the Project schedule. (A portion of any delay of seven (7) days or more must be provided.)
 - 3. A recovery schedule must be submitted within twenty (20) calendar days of written notification to Owner of causes of delay.
- C. Contractor understands, acknowledges, and agrees that the reason for providing Owner with the Notice of Delay is so that Owner may have an opportunity to analyze the circumstances and develop a potential mitigation plan or alter the Project to reduce or eliminate Contractor's asserted delay to the Project's critical path.

11.04 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.
 - 3. The delay is unreasonable under the circumstances involved;
 - 4. The delay was not within the contemplation of Owner and Contractor;
 - 5. The delay could not have been avoided or mitigated by Contractor's reasonable diligence; and
 - 6. Contractor timely complies with the claims procedure of the Contract Documents.
- B. Where a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct costs, provided that Contractor can demonstrate such additional costs are:

1. Actually incurred performing the Work;
2. Not compensated by the Markup allowed; and
3. Directly result from the extended Contract Time.

Contractor shall comply with all required procedures, documentation and time requirements in the Contract Documents. Contractor may not seek or recover such costs using formulas (e.g., Eichleay, labor factors).

11.05 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 unexcusable, 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.

11.06 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.

11.07 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 Key Personnel listed in Contractor's Statement of Qualifications (Document 00 4513) 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 5200), 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 12 - CLAIMS BY CONTRACTOR

12.01 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 00 7200 and Section 01 2600.) A Notice of Delay or Change Proposal Request are less formal procedures that proceed the formal claim and do not constitute a Claim. A Claim also does not include correspondence, RFIs, vouchers, invoices, progress payment applications, or other routine or authorized form of requests for progress payments in compliance with the Contract. If a dispute remains, then Contractor shall give written notice to Owner that expressly invokes this Article 12 within the time limits set forth herein.
- B. Contractor's sole and exclusive remedy for Disputed Work is to file a written claim setting forth Contractor's position as required herein within the time limits set forth herein.

12.02 Duty to Perform during Claim Process

Contractor and its subcontractors shall continue to perform its Work under the Contract including the disputed work, and shall not cause a delay of the Work during any dispute, claim, negotiation, mediation, or arbitration proceeding, except by written agreement by Owner.

12.03 Definition of a Claim

- A. Pursuant to Public Contract Code section 9204, the term "Claim" means a separate demand by the Contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:
 - 1. A time extension, including without limitation, for relief of damages or penalties for delay assessed by Owner under the Contract;
 - 2. Payment by Owner of money or damages arising from work done by, or on behalf of, the Contractor pursuant to the Contract and payment of which is not otherwise expressly provided for or to which Contractor is not otherwise entitled to; or
 - 3. An amount of payment disputed by Owner.

12.04 Claims Presentation

- A. Form And Contents Of Claim
 - 1. If Contractor intends to submit a Claim for an increase in the Contract Price and/or Contract Time for any reason including, without limitation, the acts of Owner or its agents, Contractor shall, within thirty (30) days after the event giving rise to the Claim, give notice of the Claim ("Notice of Potential Claim") in writing specifically identifying Contractor is invoking this Article 12 Claims Presentation. The Notice of Potential Claim shall provide Contractor's preliminary request for an adjustment to the Contract Price and/or Contract Time, with a description of the grounds therefore.
 - 2. Within thirty (30) days after serving the written Notice of Potential Claim, Contractor shall provide a Claim including an itemized statement of the details and amounts of its Claim for any increase in the Contract Price of Contract Time as provided below, including a Time Impact Evaluation and any and all other documentation substantiating Contractor's claimed damages:

- a. The issues, events, conditions, circumstances and/or causes giving rise to the dispute, and shall show, in detail, the cause and effect of same;
 - b. Citation to provisions in the Contract Documents, statute sections, and/or case law entitling Contractor to an increase in the Contract Price or Contract Time;
 - c. The pertinent dates and/or durations and actual and/or anticipated effects on the Contract Price, Contract Schedule milestones and/or Contract Time adjustments;
 - d. The Time Impact Evaluation of all time delays that shows actual time impact on the critical path; and
 - e. The line-item costs for labor, material, and/or equipment, if applicable, for all cost impacts priced like a change order according to Section 01 2600, and must be updated monthly as to cost and entitlement if a continuing claim.
3. The Claim shall include the following certification by the Contractor:
- a. The undersigned Contractor certifies under penalty of perjury that the attached dispute is made in good faith; that the supporting data is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the adjustment for which Contractor believes Owner is liable; and that I am duly authorized to certify the dispute on behalf of the Contractor.
- B. Furthermore, Contractor understands that the value of the attached dispute expressly includes any and all of the Contractor's costs and expenses, direct and indirect, resulting from the Work performed on the Project, additional time required on the Project and/or resulting from delay to the Project including, without limitation, cumulative impacts. Contractor may not separately recover for overhead or other indirect costs. Any costs, expenses, damages, or time extensions not included are deemed waived.
- C. Contractor shall bear all costs incurred in the preparation and submission of a Claim.
- D. Failure to timely submit a Claim and the requisite supporting documentation shall constitute a waiver of Contractor's claim(s) against Owner and Contractor's Claim(s) for compensation or an extension of time shall be deemed waived, released, and discharged as to any entitlement for adjustment to Contract Price and/or Contract Time.

12.05 Claim Resolution pursuant to Public Contract Code section 9204

Contractor may request to waive the claims procedure under Public Contract Code section 9204 and proceed directly to the commencement of a civil action or binding arbitration. If Contractor chooses to proceed, Contractor shall comply with the following steps:

- A. STEP 1:
1. Upon receipt of a Claim by registered or certified mail, return receipt requested, including the documents necessary to substantiate it, Owner shall conduct a reasonable review of the Claim and, within a period not to exceed 45 days, shall provide the Contractor a written statement identifying what portion of the Claim is disputed and what portion is undisputed. Upon receipt of a Claim, Owner and Contractor may, by mutual agreement, extend the time period to provide a written statement. If Owner needs approval from its governing body to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the Claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of Claim sent by registered mail or certified mail, return receipt requested, Owner shall have up to three (3) days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide Contractor a written statement identifying the disputed portion and the undisputed portion.
 - a. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after Owner issues its written statement. Amounts not paid in a timely

manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.

2. Upon receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable. In this instance, Owner and Contractor must comply with the sections below regarding Public Contract Code section 20104, et seq., and Government Code Claim Act Claims.
 3. If Owner fails to issue a written statement, or to otherwise meet the time requirements of this section, this shall result in the Claim being deemed rejected in its entirety. A Claim that is denied by reason of Owner's failure to have responded to a Claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the Claim or the responsibility or qualifications of Contractor.
- B. STEP 2:
1. If Contractor disputes Owner's written response, or if Owner fails to respond to a Claim within the time prescribed, Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, Owner shall schedule a meet and confer conference within 30 days for settlement of the dispute. Within 10 business days following the conclusion of the meet and confer conference, if the Claim or any portion of the Claim remains in dispute, Owner shall provide the Contractor a written statement identifying the portion of the Claim that remains in dispute and the portion that is undisputed.
 - a. Any payment due on an undisputed portion of the Claim shall be processed and made within 60 days after Owner issues its written statement. Amounts not paid in a timely manner as required by this section, section 25.4, shall bear interest at seven percent (7%) per annum.
- C. STEP 3:
1. Any disputed portion of the Claim, as identified by Contractor in writing, shall be submitted to nonbinding mediation, with Owner and Contractor sharing the associated costs equally. Owner and Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the Claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the Claim remaining in dispute shall be subject to applicable procedures outside this section.
 - a. For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.
 2. Unless otherwise agreed to by Owner and Contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under Public Contract Code section 20104.4 to mediate after litigation has been commenced.
- D. STEP 4:
1. If mediation under this section does not resolve the parties' dispute, Owner may, but does not require arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program.

12.06 Subcontractor Pass-Through Claims

- A. If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against Owner because privity of contract does not exist, the contractor may present to Owner a Claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that Contractor present a Claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the

subcontractor. The subcontractor requesting that the Claim be presented to Owner shall furnish reasonable documentation to support the Claim.

- B. Within 45 days of receipt of this written request from a subcontractor, Contractor shall notify the subcontractor in writing as to whether the Contractor presented the Claim to Owner and, if Contractor did not present the Claim, provide the subcontractor with a statement of the reasons for not having done so.
- C. The Contractor shall bind all its Subcontractors to the provisions of this section and will hold Owner harmless against Claims by Subcontractors.

12.07 Government Code Claim Act Claim

- A. If a claim, or any portion thereof, remains in dispute upon satisfaction of all applicable Claim Resolution requirements the Contractor shall comply with all claims presentation requirements as provided in Chapter 1 (commencing with section 900) and Chapter 2 (commencing with section 910) of Part 3 of Division 3.6 of Title 1 of Government Code as a condition precedent to the Contractor's right to bring a civil action against Owner.
- B. 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 of the claims asserted.
- C. For purposes of those provisions, the running of the time within which a claim pursuant to Public Contract Code section 20104.2 only must be presented to Owner shall be tolled from the time the claimant submits his or her written claim pursuant to subdivision (a) until the time that claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

12.08 Claim Resolution pursuant to Public Contract Code section 20104, et seq.

- A. In the event of a disagreement between the parties as to performance of the Work, the interpretation of this Contract, or payment or nonpayment for Work performed or not performed, the parties shall attempt to resolve all claims of three hundred seventy-five thousand dollars (\$375,000) or less which arise between Contractor and Owner by those procedures set forth in Public Contract Code section 20104, et seq., to the extent applicable.
 - 1. Contractor shall file with Owner any written Claim, including the documents necessary to substantiate it, upon the application for final payment.
 - 2. For claims of less than fifty thousand dollars (\$50,000), Owner shall respond in writing within forty-five (45) days of receipt of the Claim or may request in writing within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims Owner may have against the Contractor.
 - 3. If additional information is required, it shall be requested and provided by mutual agreement of the parties.
 - a. Owner 's written response to the documented Claim shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation or within a period of time no greater than that taken by the Contractor to produce the additional information, whichever is greater.
 - 4. For claims of over fifty thousand dollars (\$50,000) and less than or equal to three hundred seventy-five thousand dollars (\$375,000), Owner shall respond in writing to all written Claims within sixty (60) days of receipt of the claim, or may request, in writing, within thirty (30) days of receipt of the Claim any additional documentation supporting the Claim or relating to defenses or claims Owner may have against the Contractor.
 - 5. If additional information is required, it shall be requested and provided upon mutual agreement of Owner and the Contractor.
 - a. The Owner's written response to the Claim, as further documented, shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor to produce the additional information or requested documentation, whichever is greater.

6. If Contractor disputes Owner's written response, or Owner fails to respond within the time prescribed, Contractor may so notify Owner, in writing, either within fifteen (15) days of receipt of Owner 's response or within fifteen (15) days of Owner 's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, Owner shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.
7. Following the meet and confer conference, if the Claim or any portion of it remains in dispute, the Contractor may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions the running of the time within which a claim must be filed shall be tolled from the time the Contractor submits its written Claim until the time the Claim is denied, including any period of time utilized by the meet and confer process.
8. For any civil action filed to resolve claims filed pursuant to this section, within sixty (60) days, but no earlier than thirty (30) days, following the filing of responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator.
9. If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of the Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986, (Article 3 (commencing with Section 2016) of Chapter 3 of Title 3 of part 4 of the Code of Civil Procedure) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
10. Owner shall not fail to pay money as to any portion of a Claim which is undisputed except as otherwise provided in the Contract Documents. In any suit filed pursuant to this section, Owner shall pay interest due at the legal rate on any arbitration award or judgment. Interest shall begin to accrue on the date the suit is filed in a court of law.
11. Contractor shall bind its Subcontractors to the provisions of this Section and will hold Owner harmless against disputes by Subcontractors.

12.09 Compliance

- A. 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.
- B. 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 13 - UNDERGROUND CONDITIONS

13.01 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 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 3132 (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 3132 (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.

13.02 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 00 7200.
- 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.

13.03 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 00 7200, 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.
 3. 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 00 7200.)
- B. 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.
1. 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:
 2. 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
 3. Contractor did not know of it; and
 4. 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.)
- C. 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.

- D. 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.
- E. Allowance Expenditure Directive. If there is an Allowance, then Contractor must submit a Request for Allowance Expenditure Directive (Document 00 6340), including supporting documentation as described below, to receive authorization for the release of funds from the Allowance. Allowance Expenditure Directives shall be based on Contractor's costs, without overhead and profit, for products, delivery, installation, labor, insurance, payroll, taxes, bonding and equipment rental will be included in Allowance Expenditure Directive authorizing expenditure of funds from this Allowance. No overhead and profit shall be added to the Allowance Expenditure Directive. If cost of the unforeseen condition(s) exceed the Allowance, Contractor must submit a CPR for amounts in excess of the Allowance requesting an increase in Contract Price and/or Contract Time that is based at least partially on Contractor's assertion that Contractor has encountered unknown and/or unforeseen condition(s) on the Project. Contractor shall base the CPR on provable information that, beyond a reasonable doubt and to the District's satisfaction, demonstrates that the unknown and/or unforeseen condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, the District shall deny the CPR as unsubstantiated, and the Contractor shall complete the Project without any increase in Contract Price and/or Contract Time based on that CPR.

13.04 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 00 7200), 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 00 7200, 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 00 7200.

ARTICLE 14 - LEGAL AND MISCELLANEOUS

14.01 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.

14.02 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.

14.03 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.

14.04 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 Section 01 2600 (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.

14.05 Termination Of Contract For Cause

- A. Owner at any time reasonably believes Contractor is or may be in default under this Contract, Owner may in its sole discretion notify Contractor of this fact and request written assurances from Contractor of performance of Work and a written plan from Contractor to remedy any potential default under the terms this Contract that Owner may advise Contractor of in writing. Contractor shall, within ten (10) calendar days of Owner's request, deliver a written cure plan that meets Owner's requirements in its request for assurances. Contractor's failure to provide such written assurances of performance and the required written plan, within ten (10) calendar days of request, will constitute a material breach of this Contract sufficient to justify termination for cause.
- B. 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 five (5) 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 of five (5) 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 five (5) calendar days, the Contractor must provide Owner within the of five (5) 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).
- C. 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.

- D. 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.

14.06 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. Within 30 days of the notice, Contractor submit to Owner a payment application for the actual cost for labor, materials, and services performed, including all Contractor's and Subcontractor(s)' mobilization and/or demobilization costs, that is unpaid. Contractor shall have no claims against Owner except for the actual cost for labor, materials, and services performed that adequately documented through timesheets, invoices, receipts, or otherwise. Owner shall pay all undisputed invoice(s) for work performed until the notice of termination, subject an offset by payments made and other contract credits or withholds. 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 Contract recover costs incurred after the date of the termination.
- E. Under a termination for convenience, Owner retains the right to all the options available to Owner if there is a termination for cause.

14.07 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 Document 00 6113.13 (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 00 7200), 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.

14.08 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.

14.09 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.

14.10 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.

14.11 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 Document 00 6325 (Substitution Request Form) as provided in Document 00 2113 (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.

14.12 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.

14.13 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 15 - WORKING CONDITIONS AND PREVAILING WAGES

15.01 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.

15.02 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.

15.03 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.

15.04 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.

15.05 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.

15.06 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.

15.07 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 00 7200 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.
 - 1. This Project is subject to labor compliance monitoring and enforcement by the Department of Industrial Relations pursuant to Labor Code section 1771.4 and Title 8 of the California Code of Regulations. Contractor specifically acknowledges and understands that it shall perform the Work of this Agreement while complying with all the applicable provisions of Division 2, Part 7, Chapter 1, of the Labor Code (Sections 1770, et seq.) including, without limitation, the requirement that the Contractor and all of its Subcontractors shall timely submit complete and accurate electronic certified payroll records as required by the Contract Documents, or Owner may not issue payment.
 - 2. 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.
 - 3. 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.

4. With each application for payment, Contractor shall also deliver certified payrolls to Owner as set forth above in this Document 00 7200 (General Conditions), and concurrently therewith (but in no event less frequently than monthly) directly to the Labor Commissioner in the format prescribed by the Labor Commissioner in accordance with the Labor Code including without limitation, sections 1771. and 1776.
5. Contractor shall post all jobsite notices if and when prescribed by regulation.

15.08 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.

15.09 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

DOCUMENT 00 7316

SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

ARTICLE 1 INSURANCE

- 1.01** At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to Owner satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:
- A. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (**Occurrence Form**). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards.
 - 1. For Projects valued up to \$300,000 that are not in the public right-of-way: The limits of such insurance shall not be coverage of less than \$2,000,000 each occurrence, \$2,000,000 general aggregate limit, and \$2,000,000 aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
 - 2. For Projects valued at least \$300,001 and not more than \$500,000 that are not in the public right-of-way: The limits of such insurance shall not be coverage of less than \$3,000,000 each occurrence, \$3,000,000 general aggregate limit, and \$3,000,000 aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
 - 3. For Projects valued at least \$500,001 and not more than \$1,000,000 that are not in the public right-of-way: The limits of such insurance shall not be coverage of less than \$4,000,000 each occurrence, \$4,000,000 general aggregate limit, and \$4,000,000 aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
 - 4. For Projects valued at \$1,000,001 or more OR for all projects in the public right-of-way regardless of value: The limits of such insurance shall not be coverage of less than \$5,000,000 each occurrence, \$5,000,000 general aggregate limit, and \$5,000,000 aggregate for products and completed operations. The policy shall be endorsed to provide Broad Form Property Damage Coverage.
 - B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than \$2,000,000 each person Bodily Injury, \$2,000,000 each occurrence Bodily Injury, and \$2,000,000 each occurrence Property Damage.
 - C. All-Risk Course of Construction Insurance including damage to property owned by Owner, Contractor or third parties caused by fire. Insurance shall be in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed \$10,000.00. Each loss shall be borne by Contractor.
 - D. Workers' Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as "Workers' Compensation Insurance and Safety Act," approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount. The Workers' Compensation policy must also include Employers' Liability coverage in amounts not less than \$2,000,000 per accident, \$2,000,000 per disease, and \$2,000,000 aggregate. 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.

- 1.02** If Contractor normally carries insurance in an amount greater than the minimum amounts required by Owner in Paragraph 1.01 above, that greater amount shall become the minimum required amount of insurance for purposes of the Contract. Therefore, Contractor hereby acknowledges and agrees that all insurance carried by it shall be deemed liability coverage for all actions it performs in connection with the Contract.

The limits of insurance this Contract requires 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 Owner's benefit, to the extent required by the Contract, before the Owner's insurance or self-insurance may be called upon to protect Owner as a named insured.

- 1.03** All policies of insurance shall be placed with insurers acceptable to Owner. The insurance underwriter(s) for all insurance policies except Workers' Compensation shall have an A. M. Best Company rating of A-, VIII or better, unless otherwise specified in Contract Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of Owner, warrant such increase. Contractor shall increase required insurance amounts upon direction by Owner.

All self-insured retentions (SIR) must be disclosed to the Owner for approval and shall not reduce the coverage limits. Insurance policies containing an SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Contractor/named insured or the Owner.

- 1.04** Required Endorsements: The policies required under Document 00 7200 (General Conditions) and this Document 00 7316 (including any umbrella or excess liability policy(ies)) shall be endorsed as follows (excluding Workers Compensation insurance with respect to Paragraph A below):

- A. Name Owner, its elected and/or appointed governing body and boards, employees, representatives, consultants, and agents, and Project Manager as additional insureds, but only with respect to liability arising out of the activities of the named insured. Additional insured language must be at least as broad as the Insurance Services Office (**ISO**) forms GC 20 38 04 13 and GC 20 37 04 13.
- B. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
- C. Insurance shall be primary to Owner and no other insurance or self-insured retention carried or held by Owner shall be called upon to contribute to a loss covered by insurance for the named insured.
- D. Insurance shall contain a provision requiring the insurance carriers to waive their rights of subrogation against Owner and all additional insureds, as well as other insurance carriers for the Work.
- E. All endorsements shall include the applicable policy number, the named insured(s) and policy terms.
- F. Contractor or its insurance broker shall submit to Owner a copy of the "**Declarations Page**" for each policy identified under Paragraph 1.01 above. The Declarations Page shall include the name of the insurance carrier, the applicable policy number, the types of coverage and limits of insurance provided, the effective date(s) of the policy, the insurance broker's name and license number, and a list of all coverage forms and endorsements.

- 1.05** Certificates of insurance and endorsements shall have clearly typed thereon Owner Contract Number and title of Contract Documents. Written notice of cancellation, non-renewal, or reduction

in coverage of any policy shall be mailed to Owner (Attention: Owner Risk Manager / Purchasing Agent) at the address listed in Document 00 5200 (Agreement), 60 Days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 Days of cancellation. Contractor shall maintain all insurance in full force and effect during entire period of performance of Contract Documents, including warranty and guarantee periods. However, Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment, and shall maintain General Liability Insurance throughout the entire Extended Term specified Paragraph 1.01 above. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon Owner's request, Contractor shall submit to Owner, within 30 Days, copies of the actual insurance policies or renewals or replacements.

- 1.06** Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, Owner may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents, or require Contractor to reimburse Owner.
- 1.07** If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from Owner under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from Owner, Owner may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If Owner is compelled to pay compensation, Owner may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse Owner.
- 1.08** Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.09** Except for Comprehensive General Liability Insurance, of which Subcontractors need only obtain \$1,000,000 in coverage, all Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to Owner within ten Days of Owner's request.
- 1.10** The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work (Professional).
 - A. Each Professional shall maintain the following insurance, unless otherwise specified in Contract Documents:
 - B. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than \$1,000,000 combined single limit for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.
 - 1. Professional shall satisfy all other provisions of this Document 00 7316 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.
- 1.11** 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.

ARTICLE 2 RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION

- 2.01** Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including, without limitation, Civil Code Section 2782), Contractor shall defend, indemnify, and hold harmless, Owner and each of its officers, employees, consultants and agents including, without limitation, the Board, Project Manager and each Owner's Representative ("Indemnitees"), from claims, suits, actions, losses and liability of every kind, nature and description including, without limitation, claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with, or resulting from performance of the Work, failure to perform the Work, or condition of the Work that is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except their sole negligence, willful misconduct, or active negligence. Contractor's duty to defend, indemnify, and hold harmless obligation shall not be construed to negate, abridge, or otherwise reduce any right or obligation to defend, indemnify, and hold Owner harmless that would otherwise exist or arise as to any Indemnitee or other person described herein. This duty to defend, indemnify, hold harmless obligation includes, but is not limited to, any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any failure or alleged failure of Contractor's obligations regarding any stop payment notice actions or liens, including Civil Wage and Penalty Assessments and/or Orders by the DIR.
- 2.03** With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity including, without limitation, costs of defense, against Owner and each of its officers, employees, consultants and agents including, without limitation, Owner, the Board, Project Manager and each Owner's Representative. Owner shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Public Contract Code Section 9201.
- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them. The Contractor's defense and indemnification obligations are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained herein.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense, indemnity, and/or hold harmless obligations, Owner may in its discretion back charge Contractor for Owner's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys that may become due Contractor.
- 2.06** Contractor's obligations to defend and indemnify Owner shall survive the termination or completion of this Contract for the full period of time allowed by law.

- 2.07** Pursuant to Public Contract Code section 9201, Owner shall provide timely notification to Contractor of the receipt of any third-party claim relating to this Contract. Owner shall be entitled to recover its reasonable costs incurred in providing said notification.

END OF DOCUMENT

DOCUMENT 00 7380

APPRENTICESHIP PROGRAM

ARTICLE 1 COMPLIANCE REQUIRED

- 1.01** Contractor and Subcontractors shall comply with the requirements of California Labor Code Sections 1776, 1777.5, and 1777.6 concerning the employment of apprentices by Contractor or Subcontractors. Willful failure to comply may result in penalties, including loss of the right to Bid on or receive public works contracts.

ARTICLE 2 CERTIFICATION OF APPROVAL

- 2.01** California Labor Code Section 1777.5, as amended, requires a Contractor or Subcontractor employing tradespersons in any apprenticeable occupation to apply to the joint apprenticeship committee nearest the site of a public works project and which administers the apprenticeship program in that trade for a certification of approval. The certificate shall also fix the ratio of apprentices to journeypersons that will be used in performance of the Contract. The ratio of work performed by apprentices to journeypersons in such cases shall not be less than one hour of apprentices work for every five hours of labor performed by journeypersons (the minimum ratio for the land surveyor classification shall not be less than one apprentice for each five journeypersons), except:
- A. When unemployment for the previous three month period in the area exceeds an average of 15 percent;
 - B. When the number of apprentices in training in the area exceeds a ratio of one to five;
 - C. When a trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally; or
 - D. Assignment of an apprentice to any work performed under a public works contract would create a condition which would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large or if the specific task to which the apprentice is to be assigned is of such a nature that training cannot be provided by a journeyperson.

ARTICLE 3 FUND CONTRIBUTIONS

- 3.01** Contractor is required to make contributions to funds established for administration of apprenticeship programs if Contractor employs registered apprentices or journeypersons in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.

ARTICLE 4 APPRENTICESHIP STANDARDS

- 4.01** Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of the California Department of Industrial Relations, or from the Division of Apprenticeship Standards and its branch offices.

END OF DOCUMENT

DOCUMENT 00 9113

ADDENDA

CONTRACT NUMBER 2022-03

SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY

SHOREWAY TRUCK MAINTENANCE BUILDING ROOF REPLACEMENT

333 SHOREWAY ROAD, SAN CARLOS, CA 94070

The following Addenda were issued, modifying the Project Manual:

Addendum No. 1, issued on **May 24, 2022**

(Addenda have been incorporated into the conformed Project Manual.)

END OF DOCUMENT

STAFF REPORT

To: SBWMA Board Members
From: Joe La Mariana, Executive Director
Joanne Nghiem, Senior Management Analyst
Date: June 23, 2022 Board of Directors Meeting
Subject: Resolution Approving Contract Extension with Republic Services' Newby Island Facility for Organics Material Processing

Recommendation

Staff recommends that the Board of Directors approve Resolution No. 2022-36 attached hereto authorizing the following action:

Approve contract extension with Republic Services' Newby Island Facility for organics material processing.

Summary

The Agreement for Organic Materials Processing Services with Browning-Ferris of California, Inc. (acquired by Republic Services) at the Newby Island Facility (Newby Island) will expire on December 31, 2022. The Agreement includes 2-one-year optional extensions. The current compensation rates for Organic Materials are adjusted annual, effective January 1 of each year of the term, following the first year. The current 2022 tip fee is \$74.59. Based on the annual rate adjustments, the tip fee for 2023 would be \$77.20 per ton. Due to the recent changes implemented at the Newby Island Facility to achieve compliance with Senate Bill (SB) 1383, the tip fee effective January 1, 2023 will be \$90 per ton and the tip fee to increase by \$7.50 per ton plus CPI adjustment effective January 1, 2024. Staff performed preliminary market research and found that other composters can charge over \$100 per ton. Due to Newby Island's closer distance and demonstrated performance and due to lack of market capacity, staff recommends extending the Agreement with Newby Island for two years through December 31, 2024, after which staff will conduct a Request for Proposal (RFP) process.

Background

The SBWMA generates approximately 105,000 tons per year of source separated compostable materials from residential, multi-family, and commercial collection programs - about 25% of the total volume of materials that flows through the Shoreway Environmental Center.

- Prior to 2008, Allied was responsible for providing organic materials transportation and composting services at Newby Island.
- On April 22, 2010, the Board approved four-year agreements with Newby Island and Recology-Grover for Organic Materials Processing Services that expired on December 31, 2014. Both composting services agreements were renewed in 2014: one with Newby through 2017 and one with Recology through 2020.
- On September 28, 2017, the Board approved a new 5-year Agreement (plus 2-one-year optional extensions) with Newby Island.

Analysis

Current Materials Handling

Currently organic materials are collected in the service area by Recology and delivered to the Shoreway Environmental Center where they are loaded onto transfer trailers and transported by South Bay Recycling (SBR) to two compost facilities: Newby Island (Republic Services) composting facility in San Jose and the Recology-Blossom Valley Organics (BVO) compost facility outside of Tracy. The contract for composting services at Newby Island will expire on December 31, 2022.

In general, the lack of compost facilities and the difficulty of permitting new facilities has led to a shortage of composters to handle the organics generated by Bay Area cities. Staff performed preliminary market research and concluded that there has been little change in composting capacity in Northern California and that the lack of market capacity is exacerbated by the increase in supply of organic materials – an outcome of the efforts by municipalities to divert more food waste from landfills. In addition, other composters may even charge over \$100 per ton; which would mean an increase of more than 30% compared to 2022 tip fees. Given the increasing market supply of organic materials, the lack of new regional compost facility development and the time intensiveness of an RFP process, staff does not think it is advantageous to conduct an RFP.

Cost Evaluation

Staff held a virtual meeting with Republic Services on April 14, 2022 to discuss the option of a two-year contract extension. The justification offered by Republic Services for the tip fee changes is that Newby Island has implemented recent changes to achieve compliance with SB 1383, such as:

- Addition of a wheel loader and two new compost screens to improve product quality and yield.
- Headcount increased by 35% to enhance pre-sort capabilities.
- New site-level leadership position for a veteran industry expert to manage the composting operation.

These enhancements were necessary to meet the first contamination compliance tier that takes effect in 2022 per SB 1383. Republic Services expects further investments in both equipment and personnel may be necessary to meet the next compliance tier in 2024.

The tip fee effective January 1, 2023 will be \$90 per ton, which is a \$12.80 increase over the contract year 6 rate of \$77.20. The tip fee effective January 1, 2024 will be \$90 per ton with a CPI adjustment plus a \$7.50 increase. Assuming a 3% CPI estimate, this would be a \$20.30 increase over the contract year 7 rates of \$79.90. Newby Island's senior management has explained the \$7.50 adjustment is required to a labor offset necessary for the facility to meet new 1383 compliance and stormwater regulations. The current Agreement's yearly rates are shown in **Table 1**.

Table 1. Annual Flat Fee Increase, per the current Agreement

Material Type	Year 2 (2019) Price/Ton	Year 3 (2020) Price/Ton	Year 4 (2021) Price/Ton	Year 5 (2022) Price/Ton	Year 6 (Optional Extension)	Year 7 (Optional Extension)
Segregated Plant Materials	\$67.28	\$69.63	\$72.07	\$74.59	\$77.20	\$79.90
Segregated Wood Waste, Brush and Branches	\$67.28	\$69.63	\$72.07	\$74.59	\$77.20	\$79.90
Organics Materials	\$67.28	\$69.63	\$72.07	\$74.59	\$77.20	\$79.90

As shown in **Table 2** the Total Annual Cost for Newby Island for 2023 and 2024 will have a net difference of \$640,000 and \$1,015,000, respectively.

Table 2. Newby Island Facility – Proposed Rate Change Impact

	Composting Tipping Fee	2022 Tons (estimate)	Total Annual Cost (estimate)
Contract Year 6 (2023)	\$ 77.20	50,000	\$ 3,860,000
Extension Letter - 2023 Proposed Rate	\$ 90.00	50,000	\$ 4,500,000
\$ Change	\$ 12.80		\$ 640,000
% Change	17%		17%
Contract Year 7 (2024)	\$ 79.90	50,000	\$ 3,995,000
Extension Letter - 2024 Proposed Rate*	\$ 100.20	50,000	\$ 5,010,000
\$ Change	\$ 20.30		\$ 1,015,000
% Change	25%		25%
*Rate assumes a 3% CPI estimate.			

Fiscal Impact

The estimated annual impact to the FY2023 and FY2024 budget of the rate change will be \$640,000 and \$1,015,000, respectively (see **Table 2**). Staff will factor this adjustment into the overall budget development and tip fee recommendation process for the FY2023 and FY 2024 budget periods.

Attachments:

Resolution 2022-36

Exhibit A – Newby Island SBWMA Organic Materials Processing Agreement Extension Letter



RESOLUTION NO. 2022-36

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS APPROVING CONTRACT EXTENSION WITH REPUBLIC SERVICES' NEWBY ISLAND FACILITY FOR ORGANICS MATERIAL PROCESSING

WHEREAS, the South Bayside Waste Management Authority (SBWMA) has contracted with Republic Services to render processing services at a composting facility for Organic Materials generated from the SBWMA Member Agencies; and

WHEREAS, the Republic Services contract expires December 31, 2022 with 2-one-year optional extensions; and

WHEREAS, per the current Agreement, the Newby Island Facility tip fee for 2022 is \$74.59 per ton, for 2023 would be \$77.20, and for 2024 would be \$79.90; and

WHEREAS, due to the recent changes implemented at the Newby Island Facility to achieve compliance with Senate Bill (SB) 1383, the tip fee effective January 1, 2023 will be \$90 per ton and the tip fee to increase by \$7.50 per ton plus CPI adjustment effective January 1, 2024.

NOW, THEREFORE BE IT RESOLVED, that the South Bayside Waste Management Authority hereby approves a two-year contract extension through December 31, 2024 with Republic Services' Newby Island Facility for Organics Material processing.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23rd day of June 2022, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				
Menlo Park									

I HEREBY CERTIFY that the foregoing Resolution No. 2022-36 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 23, 2022.

ATTEST:

Alicia Aguirre, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board



Republic Services of Santa Clara County
1601 Dixon Landing Road
Milpitas, CA 95035

June 16, 2022

VIA EMAIL

Joe La Mariana
Executive Director
South Bayside Waste Management Authority
610 Elm Street, Suite 202
San Carlos, CA 94070

Dear Joe:

This letter is written in response to your recent request to exercise the first one-year extension in the Agreement for Organic Materials Processing with the South Bayside Waste Management Authority (SBWMA), which is currently set to expire on December 31, 2022. During a virtual meeting on April 14th, we discussed recent changes implemented at the Newby Island Composting Facility to achieve compliance with Senate Bill (SB) 1383. Those changes include:

- Addition of a wheel loader and two new compost screens to improve product quality and yield.
- Headcount increased by 35% to enhance pre-sort capabilities.
- New site-level leadership position for a veteran industry expert to manage the composting operation.

These enhancements to our facility are necessary to meet the first contamination compliance tier of less than 20% per SB 1383 that takes effect in 2022. It is expected that further investments in both equipment and personnel may be necessary to meet the next compliance tier in 2024, set at less than 10%.

Newby Island appreciates the partnership with the SBWMA and would like to continue being a processor for SBWMA's organic waste. Therefore, we propose the following changes to the extension terms to provide processing capacity and secure necessary pricing for current and future compliance with SB 1383:

- Extend the Agreement for Organic Materials Processing through 2024 (two-year extension)
- Tip Fee of \$90.00 per ton effective January 1, 2023.
- Tip fee to increase by \$7.50 per ton plus applicable change in the Water Sewer Trash Index (CPI-W) on January 1st 2024.

During our April 14th virtual meeting, the SBWMA staff asked Republic to report out on two additional options. Those options are detailed below.

Option for additional composting capacity at Newby Island

SBWMA staff asked Newby Island to evaluate whether any additional capacity was available for the Authority's organic waste volume. Newby Island's composting facility uses about 85% of its daily permitted volume. At this time, we are not able to offer additional capacity to our customers due to uncertainty in how SB 1383 may increase demand from existing contracts, as well as the need to reserve surge capacity for seasonal changes in volume.

Option for Commercial Food Waste tip fee at Newby Island

SBWMA staff asked if Newby Island could provide pricing to tip commercial food waste at the Newby Island Composting facility. While we do have limited ability to process commercial food waste, the Covered Aerated Static Pile (CASP) composting system at Newby Island is better-suited for green waste that tends to have a lower contamination content than commercial food waste. We are however in the process of permitting a commercial food waste processing line at the Newby Island Recyclery. We expect to complete the permitting process by the end of 2022 with construction commencing in 2023. We would be happy to keep the Authority apprised of the timeline to completion on this facility, which would be better-suited for accepting commercial food waste.

Thank you again for your partnership and please let me know if you have any questions on the content of this letter. I look forward to speaking again soon.

Best regards,



Daniel North
General Manager
Republic Services

STAFF REPORT

To: SBWMA Board Members
From: Joe La Mariana, Executive Director
Joanne Nghiem, Sr. Management Analyst
Date: June 23, 2022 Board of Directors Meeting
Subject: Staff Update on Operations Agreement RFQ Process and Resolution Authorizing Staff to Proceed with Parallel Negotiations

Recommendation

It is recommended that the SBWMA Board of Directors approve Resolution No. 2022-37 attached hereto authorizing the following action:

Authorize Staff to proceed with Phase 2 (Parallel Negotiations) of the Shoreway Environmental Center facility operator competitive procurement process with two qualified proposers, South Bay Recycling and South Bayside Industries.

Summary

The current Shoreway Operations Agreement term with South Bay Recycling (SBR) began on January 1, 2011 and will expire on December 31, 2023, at which time a new agreement will need to be in place. Due to the size (\$20M per year) and complexity of the existing Operations Agreement, at the March 25, 2021 Board Meeting Staff recommended a nearly two-year long process (March 2021 – November 2022) for conducting a competitive public procurement process to select the future facility operator, with a third year (2023) reserved for a potential awardee's mobilization and transition efforts (if the future contractor is not SBR) regarding equipment acquisition and staff development.

The competitive procurement process for selection of the future facility operator was designed as a two-phase process. The Phase 1, RFQ process, was initiated when RFQ documents were approved by the Board on September 30, 2021 and released on October 1, 2021. On January 14, 2022, two proposals were submitted: one from the current operator SBR and the other from South Bayside Industries. The Phase 1 proposal evaluation process was completed by Staff and Consultant (HF&H Consultants, LLC, "HF&H"), supplemented by technical Consultant Sloan-Vazquez-McAfee, with engagement from Legal Counsel (ADCL) and four SBWMA Board members during three Ad Hoc Board Selection Committee (AHBSC) meeting. The AHBSC consists of Alicia Aguirre, Chair (City of Redwood City); Rick Bonilla, Vice-Chair (City of San Mateo); Michael Brownrigg (City of Burlingame), no longer part of the committee; Jon Froomin (City of Foster City); and Cecilia Taylor (City of Menlo Park). Such input helped determine that both proposers are qualified companies and presented responsive proposals; therefore, the recommendation is that both companies advance to Phase 2 of the process, during which parallel negotiations will be performed with both companies to negotiate Operations Agreements for consideration by the Board for award.

In the fall of 2022, the targeted endpoint of the selection process is anticipated to be Board receipt and consideration of fully-negotiated Operations Agreements with both companies, a proposal evaluation summary report, and Staff recommendation for award of the future Operations Agreement, and Board selection of the future operator and award of the Operations Agreement. Following Board award of the Operations Agreement, which is targeted for November 2022, the selected contractor will focus on implementation of services during 2023 and commencement of services under the new contract on January 1, 2024.

Background

On September 26, 2019, the SBWMA Board exercised a single, unilateral 3-year extension to the term of the Shoreway Operations Agreement, keeping SBR as the service provider beyond December 31, 2020 to December 31, 2023. The purpose of the three-year extension was to provide sufficient time to give (1) Staff, Board and HF&H enough time for completing the RFQ preparation, posting the RFQ, evaluating proposals, and conducting the negotiations process, and (2) the future facility operations contractor sufficient time to transition, if needed, during 2023. The Staff’s Work Plan for the facility operator procurement process (see Table 1 below) was provided at the March 25, 2021 Board Meeting. The Staff has maintained the proposed schedule for the Work Plan.

Table 1. RFQ Work Plan Timeline and Key Tasks.

Date	Task	Details
2021 – Mar	RFQ-Guidance Sr. Consultant Selected	<ul style="list-style-type: none"> RFQ posted 1/4/21, with proposals due 1/29/21. RFQ proposals reviewed 2/21-3/21, and top choice HF&H selected.
2021 – Mar to Aug	Work Plan Approved and Initiated	<ul style="list-style-type: none"> HF&H’s Contract approved at 3/25/21 Board Meeting. Board approval of Work Plan for RFQ Process. Confirmation of 3 TAC member Ad Hoc Advisory Committee (AHTAC). Then met 3 times (Apr, June, Aug) with Agency staff and AHTAC for RFP strategy/material development.
2021 – Sept	RFQ strategy refined, and task list, timeline and documents approved	<ul style="list-style-type: none"> Developed RFQ based on task list and timeline, to be used in RFQ documents. Meet 2 times (early Sept and Board 9/30 meeting), first with Ad Hoc Board Selection Committee (AHBSC) of 3 Board members, to finalize and approve RFP materials.
2021 – Oct	Release RFQ documents to industry	<ul style="list-style-type: none"> Staff posted RFQ materials on 10/1/21 and required noticing (AHBSC meetings to resume in March), with purpose of eliciting Statements of Qualification within Proposals for most efficient shortlisting of top 2 proposals for Parallel Negotiations (PN).
2022 – Jan	Receive Proposal with Statement of Qualifications (SOQ) responses	<ul style="list-style-type: none"> Proposals received by 1/14/22 and reviewed Proposals (with SOQ) responses based on quality, cost, and other criteria, led by Consultant/AHBSC (meet 2 times on 3/30 and 6/1).

Date	Task	Details
2022 – May	Complete Proposal (with SOQ) evaluation	<ul style="list-style-type: none"> Finalize review of SOQ responses, with Staff/AHBSC and facilitated by interviews and facility tours.
2022 – June	Select top two responders for Parallel Negotiations	<ul style="list-style-type: none"> Select top two Proposals to advance to Phase 2, Parallel Negotiations process. Start negotiation of remaining contract items to be finalized.
2022 – July to Oct	Execute Parallel Negotiations	<ul style="list-style-type: none"> Complete eight rounds of negotiations meetings and Operating Agreement revisions for each of 2 shortlisted proposers, resolving all disputes (meet 8 times each) and presenting to Board one time (11/17/22).
2022 – Sept	Seek input from the Board on contract negotiations	<ul style="list-style-type: none"> Provide the Board an update on the Phase 2, Parallel Negotiations Process, and, if needed, seek Board input on possible changes to the Operations Agreement.
2022 – Nov	Request Board award of the contract and execute mobilization/ transition plan (if applicable)	<ul style="list-style-type: none"> Seek Board award of the future Operations Agreement to the best-value Contractor (11/17/22 with fallback as 1/27/23) and Agency signs new contract. Agree upon and start mobilization and transition plan if the selected Contractor is not incumbent (meet 3 times).
2023 – Dec 31	Current Operating Agreement expires	<ul style="list-style-type: none"> Agreement with SBR expires.
2024 – Jan 1	New Operating Agreement begins	<ul style="list-style-type: none"> New Agreement with selected Contractor starts with a 10-year base term, with potential extensions.

Analysis

This RFQ and contractor selection process was designed as a two-phase process. In order to entice proposers to initially engage in the contractor selection process, only basic information and forms were provided in the Phase 1, RFQ process. The RFQ process was planned to result in the top two proposers being selected for fuller information provision and discussion in Phase 2, Parallel Negotiations process. In Phase 2, short-listed proposers will be required to submit additional information to supplement their initial proposals, finalize their cost proposals to the extent revisions are warranted, and participate in contract negotiation.

In response to the Phase 1 RFQ, two companies submitted proposals. One proposal was received from SBR, the current operator of the Shoreway Environmental Center (SEC). SBR is a joint venture between Recology Inc. (Recology-60% ownership stake) and Potential Industries Inc. (Potential Industries-40% ownership stake), both of which are experienced operators of mixed waste Material Recovery Facilities (MRFs), commingled residential and commercial recyclables MRFs, and transfer stations. SBR has been the operator of the SEC since January 1, 2011, during which time SBR processed and transported over four million tons of solid waste and organic materials through the transfer station and one million tons of recyclables through the MRF with no penalized liquidated damages. The other company that submitted a proposal is South Bayside Industries (SBI). SBI will be a new entity that will be created specifically to operate the SEC by the shareholders of Alameda County Industries, Inc.

(ACI), which includes shareholders of ACI, South San Francisco Scavenger Co., Inc. (SSFSC) and Bay Counties Waste Services (BCWS). ACI, SSFSC, and BCWS are comprised of progressive and long-standing members of Northern California's solid waste and recycling industry with decades of experience operating transfer stations and MRFs, including the SMaRT Station in Sunnyvale and the Blue Line Transfer Station and MRF in South San Francisco.

During Phase 1 of the facility operator competitive procurement process, both proposals were evaluated. The proposal evaluation process involved the following:

- overall proposal evaluation (qualifications, technical component, contract exceptions);
- cost proposal review;
- clarification of proposal information with proposers through written communications and two interview/clarification meetings (two meetings per proposer);
- proposer site visits;
- reference checks;
- regulatory compliance checks; and
- three AHBSC meetings (held on 9/1/21, 3/30/22 and 6/1/22).

Staff, HF&H and the AHBSC have discussed the evaluation of the proposals, key operations agreement exceptions, cost proposals, and estimated rate impacts and found that both proposers are very qualified, experienced, and capable in operating waste and recycling facilities and both proposers submitted complete proposals that warrant further consideration. The Staff and AHBSC recommend that both proposers advance to the Phase 2, Parallel Negotiations process. Phase 2 activities will involve requesting additional information and subsequent evaluation, conducting parallel negotiations to develop final operating agreements, finalizing cost proposals, seeking AHBSC input and Board input, and selecting a preferred provider with contract award.

Attachment(s)

Resolution No. 2022-37



RESOLUTION NO. 2022-37

RESOLUTION OF THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS AUTHORIZING STAFF TO PROCEED WITH PARALLEL NEGOTIATIONS FOR THE OPERATIONS AGREEMENT RFQ PROCESS

WHEREAS, on December 31, 2023, the Shoreway Operations Agreement with current contractor, South Bayside Recycling, will expire and there is no further contractual mechanism to extend this agreement; and

WHEREAS, South Bayside Waste Management Authority staff and consultant, HF&H, started conducting a measured, in-depth two-year procurement process in March 2021, in order to complete a new Operations Agreement by early 2023 and transition to a new Operations Contractor, if necessary, with commencement of services on January 1, 2024 when the current Agreement expires; and

WHEREAS, two companies (South Bay Recycling and South Bayside Industries) submitted proposals; and

WHEREAS, staff, consultant, and Ad Hoc Board Selection Committee have reviewed and evaluated the submitted proposals, completing Phase 1 (Proposal Evaluation), and determined that both proposers are very qualified, experienced, and capable in operating waste and recycling facilities and both proposers submitted complete proposals that warrant further consideration;

NOW, THEREFORE BE IT RESOLVED by the South Bayside Waste Management Authority Board of Directors, that it hereby authorizes staff to proceed with Phase 2 (Parallel Negotiations) of the Shoreway Environmental Center facility operator competitive procurement process with two proposers, South Bay Recycling and South Bayside Industries.

PASSED AND ADOPTED by the Board of Directors of the South Bayside Waste Management Authority, County of San Mateo, State of California on the 23rd day of June, 2022, by the following vote:

Agency	Yes	No	Abstain	Absent	Agency	Yes	No	Abstain	Absent
Belmont					Redwood City				
Burlingame					San Carlos				
East Palo Alto					San Mateo				
Foster City					County of San Mateo				
Hillsborough					West Bay Sanitary Dist				
Menlo Park									

I HEREBY CERTIFY that the foregoing Resolution No. 2022-37 was duly and regularly adopted at a regular meeting of the South Bayside Waste Management Authority on June 23, 2022.

ATTEST:

Alicia Aguirre, Chairperson of SBWMA

Cyndi Urman, Clerk of the Board