



**CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**CONTRACT NO. 1277**

**THIRD STREET LIGHT RAIL PROGRAM  
PHASE 2 - Central Subway  
PAGODA PALACE DEMOLITION**

MAY 2013

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

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

**“Proposal for Contract No. 1277”**

CONFORMED

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CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

**INVITATION FOR PROPOSALS**

Sealed Bids will be received at One South Van Ness Ave., 3<sup>rd</sup> Floor, San Francisco, California 94103, until 3:00 p.m., May 24, 2013 for the following public work:

**Third Street Light Rail Program Phase 2 - Central Subway  
Pagoda Palace Demolition**

**(Contract No. 1277)**

**A. Proposal Bid Submittal Deadline and Bid Opening:**

A Bidder must submit its Proposal to the SFMTA at One South Van Ness Ave., 3<sup>rd</sup> Floor, San Francisco, California in the format and with the documents required herein on or before 3:00 p.m. on May 24, 2013. Bids shall be publicly opened immediately after 3:00 p.m. on May 24, 2013 at One South Van Ness Ave., 3<sup>rd</sup> Floor Conference Room.

**B. Summary of the Work**

The Work includes the demolition of the Pagoda Palace building at 1731-1741 Powell Street in San Francisco, California. Demolition includes removal of all above grade exterior walls and roof structures, interior structures and finishes, and mechanical, electrical and plumbing systems and equipment. The Work also includes the installation of compensation grouting tube-a-manchettes for use by follow-on Contractor.

The above description of the Work is a general summary only and does not modify the requirements set out in the Specifications, Drawings or other Contract Documents.

The estimated cost for this work is \$475,000.

**C. Requirements of Bidders**

1. All Proposals must be made on the Proposal form bound with the Specifications for the Work.
2. All Bidders must possess the proper license at the time of Contract award. A California State Contractor's License Classification A is required of the prime Bidder for this Contract. Each subcontractor must possess the appropriate license covering the subcontracted Work it will perform.

3. To be eligible for award of the Contract, if it be awarded, Contractor must demonstrate that it has the experience, expertise, financial and bonding capacity, personnel and equipment to perform the Work. Contractor must also demonstrate that it has a history of safe work practices as demonstrated by a loss experience factor, Experience Modification Rating (EMR), as defined in Technical Specification, Section 01 45 13.
4. Bidders are hereby notified that this contract has been designated as an SBE set-aside, meaning that the SFMTA will accept bids only from SBE firms and that 100% of the work must be performed by SBEs.

Bidders are required to submit a SBE Performance plan and Workforce Development Plan in order to demonstrate that they will meet the SBE and workforce development requirements set forth in the bid specifications.

5. A pre-bid conference will be held at 1 South Van Ness, Civic Center Conference Room , San Francisco, California, at 11:00 A.M., May 14, 2013, to discuss the salient aspects of the Project, construction issues, the SBE/Non-discrimination requirements, and to answer questions from the prospective Bidders. A site walk will be held at 1241 Powell Street, San Francisco, California at 1:00 P.M. on May 14, 2013.
6. The Contractor shall comply with all applicable Equal Employment Opportunity laws and regulations.
7. The Contractor and its subcontractors shall fully comply with the requirements of the State Apprenticeship Program as set forth in the California Labor Code, Division 3, Chapter 4 (commencing at section 3070) and section 1777.5.
8. The Contractor shall submit proof of a current Business Tax Registration Certificate.
9. The City and County of San Francisco hereby notifies all Bidders that it will affirmatively ensure that in regard to any contract entered into pursuant to this advertisement, small business enterprises will be afforded full opportunity to submit Bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.
10. The award of this Contract is subject to the concurrence of the United States Department of Transportation (DOT). All Bidders will be required to certify that they are not on the United States Controller General's list of ineligible contractors.

#### **D. Access to Reference Materials, Designs and Specifications**

To obtain a copy of the Bid Documents, requestors will be required: to certify that they are either qualified to Bid on the Contract or are a qualified subcontractor and/or supplier.

No deposit is required for the Bid Documents, which may be procured from the SFMTA on the 3rd Floor, One South Van Ness Ave., San Francisco, California 94103. **Bid documents may also be obtained by mailing a request to Mr. Shahnam Farhangi at the aforementioned address, faxing a request to (415) 701-4300 or by calling (415) 701-4284. The requestor will then be provided with a certification/confidentiality statement to complete and return prior to receipt of the Bid documents.**

The Work described in these Specifications is to be financed with the assistance of a grant from the Federal Transit Administration. All Work described in these Specifications shall be performed in accordance with Federal Transit Administration guidelines and regulations.

All Proposals must be made on the Proposal form bound with the Specifications for the Work.

#### **E. Evaluation of Bids**

As authorized by San Francisco Administrative Code section 6.20.D, the SFMTA will award Contract No. 1277, if it be awarded, to the responsible Bidder that submits a responsive Bid that contains the lowest Evaluated Bid, as described in the Special Provisions based on the Total Bid Price. The award (if an award is made), will be made as provided in these Bid Documents, provided that, if the City believes that the public interest will be best served by accepting other than the lowest Evaluated Bid, it shall have the authority to accept the Bid that will best serve the public interest. At any time prior to award, the Agency may in its sole discretion cancel the solicitation or reject all bids received and rebid the Contract or issue a different contract for all or some portion of the Work identified herein.

#### **F. Requirements for Award of Contract**

In accordance with San Francisco Administrative Code Chapter 6, no Bid is accepted and no contract in excess of \$100,000 is awarded by City and County of San Francisco until such time as the Department Head recommends the contract for award and the board or commission that has jurisdiction over that department then adopts a resolution awarding the contract. Pursuant to Charter section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

1. The selected Bidder shall cooperate with SFMTA in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of Department of Transportation (DOT)-assisted contracts and shall use its best efforts to ensure that barriers to participation of SBEs do not exist.

2. To be eligible for participation in the Contract, each subcontractor whose estimated cost of work exceeds \$10,000 must fully comply with the requirements of the “Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)” and the provisions of the Notice to Bidders, “Small Business Enterprise Program”, copies of which are attached to and made part of the Contract Documents.
3. A certified check or corporate surety bond of not less than 10 percent of the amount of the Bid must accompany each Proposal. Each Bidder shall submit with its Bid the names and quotations of all subcontractors as stated in INSTRUCTION FOR PREPARATION AND EXECUTION OF FORMS, AGREEMENT AND BONDS.
4. The Contract will provide for progressive payments. Liquidated damages for failure to complete the work within the specified time are included in the Specifications, and all Bids must cover the entire Work required under this Contract. The City reserves the right to reject any or all Bids.
5. Contractor is required to pay prevailing wages as provided in federal law and the San Francisco Administrative Code. Copies of the prevailing rate of per diem wages, as determined by the Director of the State of California Department of Industrial Relations, are on file at the SFMTA at One South Van Ness Ave., 3<sup>rd</sup> Floor San Francisco, California, 94103, and are available to any interested party upon request.



## **INSTRUCTIONS FOR PREPARATION AND EXECUTION OF FORMS, AGREEMENT AND BONDS**

Note: These instructions are included for the convenience of Bidders preparing their Proposals (Bids). If there are any conflicts between these instructions and the provisions elsewhere in the Specifications or with federal, State, or City statutory or regulatory requirements, the statutory or regulatory requirements will prevail.

**The Bidder's attention is directed to the Contract, General Provisions, Section 1.02 "Conditions of Bidding and Interpretation of Proposal" and Division 1, Section 01 45 13, "Bidders Qualifications." The Bidder must carefully read and satisfy the conditions set out in those documents for the SFMTA to determine that the Bidder is responsible and qualified to be awarded the Contract.**

### **I. INSURANCE REQUIREMENTS**

The Bidder's attention is directed to Section 10.01, Insurance Requirements, in the General Provisions and to Special Provisions section SP-7 specifying the insurance requirements for this Contract.

The Bidder is advised to furnish its insurers with the insurance requirements for this Contract prior to preparing its Bid.

The Bidder should ascertain from its insurers any added costs, if any, for meeting the City's requirements, including additional insured, cross liability, and other required coverage, and factor these added costs into its Bid.

Prior to submitting a Bid, the Bidder is advised to confirm with its insurance broker and insurers that insurance certificates and policy endorsements, on forms satisfactory to the City, will be furnished to the SFMTA Capital Programs and Construction Division within 10 Days following notification of award of the Contract, and that renewal certificates will be submitted in a timely fashion throughout the duration of the Contract.

The standard ACORD 25 form or equivalent may be used if it is modified as shown on page 3b to provide for a "firm" notice to the City upon cancellation.

### **II. DOCUMENTS TO BE SUBMITTED WITH BID**

The Bidder's attention is especially called to the following forms that must be executed in full as required and submitted with the Bid; otherwise the City may reject the Bid as non-responsive.

- (a) **Proposal sheet** (Pages 4).  
To be completed and signed by the Bidder. The Bidder is cautioned to use the proposal form listing all addenda issued. Bidders are directed to call (415) 701-4284 to verify the number of addenda issued.
- (b) **Buy America Certificate** (Page 4c).  
Complete and sign only one of the certificates on page 4c.
- (c) **Noncollusion Certificate** (Page 4d).  
Complete and sign the Noncollusion Certificate on page 4d

- (d) **Schedule of Bid Prices** (pages 4.1).  
Bid amounts must be shown for every Bid Item. Amounts are to be in U.S. dollars. All amounts must be shown in numerals. Extensions must be shown, and the total Bid Price entered at the bottom of the Schedule. To ensure clarity and avoid ambiguity in a Proposal, Bidders are cautioned to indicate a zero bid with a zero or other easily recognized null set symbol. Bidders should pay particular attention to General Provisions, Section 1.02 (B) (2).
- (e) **Bond Accompanying Bid** (Page 5).  
This form must be executed by the Bidder and the corporate surety issuing the bond unless the Bid is accompanied by a certified check for an amount of at least 10% of the Total Bid Price. The Bid Bond must be notarized. Bid Security, whether a Bid Bond or a Certified Check, must accompany the Bid.
- (f) **Subcontractors** (Page 9).  
In accordance with California Public Contract Code section 4104, a Bidder must list on page 9 all subcontractors it intends to use in the performance of the Contract whose compensation will exceed one-half of one percent ( $>.005$ ) of the Bidder's Total Bid Price, together with description of the portion of the Work each subcontractor will perform. A Bidder shall not list more than one subcontractor for each portion of the Work described in its Proposal. At the time of award, all subcontractors must possess appropriate licenses covering subcontract work they will perform. A Bidder may use additional pages as necessary to provide the required subcontractor information. The Bidder is cautioned that the total subcontract Work listed must not exceed 80% of the Total Bid Price. The selected Contractor must perform at least 20% of the Work with its own forces and equipment. Only subcontractors listed in the Proposal may be used for subcontract Work in performance of the Contract in excess of one-half of one percent of the Bidders's Total Bid Price, unless the SFMTA Board of Directors approves by Resolution the substitution of a subcontractor.
- (g) **SFMTA SBE Form No. 1** - Contractor/Joint Venture Partner and Subcontractor Participation Report (pages SBE-16 and SBE-17).
- (h) **SFMTA SBE Form No. 2A** – Bidders List (Page SBE-18)
- (i) **SFMTA SBE Form No. 2-B** - Contractor/Joint Venture Partner/Subcontractor Gross Revenue Declaration (pages SBE-19 and SBE-20)
- (j) **Schedule B** - Joint Venture Participation Form.  
Joint Ventures formed at the prime contractor level must submit a Joint Venture Participation Form (Schedule B) as well as the Joint Venture Agreement. Schedule B may be obtained by calling (415) 701-5332.

- (n) **Addenda**  
The Bidder shall acknowledge on page 4 of its Proposal all Addenda to the Contract that the City issued during the bidding period. It is the Bidder's responsibility to verify, prior to submitting its Proposal, whether the City has issued any Addendum or Addenda during the bidding period. For information call (415) 701-4284. Failure by a Bidder to acknowledge all Addenda in its Proposal may render the Bid nonresponsive.
- (o) **Certificate Regarding Lobbying** (Page L-1) for the Bidder.
- (p) **Bidder's and Subcontractors' Experience and Financial Qualifications Statements** and associated Forms (See Technical Specification, Section 01 45 13). Statements must be submitted and forms shall be completed with comprehensive information and sufficient detail to permit SFMTA to evaluate the experience and qualifications of the Bidder and its Subcontractors including the traffic control subcontractor. SFMTA may require additional information to be submitted after the bids have been opened. Each subcontractor is also required to provide this information.

**III. DOCUMENTS TO BE SUBMITTED BY THE APPARENT THREE LOW BIDDERS WITHIN FIVE (5) BUSINESS DAYS FOLLOWING DATE OF BID OPENING**

- 1. Forms to be submitted by the apparent three low bidders to the San Francisco Municipal Transportation Agency, One South Van Ness Avenue, 3<sup>rd</sup> Floor, San Francisco, California 94103, Attn: Shahnam Farhangi SFMTA Capital Programs and Construction Division by 5:00 P.M. on the fifth business day following opening of Bids.
  - (a) **SFMTA SBE Form No. 3** – Construction Employment Information (pages SBE-21 and SBE-22).  
This form must be submitted for every listed subcontractor with subcontracts over \$10,000.
  - (b) **SFMTA SBE Form No. 5** – SBE Acknowledgement Declaration (pages SBE-23 and SBE-24)
  - (c) **San Francisco Business Tax Declaration** (page 10a). Each Bidder and Subcontractor must complete the declaration on pages 10 and 10a.
  - (d) **Certificate Regarding Lobbying** (Page L-1) for all lower tier subcontractors and suppliers with work greater than \$100,000.

IV. **DOCUMENTS TO BE SUBMITTED BY SELECTED BIDDER WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF NOTICE OF AWARD**

The selected Bidder must execute and return the following documents to the San Francisco Municipal Transportation Agency, One South Van Ness Avenue, 3rd Floor, San Francisco, California 94103, Attn: Shahnam Farhangi SFMTA Capital Programs and Construction Division, within ten calendar days following Notice of Award:

- (a) Agreement (pages 11-14).

Must be executed and notarized in triplicate by the successful Bidder.

- (b) Performance Bond (pages 15 and 16).

Must be executed and notarized in triplicate by the successful Bidder and corporate Surety. This bond amount is to be for the total amount of the contract, including allowances. See General Provisions Section 10.02.

- (c) Labor and Material Bond (pages 17 and 18).

To be executed and notarized in triplicate by the successful Bidder and corporate Surety. This bond amount is to be for the Contract Sum. See General Provisions Section 10.02.

- (d) Proof of Required Insurance Coverage.

All certificates of insurance must contain a provision to the effect that the SFMTA will be notified in writing at least thirty (30) days before any policy lapses, is cancelled or is otherwise materially changed, except ten (10) days notice for non-payment of premium.

Contractor shall furnish Certificate(s) of Insurance and policy endorsements for the required insurance to San Francisco Municipal Transportation Agency, One South Van Ness Avenue, 3rd Floor, San Francisco, California 94103. Attn: SFMTA Capital Programs and Construction Division. The Contract number must be listed on the insurance certificates and policy endorsements.

- (e) Corporate Authority. Corporate authority in form of resolution or certified extract from the minutes authorizing the signatory to sign on behalf of the corporation.

- (f) "dba" Certificate. If a company is "doing business as", a copy of the "dba certificate" filed with and certified by the County Clerk. (The dba certificate must be attached to the executed Agreement.)

- (g) Authority to Execute Bond. A Power of Attorney authorizing signatories of Performance Bond and Labor and Material Bond to execute bonds.

- (h) Escrow Bid Documents. Contractor shall submit Escrow Bid Documents and make arrangements with an institution satisfactory to the City for receipt, storage, and custody of Escrow Bid Documents. See Section 01 27 23.92 of Technical Specifications for additional information.custody of Escrow Bid Documents. See Section 01 27 23.92 of Technical Specifications for additional information.

V. **DOCUMENTS TO BE SUBMITTED BY THE SELECTED BIDDER WITHIN THIRTY (30) DAYS OF AWARD**

- (a) All Prime Contractors and Subcontractors with contracts in excess of \$350,000 must complete the *CityBuild Workforce Projection* (Form 1 on Page CR-6) within thirty (30) days of award of contract. See instructions on Page CR-6.

## INFORMATION FOR BIDDERS

### **I-1 Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Lower Tier Covered Transactions (Third Party Contracts over \$25,000)**

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that the Contractor, and none of its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the Bidder certifies as follows:

The certification in this clause is a material representation of fact upon which by the SFMTA may rely in determining that the Bidder is responsible. If it is later determined that the Bidder or knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Bidder agrees to comply with the requirements of 49 CFR 29, Subpart C while its Proposal is valid and throughout the period of any contract that may arise from this Proposal. The Bidder further agrees to include a provision requiring such compliance in its lower tier covered transactions (subcontracts).

### **I-2. CLARIFICATIONS.** If the meaning and intent of the Specifications are not clear to a Bidder, the Bidder shall submit a written request for clarification or interpretation. The written request must be received by SFMTA not later than 5:00 PM PST no less than five (5) working days before the date for receipt of Bids; otherwise, the City shall have no obligation to provide a response and the Bidder requesting clarification or interpretation shall bid according to its best understanding of the Contract Documents and Reference Documents. If necessary, a clarifying addendum will be delivered to all parties who obtained Specifications, and such addendum will be an incorporated part of the Specifications. The Agency prefers that such requests be submitted by email in Portable Document Format (pdf).

The City has issued all Contract requirements and Specifications in writing, and any Addenda or other amendments to Contract requirements and Specifications will also be provided to Bidders in writing. The City shall not be responsible for oral instructions or information concerning the Specifications, Contract Requirements or the Work provided by its officers, employees, consultants or agents to prospective Bidders.

All written inquiries shall be directed to Mr. Shahnam Farhangi , SFMTA Capital Programs and Construction Division, One South Van Ness Avenue, 3<sup>rd</sup> Floor, San Francisco, California 94103, Fax (415) 701-4300.

It is the responsibility of a Bidder to ensure that its correspondence regarding a request for clarification is received within the specified time period allowed.

**I-3. ALLOWANCES.** The type of work, the value of, or the amount for Allowances as well as items listed in the Schedule of Bid Prices as Alternate or Optional Bid Items, if any, will be used for determining the SBE participation goal of the Bid. They will be calculated toward achievement of the 100% SBE Set-Aside goal as the amounts are expended.

**I-4. CITYBUILD/FIRST SOURCE REFERRAL PROGRAM.**

1. Refer to Pages CR-1 through CR-8 for CITYBUILD/First Source Referral Program requirements.
2. All Prime Contractors and Subcontractors with contracts in excess of \$350,000 must complete the *CityBuild Workforce Projection* (Form 1) within thirty (30) days of award of contract. It is the Prime Contractor's responsibility to ensure CityBuild receives completed Form 1's from all subcontractors in the specified time and keep a record of these Forms in a compliance binder for evaluation.

**I-5. EXPERIENCE.** To be awarded this Contract, a responsible Bidder shall demonstrate to the satisfaction of the City that it has sufficient resources and experience to execute all Work within the allowed Contract Time specified in the Special Provisions. Furthermore, Contractor and subcontractors and their personnel shall meet all special experience requirements specified within various sections of the Specification.

The Bidder's attention is directed to Section 01 45 13 of Technical Specifications, "Bidders Qualifications." The Bidder must carefully read and satisfy the conditions set out in these documents for the SFMTA to determine that the Bidder is responsible (i.e., qualified to be awarded the Contract).

## Sample Certificate of Insurance



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.	
IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).	
PRODUCER	CONTACT NAME: PHONE (A/C, No, Ext): E-MAIL ADDRESS: FAX (A/C, No): INSURER(S) AFFORDING COVERAGE NAIC #
INSURED	INSURER A: INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$ WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N <input type="checkbox"/> N/A If yes, describe under DESCRIPTION OF OPERATIONS below						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPO ASG \$ COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ EACH OCCURRENCE \$ AGGREGATE \$ WC STATU-TORY LIMITS \$ OTH-ER \$ E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

**PROTEST PROCEDURES  
FOR THE  
BIDDING AND AWARD OF  
FEDERALLY ASSISTED  
THIRD PARTY CONTRACTS**

**(Construction, public improvements, personal services,  
negotiated procurement and other major procurement contracts)**

**REVISED: March 2012**

**1. Policy**

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Director of Transportation, who shall review the protest and recommend its resolution to the Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.

**2. Definitions**

**Contract Manager (CM)** refers to the Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.

**Award** shall mean authorization by resolution of the Municipal Transportation Agency Board of Directors or authorization by the Director of Transportation, for contracts under the Director of Transportation's authority, for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.

**Award Process** includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a sealed bid.

**Bid** includes the terms "offer" or "proposal" as used in the context of negotiated procurements, requests for proposals and sealed bids.

**City** means the City and County of San Francisco, acting through the Municipal Transportation Agency.

**Contract Compliance Office (CCO)** is the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises as well as SFMTA's program governing Small Business Enterprises.

**Days** refers to working days of the City and County of San Francisco (unless otherwise indicated).

**Director of Transportation** refers to the Director of Transportation of the SFMTA.

**Department of Parking and Traffic (DPT)** is the former name of a division of the SFMTA, which is now the Sustainable Streets Division of the SFMTA.

**Disadvantaged Business Enterprise (DBE)** is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**Federal Transit Administration (FTA)** is an operating administration of the U.S. Department of Transportation.

**San Francisco Municipal Transportation Agency (SFMTA or Agency)** is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

**Protest** is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.

**Post-Award Protest** is a complaint by a bidder or proposer when Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.

**San Francisco Municipal Railway** refers to the San Francisco Municipal Railway of the Municipal Transportation Agency.

**Small Business Enterprise (SBE)** refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.

### **3. Responsibilities:**

- 3.1** The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.

- 3.2 The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.
- 3.3 In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.

#### 4. Implementation

##### 4.1. Submit Protest

A protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following notification of proposed award of the Contract. A post-award protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following the Notification of Award of the Contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to SFMTA no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Director of Transportation  
San Francisco Municipal Transportation Agency  
One South Van Ness Ave, 7<sup>th</sup> Floor  
San Francisco, CA 94103

with a copy to:

Director  
Capital Programs and Construction Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3rd Floor  
San Francisco, CA 94103

with a copy to:

Deputy, Contracts Administration  
Capital Programs and Construction Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 3rd Floor  
San Francisco, CA 94103

##### 4.2 Coordination Efforts

With direction from the Director of Transportation, and following the requirements of FTA Circular 4220.1F, the CM shall determine the nature of the disagreement and coordinate resolution efforts.

### **4.3. DBE or SBE Requirements**

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information.

The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director of Transportation and the CM of its decision. The CM shall provide copies of the decision to the Director of Capital Programs and Construction Division. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract-specific DBE or SBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in Section V.D.3.v of the Agency's DBE or SBE Program apply to requests for reconsideration from the apparent low bidder Administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts will be heard by an individual or entity assigned by the Agency who is not affiliated with the management of the Central Subway Project and has subject matter expertise or as may otherwise be required by applicable law.

### **4.4 Issues Not Related to DBE or SBE Requirements**

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation form the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Director of Transportation and the CM for review and evaluation. The CM shall provide copies of the opinion to the Director of Capital Programs and Construction Division, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Director of Transportation pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director of Transportation denies the appeal.

### **4.5 Disagreement by Protester**

Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Director of Transportation for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Director of Transportation shall review the decision and

make a recommendation to Agency for final action. The CM shall inform the protester of the Director of Transportation's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.

#### **4.6 Incorporate Legal Opinion/Recommendation**

The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the Agency prior to the meeting when final award is determined

#### **4.7 Final Action**

The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.

#### **4.8 Notification to FTA**

In all instances, the CM will notify the FTA of the protest, provide information concerning the nature of the protest, and keep the FTA informed about the status of the protest.

The CM shall provide the following information to the FTA as soon as possible and shall provide periodic updates in its next quarterly Milestone Progress Report and at its next Project Management Oversight review, if any:

- a. A brief description of the protest,
- b. The basis of disagreement, and
- c. If open, how far the protest has proceeded, or
- d. If resolved, the agreement or decision reached, and
- e. Whether an appeal has been taken or is likely to be taken

If a bid protest is rejected, the CM shall inform the FTA Regional Administrator for the region. The CM shall also keep the FTA project manager informed about protests with which it is involved. In particular, the recipient should contact its project manager about any unusual activity.

#### **4.9 Protest to FTA**

FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.

**APPENDIX A, 49 CFR, PART 20--CERTIFICATION REGARDING LOBBYING**  
Certification for Contracts, Grants, Loans and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

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

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

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

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

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

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
(signature of authorized official)

\_\_\_\_\_  
(title of authorized official)





## CITYBUILD/FIRST SOURCE REFERRAL PROGRAM

### 1.1 SUMMARY

- A. This Document incorporates applicable requirements of the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83), which generally requires contractors, when hiring, to provide hiring opportunities to economically disadvantaged persons as defined in Chapter 83.
- B. The CITYBUILD Referral Program promotes employment opportunities for economically disadvantaged individuals of all ethnic backgrounds and genders in the construction work force. The Office of Economic and Workforce Development ("OEWD") administers the CITYBUILD Referral Program by working with education programs to train construction workers and by working with construction contractors to identify hiring opportunities. The goal of the CITYBUILD Referral Program is to fill every hiring opportunity with a CITYBUILD Referral who is trained and prepared to enter the construction industry workforce.
- C. Contractor agrees to participate in the CITYBUILD Referral Program.
- D. The CITYBUILD workforce goals, and the program requirements for achieving such goals, are set forth below.
- E. As part of its participation, Contractor shall incorporate the provisions of this Document into any subcontract on this Project (regardless of tier) in excess of \$350,000, and shall require its subcontractors to do the same.
- F. For any Contract subject to a Project Labor Agreement ("PLA"), this Document shall remain in effect. In the event of a conflict between this Document and a PLA, the terms and conditions of the PLA shall control.

### 1.2 DEFINITIONS

For the purposes of this Document only, the following definitions shall apply:

- A. "Core" or "Existing" workforce. Contractor's "core" or "existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- B. "Economically Disadvantaged Individual". An individual who is either (a) eligible for services under the Workforce Investment Act of 1998 (29 U.S.C.A. 2801, *et seq.*), as may be amended from time to time, or (b) designated as "economically disadvantaged" by the OEWD/First Source Hiring Administration as an individual who is at risk of relying upon, or returning to, public assistance.
- C. "Hiring opportunity". When a Contractor adds workers to its existing workforce for the purpose of performing the Work under this Contract, a "hiring opportunity" is created.

For example, if the carpentry subcontractor has an existing crew of five carpenters and needs seven carpenters to perform the work, then there are two hiring opportunities for carpentry on the Project.

- D. "Job Notification". Written notice of job request from Contractor to CITYBUILD for any hiring opportunities. Contract shall provide Job Notifications to CITYBUILD with a minimum of 3 business days' notice.
- E. "New hire". A "new hire" is any worker who is not a member of Contractor's core or existing workforce.
- F. "Referral". A referral is an individual member of the CITYBUILD Referral Program who has received training appropriate to entering the construction industry workforce.
- G. "Workforce participation goal". The workforce participation goal is expressed as a percentage of the Contractor's and its Subcontractors' new hires for the Project.

### 1.3 CITYBUILD WORKFORCE GOAL

- A. The workforce participation goal for this Contract is **50%** of the **new hires** for the Work in **each trade**.
- B. Contractor and subcontractors may achieve the goal in any of the following ways:
  - On-site credit: Employment of CITYBUILD referrals to perform work on this Project.
  - Off-site credit: Employment of a CITYBUILD referral on a construction project other than this Project, during the course of or contemporaneously with this Project, so long as for such individual, the Contractor complies with the prevailing wage and payroll documentation requirements of San Francisco Administrative Code Chapter 6, section 6.22(E). Contractor or subcontractor must have prior written approval from CITYBUILD to claim "off-site" credit.

### 1.4 CITYBUILD REFERRAL PROGRAM REQUIREMENTS

- A. Contractor shall make good faith efforts to achieve the CITYBUILD workforce participation goal, as follows:
  - Within 30 days of award of the Contract, provide written notification to CITYBUILD staff as to the number of hiring opportunities the Contractor and its subcontractors have available for new hires, by completing CITYBUILD Form 1 Workforce Projections.
  - Upon receiving a completed Form 1, CITYBUILD representatives will work with Contractor and its subcontractor(s) to complete a Form 2 Workforce Hiring Plan (attached to this Document).
  - Instruct all foremen, superintendents, and other on-site supervisory personnel as to the CITYBUILD program and the program requirements.

- Attend and notify all subcontractors as to the mandatory pre-construction meeting as described in paragraph 1.5 below.
  - Ensure that all CITYBUILD referrals engage in meaningful work that will provide advancement in the person's specific trade.
  - Designate a responsible official to monitor all employment-related activity, and to work with CITYBUILD staff.
  - Comply with the documentation requirements as set forth in paragraph 1.6 below.
  - In the event of the termination of any CITYBUILD referral, contractor must submit notice to CITYBUILD and reserve the position for another referral through the CITYBUILD system.
- B. The final decision to hire a CITYBUILD referral shall be made by the hiring Contractor or subcontractor.
- C. If the Contractor or a Subcontractor is signatory to a collective bargaining agreement with a trade union, the Contractor and/or Subcontractor shall notify the appropriate union(s) of the Contractor's/Subcontractor's good faith obligations under this Document and shall request assistance from the union(s) in providing hiring opportunities for qualified CITYBUILD referrals. If a collective bargaining agreement allows for "name call" opportunities, then the Contractor or Subcontractor should reserve a requisite number of its "name call" opportunities to meet its good faith efforts obligations for participation in the CITYBUILD referral program. This Document is not intended to interfere or conflict with any collective bargaining agreement or union membership, but rather to promote hiring opportunities to the extent such goals may be met consistent with the requirements of such agreements.
- D. Contractor or its Subcontractors may decline to hire a referral if the Contractor/Subcontractor considers the referral in good faith but deems the referral not qualified. Once a referral is hired, Contractor/Subcontractor may refer-back a referral to the CITYBUILD program within eight working days of the date of employment. Contractor/Subcontractor may decline or refer-back a referral only upon a written statement as to why the referral was unsuitable to Contractor. CITYBUILD will endeavor to replace the referral as soon as possible.
- E. In the employment of CITYBUILD referrals who are or who become registered apprentices, Contractor must maintain the proper ratio of apprentices to journeymen for each trade on the job site. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, the Contractor must employ such apprentices and trainees during the training period, and the Contractor must commit to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or the California Department of Industrial Relations, Division of Apprenticeship Standards. Courses

offered by City College of San Francisco and other community college districts or comparable institutions will also be considered.

- F. Contractor shall comply with its obligations under this program, and shall make a good faith effort to achieve each goal in each trade in which it has employees performing work for the Project. The overall good faith performance by other contractors or subcontractors toward the goal does not excuse any covered contractor's failure to make good faith efforts to achieve the goals.

#### 1.5 PRECONSTRUCTION MEETING

- A. Prior to commencement of construction, Contractor shall attend a preconstruction meeting convened by CITYBUILD staff. Representatives from the Contractor/Subcontractor(s) must have hiring authority.
- B. Any Subcontractor at any tier whose contract is subject to CITYBUILD participation, who does not attend such a meeting, shall not be permitted on the job site, and any resulting delay to the work under this Contract shall be considered the Contractor's avoidable delay. CITYBUILD staff shall convene additional preconstruction meetings within 24 hours of the Contractor's request. The Contractor shall endeavor to include as many prospective subcontractors as possible at these meetings in order not to protract unduly the number of meetings.
- C. Failure to comply with this preconstruction meeting provision may result in the City ordering a suspension of work by the Contractor until the breach has been cured; any delay resulting from such suspension shall be considered the fault of the Contractor and an avoidable delay.

#### 1.6 DOCUMENTATION AND RECORDS

- A. Upon request by CITYBUILD program staff, Contractor shall promptly make available all payroll documentation and records required under San Francisco Administrative Code Chapter 6.
- B. Contractor shall permit representatives of CITYBUILD staff to interview employees during working hours on the Project site.
- C. Upon request by CITYBUILD program staff, Contractor shall provide documentation of its good faith efforts as required under this Document. To facilitate review by CITYBUILD staff, the Contractor shall maintain a CITYBUILD compliance binder on the project site which shall include copies of the Contractor's and Subcontractors' Form 1s and 2s, referrals received, and any other relevant information supporting good faith efforts under this Document.

## 1.7 PROGRESS PAYMENTS

Failure to demonstrate good faith efforts in conformance with the provisions of this Document may result in the withholding of progress payments under this Contract.

## 1.8 LIQUIDATED DAMAGES

- A. The Contractor and its subcontractors acknowledge and agree that their commitment to comply with the CITYBUILD referral program is a material element of the City's consideration for this Contract; that the failure of the Contractor or its subcontractors to comply with the terms and conditions of this Specification Section will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible-to-quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Contractor or its subcontractors from the CITYBUILD referral process, as determined by the CITYBUILD Director during his/her first investigation of the Contract or any subcontractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the failure by the Contractor or any subcontractor subject to this Specification to comply with its CITYBUILD referral contractual obligations.
  
- B. The Contractor and its subcontractors further acknowledge and agree that the continued failure to comply with its CITYBUILD referral obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000.00 for each entry level position improperly withheld from the CITYBUILD referral program, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Contractor's or its subcontractor's continued failure to comply with the CITYBUILD referral program.

## 1.7 TERM

The obligations of the Contractor and its subcontractors with respect to their construction work forces, as set forth in this Program, shall remain in effect until Substantial Completion of all work to be performed by the Contractor under the terms and conditions of this Contract.



## FORM 1: CITYBUILD WORKFORCE PROJECTION FORM

All Prime Contractors and Subcontractors with contracts in excess of \$100,000 must complete the CityBuild Workforce Projection (Form 1) within thirty (30) days of award of contract. It is the Prime Contractor's responsibility to ensure CityBuild receives completed Form 1's from all subcontractors in the specified time and keep a record of these Forms in a compliance binder for evaluation.

Once all Form 1's have been submitted, all contractors are required to attend a preconstruction meeting convened by CityBuild staff to negotiate a CityBuild Workforce Hiring Plan (Form 2) for this project.

- Contractor's "Core" or "Existing" workforce shall consist of any worker who appears on the Contractor's active payroll for at least 60 days of the 100 working days prior to the award of this Contract.
- For Construction Contracts: Use this form to indicate the TOTAL estimated number of Journey Level Positions and Entry Level/Apprentice Position that will be needed to perform the work.
- For Non-Construction Contracts: Use this form to indicate all entry-level positions that will be needed to perform the work.
- If company is on multiple projects, please submit one Workforce Projection per project.

Contract No: \_\_\_\_\_ City DPT: \_\_\_\_\_ Contractor Name: \_\_\_\_\_  
 Project Name: \_\_\_\_\_ Main Contact: \_\_\_\_\_  
 City PM: \_\_\_\_\_ Contact Number: \_\_\_\_\_

**Table 1: Workforce Projection**

Labor Trade, Position, or Title	Journey or Apprenticeship / Entry-Level	Est. Number of Core Workers To Use on this Project *	Est. # of Position(s) at Peak of Work **	Est. Start Date	Est. End Date	Est. Total # of Hours Complete Work	Union?
	Journey <input type="checkbox"/>						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Apprentice <input type="checkbox"/>						
	Journey <input type="checkbox"/>						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Apprentice <input type="checkbox"/>						
	Journey <input type="checkbox"/>						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Apprentice <input type="checkbox"/>						
	Journey <input type="checkbox"/>						Yes <input type="checkbox"/> No <input type="checkbox"/>
	Apprentice <input type="checkbox"/>						

**Instructions:**

\*As defined above, please identify the numbers of "Core" Employees per trade and skills level you will be utilizing to complete the work for this project.

\*\* The estimated total number of workers per trade and skills level including "Core" Employees you will need to complete the work.

\*\*\*Continue on separate sheet, if necessary. For assistance or questions in completing this form, contact the CityBuild Program of the Department of Economic and Workforce Development, (415) 581-2303.

**PLEASE FAX COMPLETED FORM ATTN: CITYBUILD AT (415)581-2368 OR**

**EMAIL: [KEN.NIM@SFGOV.ORG](mailto:KEN.NIM@SFGOV.ORG) OR [IAN.FERNANDO@SFGOV.ORG](mailto:IAN.FERNANDO@SFGOV.ORG) OR [RONNIE.RHOE@SFGOV.ORG](mailto:RONNIE.RHOE@SFGOV.ORG)**

**WEBSITE: [HTTP://WWW.OEWD.ORG/CITYBUILD.ASPX](http://www.oezd.org/citybuild.aspx)**

**MAIN LINE: (415)581-2335**



## FORM 1: CITYBUILD WORKFORCE PROJECTION FORM

*Please provide your Core Employee information in the sheet behind.*

**Table 2: Information on Projection of Core Employee You Will Be Utilizing On This Project**

Name	Worker Trade or Position - If Union, List Union #	Journey or Apprentice (J/A)	City	Zip Code
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
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		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		
		J <input type="checkbox"/> A <input type="checkbox"/>		

\_\_\_\_\_  
 Successful Bidder/Company Name                                      Street Address

\_\_\_\_\_  
 Name of Signer                                      Title                                      City                                      Zip                                      Email

\_\_\_\_\_  
 Signature of Authorized Representative                                      Date                                      Office Telephone                                      Cell Phone                                      Fax

PLEASE FAX COMPLETED FORM ATTN: CITYBUILD AT (415)581-2368 OR  
 EMAIL: [KEN.NIM@SFGOV.ORG](mailto:KEN.NIM@SFGOV.ORG) OR [IAN.FERNANDO@SFGOV.ORG](mailto:IAN.FERNANDO@SFGOV.ORG) OR [RONNIE.RHOE@SFGOV.ORG](mailto:RONNIE.RHOE@SFGOV.ORG)  
 WEBSITE: [HTTP://WWW.OEWD.ORG/CITYBUILD.ASPX](http://WWW.OEWD.ORG/CITYBUILD.ASPX)  
**MAIN LINE: (415)581-2335**





CITYBUILD/FIRST SOURCE REFERRAL  
PROGRAM CERTIFICATION

Bidder, by submitting the Proposal for this Contract, hereby acknowledges that Bidder has read and will participate in the CITYBUILD/First Source Referral Program, as set forth in Contract Documents and San Francisco Administrative Code Chapter 83.

The CITYBUILD Referral Program promotes employment opportunities for economically disadvantaged individuals of all ethnic backgrounds and genders in the construction work force. The Office of Economic and Workforce Development ("OEWD") administers the CITYBUILD Referral Program by working with State-certified education programs to train construction workers and by working with construction contractors to identify hiring opportunities. The goal of the CITYBUILD Referral Program is to fill every hiring opportunity with a CITYBUILD Referral who is trained and prepared to enter the construction industry workforce.

Upon award of a public work contract to a Contractor, the Contractor shall be required to make good faith efforts to provide hiring opportunities, when available, to CITYBUILD referrals. Contractor must notify OEWD of available hiring opportunities within 30 days of the date of award (CITYBUILD Referral Program, Form 1) and must develop a hiring plan for the project (CITYBUILD Referral Program, Form 2).

The Contractor must coordinate its efforts with OEWD. Bidders may find more information at the OEWD Website: [www.oewd.org/citybuild.aspx](http://www.oewd.org/citybuild.aspx) or by calling the CITYBUILD General Information Line at: 415-401-4889.

Note: The above Certification is part of the Bid. Signing the Proposal Form shall also constitute signature of this Certification.

END OF DOCUMENT



CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

**PROPOSAL** Addendum 1

Submitted by \_\_\_\_\_

\_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_ 20 \_\_\_\_\_

TO THE MUNICIPAL TRANSPORTATION AGENCY  
OF THE CITY AND COUNTY OF SAN FRANCISCO

In regards to the following contract including addendum No. 1 issued on May 13, 2013:

Third Street Light Rail Program Phase 2 - Central Subway  
Pagoda Palace Demolition

(Contract No. 1277)

the undersigned hereby propose\_\_and agree\_\_, if this proposal is accepted, to execute the proposed contract and to perform the work described in the specifications, all under the supervision and to the satisfaction of the Municipal Transportation Agency of the City and County of San Francisco, at the prices payable in lawful money of the United States, named in the schedule of bid prices attached to and forming part of this proposal.

Herewith is enclosed a bidder's bond or certified check, in the amount of \_\_\_\_\_

\_\_\_\_\_ Dollars

(\$ \_\_\_\_\_) payable to the City and County of San Francisco, pursuant to the requirements of the law relating to proposals submitted to the San Francisco Municipal Transportation Agency, and subject to all of the conditions imposed by such law.

It is hereby understood and agreed that the quantity of each item of work to be performed or material to be furnished stated in the schedule of bid prices is estimated and approximate and will be used as a basis for comparing proposals only, and that the final certification of said quantities will be made on the basis of the actual quantities of work performed or materials furnished.

(Signed) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**BUY AMERICA REQUIREMENTS** Addendum No. 1

If steel, iron, or manufactured products (as defined in 49 CFR Sections 661.3 and 661.5) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in 49 CFR Sec. 661.13(b). **Complete and sign only one of the following certificates.**

**Buy America Certificate**

**Procurement of Steel, Iron, or Manufactured Products**  
*(applicable to procurements greater than \$100,000)*

**Certificate of Compliance with Buy America Requirements**

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 CFR part 661.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**Certificate of Non-Compliance with Buy America Requirements**

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

Date \_\_\_\_\_

Signature \_\_\_\_\_

Company \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

**NONCOLLUSION DECLARATION TO BE EXECUTED  
BY BIDDER AND SUBMITTED WITH BID** Addendum No. 1

**To: THE MUNICIPAL TRANSPORTATION AGENCY  
OF THE CITY AND COUNTY OF SAN FRANCISCO**

**Project Name:** Third Street Light Rail Program Phase 2 - Central Subway  
Pagoda Palace Demolition  
**Contract No.:** 1277

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

**Address of Bidder:**

In conformance with California Public Contract Code section 7106, the undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid. The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose. Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

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

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

Bidders are cautioned that making a false certification as to noncollusion may subject the Bidder to liability for violation of false claims statutes and may subject the certifier to criminal prosecution.



**CONTRACT NO. 1277**  
**THIRD STREET LIGHT RAIL PROGRAM PHASE 2**  
**CENTRAL SUBWAY**  
**Pagoda Palace Demolition**

**CONTRACT 1277 SCHEDULE OF BID PRICES**  
**(TO BE SUBMITTED WITH BID)**

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

Unit Definition: LS = Lump Sum, CY = Cubic Yard, LF = Linear Feet, CF = Cubic Feet, LBS = Pounds, EA = Each

Bid Item	Bid Item Description	Quantity	Unit	Unit Price	Total Amount
<b>GENERAL</b>					
BI-1	Field Mobilization & Demobilization		LS		
BI-2	All Work Except for Work Included in Bid Items <b>BI-1, Allowance Items and Options</b>		LS		
<b>ALLOWANCES</b>					
AL-1	Traffic Control - City Personnel Reimbursement Allowance		Allowance		\$ 10,000
AL-2	Disposal of Unknown Excavated Hazardous Waste Material Allowance		Allowance		\$ 5,000
AL-3	Additional Unknown Hazardous Wastes Mitigation Measures Allowance		Allowance		\$ 10,000
AL-4	Archaeological Discoveries - Mitigation Measures Allowance		Allowance		\$ 5,000
AL-5	Unforeseen or Differing Conditions Allowance For Obstructions Encountered		Allowance		\$ 10,000
<b>SUBTOTAL BASE BID ITEM WORK</b>					<b>\$ 40,000</b>
<b>ADDITIVE OPTIONAL BID ITEM</b>					
OP-1	Installation of Tube-a-Manchettes (TAM)	2500	LF		
<b>SUBTOTAL ADDITIVE OPTIONAL BID ITEM 1</b>					
<b>TOTAL BID PRICE</b> <b>(BASE BID WORK PLUS ADDITIVE OPTIONAL BID ITEMS 1)</b>					

See SP-1 For Award of Contract procedures.

**CITY AND COUNTY OF SAN FRANCISCO**

**BOND ACCOMPANYING BID**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned as Principal \_\_ and the undersigned as Surety are held and firmly bound unto the City and County of San Francisco, a municipal corporation, as obligee, in the penal sum of

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our successors, executors, administrators and assigns, jointly and severally, firmly by these presents.

WHEREAS, the said Principal(s) is/ submitting a proposal for certain work to be performed for the said City and County of San Francisco described as follows:

**Third Street Light Rail Program  
Phase 2 - Central Subway  
Pagoda Building Demolition**

**(Contract No. 1277)**

THE CONDITION OF THIS OBLIGATION IS SUCH that if the proposal submitted by the said Principal \_\_ be accepted and the contract be awarded to said Principal \_\_ and said Principal \_\_ shall within a period of 10 days after such award enter into the contract so awarded and file the required bonds, then this obligation shall be void, otherwise to remain in full force and effect.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(Corporate Seal)

Principal

(Corporate Seal)

Surety

By \_\_\_\_\_

Attorney in Fact





## SUBCONTRACTORS

As required by the Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4104, a Bidder must provide the information requested below as to every Subcontractor that will perform Work in excess of 1/2 of 1% of the Contract Amount that the Bidder intends to employ if awarded the Contract. At the time of award of the Contract, each of the Bidder's Subcontractor(s) must possess appropriate licenses covering the Work that the Subcontractor(s) will perform. (See Specifications, Section 1.02 (h) of the General Provisions)

**WARNING: THE SFMTA SHALL REJECT A PROPOSAL (BID) AS NONRESPONSIVE IF THE BIDDER DOES NOT PROVIDE ALL OF THE INFORMATION REQUESTED ON THIS PAGE.**

Name and Full Address of Subcontractor's Place of Business or Local Office	Amount to be paid for Subcontractor's work, labor or service	General Description of Work Subcontractor Will Perform (Type of Trade)
Name: Street Address:		
Name: Street Address:		
Name: Street Address:		
Name: Street Address:		
Name: Street Address:		

(Bidder to attach additional sheets if necessary)





# Business Registration Certificate Requirement

Unless you have previously submitted this form, failure to complete the Declaration on the reverse and return this form to Purchasing with your bid will be a basis for rejection of the bid, and Purchasing will assume that your company does not intend to apply for a Business Tax Certificate.

## General

To receive an award, a vendor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) is pro-rated for new registrations, depending on when during the year you started your business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine the registration fee due, you can check the website at "http://sf.gov.org/tax/busfaq.htm#reg".

## Who must obtain a registration certificate?

Any business located, or conducting business, in San Francisco.

## What is "conducting business in San Francisco"?

Briefly, it means having employees or a place of business in San Francisco, or having employees visit San Francisco regularly. Questions 1-4 on the reverse specifically relate to "conducting business."

## Are there exceptions?

Yes. A non-profit, tax-exempt business need not register or pay the registration fee. See Question 5 on reverse. Government agencies, banks and insurance companies are exempt. See Question 6.

## My business is not located in San Francisco. Is a registration certificate still required?

Yes, if the business "conducts business in San Francisco," unless it is non-profit and tax-exempt, or a bank, or an insurance company.

All businesses, including those which do not "do business in San Francisco" but excluding government agencies, must sign and return the Declaration.

Businesses whose computed tax is \$2,500 or less do not have to pay the tax, but are required to file an annual statement with the Tax Collector to qualify for this Small Business Exemption. However, all businesses are subject to the annual Business Registration fee, which varies depending on the type and size of business.

## What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/ Business Tax) and licenses or permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the certificate be issued.

## Where do I obtain the certificate?

At the Tax Collector's Office. You would obtain an application form from, and submit it and the registration fee to:

Tax Collector's Office  
Taxpayer Assistance  
City Hall, Room 140  
San Francisco, CA 94102-4696  
(415) 554-6718 or (415) 554-4400

## Do Company Divisions, Parents and Subsidiaries have to register separately?

That depends on a company's individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

## Can I do business with the City without a certificate?

Not if you "conduct business in San Francisco." The City can make purchases from businesses only in the following situations:

- The business conducts business in San Francisco and has registered.
- The business does not conduct business in San Francisco and has signed the Declaration.
- The business is non-profit and tax-exempt, has signed the Declaration and has submitted an IRS exemption letter.
- The business is a government agency, bank, or insurance company.
- There is an emergency. Although Purchasing can award the contract, the vendor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts and product purchases.

## What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a **copy** of the receipt with this form.

## What if I currently "do not conduct business in San Francisco," but if I win this bid, I will?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Tax Collector.

## For more information

For information on how to apply for the certificate, call the Tax Collector's Office. For information on your eligibility to receive a particular award, call Purchasing. See the bottom of the reverse of this form.

## Completing the Declaration; Failure to do so

Unless you previously submitted this form, complete the Declaration and, if possible, return it **with your bid or quotation** in the envelope provided. If you submit this form separately, see the mailing address under "Routing" near the bottom of the reverse of this form.

If you do not complete and return this form, that will be a basis for Purchasing's rejecting the bid, and for assuming that your company should register but will not and therefore that the City cannot do business with you.

## If you submitted this form previously

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

# Business Tax Declaration

Please answer Yes or No to Questions 1-6, based on your company's situation *as of now*. If any answers would change if your company won a bid that is pending, you may submit a new form later.

## Conducting Business in San Francisco

Yes No

This person, business, or person's or business's employee:

- 1. maintains, owns or leases a fixed place of business within San Francisco.
- 2. regularly maintains a stock of tangible personal property in San Francisco for sale in the ordinary course of business.
- 3. in the ordinary course of business, loans capital on property within San Francisco.
- 4. is physically present within San Francisco through property (e.g., trucks or inventory) or employees (e.g., sales representatives) during **7 or more separate days per year** (e.g., 4 employees in San Francisco for 2 days each constitute 8 separate days, and require a "yes" answer to this question). If a manufacturer does not conduct business in San Francisco but the manufacturer's independent representative does, only the representative must register.

If you answered "no" to Questions 1-4, ordinarily you are not conducting business in San Francisco, need not register with the Tax Collector and may omit items 5-10 below, but you must sign and return this Declaration. However, this is subject to review by the Tax Collector. **If you answered "yes" to any of the questions**, you must answer the remaining questions in this Declaration and, unless an exemption applies **must register**.

I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector.

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

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_ (City) (State).

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

General Address

\_\_\_\_\_  
Mailing Address for General Corresp., Purchase Orders, etc.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City, State, ZIP

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

Remit Address

\_\_\_\_\_  
Remittance Address, if different

\_\_\_\_\_  
Title

\_\_\_\_\_  
City, State, ZIP

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

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

## Routing

If you are registering, send the application to the Tax Collector (address on obverse). **Do not send this form to the Tax Collector.** We encourage you to send this form **with your bid or quotation** in the envelope provided. If you submit this form separately, send it to: Purchasing Department, Business Tax Compliance, City Hall, Room 430, San Francisco, CA 94102-4685. If you submitted this form previously and if your business tax status has not changed, discard this form.

## For more information

Regarding how to apply, call the Tax Collector at (415) 554-6718 or 554-4400. Regarding a bid, call Purchasing.

## Tax-Exempt Businesses, Banks, Insurance Companies

Yes No

- 5. This business is non-profit, tax-exempt. If "yes," you need not register and may omit items 6-10, but you must sign the declaration and submit proof of tax-exempt status to Purchasing. Proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code.
- 6. This business is a bank or an insurance company. (Please indicate on this form your type of business.)

## Applying for a Business Registration Certificate

If you answered "yes" to any of Questions 1-4, and "no" to Questions 5 and 6, check item 7, 8, or 9 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for Purchasing to reject the bid.

- 7. This company has registered with the Tax Collector. Certificate # \_\_\_\_\_ (6 digits, e.g., "123456").
- 8. This company applied for a Certificate by mailing the application and fee to the Tax Collector, or by submitting the application in person, on \_\_\_\_\_, 20\_\_\_\_. The application is pending. (NOTE: Completing this Declaration is not the same as applying for a Certificate.) If you submitted the application in person, please submit with this Declaration a copy of the fee receipt you received from the Tax Collector.
- 9. This company does not intend to apply for a certificate.
- 10. If, as a result of winning this bid, this company is required to register, we will do so.

**MUNICIPAL TRANSPORTATION AGENCY  
SMALL BUSINESS ENTERPRISE  
(SBE) PROGRAM  
FOR CONSTRUCTION FEDERALLY-FUNDED  
CONTRACTS**

**SFMTA CONTRACT NO. 1277**

**THIRD STREET LIGHT RAIL PROGRAM PHASE 2  
CENTRAL SUBWAY  
PAGODA PALACE DEMOLITION**

**CCO NO. (13-1249)**

**FTA FUNDED**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**



**APPENDIX 4-B  
SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR  
FEDERALLY-FUNDED CONSTRUCTION CONTRACTS**

**SMALL BUSINESS ENTERPRISE SET-ASIDE CONTRACT**

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**MUNICIPAL TRANSPORTATION AGENCY  
Small Business Enterprise Program  
For Federally-Funded Construction Contracts**

**Small Business Enterprise Set-Aside Contract**

**PART ONE**

**SMALL BUSINESS PROGRAM**

**I. POLICY**

The Municipal Transportation Agency ("Agency") of the City and County of San Francisco is committed to a Small Business Enterprise (SBE) Program ("Program") for the participation of SBEs in contracting opportunities to comply with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into this Program as though fully set forth herein. It is the intention of the Agency to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the construction activities of the San Francisco Municipal Transportation Agency ("SFMTA").

**A. APPLICABILITY**

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's ("FTA") March 23, 2006, publication of the Department of Transportation's ("DOT") guidance concerning the federal Disadvantaged Business Enterprise ("DBE") program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation. The SFMTA's SBE Program is in accordance with DOT's guidance that, absent a disparity study, the SFMTA must meet its overall annual DBE goal using race-neutral means. This Program applies to the following types of SFMTA contracts that are funded, in whole or in part, by DOT financial assistance:

Construction – Building, Heavy; Construction – Dredging and surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering Services; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

**B. OBJECTIVES**

The objectives of this program are to:

1. Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;
1. Ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;

SBE-1

2. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
3. Identify business enterprises that are qualified as SBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs with SFMTA's contract procedures, activities and requirements and allow SBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

**C. ADMINISTRATION OF PROGRAM**

The Executive Director/CEO of the SFMTA is responsible for adherence to this policy. The Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. All SFMTA personnel shall adhere to the provisions and the spirit of the program. Virginia Harmon, Contracts and Procurement Senior Manager, is the DBE Liaison Officer (DBELO) for the SFMTA, located at 1 So. Van Ness Avenue, 6th Floor, San Francisco, CA 94103, telephone number (415) 701-4404, electronic mail address [virginia.harmon@sfmta.com](mailto:virginia.harmon@sfmta.com).

**D. PROHIBITED DISCRIMINATION**

SFMTA does not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

SFMTA does not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

SFMTA has signed the federal assurances regarding non-discrimination required under 49 CFR Section 26.13.

## E. NON-DISCRIMINATION IN EMPLOYMENT

SFMTA will evaluate the bidder's response to the Construction Employment Information (SFMTA SBE Form No. 3) to determine whether the bidder is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the bidder to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the bidder's workforce and the available labor market. The bidder may be required to provide SFMTA with the relevant data regarding its labor market.

## II. DEFINITIONS

Any terms used in this Program shall have the meaning set forth below:

### A. Small Business Enterprise (SBE)

An SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding the thresholds set forth in Section III. B for construction type work and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

## III. SBE SET-ASIDE REQUIREMENTS

### A. SBE Set-Aside

The Contract Compliance Office has designated this contract as an SBE Set-Aside, meaning **only certified SBE firms meeting the income threshold requirement below may submit bids and be considered for award of this contract.** Small business firms may qualify for this Set-Aside by enrollment in either the State of California's Small Business Program with the Department of General Services ("State Program"), the California Unified Certification Program with a U.S. Department of Transportation recipient ("Federal DBE program"), or the City and County of San Francisco's LBE program with the Human Rights Commission ("City Program").

**To be determined responsive, a bidder must be an SBE in a certification**

**category that corresponds with the contractor licensing requirement specified by SFMTA in the Invitation for Proposals. Such certification must be valid and in effect on the bid due date.**

SBE prime contractors that subcontract any portion of a set-aside contract (a) must subcontract to other SBE firms and (b) must serve a commercially useful function based on the contract's scope of work.

**The SBE prime contractor must perform at least 30% of the contract work. Additionally, 100% of the work must be performed by SBEs.**

**B. SBE Income Thresholds For Certain Types of Contracts**

The total average gross revenue thresholds for the past three years must not exceed the following categories as follows:

1.	Construction – Building, Heavy	\$14 Million
2.	Construction – Dredging and surface Cleanup	\$14 Million
3.	Construction (specialty trades)	\$12 Million
4.	General Freight Trucking	\$12 Million
5.	Hazardous Waste Collection, Trucking	\$12 Million
6.	Remediation	\$12 Million
7.	Testing Labs	\$12 Million
8.	Merchant Wholesalers, Durable Goods	\$12 Million
9.	All other Work Categories	\$12 Million

The bidder shall submit to SFMTA with its bid the SBE Contractor/Joint Venture Partner/ Subcontractor Gross Revenue Declaration(s) (SFMTA SBE Form No. 2B) attesting that its total average gross revenues for the past three years is equal to or below the income threshold for that specific category of contract by the bid due date. The bidder shall also collect and submit with its bid a Form 2B for each of its SBE subcontractors/suppliers.

**C. SBE Certification**

1. Bidders must be certified under the State Program, City Program, or the Federal DBE Program on the **bid due date** in order to be eligible for award of the contract. Firms may obtain information on how to become certified as SBEs from either SFMTA or from the State or City at the following addresses:

Federal DBE Program, or general information about other programs and assistance with accessing the databases:

Municipal Transportation Agency (SFMTA)  
Contract Compliance Office  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94103  
(415) 701-4436  
Attn: Sheila Evans-Peguese, CCO Certification Unit

Firms that wish to be certified as DBEs under the federal program can

obtain DBE certification applications from SFMTA at the above address. Completed DBE certification applications can be returned to SFMTA or another certifying agency. A list of certifying agencies can be obtained by calling 415-701-4436 or by going to the following website: <http://www.dot.ca.gov/hq/bep/ucp.htm>

For DBEs certified by agencies outside of California:

Please note that DBEs must be certified by the California Unified Certification Program (CUCP) on the bid due date to qualify. DBEs certified by agencies outside of California or other State unified certification programs will not be eligible unless they are also certified by the CUCP.

To apply for DBE certification under the CUCP, you must submit a CUCP DBE application. Applications can be downloaded from [http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm) or obtained from SFMTA by calling 415-701-4443.

Completed applications for CUCP certification from DBE firms certified by agencies outside of California should be submitted to the following agency:

California Department of Transportation  
Civil Rights/MS 79  
1823-14th Street  
Sacramento, CA 95814

State Program:

California Department of General Services  
Office of Small Business and DVBE Services, Room 1-400  
P.O. Box 989052  
West Sacramento, CA 95798-9052  
(916) 375-4940  
<http://www.pd.dgs.ca.gov/smbus/certapps.htm#RenReq>

City Program:

Contract Monitoring Division  
30 Van Ness Avenue, Suite 200  
San Francisco, CA 94102  
Attn: Certification Unit  
(415) 581-2310  
<http://sfgsa.org/index.aspx?page=6130>

2. Project by project certification will not be required; however, if the status of the SBE changes during the certification period, the certification may no



longer be valid. In such cases, a newly completed certification application should be submitted.

#### **IV. EVALUATION OF BID; CONTRACT PERFORMANCE**

##### **A. CCO Evaluation**

After the bid opening, CCO shall evaluate bids with regard to the SBE Set-Aside requirements to determine a recommendation to the Executive Director/CEO for award of the contract. The responsible and responsive bidder with the lowest bid price, who also meets the SBE Set-Aside requirements shall be eligible for award of the contract.

Should the CCO determine that additional information is needed to evaluate a bidder's submission with regard to the SBE Set-Aside requirements, the CCO shall request the bidder to submit the required information.

##### **B. Recommendation for Award of Contract**

Following the determination of the lowest responsive and responsible bidder, the CCO shall prepare a report on the bidder's compliance with the SBE Set-Aside requirements for submission to the SFMTA Board of Directors. SFMTA will follow the award of contract and protest procedures described in the bid documents.

##### **C. Contract Performance**

###### **1. Substitution of Subcontractors and Suppliers**

The Contractor shall not terminate an SBE subcontractor or supplier for convenience and then perform the work with its own forces. The Contractor must make good faith efforts to substitute another SBE for an original SBE subcontractor or supplier when the original SBE subcontractor or supplier is terminated or fails to complete the work on the contract. The Contractor shall notify SFMTA in writing of any request to substitute a SBE subcontractor or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

###### **2. Addition of Subcontractors and Suppliers**

The Contractor shall notify the CCO prior to any addition of an SBE or non-SBE subcontractor or supplier to the project and submit a new Subcontractor Participation Declaration (SFMTA SBE Form No. 4) reflecting the addition. Any new SBE subcontractor or supplier approved by the CCO also must submit a Subcontractor Participation Declaration (SFMTA SBE Form No. 5).

###### **3. Prompt Payment to Subcontractors/Suppliers**

In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the prime contractor notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime contractor and the subcontractor. Within five (5) days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractor.

Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within thirty (30) days after the City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractors. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City.

If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in California Code of Civil Procedure Section 685.010(a).

#### **4. Reporting Requirements**

The Contractor shall maintain records of all SBE/Non-SBE participation in the performance of the contract, including subcontracts entered into with certified SBEs/Non-SBEs and all materials purchased from certified SBEs. The Contractor shall supply the CCO with copies of all contracts with SBE and non-SBE subcontractors and suppliers.

The Contractor shall submit SBE/Non-SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE/Non-SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE/Non-SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

#### **5. Administrative Remedies**

##### **a. Monitoring SBE Participation**

The CCO will monitor and track the actual SBE participation through contractor and subcontractor reports of payments, site visits and other appropriate monitoring. The CCO will ensure that SBE participation

is counted towards contract goal(s) and the overall annual goal in accordance with the Regulations.

The CCO will require prime contractors to maintain records and documents of payments to SBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SFMTA or DOT. This reporting requirement also extends to any certified SBE subcontractor.

The CCO will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award. The CCO will perform interim audits of contract payments to SBEs. The audit will review payments to SBE subcontractors to ensure that the actual amount paid to SBE subcontractors equals or exceeds the dollar amount stated in the schedule of SBE participation.

**b. Enforcement Mechanisms**

SFMTA will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the Program so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the SBE Program constitutes a material breach of contract and will be grounds for termination of the contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE Program.

**D. CONFIDENTIALITY**

SFMTA will safeguard from disclosure from third parties information that may reasonably be regarded as trade secrets, consistent with federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, SFMTA will not release personal financial information submitted in response to the personal net worth requirement to a third party other than DOT without the written consent of the person submitting the information.

**PART TWO**  
**SUBMISSION OF FORMS AND INSTRUCTIONS**

**I. REQUIRED FORMS**

BIDDERS ARE WARNED THAT FAILURE TO COMPLY WITH THE REQUIREMENTS FOR SUBMISSION OF FORMS, WITHIN THE TIMES PRESCRIBED, MAY RESULT IN REJECTION OF THE BID UNLESS A LATER TIME IS AUTHORIZED BY THE CCO.

Forms that are included in the bid documents consist of the following:

SFMTA SBE Form No. 1	Contractor/Joint Venture Partner and Subcontractor Participation Report
SFMTA SBE Form No. 2A	Bidders List
SFMTA SBE Form No. 2B	SBE Contractor/Joint Venture Partner/Subcontractor Gross Revenue Declaration
SFMTA SBE Form No. 3	Construction Employment Information
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration
SFMTA SBE Form No. 6	Progress Payment Report
SFMTA SBE Form No. 7	Subcontractor Payment Declaration
SFMTA SBE Form No. 8	Declaration - Modification of Construction Contracts
SFMTA SBE Form No. 9	Contractor Exit Report and Declaration

## II. INSTRUCTIONS

**Note:** These instructions are included for the convenience of bidders in preparing their bids and for contractors to monitor SBE participation appropriately. If there is a conflict between these instructions and the provisions elsewhere in the specifications, the latter will prevail. If either these instructions or provisions elsewhere in the specifications conflict with federal, state or city requirements, the relevant statutory requirements will prevail.

### A. TO BE SUBMITTED ON BID DAY:

The following forms must be executed in full and submitted with the bid package or as otherwise specified; if not, the bid may be rejected.

**SFMTA SBE Form No. 1 - Contractor/Joint Venture Partner And Subcontractor Participation Report**

All bidders are required to complete this form and include the names of the SBEs being used, a description of the work the SBEs will perform, the services or supplies that will be provided by each SBE, and the dollar value of each SBE transaction. (Note: The SBE subcontractors listed on SFMTA SBE Form No. 1 are also required to be listed on the Subcontractors List (Page 9 of the bid documents) when the amount of the subcontractor's bid is in excess of ½ of 1% of the base bid.)

**SFMTA SBE Form No. 2A – Bidders List**

SFMTA will create and maintain a Bidders List consisting of all firms bidding on prime contracts and bidding or quoting on subcontracts on DOT-assisted projects. For every firm, the following information must be included: firm name, firm address, firm status as an SBE or non-SBE, the age of the firm,

**SFMTA SBE Form No. 2B – SBE Contractor/Joint Venture Partner/Subcontractor – Gross Revenue Declaration**

The bidder, and all listed SBE subcontractors or suppliers, including lower tier subcontractors, must complete this form and bidder shall submit them with its bid. The bidder and listed SBE subcontractors or suppliers will need to submit this form attesting, under penalty of perjury, that its total average gross revenues for the past three years are equal to or below the income threshold for the specific category of the contract.

### B. TO BE SUBMITTED WITHIN FIVE (5) DAYS OF BID OPENING:

**SFMTA SBE Form No. 3 – Construction Employment Information**

Any bidder, joint venture partner, and every listed subcontractor with a subcontract of \$10,000 or more shall complete this form. The apparent low Bidder shall submit this form directly to SFMTA Contract Compliance Office by 4:00 p.m. on the fifth business day after Bid opening.

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This form must be completed and returned in a timely manner or the bid may be determined non-responsive and rejected.

**SFMTA SBE Form No. 5 - Small Business Enterprise Acknowledgement Declaration**

Each listed SBE subcontractor or supplier, including lower tier subcontractors, must submit the completed forms to the apparent low bidder. The apparent low bidder shall submit the completed forms and copies of the subcontractors' or suppliers' bid quotations to the CCO no later than 4:00 p.m. on the fifth business day following bid opening unless an extension of time is granted by the CCO.

**C. CONTRACTOR POST-AWARD FORMS**

**SFMTA SBE Form No. 6 – Progress Payment Report**

This form shall be completed by the Contractor, including each joint venture partner, and submitted to the Resident Engineer and the CCO with monthly progress payment applications after contract award. Contractors must provide information and documentation indicated in Part 2 of the form for the preceding period for SBE joint venture partners and all subcontractors, suppliers, and truckers that are utilized.

**SFMTA SBE Form No. 7 - Subcontractor Payment Declaration**

The Contractor shall pay its subcontractors for work that has been satisfactorily performed no later than three (3) days after the Contractor's receipt of progress payments from the SFMTA. Within five (5) working days of such payment, Contractor shall provide City with satisfactory evidence that it has promptly paid subcontractors for the work they have performed. Failure to provide such evidence shall be cause for the City to suspend progress payments to the Contractor.

**SFMTA SBE Form No. 8 – Modification Declaration Construction Contracts**

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. Prime contractor, including each joint venture partner, subcontractors and any other vendors participating in any modification must be listed.

**SFMTA SBE Form No. 9 - Contractor Exit Report And Declaration**

Contractors, including all joint venture partners, if any, shall complete and submit this form to the CCO, the Resident Engineer, and the Controller's Office with its final progress payment application. Contractor must have this form signed by all SBE joint venture partners and all subcontractors,

suppliers, and truckers.

**PART THREE**

**EMPLOYMENT WORKFORCE GOALS**

**I. GENERAL**

Executive Order 11246, as amended, including the implementing regulations in 41 CFR Parts 60-1 through 60-50, prohibits discrimination and requires affirmative action to ensure equal employment opportunity without regard to race, color, sex, and/or national origin. In order to be eligible to bid or have a bid considered for the work or works of improvement contemplated by this contract, each bidder shall, by affixing his/her signature on the bid proposal or contract document, agree to abide by a nondiscrimination program in employment that conforms to the requirements. (These requirements apply to contractors with a covered Federal contract in excess of \$10,000).

Further, Federal law requires that contractors adhere to Section 102 of the Americans With Disabilities Act, as amended, 42 USC § 12112, and implementing regulations at 20 CFR Part 1630, pertaining to employment of persons with disabilities

**II. EMPLOYMENT GOALS FOR TRADE PARTICIPATION**

This provision applies to all solicitations or bids on construction contracts in excess of \$10,000:

Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation in Each Trade	Goals for Female Participation in Each Trade
25.6%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority



or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the San Francisco-Oakland Standard Metropolitan Statistical Area.

### **III. Good Faith Efforts**

Contractor and its subcontractors shall make good faith efforts to eradicate and prevent barriers to equal employment opportunity. The contractors should engage in outreach and other efforts to broaden the pool of qualified candidates to include minorities and women. These goals are targets for recruitment and outreach and should be reasonably attainable by means of applying good faith efforts.

### **IV. Collective Bargaining Agreement Provisions**

Neither the provisions of a collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under the contract specifications. See 41 CFR § 60-4.3 (a) 7.d in part requires the contractor/subcontractor to notify the Office of Federal Contract Compliance Programs when the contractor/subcontractor has information that the union referral process has impeded the contractor's efforts to meet its EEO and affirmative action obligations.

### **V. Working Environment**

Contractors and subcontractors must maintain a work environment free of harassment, intimidation, and coercion at all sites and in all facilities at which the contractor's employees are assigned. (41 CFR 60-4.3(a) 7.a.)

Contractors must also take specific steps to ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the company's contractual obligation to maintain such a working environment, with specific attention to minorities and women at all work sites and facilities. In addition, contractors that assign more than one woman to each construction project should retain records of such assignments.

### **VI. Facilities**

Contractors and subcontractors must ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities designed to assure privacy between the sexes shall be provided. (41 CFR 60-4.3 (a) 7.n.)

## **VII. Outreach**

Contractor will utilize the outreach groups designated or approved by SFMTA for recruiting minorities and women for apprenticeship to the fullest extent permitted by any collective bargaining agreement or other contract or understanding to which Contractor is a party, and will notify every joint apprenticeship committee covering its workforce. Furthermore, contractors/subcontractors must send notice to its recruitment sources for women and minorities announcing acceptance of applications for apprenticeship or other training.

## **VIII. Labor Code 1777.5 Ratio**

Contractor agrees that the ratio of apprentices to journey persons employed by the Contractor on this job will comply with the ratio required on public works projects by California Labor Code Section 1777.5.

## **IX. Compliance Review Meetings**

An authorized representative of the Contractor, its subcontractors and suppliers will actively participate in periodic compliance review meetings with a representative of the CCO to review progress and problems concerning the implementation of these requirements. The authorized representative of the company in attendance must have authority to commit the organization. Contractor shall be responsible to notify and to require the attendance of its subcontractors at such meetings. In addition, CCO may ask to see documented evidence of a contractor's compliance efforts and provide input or suggestions on how best to remedy any discriminatory practices or regulatory violations.

**Submit with the Bid**

BIDDER: \_\_\_\_\_

**CONTRACTOR/JOINT VENTURE PARTNER AND SUBCONTRACTOR  
PARTICIPATION REPORT**

**SFMTA SBE FORM No. 1  
CONSTRUCTION CONTRACTS**

Is bidder a Small Business Enterprise? \_\_\_\_\_ YES \_\_\_\_\_ NO

Is bidder a joint venture with SBE partners? \_\_\_\_\_ YES \_\_\_\_\_ NO

<b>SBE SUBCONTRACTOR* FIRM: NAME &amp; ADDRESS</b>	<b>WORK DESCRIPTION</b>	<b>ESTIMATED** DOLLAR AMOUNT</b>	<b>CERTIFICATION TYPE (i.e., Local, CUCP, Cal. SBE); CERTIFICATION NO.</b>

\* SBE subcontractors should also be listed on the Subcontractors Form (page 9 of the bid documents), in compliance with the California Subletting and Subcontracting Fair Practices Act.

\*\* Include Labor Costs Only. Do not include cost of materials and/or Equipment. If materials and/or equipment are purchased by an SBE supplier, include as appropriate on next page.

**SUPPLIERS - REGULAR DEALERS**

SBE SUPPLIER FIRM: NAME & ADDRESS	WORK DESCRIPTION	ESTIMATED** DOLLAR AMOUNT	CERTIFICATION TYPE (i.e., Local, CUCP, Cal. SBE); CERTIFICATION NO.

**OTHERS**

NAME AND ADDRESS	DESCRIPTION OF SERVICE	AMOUNT OF FEE OR COMMISSION	ESTIMATED TOTAL DOLLAR AMOUNT	CERTIFICATION TYPE (i.e., Local, CUCP, Cal. SBE); CERTIFICATION NO.

*(Attach additional copies of this form if more space is needed.)*

By signing this form, I declare under penalty of perjury under the laws of the State of California that the foregoing constitutes the listing of SBEs with which my company will subcontract if it is awarded the contract, for a total dollar value of \_\_\_\_\_ or \_\_\_\_\_ percent of the total base bid. I agree that my company will achieve the level of SBE participation specified above for the entire work under this contract, including any amendments to the contract.

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

\_\_\_\_\_  
Name and Title

**Submit with the Bid**

BIDDER: \_\_\_\_\_

**SFMTA SBE FORM No. 2A**  
**BIDDERS LIST**

(Supply the following information for all firms bidding or quoting to the prime bidder. If any information is not included, specify reason why you could not obtain the information.)

Name/ Federal I.D. or State I.D. No.	Address	Phone	DBE Certified		Yrs. in Business	Annual Gross Receipts of Firm
			Yes	No		

## Submit with the Bid

BIDDER: \_\_\_\_\_

### SFMTA SBE FORM No. 2B

#### SBE CONTRACTOR/JOINT VENTURE PARTNER/SUBCONTRACTOR GROSS REVENUE DECLARATION

**(TO BE COMPLETED BY SBE CONTRACTOR/JOINT VENTURE PARTNER/SUBCONTRACTOR)**

An SBE Contractor and listed SBE subcontractor or supplier, including lower tier subcontractors, must submit the completed declarations to the Prime Contractor. The Prime Contractor shall submit completed declarations with its proposal to the Contract Compliance Office. The SBE attests, under penalty of perjury, that its total average gross revenues for the past three years are equal to or below the income threshold for the specific category of the contract in order to be counted towards the SBE goal.

---

#### SECTION I

Name: \_\_\_\_\_ Vendor Number: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Type of Contractor's License(s): \_\_\_\_\_ Federal I.D. No.: \_\_\_\_\_

---

#### SECTION II

**(Check Ownership and Certification Type check all that apply)**

- |  |  |
|--|--|
| <input type="checkbox"/> <b>Sole Proprietor</b>          | <input type="checkbox"/> <b>DBE</b> (Issued by Calif. Unified Certification Prog.) |
| <input type="checkbox"/> <b>Partnership</b>              | <input type="checkbox"/> <b>SBE</b> (Issued by Calif. Dept. of General Services)   |
| <input type="checkbox"/> <b>Corporation, s-Corp, LLC</b> | <input type="checkbox"/> <b>LBE</b> (Issued by SF Human Rights Commission)         |

#### Income Thresholds For Certain Types of Contracts

**(Check category for your business)**

The total average gross revenue for the past 3 years must be equal to or below the following category thresholds:

- |  |              |
|--|--------------|
| <input type="checkbox"/> Construction – Building, Heavy              | \$14 Million |
| <input type="checkbox"/> Construction – Dredging and Surface Cleanup | \$14 Million |
| <input type="checkbox"/> Construction (specialty trades)             | \$12 Million |
| <input type="checkbox"/> General Freight Trucking                    | \$12 Million |
| <input type="checkbox"/> Hazardous Waste Collection, Trucking        | \$12 Million |
| <input type="checkbox"/> Remediation                                 | \$12 Million |
| <input type="checkbox"/> Testing Labs                                | \$12 Million |
| <input type="checkbox"/> Merchant Wholesalers, Durable Goods         | \$12 Million |

**DECLARATION**

**The undersigned declares under penalty of perjury under the laws of the State of California that its total average gross revenues for the past three years are equal to or below the income threshold for category checked above.**

---

**Name of Firm (print)**

**Name and Title (print)**

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**Signature**

**Date**

**END OF FORM**

## Five (5) Day Submittal

BIDDER: \_\_\_\_\_

### SFMTA SBE FORM No. 3 CONSTRUCTION EMPLOYMENT INFORMATION

*The apparent low Bidder shall submit these forms directly to SFMTA Contract Compliance Office by 4:00 p.m. on the fifth business day after Bid opening.*

This form must be completed and returned in a timely manner or the Bid may be determined non-responsive and rejected. Subcontractors are also required to sign this form.

#### SECTION I

Name: \_\_\_\_\_ Vendor Number: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Type of Contractor's License(s): \_\_\_\_\_ Federal I.D. Number: \_\_\_\_\_

#### SECTION II

1. *Submit copies of the last 4 quarters of the California Quarterly Payroll Tax Record. List all employees that you plan to utilize on this project.*

Date of most recent hire	EMPLOYEE NAME <sup>(1)</sup>	TRADE [Carpenter, admin. sales]	CLASSIFICATION [Journey person, apprentice/secretary, outside sales]	RACE <sup>(2)</sup>	SEX

(1) *Mark with an asterisk all those employees that will be assigned to this project.*

(2) *Indicate which of the following: American Indian/Alaskan Native, Asian/Pacific Islander, Black, Filipino, or Latino*



2. List below how many people you will assign to this project and in what trades (contractors only). Instructions for completing the tabulated data below are as follows:

- a. Obtain SFMTA goals from Paragraph (\_\_\_\_\_)
- b. Multiply column 4 by column 6 and insert into column 7
- c. Multiply column 5 by column 6 and insert into column 8

1	2	3	4	5	6	7	8
Trade	Number of People	Number of Estimated New Hires	Goal for <u>Minority</u> Participation (%)	Goal for <u>Women's</u> Participation (%)	Total Hours Estimated in Each Trade	# Minority Hours*	# Woman Hours*

3. Explain in detail your method of hiring and the provisions of your collective bargaining agreement (if applicable) that concern hiring procedures. This explanation should make quite clear the procedures to be followed when job applicants are referred to your company.

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**SECTION III**

*I will ensure that my firm complies fully with the provisions of Chapter 12B of the San Francisco Administrative Code. I acknowledge and am hereby advised that upon a finding of non-compliance with the provisions of Chapter 12B, the City is authorized to impose penalties which may include financial penalties and disqualification from providing goods and services to the City and County of San Francisco for a period not to exceed two years.*

*I declare that the above provisions are true and correct under penalty of perjury under the laws of the State of California.*

\_\_\_\_\_  
Owner/Authorized Representative (Print)

\_\_\_\_\_  
Name of Firm, Partnership or Joint Venture (Print)

\_\_\_\_\_  
Owner/Authorized Representative Signature

\_\_\_\_\_  
Date

**END OF FORM**

## Five (5) Day Submittal

BIDDER: \_\_\_\_\_

### SFMTA SBE FORM No. 5

#### SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

*Every listed SBE subcontractor or supplier (including lower tier subcontractors) must submit the completed declarations to the apparent low Bidder. The apparent low Bidder shall submit completed declarations and copies of the subcontractors' or suppliers' bid quotations directly to the Contract Compliance Office no later than 4:00 p.m. on the fifth business day following bid opening.*

---

(Owner or Authorized Representative and Title)

declares that \_\_\_\_\_ will award a  
(Name of Prime Contractor)

subcontract in the amount of \$ \_\_\_\_\_, or a purchase order in the  
amount of \$ \_\_\_\_\_ to \_\_\_\_\_  
(Name of your firm)

License No. \_\_\_\_\_. Nature of work to be performed by SBE: \_\_\_\_\_

---

#### FORM OF OWNERSHIP FOR SMALL BUSINESS ENTERPRISE

Sole Proprietorship \_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venture \_\_\_\_\_

Corporation \_\_\_\_\_ Limited Liability Partnership \_\_\_\_\_ Limited Liability Corporation \_\_\_\_\_

Type of SBE Certification \_\_\_\_\_

#### **LIST OWNERS**

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Percentage of SBE Stockholders: \_\_\_\_\_

\*Ethnic Codes: AI/AN = American Indian or Alaskan Native, A/PI = Asian or Pacific Islander, B = Black, F = Filipino, H = Hispanic, and W = White.

**LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS**

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

**For Contractors and Subcontractors Only:**

List the firm's annual gross receipts for the last three fiscal years:

20\_\_\_\_\_ \$\_\_\_\_\_, 20\_\_\_\_\_ \$\_\_\_\_\_, 20\_\_\_\_\_ \$\_\_\_\_\_

**For Suppliers Only:**

List the number of employees for the last three fiscal years:

20\_\_\_\_\_ Number\_\_\_\_\_, 20\_\_\_\_\_ Number\_\_\_\_\_, 20\_\_\_\_\_ Number\_\_\_\_\_

**ADDITIONAL SUBCONTRACTING BY SUBCONTRACTOR:**

a. \_\_\_\_\_ We will not subcontract any portion of work to another subcontractor/sub consultant.

b. \_\_\_\_\_ We will subcontract \_\_\_\_\_% of our work to \_\_\_\_\_  
(Name of Subcontractor)

in the amount of \$\_\_\_\_\_. Indicate owners' ethnicity and gender \_\_\_\_\_.

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct; and that our firm is a certified SBE as defined under the SFMTA's SBE Program.

\_\_\_\_\_  
**Owner/Authorized Representative (Signature)**

\_\_\_\_\_  
**Name & Title (Please Print)**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**Telephone No.**

**END OF FORM**

**BIDDER:** \_\_\_\_\_

**Post Award**

**SFMTA SBE FORM No. 6**

**PROGRESS PAYMENT REPORT**

*(To be completed by Contractor with its monthly progress payment report)*

**TRANSMITTAL TO:** Resident Engineer

**Copy To:** Contract Compliance Office

From: Contractor: \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

***PART 1: Fill in all blanks and check the box below.***

Contract Number:	Contract Title:
------------------	-----------------

Reporting Period (Month and Year): \_\_\_\_\_

Corresponding Progress Payment No.: \_\_\_\_\_

Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

1. Amount of Prime Contract	\$
2. Amount of Change Orders, Amendments and Modifications to Date	\$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$
4. Amount Invoiced this Reporting Period excluding Retention	\$
5. Total Amount Paid to Date excluding Retention (excluding Line 4)	\$
6. Amount of Progress Payment Requested to Date excluding Retention (Line 4 + Line 5)	\$
7. Percent Complete (Line 6 ÷ Line 3)	
8. Reporting Period - From (date):	To (date):

***Contractor, including each joint venture partner, must sign this form.***

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Please Print)                      Date                      Name & Title (Please Print)                      Date

Firm Name    Firm Name

Telephone                      Fax                      Telephone                      Fax

## PROGRESS PAYMENT REPORT

**PART 2:** Provide complete information in the following table for Contractor, each SBE joint venture partner and all subcontractors. Make copies of this sheet as needed. Attach copies of all invoices from subcontractor supporting the information tabulated on this form and Contractor's invoice and Contractor Payment Authorization for the immediately preceding progress payment period.

**NOTE:** Failure to submit all required information may lead to partial withholding of progress payment.

A Name of Firm (List contractor, including each joint venture partner, and all subcontractors, suppliers and truckers, and indicate if firm is a SBE.)	B Portion of Work	C Amount of Subcontract or Purchase Order	D Amount of Change Orders to Date	E Total Amount Subcontractor or Purchase Order to Date + Change Orders (C + D)	F Amount Invoiced this Reporting Period excluding Retention	G Amount of Progress Payments Paid to Date excluding Retention	H Percent Completed to Date [F + G] / E excluding Retention
<b>TOTALS</b>							

**END OF FORM**

**BIDDER:** \_\_\_\_\_ **Post-Award**

**SFMTA SBE FORM No. 7  
SUBCONTRACTOR PAYMENT DECLARATION**

Contractor shall submit this form to SFMTA CCO within five (5) working days following actual payment to subcontractor.

**TRANSMITTAL TO:** Contract Compliance Office  
**COPY TO:** Resident Engineer

From: Prime Contractor: \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

---

*Provide the following information for each progress payment received from SFMTA. Use additional sheets to include complete payment information for all subcontractors and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.*

Contract No.: \_\_\_\_\_ Contract Title: \_\_\_\_\_

Contract Awarding Department: \_\_\_\_\_

Progress Payment No.: \_\_\_\_\_ Period Ending: \_\_\_\_\_

Amount Received: \$ \_\_\_\_\_ Date: \_\_\_\_\_ Warrant/Check No.: \_\_\_\_\_

<b>Prime/JV/Subcontractor/ Vendor Name</b>	<b>Business Address</b>	<b>Amount Paid excluding Retention</b>	<b>Payment Date</b>	<b>Check Number</b>

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

*Prime Contractor, including each joint venture partner, must sign this form.*

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

---

Name (Please print/type)

---

Name (Please print/type)

---

Title (Please print/type)      Date

---

Title (Please print/type)      Date

---

Firm Name

---

Firm Name

---

Telephone      Fax

---

Telephone      Fax

**END OF FORM**

**Post Award  
SFMTA SBE FORM No. 8  
DECLARATION - MODIFICATION OF CONSTRUCTION CONTRACTS**

This section is to be completed for all modifications to this contract. All prime contractors, Individual joint venture partners, subcontractors and any other vendors participating in the modifications must be listed.

CONTRACT NO.:		CONTRACT MOD NO.:	
CONTRACT TITLE:			
ORIGINAL AMOUNT:	\$	SBE GOAL:	
CONTRACT MODIFICATION AMOUNT:	\$		
CONTRACTOR:			
CONTACT PERSON:		PHONE:	
ADDRESS:			
CITY:	STATE:	ZIP CODE:	

JV/P/S: Indicate if contractor is Joint Venture Partner, Prime or Sub.

JV/P/S	NAME	SERVICES PERFORMED	% OF TOTAL MOD	MODIFICATION AMOUNT	% SBE

I declare, under penalty of perjury under the laws of the State of California, that the information contained on this form is true and correct.

\_\_\_\_\_  
Owner/Authorized Representative (Signature):

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

\_\_\_\_\_  
Owner/Authorized Representative (Print):

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

Information is needed for each firm listed on Page 1 (prime contractors, joint venture partners, subcontractors and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.



FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White,  
Other (please state) \_\_\_\_\_.

SFMTA SBE FORM No. 9

CONTRACTOR EXIT REPORT AND DECLARATION

(To be completed by Contractor, including all joint venture partners, if any, with its final progress payment report)

TRANSMITTAL TO: Resident Engineer
COPY TO: Contract Compliance Office

Contract No.: \_\_\_\_\_

From: Contractor: \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

Contractor must complete this form and have it signed by all SBE joint venture partners and all subcontractors, suppliers, and truckers.

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

I/We declare, under penalty of perjury under the laws of the State of California, that the information on Page 2 of this form is complete, that the tabulated amounts paid to date are true and correct, and that the tabulated amounts owing will be paid within 30 days after the date of the City's final payment under the Contract.

Contractor, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

( ) Telephone ( ) Fax

( ) Telephone ( ) Fax

**Note: Failure to submit all required information may lead to partial withholds of progress payments. See 49 CFR Sections 26.29, 26.37.**

<b>Name of Firm</b> (List Contractor, including each joint venture partner, and all subcontractors, and indicate if the firm is a SBE.)	Portion of Work	Amount of Progress Payments Paid to Date including Retention	Amount Owing under the Contract including all Change Orders, Amendments and Modifications	Owner/Authorized Representative Signature (Contractor, including each joint venture partner, and all subcontractors)
<b>TOTALS</b>				

**END OF FORM**

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CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

AGREEMENT

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
by and between

Iluey Construction Management Co., Inc. dba MH Construction Management Co.

whose place of business is at 1630 - 17th Street, San Francisco, CA 94107

\_\_\_\_\_ hereinafter called the Contractor, and the  
CITY AND COUNTY OF SAN FRANCISCO, a MUNICIPAL CORPORATION by its MUNICIPAL  
TRANSPORTATION AGENCY (the "Agency"), acting under and by virtue of the authority vested in the  
Agency by the Charter of said City and County and by ordinances enacted pursuant to said Charter.

WHEREAS, the Agency, by its resolution No. W/A, adopted on the \_\_\_\_\_  
day of \_\_\_\_\_, 20\_\_\_\_ --(a copy of which is hereto attached and hereby made a part of this Agreement),  
awarded to the Contractor the Contract for

**Third Street Light Rail Program  
Phase 2 - Central Subway  
Pagoda Palace Demolition  
Contract No. 1277**

in the following amounts to complete all Work:

Four Hundred Ninety Eight Thousand Nine  
Contract Sum Hundred Ninety Five Dollars .. .. . Dollars  
(\$ 498,995.00 )

Contract Time: 30 .. .. . Calendar Days

NOW, THEREFORE, the Contractor for and in consideration of payment to be made as  
hereinafter mentioned, promises and agrees with the Agency as such and not otherwise, to perform said  
Work in a good and workmanlike manner, under the direction (to the extent of ascertaining whether said  
Work is being performed in accordance with the Plans and Specifications) and to the satisfaction of the  
Agency and to furnish all labor, material and equipment necessary for use in the performance and  
completion thereof, all in accordance with the Invitation for Proposals, the Proposal submitted by the  
Contractor, the Specifications attached hereto and all Drawings which as provided in said Specifications are

made a part thereof, all of which documents are by reference made a part of this Agreement as if all requirements and provisions therein contained were specifically set forth herein.

Said Work shall be commenced as soon as practicable after execution of this Contract upon the Agency's issuing Notice to Proceed as provided in the Agreement, prosecuted diligently thereafter and completed within the Contract Time stated above.

The City and County of San Francisco, by and through its Municipal Transportation Agency, promises and agrees that upon performance and fulfillment of the covenants aforesaid, it will pay to the Contractor for said Work, in the manner provided by law and in said specifications, the price or prices fixed in the Contractor's Proposal for said Work set forth in the resolution hereinabove mentioned.

Time is of the essence in this Contract.

It is understood and agreed that in no instance is any party signing this Agreement for or on behalf of the City and County of San Francisco or acting as a member of the San Francisco Municipal Transportation Agency liable on this Contract, or upon any warranty of authority, or otherwise, and it is further understood and agreed that the liability of said City and County is limited and confined to such liability as authorized or imposed by law.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals and have executed this contract in triplicate the day and year first above written.

<p>CONTRACTOR</p> <p>By: <u><i>Matthew Gray</i></u> Signature</p> <p><u>Matthew Gray</u> Printed Name</p> <p>Title: <u>President</u></p> <p>By: _____ Signature</p> <p>Printed Name</p> <p>Title: _____</p>	<p>CITY AND COUNTY OF SAN FRANCISCO by and through its MUNICIPAL TRANSPORTATION AGENCY</p> <p><u><i>[Signature]</i></u> Edward D. Reiskin Director of Transportation</p> <p>ATTEST:</p> <p>Authorized by the Municipal Transportation Agency Resolution No. <u>N/A</u></p> <p>Adopted: <u>N/A</u></p> <p><u>N/A</u> Secretary, Municipal Transportation Agency</p> <p>Approved as to form:</p> <p>Dennis J. Herrera City Attorney</p> <p><u><i>[Signature]</i></u> Robert K. Stone <u>7-12-2013</u> Deputy City Attorney</p>
---	--

**COPY OF RESOLUTION NO.** \_\_\_\_\_

**adopted** \_\_\_\_\_, **20** \_\_\_\_\_

**by the Municipal Transportation Agency of  
the City and County of San Francisco.**



CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

**PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, The Municipal Transportation Agency of the City and County of San Francisco, State of California, by Resolution

No. \_\_\_\_\_, adopted \_\_\_\_\_, 20\_\_\_\_, has awarded to

\_\_\_\_\_  
\_\_\_\_\_(the "Principal," a contract for the

**Third Street Light Rail Program  
Phase 2 - Central Subway  
Pagoda Palace Demolition**

**(Contract No. 1277)**

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

NOW, THEREFORE, we, the Principal and \_\_\_\_\_ as Surety, are held and firmly bound unto the City and County of San Francisco, hereinafter called the

City, in the penal sum of: \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally, firmly by these presents.

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

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

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

\_\_\_\_\_  
Principal

By \_\_\_\_\_  
Surety

By \_\_\_\_\_

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By \_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

Date \_\_\_\_\_

Bond No. \_\_\_\_\_

The premium charged for this bond is \$ \_\_\_\_\_ for the term.

# GENERAL PROVISIONS

## ARTICLE 1 - GENERAL

### 1.01 DEFINITIONS

- A. Wherever a word or phrase defined below, or a pronoun used in place thereof, is used in the Contract Documents, it shall have the meaning set forth in this Section 1.01. References to related Sections or Documents are provided for convenience but not to exclude other Section or Documents where such terms may be used. The colon (":") is employed in this Section as a symbol for "shall mean". A colon also may be employed in these General Provisions or elsewhere in the Contract Documents to set off a paragraph title or heading from the text that follows or as a punctuation mark in a sentence to direct attention to the matter that follows. Where additional definitions are provided in Sections of the Technical Specifications, to the extent there is any conflict between those definitions of terms and the defined terms set out in this Section 1.01, the definitions provided in the Technical Specifications shall govern, but only as to that Section of the Technical Specifications.
1. **Accepted, Approved:** Accepted or approved, or satisfactory for Work (or a portion thereof), as determined in writing by the City by a person authorized to make such determination. Where used in conjunction with the City's response to submittals, requests, applications, inquiries, proposals and reports by Contractor, the term "approved" shall be held to limitations of the City's responsibilities and duties as specified in these General Provisions. In no case shall the City's approval be interpreted as a release of Contractor from its responsibilities to fulfill the requirements of the Contract Documents or a waiver of the City's rights under the Contract.
  2. **Addenda:** Written or graphic instruments issued prior to the opening of Bids which make changes, additions or deletions to the Bid Documents.
  3. **Additional Work:** Work that the City directs Contractor to perform that is not within the original scope of Work described in the Contract Documents and is not Incidental Work.
  4. **Agreement:** The contract between the City and Contractor as memorialized in the Contract Documents, describing the Work to be performed, the furnishing of labor, Materials and equipment to perform the Work, insurance, bonds, the terms and conditions of performance, and consideration, and any properly executed and certified Change Order.
  5. **Alternate Bid Item (Option):** A Bid item that may be added to or deducted from the Bid Price to meet the Project construction budget or other Agency requirements. An Option that the City may add to the Work is an Additive Option; an Option that the City may delete from the Work is a Deductive Option.

6. Application for Progress Payment: Written request submitted by Contractor to City for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values. Refer to Article 9 Payments and Completion.
7. Approved Equal: Approved in writing by the City as being of equivalent quality, utility and appearance. Equivalent means equality in the opinion of the Engineer. The burden of proof of equality is the responsibility of Contractor. Refer to Technical Specifications (Division 1) for procedures for proposing substitutions.
8. Article: A numbered, titled provision of this General Provision document that includes one or more paragraphs or Sections.
9. Award: Resolution by the SFMTA Board of Directors approving award of the Contract to the Contractor and authorizing the Department Head to execute said Contract, subject to the any other required approvals and the Controller's certification of funds.
10. Base Work: Work that is not included under an Alternate Bid Item (aka Option).
11. Baseline Schedule: The schedule for the performance of the Work established immediately following NTP. Refer to Technical Specifications, Division 1.
12. Beneficial Use: Refer to Section 2.08.
13. Bid: Refer to "Proposal".
14. Bidder: An individual or entity submitting a Proposal to perform the Work under the Contract.
15. Bid Bond: The security submitted by a Bidder with its Proposal to guarantee its acceptance of offer of the Contract if awarded to it, which security shall be a corporate surety bond in the form required by the City or a certified check drawn on a solvent bank of the State of California, payable on sight to the City and County of San Francisco, the amount of which shall not be less than 10 percent of the total amount bid for the proposed Work.
16. Bid Documents: The forms and documents issued to a proposer and the completed forms and other documents required to be submitted with the Bidder's Proposal.
17. Bid Price: The value stated in dollars that the Contractor has proposed in its Bid and agrees in the Contract shall be full compensation and consideration for Contractor's performance of all Work in accordance with the Contract Documents.
18. By Others: Work related to the project that is the focus of the Work, that is outside the scope of Work to be performed by Contractor, but that will be performed by the City, other contractors, or by other means and at other expense.

19. Change Order: A written instrument prepared by the City and executed in writing by the City and Contractor, stating their agreement upon all of the following: (1) a change in the Work; (2) the amount of the adjustment in the Contract Sum, if any; (3) the extent of the adjustment in the Contract Time, if any; and (4) an amendment to any other Contract term or condition. Refer to Article 6 Clarifications and Changes in the Work.
20. Change Order Request (COR): A request prepared by Contractor for additional compensation or time Contractor deems necessary, which shall include a written narrative stating the amounts and reasons for such additional compensation or time, and complete documentation supporting the request. Refer to Section 6.02.
21. City: The City and County of San Francisco, California, identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number. Except as to any reference to a City department or agency that acts in a regulatory capacity, the terms City, SFMTA, Agency and Owner are synonymous for purposes of this Contract.
22. City Representative: Refer to "Engineer".
23. Claim: A written demand by Contractor for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the requirements of the Contract Documents. Refer to Section 13.04 (Contract Claims).
24. Clarification: A document consisting of supplementary details, instructions or information issued by the City which clarifies or supplements the Contract Documents. Clarifications do not constitute a change in Contract Work, Contract Sum or an extension of Contract Time unless requested by Contractor and approved by the City in accordance with the Contract Documents. Refer to Article 6, Clarifications and Changes in the Work.
25. Code: State, federal and local regulations, ordinances, statutes and other laws and requirements of regulatory agencies with jurisdiction over the Project that govern the design, means and methods of construction, labor employed on the Work, the built structure, and safety and other mandates of law. Wherever reference is made to Code, that reference shall be construed to mean the applicable codes, regulations, ordinances, statutes, laws and other legal requirements applicable to the Work, whether or not specified or otherwise referenced in the Contract Documents.
26. Construction Area: Any area surrounding or adjacent to the Site that is impacted by Contractor's performance of the Work, including but not limited to streets, sidewalks, and private and public property.
27. Contract: Refer to "Agreement."
28. Contract Amount: Refer to "Contract Sum."

29. Contract Documents: The documents listed in Section 1.04 that read together memorialize the City's agreement with the Contractor to perform the Work for the Contract Sum and within the Contract Time stated therein
30. Contract Modification: Refer to "Change Order."
31. Contract Sum: The dollar sum (or the corrected dollar sum if errors are found) stated in the Contractor's Bid for which it will perform the Work as described in the Contract Documents (including exercised Options), which amount shall compensate Contractor for costs, as that amount may be amended by a properly executed Change Order.
32. Contract Time: The number of Days as stated in the Special Provisions, within which Contractor shall complete the Work or a specified portion of the Work. (The term "time" is synonymous to the Contract Time, when "time" is used to reference to a period in which the Contractor shall perform Work or a specific portion of the Work.) See Section 1.03.G.
33. Contractor: The Bidder (person or entity) with whom the City has executed the Contract and who is identified as such therein and referred to throughout the Contract Documents as if singular in number and neuter in gender. The term "Contractor" includes the Contractor's authorized representative(s).
34. Contractor's Employees: Any person engaged in the execution of Work under this Contract as direct employees of the Contractor, as Subcontractors, as suppliers or as employees of Subcontractors or suppliers.
35. Critical Path: A continuous chain of activities with zero float running from the date the Work is to be commenced (stated in the first NTP issued to Contractor) to the date stated in the Project Schedule by which Contractor shall have reached Substantial Completion of the Work.
36. Critical Path Method (CPM): Refers to the critical path method scheduling technique.
37. Day: A calendar day of 24 hours, unless otherwise specified, irrespective of whether it is capitalized.
38. Days: Consecutive calendar days.
39. Default: Failure by Contractor to meet a requirement of the Contract that if not timely cured would constitute breach of contract. Refer to Section 14.01.
40. Department of Parking and Traffic (DPT): The former name of the Sustainable Streets Division of the SFMTA, the division of the SFMTA in charge of parking regulation and control, and traffic engineering.
41. Department Head: The Director of Transportation (chief executive officer) of the San Francisco Municipal Transportation Agency acting directly or through properly authorized representatives, agents, and consultants, limited by the particular duties entrusted to them.

42. Differing Condition (or Differing Site Condition): A condition of the Site that impacts the Work or the Project Schedule and is not described in the Contract Documents or Reference Documents and could not be inferred from diligent review of those documents, could not be discovered by diligent inspection of the Site, or would not reasonably be known or apparent to an experienced contractor. Refer to Section 3.04.
43. Division: A grouping of Sections of the Technical Specifications describing related construction products and activities. Refer to Table of Contents for a listing of Division and Section numbers and titles.
44. Drawings: The official graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, Sections, details, schedules and diagrams pertaining to the Work provided for in the Contract or any construction connected therewith.
45. Effective Date of the Agreement: The date indicated in the Agreement on which it was executed, but if no such date is indicated it shall mean the date on which the Agreement is signed by the last of the two parties to sign, or the date specified in the notice issued by SFMTA to Contractor that the Controller of the City and County of San Francisco certifies the availability of funds, whichever is later.
46. Engineer: A contract manager or Site representative of the San Francisco Municipal Transportation Agency properly authorized by the SFMTA with regards to this Contract. The Engineer will manage this Contract for the SFMTA and be the main point of contact with the Contractor. The Engineer is referenced in some Contract Documents as the "City Representative".
47. Extended Daily Rate for Delay: Rate stated in dollars per Day of delay, which constitutes full and complete compensation for all delay costs compensable in accordance with Section 7.02, including but not limited to: all field and home office supervision, administration and overhead; all idle and extended equipment; insurance and bond costs; overhead direct and indirect costs; impact, acceleration, and all inefficiencies of any nature for prime, all subcontractors and suppliers at every tier, associated with any delay. This is not a Unit Price as defined in the Contract Documents.
48. Final Acceptance: The date of written acceptance of the Work by the SFMTA, issued in accordance with Section 6.22(K) of the San Francisco Administrative Code, when the Contract has been fully performed, including all Items on Punch Lists, and when all contractual and administrative requirements have been fulfilled.
49. Force Account Work: Change Order Work that the City directs the Contractor to perform, and which shall be paid for on the basis of direct costs plus markup on direct costs for overhead and profit, as provided in Section 6.05.
50. Furnish: Purchase and deliver to the Site, including proper storage only; no installation is included. The term "Furnish" also means to Supply and Deliver to the Site.

51. General Equipment: The equipment and tools necessary to perform the Work as listed in the "Labor Surcharge & Equipment Rental Rate Book" published by the California Department of Transportation (available at <http://www.dot.ca.gov/hq/construc/equipmnt.html>) and in the "Rental Rate Blue Book," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. The term "equipment," irrespective of capitalization, when used in reference to tools or equipment used by the Contractor in performance of the Work but not incorporated into the Work shall be synonymous with General Equipment.
52. Incidental Work: Work that may not be specifically called out in the Contract Documents, but which in the ordinary and custom of trade and construction is necessarily connected to, must be performed as part of the Work, or is a prerequisite to the performing the Work that is identified in the Contract Documents. The compensation for Incidental Work is included in the Contract Sum and no additional compensation shall be paid for its performance.
53. Indemnitee: A person or entity to whom Contractor owes defense and indemnity obligations (also variously identified as "indemnified party") as described in Section 3.24, Article 10, and the sections of the Special Provisions concerning insurance, or other part of this Agreement,
54. Install: Apply, connect or erect items for incorporation into the Work; Furnishing or Supplying is not included. The term "Install" also describes operations at the Site, including unpacking, assembly, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations.
55. Item: A separate, distinct portion of the whole Work, which may comprise Material(s), Equipment, Article(s), or process(es).
56. Key Personnel: Employees of Contractor or Subcontractors essential to Contractor's performance of the Work who Contractor shall assign to perform the Work exclusively, unless otherwise authorized by the SFMTA to perform other work.
57. Lower-Tier Subcontractor or Supplier: A person or entity who has a direct contract with a Subcontractor or Supplier, or with another Lower-Tier Subcontractor or Supplier, to perform a portion of the Work at the Site or to Furnish Materials or equipment to be incorporated into the Work by Contractor, Subcontractor or Lower-Tier Subcontractor, as applicable.
58. Mark-up: The charge added to Contractor's costs as part of a Change Order to cover overhead and profit. Refer to Section 6.04.D.
59. Material(s): Machinery, manufactured articles, Materials of construction (fabricated or otherwise), and any other classes of material that are necessary to perform or otherwise are to be furnished in connection with the Work or Contract, except where a more limited meaning is indicated by the context.



60. Milestone: A principal date or time specified in the Contract Documents relating to completion of a specified portion of the Work or other intermediate event prior to Substantial Completion.
61. MUNI or Muni: The San Francisco Municipal Railway and its transit operations, a division of the SFMTA.
62. Night Time Hours: Unless otherwise specified, the hours of 8 PM to 7 AM.
63. Non-conforming Work: Work that is unsatisfactory, faulty, defective, or deficient; Work that does not conform to the requirements of the Contract Documents; Work that does not meet the requirements of inspection, reference standards, tests, or approval referenced in the Contract Documents; or Work that has been damaged prior to Final Acceptance.
64. Notice of Default: Refer to Section 14.01.
65. Notice of Potential Claim: Refer to Section 13.03.
66. Notice to Proceed (NTP): The written notice issued by the City to Contractor authorizing Contractor to proceed with the Work and establishing the date of commencement of the Contract Time, which shall be the date of the Notice unless specifically otherwise stated in the body of the Notice. Refer to Section 1.03.
67. Notice of Substantial Completion: The written notice issued by the City to Contractor acknowledging that the Work is Substantially Complete as determined by the Engineer. Said Notice shall not be considered as Final Acceptance of any portion of the Work or relieve Contractor from completing the Punch List items attached to said Notice within the specified time and in full compliance with the Contract Documents.
68. Option: Refer to "Alternate Bid Item".
69. Owner: Refer to "City".
70. Partial Utilization: Right of the City to use a portion of the Work prior to Substantial Completion of the Work.
71. Plans: Refer to "Drawings".
72. Project: The thing to be constructed, either wholly or partially under this Contract; the end result of the Work.
73. Product: A manufactured Item provided by Contractor that may include assemblies, appurtenances, and installation hardware.
74. Proposal: An offer to perform the Work as required by the Contract Documents submitted by a Bidder to the SFMTA, which shall include quantities and prices listed in the offer. Refer to Schedule of Bid Prices.

75. Proposer: Refer to "Bidder".
76. Proposed Contract Change (PCC): A document prepared by the City requesting a quotation of cost or time from Contractor for additions, deletions or revisions in the Work initiated by the City or Contractor.
77. Provide: Furnish and Install or Supply and Install, complete and in place, at the Site.
78. Punch List: The list of Work to be completed or corrected that the City provides to Contractor, which must be completed or corrected as a condition of Final Acceptance.
79. Reference Documents: Documents identified in the Bid Documents that contain information relevant to the Work or Site and Construction Area that the City believes may be useful to Contractor but that are not part of the Contract. Refer to Division 1.
80. Regular Working Hours: 7:00 a.m. to 5:00 p.m., Monday through Friday, except holidays observed by the City.
81. Request for Information (RFI): A document prepared by Contractor requesting information from the City regarding the Work, Project or Contract Documents.
82. Request for Substitution (RFS): A request from Contractor in accordance with the conditions specified in Division 1 to substitute an Item, type of construction, or process indicated in the Contract Documents with another Item, type of construction or process that shall be equal in all respects to that so indicated. Refer to Section 3.14.
83. RFI Response: A reply or substantive response issued by the SFMTA in response to a Request for Information or Request for Substitution.
84. San Francisco Municipal Transportation Agency (SFMTA or Agency): The department of the City and County of San Francisco that provides public transportation in San Francisco, as established under section 8A of the City Charter.
85. Schedule (Project Schedule): The schedule for the performance of the Work, which is the Baseline Schedule amended during the course of the Project.
86. Schedule of Bid Prices: Contractor's stated prices to perform the Work submitted as part of Contractor's Bid, as amended and approved by the Engineer.
87. Section: A numbered provision of these General Provisions that are subparts of an Article. The term Section as to the Special Provisions refer to those provisions identified by a unique number in the title. A Section in the Technical Specifications is an individually numbered chapter of a Division of the Technical Specifications, as indicated in the title of the Section.

88. SFMTA Board of Directors: The policy body of the SFMTA acting under authority of the City Charter and Codes.
89. Site: Geographical location of the Work as indicated in the Contract Documents; also generally referenced as the job site, work site, work area, location, project site, and construction site, both in capitalized and in lower case lettering.
90. Special Provisions: The part of the Contract Documents titled "Special Provisions" that amends, modifies, or supplements these General Provisions.
91. Specifications: The directions, provisions and requirements of the Contractor to perform the Work that are set out in the Contract Documents.
92. Specialized Equipment: Equipment and tools necessary for the Work listed in Division 1 or the Technical Specifications that are not also listed in the CalTrans "Labor Surcharge & Equipment Rental Rate Book" or in the PRIMEDIA "Rental Rate Blue Book" (that is, are not General Equipment).
93. Subcontractor: A person or entity who has a direct contract with Contractor to perform a portion of the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neuter in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor. The term "Subcontractor" shall also include contracts assigned to Contractor, if so provided in the Supplementary Conditions or provided in the Technical Specifications (Division 1). The term "Subcontractor" whether or not capitalized as used in the Contract Documents may in some contexts refer to any or all subcontractors of every tier.
94. Subsection: A numbered provision that are subparts of a Section.
95. Substantial Completion: The stage in the progress of the Work, when the Work (or a specified part thereof) is sufficiently complete (a.k.a. "Substantially Complete") in accordance with the Contract Documents, including receipt of a temporary certificate of occupancy or operation, if applicable, issued by the agency having jurisdiction over the Work, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended.
96. Supplier: A manufacturer, fabricator, distributor, or vendor having a direct contract with Contractor or with a Subcontractor to furnish Materials or equipment to be incorporated in the Work.
97. Technical Specifications: The directions, provisions, and requirements contained in the documents identified as Divisions 1 through 34, including any plans or Drawings attached or referred to and such additional provisions as may be necessary, pertaining to the performance of the Work herein required and to the furnishing of Material.

98. Term: The period which the Contract is in effect, as measured as between the Effective Date of the Contract and the date of the SFMTA's termination of the Contract or Final Acceptance of the Work.
99. Time: Refer to Contract Time.
100. Total Bid Price: The total sum of prices the Contractor states in the Schedule of Bid Prices submitted with Contractor's Proposal to perform the Work, as approved by the Engineer.
101. Unavoidable Delay: A delay to Contractor's completion of the Work or identified Milestone caused by factors outside Contractor's control and that Contractor could not have reasonably anticipated or avoided by due diligence. Refer to Section 7.02 Delays and Extension of Time.
102. Unilateral Change Order: A written Change Order to Contractor issued by the Engineer after the effective date of the Agreement. Refer to Section 6.03.
103. Work: The performance by Contractor of its responsibilities and obligations as specified or otherwise set forth in the Contract Documents, and the results of Contractor's efforts. Work shall include, but not be limited to, providing all labor, services, Materials, equipment, and documentation required by the Contract Documents. References in the Contract Documents to "Work" may be to Items of Work. .
104. Working Day: Any day of the week except Saturdays, Sundays and holidays observed by the City.

## 1.02 CONDITIONS OF BIDDING AND INTERPRETATION OF PROPOSAL

In submitting its Proposal (Bid), a Bidder agrees to meet and abide by the following requirements and conditions:

### A. Format and Submission Requirements.

1. Required Form. The Proposal for performing the required Work and furnishing the required materials must be made on the blank form of Proposal hereto attached.
2. Submission of Proposal. The Proposal must be enclosed in an opaque envelope addressed to the Agency, sealed and endorsed with the superscription indicated on the cover page of the Specifications. Proposals will be received at the designated location at any time prior to the deadline (date and hour) for submission stated in the Invitation for Proposals.
3. Agency's Right. The Agency reserves the right to waive technical defects in Bids and the bidding process. The Agency reserves the right to determine in its sole discretion whether a Proposal is responsive.

4. Multiple Proposals Prohibited. No person, firm, or corporation shall make, file, or be interested in more than one Proposal for the same Work, except where alternative bids are expressly provided for in the Proposal form. (However a person, firm or corporation that has quoted prices to one Bidder is not thereby disqualified from quoting prices to other Bidders.)
5. Collusion Prohibited. Each Bidder must submit an Affidavit of Noncollusion with its Proposal.

B. Interpretation of Proposal.

1. Bid Form Must Be Completed Fully. Blank spaces in the Proposal Form must be properly filled in, and the provisions and wording of the Proposal must not be changed, supplemented, deleted or omitted, or exceptions stated thereto. Statements or communications accompanying bids and serving to qualify such bids will not be considered in awarding the Contract and are not included in, part of, or evidence of a contract or amendment of contract, and such communications may if deemed improper by the City render a Proposal nonresponsive and disqualify the Bidder.
2. Calculation of Prices for Blank Bid Items. If a Bidder leaves a single blank space on the Bid Form where a price should be listed and the sum of all other Items' prices listed equals the Bid Price, the price bid for the Item left blank shall be zero and Contractor shall provide the Work described in that Item for no additional cost to the City. If a Bidder leaves a single blank space on the Bid Form where a price should be listed and the sum of all other Items' prices listed are less than the Bid Price, the price bid for the Item left blank shall be calculated as difference between the sum of the Item prices listed and the Bid price. If a Bidder leaves two or more spaces in the Bid Form blank where a price should be listed, the Proposal (Bid) will be rejected as non-responsive. An intentional mark in a space for a price in the Bid Form that does not indicate a number shall be interpreted as a "zero" and Contractor shall perform that Work as included in the Bid Price.
3. Conflict. In case of conflict or ambiguity between words and numerals, the words, unless obviously incorrect, will govern.
4. Unit Prices. In unit price bids, if the unit price and the total price stated in the Proposal conflict, or if the amount shown as the total of two or more item prices is not the true sum of the Item prices, it will be presumed that the unit price in the first case, or the item prices in the second case, correctly represent the Bidder's price, and the corrected totals will be used in comparison of bids.
5. Interpretation of Contract. The rules of contract construction stated in this Section 1.02 shall serve to interpret the Proposal prior to Award and to interpret the Contract following Award.

C. Site Investigation and Review of Contract Prior to Bidding.

1. Contractor represents and affirms that prior to submitting its Proposal, Contractor has: (1) carefully and personally investigated the Site, (2) carefully evaluated all existing work in place or past work performed by others for this Project; (3) carefully reviewed the Specifications, Drawings, and Reference Documents, and (4) conducted other such investigation of the contractual requirements and actual Site conditions and requirements of the Work by such means as Contractor deemed appropriate; (5) investigated any unusual difficulties that may be encountered in the performance of the Work to confirm Contractor's ability to perform the Work required; (6) reviewed the character and amounts of all classes of labor, equipment and material necessary to carry out the Work; (7) carefully considered all other circumstances and conditions affecting the cost of the Work. Contractor represents that it has included in its Proposal all expenses it may incur to complete the Work in accordance with the Contract.
  2. Contractor represents and affirms that prior to submitting its Proposal, it carefully reviewed the existing Contract Documents, and that it requested clarification of any provision therein that appeared ambiguous or otherwise unclear in its requirements or intent.
  3. Contractor represents and warrants that: (1) it is fully capable and qualified to perform the Work; (2) all conditions and requirements of this Contract are within reason and can be met by the Contractor; and, (3) it has read, understands and will comply with every provision of the Contract
- D. Contractor's Experience. Contractor affirms and warrants that it has the necessary experience in the types of the Work to be performed, and that it possesses the ability, personnel, equipment and financial resources to perform the Work satisfactorily within the Contract Time specified for the Contract Amount presented in its Proposal. Information regarding Bidder's experience and qualifications must be submitted by the Bidder on forms provided for that purpose. The Bidder must provide complete and comprehensive answers to all questions. The SFMTA will consider such information in determining whether the Bidder is responsible and whether the Proposal is responsive.
- E. Contractor's License. Contractor represents that for a federally funded contract, prior to Award of the Contract, Contractor and each of its Subcontractors was licensed with the Department of Consumer Affairs of the State of California in the class appropriate for the Work contemplated. For a contract that is not federally funded, Contractor represents that at the time it submitted its bid, Contractor and each of its Subcontractors was licensed with the Department of Consumer Affairs of the State of California in the class appropriate for the Work contemplated. Contractor understands and agrees that failure of the Contractor or any of its Subcontractors to possess such current license(s) at the time required (as stated above) will be deemed sufficient cause to determine that Contractor is not responsible (and on that basis reject the Proposal) or to terminate the Contract, if awarded.
- F. Performance of Work By Contractor.
1. By submitting a Bid for the Contract, Contractor certifies that it shall perform on the Site and with its own organization and employees Work equivalent to at least twenty percent (20%) of the total amount of the Work to be performed under the

Contract. Work performed by the Contractor shall be measured by and include costs of labor, labor burden, overhead, equipment and materials directly provided by Contractor and not provided by any Subcontractor or any Supplier. See Section 3.25 for additional requirements.

G. Subcontractor Listing.

1. Contractor represents and affirms that it has in its Proposal listed on the form provided by the City each subcontractor who will perform any portion of the Work in excess of one-half of one percent (.5%) of the Bidder's total bid price, the following information:
    - a. Name of Subcontractor.
    - b. Address of Subcontractor.
    - c. Brief description of the portion of Work to be performed under subcontract.
    - d. Amount to be paid for Subcontractor's work, labor or service.
  2. Contractor shall comply with the requirements of California Public Contract Code section 4104 as to Contractor's division of the Work and assignment of listed Subcontractors. Where two or more Subcontractors are listed to perform the same type of work (by trade), Contractor shall indicate the portions of the Work to be assigned to each.
  3. Contractor shall on request furnish to SFMTA information as to the technical experience, financial status, and adequacy of the plant or equipment of each Subcontractor listed in the its Proposal.
- H. Rejection of Bids. The Agency may reject any and/or all Bids for any reason. The Agency may also reject any portion of any Bid prior to award of the Contract provided such rejection will not affect the determination of the lowest Bid
- I. Surety Bond or Certified Check Must Accompany Proposal. The Proposal shall be accompanied by a corporate surety bond in the form herein set forth, or by a certified check on a solvent bank of the State of California, payable on sight to the City and County of San Francisco, the amount of which shall not be less than 10 percent of the total amount bid for the proposed work or improvement. **THE SFMTA WILL NOT CONSIDER A PROPOSAL UNLESS IT IS ACCOMPANIED BY SUCH BOND OR CHECK.** When Bids have been received and checked by SFMTA, all such bonds or checks will be returned to the respective Bidders, after the Contract has been awarded and the successful Bidder has executed it and filed satisfactory bonds and certificates of insurance as herein specified, or after all Proposals have been rejected if no award is made.
- J. Estimate of the Amount of Work to be Performed. The amount of each class of Work included in a unit price will have been preliminarily estimated by the Agency, as shown on the Schedule Of Bid Prices in the Proposal, and the Agency will use this estimate as a basis for comparing bids. The Agency does not expressly or by implication agree that the actual amount of Work will correspond with the amount shown or estimated,

but reserves the right to increase or decrease the amount of any class or portion of the Work, to leave out an entire Bid Item or Items, or so add work of a class not included in the Proposal, when in its judgment such change is in the best interest of the City. No such change in the Work shall be considered as a waiver of any other condition of the Contract.

- K. **Balanced Proposal.** Contractor represents that its Proposal is not improperly balanced, that is the prices listed for each line item in the Bidder's Proposal accurately represents the Bidder's costs for those bid item(s) with an addition of fair profit.

### 1.03 AWARD, EXECUTION AND CERTIFICATION OF CONTRACT; CONTRACT TIME

In submitting its Proposal, a Bidder agrees to the requirements and conditions stated in this Section 1.03:

- A. **Award of Contract.** The award of the Contract, if it be awarded, will be made by SFMTA pursuant to the provisions of Chapter 6 of the San Francisco Administrative Code as soon as practicable after the review of the proposals.
- B. **Execution of Contract and Effective Date.** Within ten Days from the date that the SFMTA issues notice of award of the Contract, the Bidder to which the SFMTA issues the notice must deliver to SFMTA a fully executed Contract, together with the bonds and insurance certificates and policy endorsements required herein. The Effective Date of the Contract shall be as defined herein, the date specified in a notice issued by the SFMTA to the Contractor that the Controller has certified the funds for the Contract. Said notice of certification of funds may be contained in the Notice to Proceed, in which the City will direct Contractor to commence the Work. The Contract Time commences on the date stated in the NTP when Work must begin. If the NTP provides Contractor discretion as when to begin the Work, then Contract Time shall commence on the date that the Contractor actually begins the Work.
- C. **Insurance and Bond Requirements.** See Article 10 and Special Provisions for insurance and bond coverage and documentation requirements. The selected Bidder (Contractor) shall deliver the required insurance documents to the SFMTA within ten (10) Days from the date that the SFMTA issues notice of Award of the Contract.
- D. **Failure to Execute Contract.** Failure of the selected Bidder to execute the Contract and to submit the required bonds and insurance to the SFMTA within the time limits prescribed in the Special Provisions and Article 10 shall be just cause for the forfeiture of the Bid Bond. If the selected Bidder shall fail or neglect to enter into the Contract and file the required bonds and insurance documents, the Agency shall deposit the Bid Bond with the Treasurer of the City and County for collection and the proceeds thereof shall be retained by the SFMTA as liquidated damages for the failure of such Bidder to enter into such Contract, unless upon recommendation of the Agency, the SFMTA's Board of Directors, by resolution, approves the return of such bond or check.
- E. **Certification of Contract.** The Contract, if awarded, shall not be effective until the Controller has certified that funds for the Contract or a portion thereof specified by the SFMTA are available in the budget or by supplemental appropriation. Refer to Section 1.05.



- F. Failure to Certify Contract. If the Contract is not certified by the Controller (as provided in Section 1.05) within Ninety (90) Days after the award of the Contract by the Agency, the Agency may cancel the award of Contract and the City, including the Agency, its directors, officers, employees, or departments and the SFMTA or any member or agent thereof, shall have no liability by reason of the cancellation of said award of Contract.
- G. Contract Time. Contractor shall complete the Work within the Contract Time stated in the Special Provisions. (The term "time" is synonymous to the Contract Time, when "time" is used to reference to a period in which the Contractor shall perform Work or a specific portion of the Work.) Contract Time commences on the date stated in the Notice to Proceed (NTP) on which the Contractor is directed to commence the Work. If more than one NTP is issued, the first NTP issued shall establish the date for commencement of Contract Time. If the NTP provides Contractor discretion as when to begin the Work, then Contract Time shall commence on the date that the Contractor actually begins the Work, provided that Contractor has given the City the notice required under the Contract.

#### 1.04 CONTRACT DOCUMENTS AND REQUIREMENTS

- A. The Contract Documents establish the rights, obligations and responsibilities of the parties. The Contract Documents listed below form the entire Contract and set out the requirements for the performance of the Work, and consist of all of the following:
1. Form Agreement;
  2. General Provisions;
  3. Special Provisions;
  4. Contract Drawings and Standard Drawings and all revisions thereto;
  5. Drawings and Specifications that may be provided during the course of the Work;
  6. Reply/ies to RFI(s);
  7. Technical Specifications (Divisions 1 through 34);
  8. Geotechnical Baseline Report;
  9. Geotechnical Data Report (and supplemental investigations);
  10. Executed Change Orders including Unilateral Change Orders issued after execution of the Contract;
  11. Payment and Performance Bonds;
  12. Documents specifically incorporated by reference in the Contract;
  13. Addenda to the Contract;
  14. All forms and signature pages submitted by Contractor with its Proposal; and
  15. All provisions of the Bid Documents not in conflict with the foregoing.

See Section 1.09 for order of precedence of Contract Documents.

- B. Where items of Work are performed under subcontracts, each item shall be subject to the requirements of the Contract. But nothing in the Contract Documents shall be construed to create a contractual relationship between the City and a Subcontractor, Supplier, Lower Tier Subcontractor or Supplier of any tier, or any person or entity other than the City and Contractor.
- C. The requirements set out in the Specifications contain information necessary for completion of every part of the Work.
- D. The Work to be completed under this Contract is funded in part by federal grants. Bidders are cautioned to review carefully the federal contract requirements set out in the Special Provisions.

#### 1.05 CERTIFICATION OF FUNDS.

- A. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. The City's obligation hereunder shall not at anytime exceed the amount certified by the Controller for the purpose and period stated in such certification. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Funding for the Contract may be certified in parts, as funds become available. Contractor shall not perform Work in excess of the of the amount certified for the Contract Sum.
- B. The City and its employees and officers are not authorized to offer or promise to Contractor: (1) additional funding for the Contract which would exceed the maximum amount of funding provided for in the Contract for Contractor's performance under the contract or (2) additional funding beyond that certified by the Controller. Additional funding for the Contract in excess of the maximum provided in the Contract and certified by the Controller shall require lawful approval by the Agency and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the Contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

#### **THIS SECTION 1.05 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

#### 1.06 SEVERABILITY

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

## 1.07 MEANING AND INTENT OF CONTRACT DOCUMENTS

- A. **Complete Agreement.** The Contract Documents constitute an integrated contract that contains the full and complete understanding of the parties and supersede any previous agreements or understandings, oral or written, with respect to the subject matter hereof. The Contract Documents may be modified or amended only as specified in Article 6.
- B. **Contract Documents to be Read as a Whole.** The Contract Documents are complementary; what is required by one shall be as binding as if required by all. The Contract Documents are intended to be read together and integrated as a whole, and shall be construed and interpreted in a manner so as to avoid any conflicts to the greatest extent possible. It is expressly agreed by and between Contractor and the City that should there be any conflict between the terms and conditions stated in the Contract Documents and the Contractor's Bid, the Contract Documents shall control and nothing herein shall be considered as an acceptance of any terms of the Bid that conflict with the Contract Documents. The Contract Documents shall be construed in accordance with the laws of the State of California, the City's Charter and Administrative Code, and applicable building codes and statutes of the City and/or County where the Work is to be performed.
- C. **Intent of Contract Documents.** The intent and ultimate purpose of the Contract is to describe the Work to be performed that will result in a functionally complete and operational Project (or specified part thereof) to be constructed in accordance with the Contract Documents. Contractor shall provide all Work, Materials, and equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage that are necessary to properly execute and complete the Work in accordance with the requirements of the Contract Documents for the Contract Sum stated in Contractor's Bid and within the Contract Time stated in the Contract Documents.
- D. **Interpretation of Technical Specifications.** Should any discrepancy appear or any misunderstanding arise as to the requirements or import of anything contained in the Technical Specifications or Drawings, the matter shall be referred to the Engineer, who shall decide the true intent and meaning as construed by him/ her, and his/her decision shall be binding on the Contractor. The Agency will provide suitable instructions or corrections when any such error or omission is discovered.
- E. **Stated Amounts.** In case of conflict between words and numerals stating amounts in the Contract, the words, unless obviously incorrect, will govern.
- F. **Review of Drawings.** The Contractor shall review (check) all Drawings furnished to Contractor immediately upon their receipt and shall promptly notify the Engineer of any discrepancies within the Drawings or in conflicts between the Drawings and the Technical Specifications. Figures shown on Drawings shall in general be followed in preference to scale measurements. Large scale Drawings shall in general govern over small scale Drawings. The Contractor shall compare all Drawings and verify the figures before laying out the Work, and shall be responsible for any errors which might have been avoided by such comparison.

- G. Deviations from Technical Specifications and Drawings. Contractor shall not deviate from the Drawings and the dimensions therein given, whether or not an error is believed to exist, except as specifically directed or approved by the Engineer in writing.
- H. Conflicts and Omissions in Technical Specifications and Drawings. Anything stated in the Technical Specifications and not shown on the Drawings, or shown on the Drawings and not mentioned in the Technical Specifications, shall be of like effect as if shown or mentioned in both. Omissions from the Drawings or Technical Specifications or the misdescription of details of Work that are manifestly necessary to carry out the intent of the Drawings and Technical Specifications or which are customarily performed shall not relieve the Contractor from obligation to perform such omitted or misdescribed details or Work; Contractor shall be perform such Work as if it was fully and correctly set forth and described in the Drawings and Technical Specifications and the performance of such omitted or misdescribed Work shall be Incidental Work and included in the Contract Sum.
- I. Arrangement and Titles of Drawings. Arrangement and titles of Drawings, and organization of the Technical Specifications into Divisions, Articles and Sections in the Contract Documents shall not be construed as segregating the various units of material and labor, dividing the Work among Subcontractors, or establishing the extent of Work to be performed by any trade. Contractor may arrange and delegate its Work in conformance with trade practices, but Contractor shall be responsible for completion of all Work in accordance with the Contract Documents. The City assumes no liability arising out of jurisdictional issues raised or claims advanced by trade organizations or other interested parties based on the arrangement or manner of subdivision of the content of the Drawings and Technical Specifications. The City is not responsible to act as arbiter for or to otherwise establish subcontract limits between portions of the Work.
- J. Common Terms. In interpreting the Contract Documents, words describing Materials or Work with a common or well-known technical or trade meaning, unless otherwise specifically defined in the Contract Documents, shall be construed in accordance with such well-known meaning.
- K. Representative Details in Drawings. A typical or representative detail on the Drawings shall constitute the standard for workmanship and material throughout corresponding parts of the Work. Where necessary, and where reasonably inferable from the Drawings, Contractor shall adapt such representative detail for application to such corresponding parts of the Work. The details of such adaptation shall be submitted to the City for approval. Repetitive features shown in outline on the Drawings shall be in exact accordance with corresponding features completely shown.
- L. Clarification. In the event of a conflict in the Contract Documents regarding the quality of an Item, Material or product, Contractor shall request a clarification from the City as provided in Article 6 before procuring said product or proceeding with the Work affected thereby.

- M. **General Presentation of Drawings.** The layout of mechanical and electrical systems, equipment, fixtures, piping, ductwork, conduit, specialty items, and accessories on the Drawings is shown in diagrams and symbols to illustrate the relationships existing between the parts of the Work; all variations in alignment, elevation, and detail required to avoid interferences and satisfy architectural and structural limitations are not necessarily shown. If rerouting (i.e. relocating a duct, pipe, conduit or similar utilities from the indicated room or space to another room or space to avoid structural interferences) results in a total linear footage which exceeds 125% of the indicated route if the structural interferences did not exist, then Contractor will be compensated for the amount in excess of 125% under the provisions for Change Orders set out in Article 6. Actual layout of the Work: (1) shall be carried out without affecting the architectural and structural integrity and limitations of the Work; (2) shall be performed in such sequence and manner as to avoid conflicts; (3) shall provide clear access to all control points, including valves, strainers, control devices, and specialty items of every nature related to such systems and equipment; shall obtain maximum headroom; and, (4) shall provide adequate clearances as required for operation and maintenance, and as required by the San Francisco Building Code or Code of other public authority having jurisdiction.
- N. **Drawings Not to Scale.** Unless otherwise indicated in the Contract Documents, the Drawings shall not be scaled for dimensions when figured dimensions are given, or when dimensions could be calculated or field measured. When a true dimension cannot be determined from the Drawings or field measurement, and such is required, Contractor shall request promptly the same from the City and shall obtain a Clarification or written interpretation from the City before proceeding with the Work affected thereby.
- O. **Work is Inclusive.** Contractor's performance of the Work in accordance with the requirements provided, described, or referenced in the Contract Documents is included within and incidental to the Work and is compensated within the Contract Sum, and no additional compensation shall be due Contractor for its compliance with the Contract.
- P. **Omitted Words.** In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. In any provision of the Agreement describing an obligation, duty, or performance requirement where the party responsible or obligated or having the duty is not clearly stated, or where the provision is written in the passive voice or third person, it shall be presumed that the Contractor is the responsible and obligated party, unless such result is clearly contrary to the intent and meaning of the provision or would otherwise render an absurd result. Contractor shall seek a Clarification from the Engineer as to any provision of the Contract of which the Contractor questions whether it is the obligated party. The determination of the Engineer as to such questions shall be final and binding.
- Q. **Determinations of the Engineer.** The words "as directed" shall mean directed in writing by the Engineer. The words "approved," "acceptable," "satisfactory," "as permitted" or words of like import, shall mean approved in writing by the Engineer. All

references in the Contract Documents to "satisfactory", "sufficient", "reasonable", "acceptable", "suitable", "proper", "correct", or adjectives of like effect shall be construed to describe an action or determination of the Engineer for the sole purpose of evaluating the completed Work for compliance with the requirements of the Contract Documents and conformance with the intent as expressed in Section 1.07. Such determinations of the Engineer shall be final and conclusive.

- R. Titles. Document, Division, Article, Section, and Subsection titles and references are for the convenience of the reader, but are not operative terms of the Agreement. The term "Section" refers to numbered parts within these General Provisions, that are subparts of an Article, unless otherwise indicated. The term Section as to the Special Provisions and Technical Specifications refer to those parts identified by an unique number in the title.
- S. Conflict between Drawings and Site Conditions. When there is a conflict between existing Site conditions and information indicated on the Drawings, other than Differing Conditions as described in Section 3.04, the existing Site conditions shall govern. If the Engineer determines that the Contractor knew or should have known of such conflicts based on its reasonable investigation of the Site prior to submitting its Bid, Contractor shall perform the Work and adjust to the existing Site conditions at no additional cost to the City.
- T. Site Visit. Prior to start of Work, Contractor and the Engineer shall visit the Site, Construction Area and adjacent properties as necessary to document existing conditions including photographs. Contractor shall document these conditions and shall submit prior to the start of Work a complete report of existing conditions determined by the Site survey as indicated in Division 1 of the Specifications.
- U. Standards to Apply Where Detailed Technical Specifications Are Not Furnished. Wherever in the Technical Specifications, or in any orders given by the Engineer pursuant to or supplementing the Technical Specifications, it is provided that the Contractor shall furnish Materials or manufactured articles or shall do Work for which no detailed Technical Specifications are set forth, the following general requirements shall apply:
1. The Materials or manufactured articles shall be new and of the best grade, in quality and workmanship, obtainable in the market from firms of established good reputation, or, if not ordinarily carried in stock, shall conform to the usual standards for first-class Materials or articles of the kind required, with due consideration of the use to which they are to be put.
  2. Work for which no detailed Technical Specifications are set forth herein shall conform to the usual standards applicable in the San Francisco Bay Area for first-class work of the kind required.

## 1.08 AMENDMENT OF CONTRACT DOCUMENTS

- A. The Contract Documents may be amended after execution of the Agreement to provide for additions, deletions, and revisions in the Work or to modify the terms and

conditions thereof in one of the following ways: (1) Change Order, or (2) Unilateral Change Order. Refer to Article 6.

- B. Change Orders must be in writing and signed by authorized persons. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide Materials, equipment and supplies that would result in Contractor performing services or providing Materials, equipment and supplies that are beyond the scope of the services, Materials, equipment and supplies agreed upon in the Contract or in excess of the Contract Amount certified by the City's Controller, unless said request is memorialized in a written Change Order and approved by the Agency in accordance with applicable City law and SFMTA policies. The City is not required to reimburse Contractor for services, Materials, equipment and supplies that are provided by Contractor which are beyond the scope of the services, Materials, equipment and supplies agreed upon in the Contract and which were not approved by a written modification to the Contract executed by the Agency as required by law and SFMTA policy. The provisions of this Section shall govern the City's obligation and liability to compensate Contractor for work outside the approved scope of the Contract, notwithstanding any other provision of the Contract.
- C. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways: (1) a Clarification, written interpretation or other bulletin issued by the City; or (2) the City's review and acceptance of a shop drawing or sample or other Submittal in accordance with Section 2.01. A Clarification shall not constitute a Contract Modification but is only a statement of the City's interpretation of the Contract Documents upon which the Contractor may rely.

#### 1.09 PRECEDENCE OF CONTRACT DOCUMENTS

- A. In the case of discrepancy or ambiguity in the Contract Documents or conflict among provisions of the Contract Documents, the following order of precedence shall apply to the construction or interpretation of the Contract Documents. The Contract Documents are listed in order of highest (1) to lowest precedence (14):
1. Approved Contract Modifications (Change Orders) in inverse chronological order, and in same order as specific portions they are modifying.
  2. Addenda.
  3. Special Provisions.
  4. Technical Specifications (Division 1).
  5. Technical Specifications (Divisions 2 through 34).
  6. Contract Drawings (specific to the Work).
  7. Standard Drawings (such as DPW standards).
  8. General Provisions.
  9. Geotechnical Baseline Report.
  10. Geotechnical Data Report (and supplemental investigations).

11. Utility Standards.
  14. Industry Standards specifically incorporated (to the extent incorporated into a Contract Specification).
- B. With reference to the Drawings the order of precedence shall be as follows (listed in order of highest to lowest precedence):
1. Written numbers over figures, unless obviously incorrect.
  2. Figured dimensions over scaled dimensions.
  3. Large-scale Drawings over small-scale Drawings.
  4. Schedules on Drawings over conflicting information on other portions of Drawings.
  5. Detail Drawings govern over general Drawings.
  6. Drawing with highest revision number prevails over drawing of same Item with lower revision number.
- C. The City's response to a RFI shall not modify the Contract, but only clarifies the meaning of a Contract Document, upon which Contractor may rely on a City as to the specific matter addressed in the response.

#### 1.10 REUSE OF CONTRACT DOCUMENTS

The Contract Documents were prepared for the Work of this Contract only. No part of the Contract Documents shall be used for any other construction or for any other purpose except with the written consent of the City. The City shall have no liability for any unauthorized use of the Contract Documents, and the risk and liability for such unauthorized use shall be wholly assumed by the user.

#### 1.11 CONTRACTOR REVIEW

Contractor hereby acknowledges that prior to and in preparation for submitting its Proposal, Contractor: (a) read every part of the Contract Documents, including but not limited to the General Provisions, Special Provisions and the Technical Specifications; (b) examined the Drawings; (c) examined the Site and the surrounding Construction Area; and, (d) made all inquiries and investigations necessary to enable the Contractor to understand thoroughly the intent and ultimate purpose of the Contract and the nature of the Work. Based the aforesaid examination and review, Contractor agrees that it will not hereafter make any claim for increase in Contract Sum or other additional compensation, extension of Contract Time, or other allowance of any sort, based upon or arising out of any alleged misunderstanding by Contractor of any part of the Contract Documents.

#### 1.12 NOTICES

- A. Notices to Contractor. The address given in the Contractor's Proposal is hereby designated as the legal address of the Contractor to which the City shall send all required notices, but the Contractor may change said address at any time by providing written notice to the SFMTA. The SFMTA's delivery to the address



provided by Contractor or the depositing in any post office or post office box regularly maintained by the United States Postal Service, in a postpaid wrapper, directed to the Contractor at such address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon the Contractor.

- B. Notices to City. Except as specifically provided herein, all notices to the City concerning this Contract shall be sent to:

Central Subway Project  
Attention: John Funghi, Program Manager  
821 Howard Street, 2nd floor  
San Francisco, CA 94103

with a copy to:

SFMTA  
Attention: Shahnaz Farhangi, Contract Manager  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94102

## **ARTICLE 2 - CITY'S RESPONSIBILITIES AND RIGHTS**

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

- A. Administration. The City will administer the Contract as described in the Contract Documents. (See this Article 2 and Division 1 for administrative requirements and procedures.)
- B. Engineer and Other City Representatives. The Department Head will designate in writing the Engineer (a.k.a. "City Representative"), who will be the authorized representative of the Agency with limited authority to act on behalf of the Agency. The Agency may at any time during the performance of this Contract make changes in the authority of any representative or may designate additional representatives in accordance with SFMTA policies and City Charter and Codes. Any such changes will be communicated to Contractor in writing. Contractor assumes all risks and consequences of performing work, expending funds, or assuming risk pursuant to any order, including but not limited to instruction, direction, interpretation or determination, of anyone not authorized to issue such order.
- C. Review of Submittals. The review, approval, or other action taken by the City or by the City's design consultants upon Contractor's Submittals, such as shop drawings, product data, samples and other submittals, shall apply to general design concepts only, and shall in no way relieve Contractor of its responsibility to notify the City of errors or omissions therein in accordance with Section 3.02, nor from providing all labor, equipment, and Materials in accordance with the requirements of the Contract Documents necessary for the proper execution of the Work. The City will complete such review approval or other action with reasonable promptness provided that the City shall be provided a reasonable time to do so, as provided in the Specifications (Division 1). Costs incurred by Contractor and time required arising from the City's

- review of submittals are within the Contract Sum and Contract Time. Contractor shall be responsible for engineering or other costs necessary to prepare the submittals and obtain approvals required by the Contract Documents from the City or other authorities that have jurisdiction over the Work. The City is not precluded, by virtue of such approvals, from obtaining a credit for construction cost savings that result from allowed concessions in the Work or Materials that reduce the costs or quantities of the Work.
- D. Authority of the Engineer. Except as otherwise expressly provided in the Contract Documents, the Engineer shall decide all questions that may arise as to the quality or acceptability of Materials furnished and Work performed, and as to the manner of performance and rate of progress of the Work; all questions that may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. The Engineer shall have authority to enforce and make effective such decisions and orders that the Contractor fails to carry out promptly (following notice to Contractor and provision of reasonable time to perform).
- E. Access to the Work. During the performance of the Work, the SFMTA and its agents and employees may at any time enter upon the Site, the Work, the shops where any part of the Work may be in preparation, or the factories where any Materials for use in the Work are being or are to be manufactured, and the Contractor shall provide proper and safe facilities for such visits, and shall make arrangements with manufacturers to facilitate inspection of their processes and products to such extent as the City's interests may require. Other contractors performing work for the City may also, for all purposes required by their respective Contracts, enter upon the Work.

## 2.02 INFORMATION AND SERVICES

The City's survey information, such as monuments, property lines, and reports describing physical characteristics, legal limitations and utility locations for the Site are available as Reference Documents. The City's responsibilities with respect to certain inspections, tests, and approvals are set forth in Article 8.

## 2.03 RIGHT TO STOP THE WORK

- A. The City may for good cause order Contractor to suspend the Work, or a portion thereof, until the cause for such order has been eliminated. An order to suspend the Work shall be in writing and signed by the Engineer. Unless otherwise agreed by the City, the Contract Time will not be extended and the Contract Amount will not be adjusted as a result of an order to suspend the Work.
- B. Good cause justifying the City's order to suspend the Work or any portion thereof, includes but is not limited to the following:
1. After receipt of notice from the Engineer to correct Work that does not meet Contract requirements, Contractor fails to correct said Work ; or
  2. After receipt of notice from the Engineer to do so, Contractor fails to carry out Work in accordance with the Contract Documents; or;

3. After receipt of direction from the Engineer, Contractor disregards the authority of the Engineer or other authorized Agency representative; or
  4. After receipt of notice from the Engineer to conform to the requirements of applicable Codes or orders of a public agency with jurisdiction over the Work, Contractor disregards the applicable Codes or orders of such agency; or
  5. After receipt of notice to cure, Contractor violates in any substantive way (which determination shall be within the reasonable discretion of the Engineer) any provisions of the Contract Documents; or
  6. Contractor fails to maintain required bond and insurance coverage and/or fails to maintain required documentation of such coverage on file with the City;
  7. Contractor fails to enforce safe work practices or otherwise fails to maintain safety at the Site or Construction Area;
  8. Public emergency, unsafe work conditions, or severe weather; or
  9. Original Contract Work is proceeding but will be modified by a pending Change Order, which will result in waste if the Work is not stopped.
  10. Contractor assigns unqualified personnel to the Work who the Engineer has determined lack the necessary skills and expertise to competently perform the Work, and Contractor fails to reassign them from the Work when directed to do so by the Engineer.
- C. The right of the City to suspend the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor or other person or entity.
- D. If the Engineer orders a suspension of all Work or a portion of the Work that is a current critical operation because of unsuitable weather or such other conditions as are considered unfavorable to the proper performance of the Work and are entirely outside of the Contractor's control, the delay caused by said suspension shall be considered Unavoidable Delay as defined in Section 7.02.H (Unavoidable Delays).
- E. The City's suspension of Work shall not return control of the Site to the City or otherwise modify the City's delegation of control of the Site to the Contractor, unless the City provides the Contractor written notice explicitly stating that the City has assumed control of the Site.
- F. An order to suspend the Work for any reason shall not relieve Contractor of its responsibilities under the Contract, which include maintaining control, security and safety at the Site and protecting the safety of persons and property on and adjacent to the Work. An order to stop the Work shall not under any circumstances affect the City's delegation to Contractor of control of the Site and control of safety and security on the Site, unless the City in writing expressly relieves Contractor of such responsibilities and delegated control. If the Engineer orders a suspension of Work due to Contractor's failure to observe safety rules or otherwise maintain Site safety, such delay shall not constitute an Unavoidable Delay and shall be charged against the Contractor.

## 2.04 RIGHT TO CARRY OUT THE WORK

In the event that Contractor fails to carry out the Work in accordance with the Contract Documents and fails to promptly correct or prosecute the Work within a 3-Day period following a written notice of a deficiency from the City, or other such period as may be specified elsewhere in the Contract Documents, the City may, without prejudice to other remedies the City may have, correct such deficiencies itself. In such case, the City will deduct all costs of such corrections, including the costs of City staff, consultants and other contractors, from amounts due Contractor. If funds remaining under the Contract are not sufficient to cover the costs of such corrections, Contractor shall reimburse the City the remaining amounts.

## 2.05 RIGHT TO CHANGE, SUSPEND OR DELAY THE WORK

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

## 2.06 AUDIT

- A. The City shall have the right to examine, copy and audit all documents (whether paper, electronic, or other media) and electronically stored information, including, but not limited to, any and all books, estimates, records, contracts, escrow bid documents, bid cost data and documents, equipment cost data and documents, schedules, subcontracts, job cost reports, computations and projections and other data of Contractor, Subcontractors, Lower-Tier Subcontractors and Suppliers related to bidding, negotiating, pricing, or performing the Work covered by: (1) a Change Order Request; (2) Force Account Work; or (3) a Contract Claim or claim submitted under the California Government Code. In the event that Contractor is a joint venture, said right to examine, copy and audit shall apply collaterally and to the same extent to the records of the joint venture sponsor, and those of each individual joint venture member.
- B. Upon written notice by the City, Contractor immediately shall make available at the Site Office or other location directed by the City, at all reasonable times, the Materials noted in the preceding Subsection 2.06 (A) for examination, audit, or reproduction. Said notice shall be in writing, delivered by hand or by certified mail, and shall provide not less than five (5) Days' notice of the examination and/or audit. The City may take possession of the records and materials noted in Subsection 2.06 (A) by reproducing documents for off-Site review or audit. When requested in the City's written notice of examination and/or audit, Contractor shall provide the City

with copies of electronic documents and electronically stored information in a usable format that will allow the City to readily access and analyze all such documents and information. For documents and information that require proprietary software to access and analyze, Contractor shall provide the City with two licenses with maintenance agreements authorizing the City to access and analyze all such documents and information.

- C. The City has sole discretion as to the selection of an examiner or auditor and the scope of the examination or audit.
- D. The City may exercise its audit rights under this Section 2.06 to examine, audit, or reproduce the Materials and records described in this Section from Award until three years after final payment to Contractor under this Contract.
- E. Failure by the Contractor to make available any of the records or materials noted in Subsection 2.06 (A) or refusal to cooperate with a notice of audit shall be deemed a material breach of the Contract and grounds for Termination For Cause.
- F. Contractor shall insert all of the provisions of this Section in all subcontracts of Subcontractors and Lower-Tier Subcontractors and Suppliers for this Contract valued more than Ten Thousand Dollars (\$10,000).

## 2.07 NO WAIVER OF RIGHTS

- A. None of the following shall operate as a waiver of any provision of this Contract or of any power herein reserved by the City or any right of the City to damages herein provided:
  - 1. Inspection by the City or its authorized agents or representatives; or
  - 2. Any order or certificate for payment, or any payment for, or acceptance of the whole or any part of the Work by the City; or
  - 3. Any extension of time; or
  - 4. Any position taken by the City or its authorized agents or representatives.

## 2.08 OWNER'S BENEFICIAL USE

- A. Whenever the Work, or any part thereof, is in a condition suitable for use in the opinion of the City, and the best interest of the City requires such use, the City by written order of the Engineer may take possession of and use the Work, or a part thereof, at no additional cost to the City. The City shall bear all maintenance and repair costs arising from ordinary wear and tear caused by the City's use of the Work or portion thereof. . The City's use of the Work or part thereof shall in no case be construed as constituting completion or acceptance of Non-conforming Work. Unless otherwise provided elsewhere in the Contract Documents, such use shall neither relieve Contractor of any of its responsibilities under the Contract, nor act as a waiver by the City of any of the conditions thereof.
- B. Such Partial Utilization may commence at any time as determined by the City, except that the insurers providing property insurance shall have acknowledged notice thereof and in writing effected any changes in insurance coverage necessitated thereby.

- C. If Contractor believes that any part of the Work of which the City has taken possession is has reached Substantial Completion, Contractor shall notify the City in writing and request a joint inspection of that part of the Work prior to submitting an application for payment and request for certificate of Substantial Completion. Refer to Section 7.01.E.
- D. Partial utilization of the Work shall not constitute acceptance of Non-conforming Work or Work that does not otherwise fully comply with the requirements of the Contract Documents.
- E. Contractor shall perform final cleaning of such partially utilized Work as specified in the Technical Specifications (Division 1) when and as directed by the City.

### **ARTICLE 3 - CONTRACTOR'S RESPONSIBILITIES**

#### **3.01 GENERAL REQUIREMENTS OF CONTRACT**

- A. The Contractor shall furnish all labor, Materials, supplies and equipment, unless otherwise specified herein, and shall do all Work necessary for the performance and completion of the Work, all in accordance with these Contract Documents and to the satisfaction of the Agency. All Work constructed or installed shall be complete and ready for operation and use within the Contract Time and for the Contract Sum.
- B. The Total Bid Price shall include the entire cost of the Work contemplated in the Contract, including all Incidental Work. Any part of the Work not shown on the plans or described in the specifications but which is reasonably implied by either, or is necessary or usual in the performance of such Work, shall be performed by the Contractor as Incidental Work without extra cost to the City, as if fully described in the Specifications and/or shown on the Plans and Drawings.

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

- A. The Contract Documents are not complete in every detail but show the purpose and intent only, and Contractor shall comply with their true intent and meaning, taken as a whole, and Contractor shall not avail itself of any manifest error, omission, discrepancy or ambiguity that may appear in the Contract Documents, instructions or work performed by others.
- B. Contractor shall verify all dimensions and determine all existing conditions that may affect its Work adequately in advance of the Work to allow for resolution of questions without delaying said Work, and Contractor shall be responsible for the accuracy of such dimensions and determinations.
- C. Contractor shall carefully review the appropriate portions of the Contract Documents a minimum of 30 Days in advance of the Item or other portion of Work to be executed for the express purposes of checking for any manifest errors, omissions, conflicts, discrepancies or ambiguities within the Contract Documents and with observable field conditions. Contractor shall not be entitled to any compensation for delays, disruptions, inefficiencies or additional administrative effort caused by Contractor's untimely or

other failure to exercise due diligence in reviewing the Contract Documents and observable field conditions.

- D. Any rule that would require that the General Provisions or Special Provisions to be construed against the drafter of those Provisions, including but not limited to California Civil Code section 1654, shall not apply to this Contract. Ambiguities in the Specifications or the Drawings shall be addressed under the RFI and Change Order processes set out in Article 6.
- E. Contractor shall notify the City in writing promptly as specified in Article 6 upon discovery of errors, omissions, discrepancies or ambiguities, and the City will issue a Clarification or RFI Response as to the procedure to be followed. If Contractor proceeds with any such Work without receiving such Clarification or RFI Response, Contractor shall be responsible for correcting all resulting damage and Non-conforming Work.
- F. Contractor shall be responsible for its costs and the costs of its Subcontractors to review Contract Documents and Site and field conditions and to implement and administer a Request for Information (RFI) system throughout the Contract Time in accordance with the requirements of these General Provisions and Specifications (Division 1). Contractor shall be responsible for costs incurred by the City for the work of the City's consultants and City's administrative efforts in answering Contractor's RFIs where the answer could reasonably be found by reviewing the Contract Documents or inspecting the Site.

### 3.03 SUPERVISION OF THE WORK

- A. Unless there are specific provisions in the Contract Documents to the contrary (which provisions shall be limited to the specific scope or subject thereof), Contractor shall be solely responsible to fully and skillfully supervise and coordinate the Work and control the construction means, methods, techniques, sequences and procedures. Contractor shall be solely responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and for the acts or omissions of Contractor, its Subcontractors, or their agents or employees, or of any other persons performing any portion of the Work. Contractor is solely responsible for maintaining safe conditions on the Site at all times, in accordance with Article 12.
- B. Contractor shall supervise and coordinate the Work of its Subcontractors so that information required by one will be furnished by others involved in time for incorporation of the information into the Work in the proper sequence and without delay of Materials, devices, or provisions for future Work.
- C. Whenever the Work of a Subcontractor is dependent upon the work of other Subcontractors or contractors, then Contractor shall require the Subcontractor to:
  - 1. Coordinate its Work with the dependent work;
  - 2. Provide necessary dependent data, connections, miscellaneous items, and other transitional requirements;
  - 3. Supply and install items to be built into dependent work of others;
  - 4. Make provisions for dependent work of others;

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5. Examine dependent drawings and specifications and submittals;
  6. Examine previously placed dependent work;
  7. Check and verify dependent dimensions of previously placed work;
  8. Notify Contractor of previously placed dependent work or dependent dimensions which are unsatisfactory or will prevent a satisfactory installation of its Work; and
  9. Not proceed with its Work until the unsatisfactory dependent conditions have been corrected.
- D. Contractor shall immediately comply with and perform as directed orders and instructions including, but not limited to, Change Orders, RFI Responses and Clarifications given by the City in accordance with the terms of this Contract, but nothing therein shall be interpreted as a waiver of any obligation of Contractor or otherwise to relieve Contractor of any of its obligations or liabilities under this Contract, or of performing its required detailed direction and supervision, unless such direction is provided in a fully and properly executed Contract Modification.
- E. Contractor shall at all times permit the City, its agents and authorized representatives to: (1) visit and inspect the Work and the Site; (2) inspect and test the Materials at the Site and/or at the place of manufacture and/or preparation ; and, (3) reject Work or Materials that do not conform to the requirements of the Contract Documents. This obligation of Contractor shall include maintaining proper facilities and safe access for such inspection. Where the Contract requires Work to be tested or inspected, it shall not be covered up before inspection and approval by the City as set forth in Article 8. The City's exercise of, or failure to exercise rights to inspect, test, or examine any Materials, equipment and Work, shall in no way relieve the Contractor of its obligations under the Contract, and shall not be construed as constituting or implying acceptance by the Engineer.
- F. Whenever Contractor desires to perform Work outside regular working hours, Contractor shall give notice to the City of such desire and request and obtain the City's written permission at least three (3) Working Days in advance, or such other period as may be specified, except in the event of an emergency prior to performing such Work, so that the City may make the necessary arrangements for testing and inspection.
- G. If Contractor receives a written notice from the City that a Clarification is forthcoming from the City, all Work performed before the receipt of the Clarification shall be coordinated with the City to minimize the effect of the Clarification on Work in progress, to maximize efficiency, and to avoid delay, repetition, or destruction of Work. All affected Work performed after receipt of the City's written notice but before receipt of the Clarification and not so coordinated shall be at Contractor's risk.
- H. During all disputes or disagreements with the City, Contractor shall carry on the Work and adhere to the progress schedule as required by the Contract Documents. Contractor shall not delay or postpone performance of any portion of the Work pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing.



### 3.04 UNFORESEEN OR DIFFERING CONDITIONS

- A. As required by California Public Contract Code section 7104 and this Section, if any of the conditions listed in this Section are encountered at the Site, Contractor shall immediately upon discovery, and before such conditions are disturbed, notify the Engineer in writing of any:
1. Material that Contractor believes may be hazardous waste, as defined in California Health and Safety Code section 25117, that is required to be removed to a Class I, Class II, or Class III disposal Site in accordance with provisions of existing Law.
  2. Subsurface or latent physical conditions at the Site that differ materially from the conditions indicated in Site information (including Reference Documents) made available to Bidders prior to the deadline for submitting bids.
  3. Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character or otherwise similar to the Work provided for in the Contract Documents.
- B. Within 24 hours of discovery of any condition(s) listed in the preceding Subsection A, Contractor shall provide written notice to the Engineer providing the following information concerning such differing Site condition(s): (1) location; (2) nature and extent; (3) anticipated impact the Work and the Project Schedule; (4) recommended methods to overcome such conditions; and (5) reference to the baseline conditions as stated in the Contract Documents that formed the basis of Contractor's expectations regarding the conditions that to be encountered.
- C. Differing Conditions shall not include:
1. All that is indicated in or may reasonably interpreted or inferred from the Contract Documents or Reference Documents;
  2. All that could be seen on Site by diligent observation;
  3. Conditions that are materially similar or characteristically the same as those indicated or described in the Contract Documents or Reference Documents.
  4. Conditions where the location of a building component is in proximity to the location indicated in or reasonably interpreted from the Contract Documents or Reference Documents.
- D. The City will promptly investigate the conditions reported in Contractor's written notice, and will issue a written report of findings to Contractor.
- E. Contractor shall remain responsible for the safety, security, and protection of the Site and affected area of the Work for the duration of the City's investigation of potential Differing Conditions.
- F. As provided in Public Contract Code section 7104 and the process set forth therein, the City will grant a Change Order if the City determines, in its sole discretion, that the conditions reported do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost or time to perform all or part of the Work; the City will grant such Change Order if granted at all, only as provided in Article 6 of these General Provisions, and/or as a Contract Time extension as provided in Article 7 of these General Provisions, as appropriate. If the City determines that a differing

condition exists, Contractor shall promptly submit a Change Order Request, as required by Article 6 of this Contract.

- G. Should Contractor disagree with the City's determination and wishes to pursue an adjustment to Contract Time or Contract Sum, Contractor shall timely submit a written Notice of Potential Claim to the City as provided in Section 13.03 of these General Provisions. Contractor shall in such Notice of Potential Claim include the information required under Section 13.03 and must also identify the Escrow Bid Documents that form the basis of Contractor's Bid to perform the Work affected by the Differing Condition. In the event of such disagreement, Contractor shall proceed with all Work to be performed under the Contract Documents, and shall not be excused from any scheduled completion date provided for by the Contract Documents.
- H. Failure by Contractor to comply with the requirements of this Section concerning the timing and content of any notice of unforeseen or differing site conditions or of any request for adjustment of the Contract Sum and/or Contract Time based on alleged unforeseen or differing site conditions shall be deemed a waiver of any Contract Claim or subsequent proceedings (e.g., Government Code Claims and litigation) by Contractor for adjustments to the Contract Sum or Contract Time arising from or relating to such conditions.

### 3.05 CONTRACTOR'S ORGANIZATION

- A. Contractor's Legal Address. The address given in the Contractor's bid or Proposal is hereby designated as the legal address of the Contractor, but such address may be changed at any time by notice in writing, delivered to SFMTA. The delivering to such legal address or the depositing in any post office or post office box regularly maintained by the United States Postal Service, in a postpaid wrapper, directed to the Contractor at such address, of any drawing, notice, letter or other communication, shall be deemed legal and sufficient service thereof upon the Contractor.
- B. Contractor's Office At the Work. The Contractor shall maintain an office at the site of the Work, which office shall be headquarters of a representative authorized to receive instructions, drawings or other communications from the Engineer. Such instructions, drawings, or other communications given to such representative or delivered at their office in their absence shall be deemed to have been given to the Contractor.
- C. Contractor's Superintendents or Foremen.
  - 1. Contractor shall at all times be represented at the Site by one or more Contractor superintendents or foremen who are competent and who Contractor has been authorized in writing to make decisions and receive and carry out any instructions from the City. Contractor will be held responsible for the faithful compliance with such instructions.
  - 2. Prior to the issuance of Notice to Proceed, Contractor shall inform the City in writing of the names, addresses and telephone numbers of its personnel whom it has authorized to act as its representatives at the Site and who are to be contacted in case of emergencies at the Site during non-working hours, including Saturdays, Sundays and holidays. If Contractor is a joint venture, its designated representative shall represent and receive notice and instructions on behalf of the joint venture and all of its constituent members.
  - 3. The City reserves the right to reject Contractor's project manager, general construction superintendents, project coordinators, foremen or other Key

Personnel at any time for cause.. The City shall be given written notice of and proof of qualifications of any replacement Key Personnel, and the City shall have the right to approve or reject the replacement of Contractor's project manager, superintendents and foremen, and other such Key Personnel. Contractor's failure to obtain City approval of replacement Key Personnel shall not constitute cause for delay. In addition, the City may issue an order to suspend the Work under Section 2.03 until such time as Contractor engages replacement Key Personnel possessing skills and qualifications acceptable to the City.

### 3.06 LABOR, MATERIALS AND EQUIPMENT

- A. The Contractor shall at all times keep on the premises a sufficient amount of Materials and employ a sufficient number of workers to perform the Work at a rate necessary to complete the Work within the Contract Time. Should the Contractor at any time during its performance of the Work refuse, neglect, or be unable to supply sufficient Materials or labor to perform the Work at such necessary rate, then upon receipt of notice to that effect from the Engineer, the Engineer may notify the Contractor to furnish such workers or Materials as the Engineer may consider necessary, and if the Contractor does not comply within three (3) Days of the date of service of such notice, the SFMTA may in its discretion finish said Work at Contractor's sole expense. The costs incurred by the City in such circumstances shall be deducted from any moneys due or which may thereafter become due to Contractor under the Contract, and the City may pay said funds to persons performing the work or supplying the Materials . The amount of any such payments shall be deducted from the fund or appropriation set aside for the purposes of this Contract and charged to the Contractor as if paid to it.
- B. Contractor shall employ only competent and skillful persons to perform the Work, and shall at all times maintain good discipline and order at the Site. Upon the City's notification, Contractor shall discharge from the Work and replace at no additional cost to the City any employee, Subcontractor or Supplier used on the Work who, in the City's sole judgment is: incompetent, unfaithful, obnoxious, or disorderly, or who refuses to carry out the provisions of the Contract, uses threatening or abusive language or actions to any person, displays either by word or action a level of prejudice or insensitivity to the cultural and/or ethnic background of his or her co-workers or persons in the community, or is otherwise unsatisfactory.
- C. In order that the City can determine whether Contractor has complied or is complying with the requirements of the Contract that are not readily enforceable by inspection and test of the Work and Materials, Contractor shall upon request submit properly authenticated documents or other satisfactory proof of its compliance with such requirements.
- D. Before ordering Materials, equipment, or performing Work, Contractor shall verify indicated dimensions in a timely fashion by inspecting the Site and taking field measurements required for the proper fabrication and installation of the Work as specified in Section 3.02. If a discrepancy exists, Contractor shall notify the City immediately and request the City to clarify the intended design. Upon commencement of a particular Item or other portion of the Work, Contractor shall be responsible for dimensions related to such Item or portion of the Work.

- E. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all Materials, equipment, labor, transportation, construction equipment, machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, field offices, storage facilities and incidentals necessary for the performance, testing, start-up and completion of the Work in accordance with the Technical Specifications (Division 1).
- F. In the event that the Technical Specifications (Division 1) do not require that Contractor provide a field office for the Engineer with sanitary facilities, Contractor shall provide adequate separate sanitary facilities at the Site for the Engineer.
- G. The Contractor shall provide at convenient points ample water supply of satisfactory quality for all operations required under this Contract.
- H. No Materials used or article furnished under this Contract shall have been made in a prison or by convict labor
- I. Construction Plant, Equipment and Methods.
  - 1. The construction plant and equipment provided by the Contractor, and its methods and organization for handling the Work, shall be such as will secure a satisfactory quality of Work and rate of progress which, in the opinion of the Engineer, will ensure the completion of the Work within the Contract Time or other specified period.
  - 2. The Contractor shall give the Engineer full information in advance as to Contractor's plan for carrying on any part of the Work. If at any time before the commencement or during the progress of the Work, any part of the Contractor's plant or equipment, or any of its methods of executing the Work, appears to the Engineer to be unsafe or inadequate to insure the required quality or rate of progress of the Work, the Engineer may order the Contractor to increase or improve or otherwise amend Contractor's facilities or methods, and the Contractor shall promptly comply with such orders; but neither compliance with such orders nor failure of the Engineer to issue such orders shall relieve the Contractor from its obligation to secure the degree of safety, the quality of the Work and the rate of progress required by the Contract. The Contractor alone shall be responsible for the safety and adequacy of plant, equipment and means and methods of performing the Work.

### 3.07 PERMITS, FEES, NOTICES, AND CODE REQUIREMENTS

- A. Contractor shall pay all utility charges for temporary connections to the Work.
- B. The Contractor shall procure and pay for any building permits and other permits and licenses, pay all charges and governmental fees (other than permanent utility service connection fees), licenses, and inspections (other than inspections which are to be performed at the expense of the City as provided in Article 8) necessary for proper execution and completion of the Work. The City will reimburse Contractor for reasonable costs incurred for obtaining permits that the Engineer directs Contractor to

procure that are not specified in the Contract Documents to be obtained at Contractor's expense.

- C. Contractor shall give all notices required by applicable Codes, laws, ordinances, rules, regulations and lawful orders of public authorities that relate to performance of the Work, including but not limited to notices required under California Civil Code section 832.
- D. Contractor shall secure all permits and pay all applicable permit fees prior to performing excavation in the public right of way. Contractor shall timely deliver, post and maintain all notices required by such permits. Contractor shall be solely responsible for coordinating and performing its excavation and street restoration operations in accordance with the conditions of such excavation permits and applicable regulations. Should delays or damages be caused by Contractor's failure to coordinate or comply with the conditions of such excavation permits, Contractor shall pay all costs, assessments, fines, and penalties resulting therefrom.
- E. If Contractor observes that portions of the Contract Documents are at variance with any Code or other applicable laws, statutes, ordinances, rules and regulations, Contractor shall promptly notify the City in writing. If the City determines that changes to the Contract Documents are necessary to comply with any Codes, laws, statutes, ordinances, rules or regulations, the City will make necessary changes to the Contract Documents by appropriate Contract modification.
- F. If Contractor performs Work it knows, or reasonably should have known, to be contrary to an applicable Code or other applicable laws, statutes, ordinances, and rules and regulations without written notice to the City, Contractor shall assume responsibility for such Work and shall bear all costs of correction.
- G. Contractor shall keep all permits, an approved set of Drawings and Specifications, and a copy of applicable Codes at the Site Office readily available for inspection during regular working hours throughout its performance of the Work.
- H. Contractor shall coordinate all required inspections and special inspections with the appropriate agency having jurisdiction. Contractor shall notify the Engineer in accordance with Section 8.02.B so that the Engineer, other appropriate City staff and outside agency inspectors will be present at these inspections.
- I. Contractor shall be responsible for preparing and submitting for approval to the appropriate agency having jurisdiction all shop drawings, product data, and manufacturer's certificates as may be required under the conditions of applicable permits.
- J. Contractor shall submit to the Engineer as a condition precedent to Final Acceptance signed permit documents including, but not limited to, job cards, permit applications, permit Drawings, and certificates of occupancy.

### 3.08 RECORD DOCUMENTS

- A. Contractor shall maintain at the Site Office a current record copy of all Contract Documents including, but not limited to, Drawings, Specifications, Addenda, Change Orders, RFIs, Clarifications, and approved shop drawings, samples and other submittals, in good order and clearly marked to record accurately the Work as actually constructed ("as-built"), including changes, adjustments, and other information relative to the Work as actually constructed, all in accordance with the Specifications (collectively "Record Documents"). Additionally, said Record Documents shall conform to the requirements specified in Technical Specifications (Division 1).
- B. Upon request by the Engineer and no less often than monthly, Contractor shall make available Record Documents for the City to review and determine their sufficiency in conforming to the requirements set forth in Subsection 3.08.A. The City shall have the right to withhold 25 percent of progress payments due Contractor until Contractor has complied with Subsection 3.08.A.
- C. Record documents shall be available for inspection by the City at all times and shall be delivered to the City prior to Substantial Completion.

### 3.09 CONTRACTOR'S DAILY REPORT

- A. Each Day that it performs Work, the Contractor shall complete, and submit to the City on the following Day Work is performed, consecutively numbered daily construction reports in accordance with Technical Specifications (Division 1). In addition, when performing Force Account Work, Contractor shall complete and submit to the City detailed written daily Force Account Work reports as provided under Section 6.05.

### 3.10 COST DATA

- A. The Contractor shall give the Engineer, at his/her request at any time, full and correct information as to the number of persons employed in connection with each subdivision and task of the Work, the classification and rate of pay of each person, the cost to the Contractor of each class of Materials, General Equipment, Specialized Equipment, tools and appliances used by Contractor in the Work, and the amount of each class of Materials used in each subdivision of the Work.

### 3.11 PROGRESS AND SUBMITTAL SCHEDULES

- A. At the Pre-Construction Conference, Contractor shall submit to the City for review a 120-Day Plan of Operation as required by Technical Specifications (Division 1).
- B. In accordance with Division 1, Contractor shall submit to the City for review the following schedules:
  1. A cost-loaded Baseline Schedule for the Work which shall use, unless otherwise specified in Technical Specifications (Division 1), the critical path method (CPM), activity on arrow or precedence diagramming method, as outlined in the Associated General Contractors publication "The Use of CPM in Construction," and shall indicate the times (number of Days or dates) for starting and completing the

various stages of the Work, including all Milestones and special constraints specified in the Contract Documents, unless other scheduling requirements are provided in Technical Specifications (Division 1) or the Special Provisions; and

2. A submittal log, coordinated with the progress schedule in accordance with the requirements of Technical Specifications (Division 1), listing all submittals required by the Contract, applicable specification references, and submittal due dates.
- C. Unless specified elsewhere in the Contract Documents, within 10 Days after submittal, the City and Contractor shall meet to review for acceptability to the City the submitted Baseline Schedules and other materials required under Section 3.11.B. Contractor shall have an additional 5 Days to make corrections and adjustments and to complete and resubmit the schedule.
- D. No progress payments will be made to Contractor unless and until the Baseline Schedule is submitted and accepted by the City.
- E. Contractor shall adhere to the Baseline Schedule accepted by the City in accordance with Subsection 3.11.B. The Baseline Schedule may be adjusted during the performance of the Work, in accordance with the Contract Documents. Contractor shall submit to the City for acceptance proposed revisions or adjustments in the Baseline Schedule. Proposed adjustments in the Baseline Schedule that will change the Contract Time shall be submitted to the City as a Change Order Request in accordance with Sections 6.02 and 7.02.
- F. The City's approval of Contractor's Baseline Schedule and Submittal Schedule will not relieve Contractor of its sole responsibility for the sequencing, scheduling, performance or rate of progress of the Work, will not impose liability on the City for those aspects of the Work, and will not directly or indirectly waive any City right under the Contract.
- G. Contractor shall submit a monthly progress schedule update (as an update to the Baseline Schedule) as a condition precedent to making an Application for Payment as set forth in Article 9 and Technical Specifications (Division 1). All updates shall be submitted to the City for the City's acceptance; if rejected, Contractor shall correct and resubmit updates to the satisfaction of the City before a pending application for payment is approved.
1. Each progress schedule update shall show all Work activities including those already completed and those of changed Work from the update of the previous month.
  2. Each progress schedule update shall accurately reflect "as-built" information by accurately indicating the dates Contractor started and completed activities and Items, and the actual status (percentage of completion) of activities and Items.
  3. Contractor's submission of progress schedule updates, reports, curves or narratives, and the City's approval of such progress schedule updates, reports, curves or narratives, shall not amend or modify, in any way, the Contract Time or Milestone dates or modify or limit, in any way, Contractor's obligations under this Contract.

4. Contractor waives any claim to extension of Contract Time based on changed Work, if Contractor has failed to meet its obligations to provide monthly schedule updates as specified herein.
- H. Early Completion Schedule: If Contractor submits a Baseline Schedule that shows a completion time that is earlier than the Contract Time, the "float" shall belong to the Project. Contractor shall not be entitled to a compensable time extension for any Change Order or Unilateral Change Order that causes the early completion date to be extended within the "float".

### 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- A. Shop drawings, product data and samples shall be furnished to the Engineer for approval, and any Work for which submittals are required, which is executed before such approval, shall be at the Contractor's risk.
- B. The review and approval of said submittals by the Engineer or City design consultants will refer to general design only, and will not relieve the Contractor from responsibility for errors contained therein, or from the necessity of furnishing such Work and Materials as may be required by the plans and Technical Specifications, or otherwise necessary for the proper execution of the Work intended, whether or not indicated on the submittals when approved.
- C. Shop drawings, product data, samples and similar submittals are not Contract Documents. The purpose of a submittal is to demonstrate (for those portions of the Work for which submittals are required) the manner (i.e., means and methods) that Contractor proposes to perform the Work to conform to the information given and the design concept expressed in the Contract Documents. Review or approval of Contractor's submittals by the City is subject to the requirements stated in Section 2.01.C.
- D. Contractor shall review, approve, stamp, and submit to the City as specified in Technical Specifications (Division 1) all shop drawings, product data, samples and similar submittals required by the Contract Documents in accordance with the accepted submittal schedule. Submittals made by Contractor that are not required by the Contract Documents may be returned without action.
- E. By approving and submitting shop drawings, product data, samples and other submittals, Contractor represents that it has determined and verified Materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals for conformance to the Contract Documents and for coordination of the Work indicated in the submittal and with adjacent work.
- F. Contractor shall not perform any portion of the Work that requires City review of shop drawings, product data, samples or other submittals until the City has reviewed and approved the submittal and returned it to Contractor. Work shall conform to submittals approved by the City. Contractor is solely responsible for delays or disruptions to the Work caused by inadequate, uncoordinated, incorrect or late submittals.



- G. Where a shop drawing or sample is required by the Contract Documents, related Work performed prior to the City's review and approval of the pertinent submittal shall be at the sole expense, risk and responsibility of Contractor.
- H. Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the City's approval of shop drawings, product data, samples and other submittals unless Contractor has specifically informed the City in writing, attached to the submittal, of such deviation at the time of submittal and the City has given written approval to the specific deviation.
  - 1. Deviations shall also be indicated clearly and boldly on such shop drawing, product data, sample or related submittal.
  - 2. For resubmitted shop drawings, product data, samples and other submittals, Contractor shall direct specific attention, by written attachment, to revisions other than those requested by the City on previous submittals.
- I. Contractor shall not be relieved of responsibility for errors or omissions in shop drawings, product data, samples or similar submittals by the City's approval thereof.

### 3.13 MATERIALS HANDLING

All Materials and equipment shall be delivered, handled, stored, installed, and protected to prevent damage in accordance with best current practice in the industry, in accordance with manufacturers' specifications and recommendations, and in accordance with the requirements of the Contract Documents. Contractor shall store packaged Materials and equipment at or off the Site in their original and sealed containers, marked to identify the Item, its brand and manufacturer, until the Item is ready for use. Contractor shall deliver Materials and equipment in ample time to facilitate inspection and tests prior to installation. Materials shall be so stored as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, they shall be placed on wooden platforms or other hard, clean surfaces and not on the ground. They shall be placed under cover when necessary to protect them from dirt, dust, wet, or corrosion, or as directed by the Engineer. Stored Materials shall be so located as to facilitate prompt inspection. Unless specifically authorized as a compensable expense, Contractor may at its own expense store Materials off of the Site. Contractor shall ensure that Materials stored off the Site are covered at all times under applicable insurance. Contractor shall be solely responsible for replacement of lost, stolen or damaged Materials that are not covered under Builder's Risk or other insurance.

### 3.14 SUBSTITUTIONS

- A. Whenever in the Technical Specifications, any article, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for the purpose of facilitating description of the material and process desired, and shall be deemed to be followed by the words "or equivalent," and the Contractor may offer any substitute material or process which it considers equal in every respect to that so designated, and if the material, or process,

offered by the Contractor is, in the opinion of the Engineer, equal in every respect to that so designated, its use will be approved.

- B. Consistent with Section 3400 of the California Public Contract Code and as specified in Technical Specifications (Division 1), as early as practicable, but no more than 60 Days from the Effective Date, the Contractor shall submit to the Engineer a completed Request for Substitution listing all Materials and equipment that Contractor proposes to furnish or use as an equal to any that are designated by proprietary names or proprietary descriptions. Contractor shall furnish such detailed information in regard to each proposed substitute in time to permit the City's proper investigation without delay to the Work. Such information shall include descriptive matter, Drawings, catalogue references, cuts, samples, results of tests, and other appropriate matter such as will enable the Engineer to determine to his/her satisfaction whether the substitute is acceptable. No approval of such a substitution shall be valid unless given in writing and signed by the Engineer. Costs incurred by Contractor for Work performed and Materials procured for the substitution prior to the Engineer's approval of the substitution shall be at the Contractor's risk. Failure to submit said Request for Substitution form within the period specified will be deemed adequate and reasonable grounds for the City to refuse any subsequent proposed substitutions.

### 3.15 USE OF SITE

- A. Site Boundaries. Contractor shall confine its operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents. Contractor shall not unreasonably encumber the Site or the Construction Area with Materials or equipment. Notwithstanding the designation of Contract limits or the indication of temporary fences or barricades, the provisions of the Contract Documents governing certain portions or phases of the Work may require that certain operations be carried out beyond such designated limits. In all cases, the Work shall be constructed solely within the locations and boundaries described in the Contract Documents. Contractor shall coordinate with the City to obtain in advance of said operations all necessary permits, rights-of-way, or easements, and shall give proper notice thereof to owners of affected properties in accordance with California Civil Code section 832. Contractor shall obtain all such permits, rights-of-way and easements at no cost to the City.
- B. Water Removal. Pumping, draining and control of surface and ground water and excavating or other earthwork shall be carried out so as to avoid endangering the Work or adjacent facility or property, or interrupting, restricting or otherwise infringing or interfering with the use thereof. Contractor shall conform to the Code and applicable laws and regulations and shall obtain all permits necessary to perform grading or excavation or dispose of surface or ground water or excavated Materials at the Site.
- C. Loading. Contractor shall not load nor permit any part of any structure to be loaded in a manner that will endanger the structure, nor shall Contractor subject part of the Work or adjacent property to stresses or pressures that will endanger it. Contractor shall ensure that trucks delivering or removing Materials, equipment or debris to and from the Site comply with all applicable weight and traffic restrictions.

- D. **Damage Claims.** Contractor shall assume full responsibility and shall promptly settle all claims for damage to areas within the Contract limits, or to adjoining areas or the owners or occupants thereof, resulting from the performance of the Work.
- E. **Temporary Structures.** The Contractor shall erect at its own expense, and remove upon the completion of the Work or as ordered by the Engineer, such temporary storage sheds, office and other temporary facilities as are necessary for the Work. The location and size of such facilities are subject to the Engineer's approval.
- F. **Cooperation with Other Contractors.** The Contractor shall cooperate with all other contractors and workers who may be employed by the City on any work in the vicinity of the Work to be done under this Contract, and it shall so conduct its operations as not to interfere with the work of such contractors or workers. Contractor shall promptly make good, at its own expense, any injury or damage that may be sustained by the work of other contractors or employees of the City by its interference or failure to cooperate with such other contractors or employees of City. Any difference or conflict that may arise between the Contractor and other contractors or between the Contractor and the workers of the City in regard to their work shall be adjusted and determined by the Engineer. The Contractor shall suspend any part of the Work or shall carry on the same in such manner as may be prescribed by the Engineer, when such suspension or performance is necessary to facilitate the work of other contractors or workers.
- G. **Sanitary Rules.**
1. All portions of the Work and the Site shall be maintained at all times in neat, clean and sanitary condition.
  2. Toilets shall be furnished by the Contractor for the use of employees on the Work, and their use shall be strictly enforced. All toilets shall have facilities for hand washing. They shall be properly secluded from public observation, and shall be located, constructed and maintained subject to the approval of the Engineer.
  3. Contractor shall strictly obey and enforce all regulations of legally constituted public authority and all regulations prescribed by the Engineer in regard to sanitation, and shall summarily dismiss, and not again engage, except with the consent of the Engineer, any employees willfully violating sanitary regulations.
- H. **Utilities.** The Contractor shall conduct operations so as to avoid possible interruptions of sewer, water, gas, electric or other utility service to the adjacent residents or property owners. If the Contract requires such services to be interrupted, the Contractor shall make all necessary arrangements prior to such interruption as will ensure the least inconvenience to the residents and prompt restoration of service, all in accordance with such conditions as may be prescribed by the proper authorities or the Engineer. It shall be the sole responsibility of the Contractor to determine the exact location of any sewer, water, gas, electric, or other utility. If any such utility becomes injured due to any operation of the Contractor, it shall be immediately repaired at Contractor's expense. Should the Contractor, in the opinion of the Engineer, fail to comply with any of such requirements as herein stipulated, the Engineer may cause

the necessary Work to be done, and the cost thereof shall be chargeable to, and shall be paid by, the Contractor.

- I. First Aid. At its own expense, the Contractor shall provide approved "First Aid" cabinets close to all points where persons are at work, or wherever directed, and keep such cabinets stocked with the proper dressings, antiseptics, and other necessary medical provisions, and shall promptly transport sick or injured employees from the Site to points at which they may receive proper care.
- J. Use of Roadways and Walkways. The Contractor shall not unnecessarily interfere with the use of any roadway, walkway or other facility for vehicular or pedestrian traffic, by any party entitled to use it. Wherever such interference becomes necessary and no satisfactory detour route exists, the Contractor shall, before beginning the interference, provide a satisfactory detour, temporary bridge, or other proper facility for traffic to pass around or over the interference, and shall maintain it in satisfactory condition as long as the interference continues, all without direct payment unless otherwise expressly stipulated in the Special Provisions.
- K. Preconstruction Documentation. The Contractor shall video the project area prior to commencement of Work, at least across city roads and property to record and document the existing conditions.
- L. Parking. Construction Materials and contractors' vehicles shall not be parked on the street except those actively involved in the construction of the Day.
- M. Tree Pruning. All tree pruning shall be carried out by a company having in full time employment an Arborist certified by the Western Chapter, International Society of Arboriculturists.

### 3.16 ACCESS TO WORK

- A. During the performance of the Work, the City and its authorized representatives or other persons deemed necessary by any of them acting within the scope of the duties entrusted to them (including but not limited to construction management personnel and design consultants), may at any time, and for any purpose, enter upon the Work, the shops where any part of such Work may be in preparation, the facilities where any part of the Work may be in storage, or the factories where any Materials for use in the Work are being, or are to be, manufactured. Contractor shall not require City personnel or City consultants performing necessary project-related functions on behalf of the City to sign visitor hold harmless agreements or similar agreements requiring the signatory to defend, hold harmless and/or indemnify Contractor for claims arising out of or relating to the Work, the Project, or the Site.
- B. Whenever required by the Engineer, the Contractor shall furnish all tools, labor and Materials necessary to make an examination or tests of any Work under this Contract that may be completed or in progress, even to the extent of uncovering or taking down portions of finished Work. Should such Work be found or have previously been found to be unsatisfactory or should the Contractor not have given the Engineer proper access or notice that the Work was ready for inspection, the cost of making such re-examination or re-test and or reconstruction shall be borne by the Contractor.

Otherwise, the examination or tests will be paid for by SFMTA in the manner herein prescribed for paying for alterations, modifications and Additional Work.

### 3.17 CUTTING AND PATCHING

- A. Contractor shall be responsible for performing, in accordance with the requirements of the Technical Specifications, all cutting, fitting, and patching of the Work that may be required to make all parts fit together or to receive the work of other contractors shown on, or reasonably implied by, the Contract Documents for the completed Work.
- B. Contractor shall not damage or endanger a portion of the Work, or fully or other partially completed construction of the City or separate contractors, by excavation or by cutting, patching or otherwise altering such construction. Contractor shall not cut or otherwise alter such construction by the City or a separate contractor except with written consent of the City. Contractor shall not withhold its consent for the City to cut or otherwise alter the Work.
- C. As more specifically described in the Specifications, Contractor shall confer, consult and cooperate with any contractor that performs follow-on work, that builds upon, or integrates with the Work performed by the Contractor under this Contract, so that the contractor performing such follow-on work may understand the means, methods, approach of Contractor, and so that the follow-on contractor can devise the best means of preserving, avoiding damage to and/or integrating with Contractor's Work.

### 3.18 ILLUMINATION OF WORK

When any work is performed at night or where daylight is shut off or obscured, the Contractor shall provide artificial light sufficient to prosecute the Work properly and to permit thorough inspection.

### 3.19 CLEANING UP AND REMOVING DEBRIS

- A. The Contractor shall keep the Site and surrounding area, including public areas adjacent to the Site, roadways, temporary pedestrian walkways and sidewalks, in a neat and clean condition, free from accumulation of excess materials, rubbish, graffiti, and debris. Contractor shall dispose of dirt, construction debris, garbage, and excavated materials in a satisfactory and lawful manner, as directed by the Engineer and as required by the Specifications so that there shall at no time be any unsightly or obnoxious accumulation of dirt or debris at the Site or surrounding area.
  - 1. On the completion of any portion of the Work, at Substantial Completion, and as a condition of Final Acceptance, the Contractor shall: (1) promptly remove all equipment, temporary structures and surplus Materials of construction not to be used at or near the same location in the later performance of other portions of the Work; (2) properly dispose of all debris resulting from the Work; and, (3) shall perform final cleaning as specified in accordance with the requirements of the Specifications to leave the Site in a neat and clean condition satisfactory to the Engineer.

2. Contractor's removal and disposal of such excess Materials, garbage, excavated Materials, and other debris shall conform to requirements of the Contract and applicable Codes, laws and regulations.
- B. If Contractor fails to comply with the requirements of this Section or to clean up as otherwise provided in the Contract Documents, the City may do so and deduct the cost of such cleanup from the amount due Contractor under the Contract.
  - C. Contractor shall sort and segregate construction debris and garbage for recycling as required by the San Francisco Environment Code and the Specifications.
  - D. As more specifically provided in the Technical Specifications, Contractor shall salvage and deliver to the City removed equipment, appurtenances and other Materials that are not reused in the Work and indicated by the Engineer to be salvaged. Contractor shall remove from the Site as its property and dispose of in a legal manner all other equipment, appurtenances and other Materials to be removed and not indicated to be salvaged or otherwise claimed by the City.

### 3.20 DELEGATION OF CONTROL OF THE SITE; PROTECTION OF WORK, PERSONS AND PROPERTY AGAINST DAMAGE

- A. The City delegates and Contractor accepts such delegation of the control of the Site and responsibility for the safety of persons and property on and adjacent to the Site, commencing at NTP and continuing to Final Acceptance, unless the City earlier relieves Contractor of that delegation by written notice as provided in this Contract. To the maximum extent allowed by law, and except to the extent that any of loss, injury or damage is due to the City's sole negligence or intentional wrongful acts, Contractor shall be solely liable for any loss, injury or damage caused by or arising from the Work. See also Section 3.24 (Indemnification). Contractor may only be relieved of its responsibility for safety or persons and property affected by the Work on express written order of the Engineer. A directive of the Engineer, City safety consultant, or regulatory enforcement agency concerning Site safety, unsafe conditions, or compliance with safety orders and Codes shall not alter the Contractor's responsibility for the Site and shall not relieve Contractor of its responsibility for the safety of persons and property affected by the Work.
- B. Commencing at NTP, Contractor shall protect the Work and Materials from damage due to the nature of the Work, the action of the elements, the carelessness of other contractors, or any other cause whatsoever, until the completion and the City's Final Acceptance of the Work. Should any damage to the Work or Materials occur, the Contractor shall repair it at its own expense to the satisfaction of the Engineer. Neither the City nor any of its agents assume any responsibility for seeking indemnity or collecting damages or other restitution from any person or persons causing damage to the Work or the Materials.
- C. The Contractor shall bear all responsibility for damage to adjoining work, property, or structures, and for injury to its employees and to any other persons whatever, or to livestock, arising from or in consequence of the performance of this Contract, and shall furnish guards, fences, warning signs, walks and lights and take all other necessary precautions to prevent such damage or injury. All safety orders, rules and

recommendations of the Division of Industrial Safety of California applicable to the Work shall be obeyed and enforced by the Contractor.

- D. As much of the moneys due and retained by the City under this Contract as may be considered necessary by the Engineer may, at his or her option, remain unpaid until all suits or claims for damages as described above shall have been settled and satisfactory evidence to that effect furnished.

### 3.21 INTELLECTUAL PROPERTY; ROYALTIES AND PATENTS

- A. Contractor shall be responsible at all times for compliance with applicable patents, copyrights, trademarks, and/or other intellectual property rights held by others encompassing, in whole or in part, any invention, design, process, product, device, equipment, software, tools, Material, article or arrangement used, directly or indirectly, in the performance of the Work or incorporated into the Work.
- B. Contractor shall pay, and include in the Contract Sum, all royalties and license fees and assume all costs incident to the use in the performance of the Work or the incorporation into the Work of any invention, design, process, product, device, equipment, software, tools, Material, article or arrangement that is the subject of a patent right, copyright, trademark, and/or other intellectual property right held by others.
- C. To the fullest extent permitted by law, Contractor shall save, defend, hold harmless, and fully indemnify the City (and all its officers and employees connected with the Project, other parties designated as Indemnitees, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them) from all damages, claims for damage, costs, or expenses in law or equity, including attorney's fees and costs, that may at any time arise or be set up for any infringement or unauthorized use of any patent right, copyright, trademark, trade name, service mark, trade secret, or other intellectual property or other proprietary right claims by any person in consequence of the use by the City, or any of its officers, agents, members, employees, authorized representatives, or any other person deemed necessary by any of them acting within the scope of the duties entrusted to them, of any invention, design, process, product, device, equipment, software, tools, material, article or arrangement used in the performance of the Contract or incorporated into the Work, and of which Contractor is not the patentee, copyright holder, or assignee, or does not have the lawful right to sell the same. This indemnity provision is in addition to all other hold harmless and indemnity clauses in the Contract Documents, and shall survive Final Acceptance and termination of the Contract. The notice, cooperation and control of defense provisions set forth in Section 3.24 (Indemnification) shall apply to this intellectual property indemnity.
- D. If the City is enjoined from the operation or use of the Work, or any part thereof, as a result of any suits or claims for infringement or unauthorized use of a patent right, copyright, trademark, and/or other intellectual property right, Contractor shall, at its sole expense and at no cost to the City, take reasonable steps to procure the right to operate or use the Work. If Contractor cannot so procure such right within a reasonable time, Contractor shall promptly, at no cost to the City: (1) modify the Work,

consistent with applicable requirements of the Contract Documents, so as to avoid infringement of any such intellectual property right; or, (2) replace said Item or Work with an equivalent Item or Work that meets applicable requirements of the Contract Documents and that does not infringe or violate any such intellectual property right.

- E. Subsections 3.21.C and 3.21.D, above, shall not apply to any suit, claim or proceeding based on infringement or violation of a patent right, copyright, trademark, and/or other intellectual property right that: (1) arises from modifications to the Work by the City or its agents after acceptance and Final Completion of the Work; (2) arises from any unauthorized modifications to the Work by the City or its agents; or (3) arises from the combination of Work with any products or services not provided or recommended by Contractor where the combination is the basis for infringement.
- F. Infringement of intellectual property or other proprietary rights in the performance of this Contract, if determined by a court of competent jurisdiction not to be the basis for indemnification under the law, shall nevertheless be considered a material breach of the Contract, in which case Contractor's defense and indemnification of the City, acquisition of the rights to utilize the aforesaid intellectual property for the Work, or provision of a non-infringing equivalent Item or Work, as provided in this Section 3.21, shall be the sole cure and remedy for said breach.

### 3.22 WARRANTY

- A. Contractor warrants and guarantees to the City that Materials and equipment provided under the Contract will be first-class in quality and new (unless the City in writing authorizes the use of specifically identified used equipment), and if no quality is specified, then the Materials and equipment shall be of commercial grade, suitable for heavy public use in facilities of similar size and complexity, that the Work will be free from defects and of the quality specified, and that the Work will conform to the requirements of the Contract Documents. Contractor additionally warrants manufacturers' product warranties as may be required by the Contract Documents.
- B. Contractor further agrees and warrants that if any part of the Work furnished and installed or constructed by Contractor shall fail to fulfill any of the requirements of the Contract, Contractor will, without delay, with the least practicable inconvenience to the City, and without further cost to the City, repair or replace defective or otherwise unsatisfactory Materials furnished by Contractor or reperform or repair or otherwise remedy defective Work. Should the Contractor fail to act promptly in accordance with these requirements, or should the City determine that the Item or Work is vital to Agency's operations and therefore require repairs or replacements to be made before the Contractor can be notified or can respond to notification, the Contractor hereby agrees that the City shall have the right to make the necessary repairs or replacements at the expense of the Contractor.
- C. Contractor's warranty excludes damage or defects caused by abuse, modifications to equipment by the City and not authorized by Contractor, improper or insufficient maintenance, improper operation, and normal wear and tear. Testing shall not be construed as operation.



- D. Contractor shall deliver product-warranties and guarantees that conform to the requirements of the Specifications to the Engineer prior to and as a condition of Substantial Completion. The effective date of said warranties and guarantees shall commence on the date that the SFMTA determines the Work has reached Substantial Completion.
- E. The warranty provisions of this Section are separate and additional to the provisions for correction of Non-conforming Work as specified in Article 8.
- F. The guarantees and warranties described in this Section are covenants, the performance of which shall be secured by the Performance Bond. (See Section 10.02).

### 3.23 TAXES

- A. **General Obligation.** Contractor shall be responsible for paying all taxes applicable during the performance of the Work or portions thereof, whether or not said taxes were in effect on or increased after the date of Bid opening. The Contractor shall pay all sales taxes levied on Materials, supplies, or equipment purchased by Contractor and used in the performance of or incorporated into the Work, and all other taxes properly assessed against its equipment or other property used in connection with the Work.
- B. **Included in Bid Price.** The cost of all taxes is included in the Bid Price submitted by Contractor with its Bid and the Contract Sum, as that amount may be amended by Change Order(s).

### 3.24 INDEMNIFICATION AND DEFENSE OF CLAIMS

- A. Contractor's Obligation to Defend and Indemnify. To the fullest extent provided by law and consistent with California Civil Code section 2782, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other parties designated as Indemnitees in the Special Provisions (See SP -7, Insurance Requirements), and all of their officers, agents, members, employees, authorized representatives, (or any other persons deemed necessary by any of them to the extent that any claims against such other persons arise from or are related to Contractor's Work or obligations under this Contract), from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees, directly or indirectly arising out of, connected with or resulting from the performance of the Work. This indemnification shall not be valid in the instance where the loss is caused by the sole negligence or willful misconduct tort of any Indemnitee. Contractor's obligations under this Section apply regardless of whether or not such claim, suit, action, loss or liability was caused in part or contributed to by an Indemnitee. However, without affecting the rights of the City under any provision of this Contract, Contractor shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City (or any other Indemnitee), provided such active negligence is determined by agreement between Contractor and City or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of Contractor will be for that entire portion or percentage of liability not attributable to the active negligence of City.

1. Contractor's defense, indemnity and hold harmless obligations shall extend to City Consultants (e.g., design professionals and construction managers) providing services under separate written agreement with the City covering any portion of the Project and designated as additional insureds in Article "Insurance for Others" of Document 00805.
2. Contractor's defense, indemnity and hold harmless obligations shall not extend to the liability of a City Consultant (including but not limited to architects and engineers) designated as an Indemnitee or its agents, employees or subconsultants arising out of, connected with or resulting from such Indemnitee's own active negligence, errors or omissions or from such Indemnitee's preparation or approval of maps, plans, opinions, reports, surveys, Change Orders, designs or Specifications, or such Indemnitee's issuance of or failure to issue directions or instructions provided that such issuance or failure to issue is the primary cause of the damage or injury.

B. Special Damages.

1. The City, its boards and commissions, and all of their officers, agents, members, employees, and authorized representatives shall have no liability to Contractor for any type of special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising under or related to this Contract or under any cause of action related to the subject matter of this Contract, whether in contract, tort (including negligence), strict liability, or otherwise. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension, cancellation or rescission of the Work or this Contract, negligence or strict liability by the City, its boards and commissions, and their representatives, consultants or agents.
2. Contractor shall be responsible for special, consequential or incidental damages incurred by the City arising out of or connected with Contractor's performance of the Work.

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

D. Defense of Claims. On request, Contractor shall defend any action, claim or suit asserting a claim covered by the indemnity requirements stated in this Agreement. Contractor shall pay all costs, including reasonable attorney's fees, that may be incurred by the City and all indemnified parties (the "Indemnitees") specified in Subsection 3.24.A and in the Insurance Requirements of the Contract Documents.

- E. Notice of Claim. The City and other Indemnitees will provide Contractor with prompt written notice after receipt of any claim, action or demand ("claim") made by a third party against the City and/or other Indemnitee, provided, however, that no delay on the part of the City or other Indemnitee shall relieve Contractor from any obligation hereunder. Contractor shall obtain the City's and other Indemnitees' consent for Contractor's choice of counsel and such consent shall not be unreasonably withheld or delayed, such that any responsive pleadings may be timely filed, and in every instance, within thirty (30) days after City or other indemnified party has given notice of the claim, and provided further that City and other Indemnitees may retain separate co-counsel at their expense and participate in the defense of the claim. If the interests of Contractor and the City and/or other Indemnitee conflict, and counsel chosen by Contractor cannot, in City's or other Indemnitee's reasonable opinion, adequately simultaneously represent Contractor and City and/or other Indemnitee, then the cost and expense associated with the City and/or other Indemnitee retaining separate co-counsel shall be borne by Contractor, otherwise, the cost and expense of separate co-counsel retained by City and/or other Indemnitee shall be borne by the City or other Indemnitee, as applicable. Subject to Contractor's obligation to reimburse City's and other Indemnitee's costs of same, City and other Indemnitees will assist Contractor in the defense of the claim by providing cooperation, information and witnesses, as needed to the extent there is not material conflict of interest.
1. So long as Contractor has assumed and is conducting the defense of a claim in accordance with the preceding Subsection, (a) Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the claim without the prior written consent of City or other affected Indemnitee, as applicable, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and/or other Indemnitee in connection with such judgment or settlement and Contractor obtains the full and complete release of City and/or other Indemnitees ; and (ii) City and/or other Indemnitees will not consent to the entry of judgment or enter into any settlement without the prior written consent of Contractor.
  2. If Contractor does not assume and conduct the defense of claim as required above, (a) City or other Indemnitee may defend against, and consent to, the entry of any judgment or enter into any settlement with respect to the claim in any manner it reasonably may deem appropriate, and City or other Indemnitee need not consult with, or obtain any consent from, Contractor, and (b) Contractor will remain responsible for any losses City and/or other Indemnitee may suffer resulting from, arising out of, relating to, in the nature of, of caused by the claim to the fullest extent provided in this Section 3.24.
- F. Insurance Does Not Limit Liability. Contractor's liability shall not be limited to the amount of insurance coverages required under this Agreement.
- G. Resolution of Claim by City. In the event that Contractor and its insurance carrier(s) in bad faith refuse to negotiate and compensate a third party or parties for property damage or personal injuries which arise out of Contractor's performance of the Work, the City shall have the right to estimate the amount of damages and to pay the same, and the amount so paid shall be deducted from the amount due Contractor under this

Contract, or an appropriate amount shall be retained by the City until all suits or claims for said damages shall have been settled or otherwise disposed of and satisfactory evidence to that effect shall have been furnished to the City.

- H Liability of JV Partners. If Contractor is a joint venture partnership, the requirements of this Article shall apply jointly and severally to each joint venture partner.
- I. Surviving Obligations. The defense and indemnity obligations of this Agreement shall survive Final Completion, termination of the Contract, and Final Acceptance of the Work. Contractor's defense and indemnity obligations shall extend to claims arising after the Work is completed and accepted if the claims are directly related to alleged acts or omissions by Contractor that occurred during its performance of the Work.

### 3.25 PERCENTAGE OF WORK TO BE PERFORMED BY CONTRACTOR

- A. By submitting a Bid for the Contract, Contractor certifies that it shall perform on the Site, and with its own organization, Work equivalent to at least twenty percent (20%) of the total amount of the Work to be performed under the Contract. Work performed by the Contractor shall be measured by and include costs of labor (wages and benefits), overhead, equipment and Materials directly provided by Contractor and not provided by any Subcontractor or any Supplier.
- B. If, during the progress of the Work hereunder, the Contractor requests a reduction in such percentage and the Engineer determines in his sole discretion that Contractor (1) has shown good cause for such reduction, (2) that Contractor's request is not made in bad faith and, (3) such reduction would be at no cost and would not otherwise disadvantage the City, then the percentage of the Work required to be performed by the Contractor may be reduced. Any reduction in the percentage of Work that Contractor must perform shall be effected by executed Change Order and must comply with the requirements of applicable law, including but not limited to the California Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq.
- C. If the SFMTA determines that Contractor at the time it submitted its Bid did not intend to perform at least 20 percent of the Work, or that its request to reduce that requirement is otherwise in bad faith, Contractor shall be deemed to be in material breach of this Contract.

### 3.26 WORK PERFORMED OUTSIDE SAN FRANCISCO

- A. When performing Work outside the boundaries of the City and County of San Francisco, Contractor shall abide by all applicable rules, regulations and ordinances of the local authorities where the Work is performed, including but not limited to rules and regulations governing loading, hauling, and, disposal of excavated materials, soil and construction debris.

### 3.27 DESIGN PROFESSIONAL SERVICES

- A. In the event that the Contract Documents require that a certain Item be designed by Contractor, Contractor shall, consistent with applicable licensing laws, retain the

services of such Design Professional(s) who shall be licensed in the State of California and shall have the necessary expertise and experience required to prepare such design documents to permit Contractor to complete such Item in accordance with the requirements of the Contract Documents. Nothing in the Contract Documents is intended to create a legal or contractual relationship between the City and any Design Professional.

- B. Such Design Professional(s) shall be vested with the authority to act on behalf of Contractor in all matters relating to design or supervision of construction of that Item of which he or she is responsible. Contractor's Design Professional(s) may be replaced only with the approval of the City.
- C. Contractor shall require its Design Professional(s) to be responsible without limitation for the following:
  - 1. Consult with authorized employees, agents and representatives of the City relative to the City's requirements for the design and construction of the Project.
  - 2. Review the Contract Documents and Reference Documents and studies of the proposed Site and other data furnished to the Design Professional and advise the City whether such data is sufficient for purposes of design, and whether additional data is necessary before the Design Professional can proceed.
  - 3. Provide additional surveys and information related to the Site, which the Design Professional deems necessary for the performance of the Work.
  - 4. Provide design-related services for preparing construction documents necessary for Contractor to construct the Item and coordinate it with and integrate it to the Work in conformance with the intent and performance requirements of the Contract Documents.
    - a. Construction documents shall be submitted to the City for review and acceptance for conformance with the intent and performance requirements of the Contract Documents prior to Contractor initiating permit or construction activities based on such construction documents.
    - b. The City's approval or acceptance of construction documents submitted by Contractor shall not be interpreted as a release of Contractor from its responsibilities to coordinate and integrate the various portions of the design and to provide accurate and complete design documents to fulfill the intent and requirements of the Contract Documents.
  - 5. Provide to the City design data, technical criteria and assistance necessary for supporting, protecting, and incorporating into the Project the Item designed by the Design Professional.
  - 6. Comply with requirements of codes, regulations, and written interpretation thereof, existing at the time permit application(s) are made with the local authorities having jurisdiction over the Project.

7. Provide Design Professional's professional liability policies and coverages as required in the Special Provisions and Document 00805 (if applicable).
  8. Provide assistance in connection with the start-up, testing, refining and adjusting of equipment or system designed by the Design Professional for incorporation into the Project.
  9. Assist the City in training staff and developing systems and procedures for operation and maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.
- D. Contractor shall be wholly responsible for all engineering and design of such Item regardless of any contribution, input, review, participation, or coordination that the City, its agents, members, employees, and authorized representatives may have provided to Contractor or its Design Professional.
- E. Contractor agrees to release the City, its agents, members, employees, and authorized representatives from liability or losses directly or indirectly arising out of, connected with, or resulting from such Items engineered or designed by Contractor or its Design Professional or furnished and installed by Contractor, and Contractor shall bear the costs of corrective and replacement work necessary to complete the Items in accordance with the requirements of the Contract Documents.

## ARTICLE 4 - SUBCONTRACTORS

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

- A. Unless otherwise specifically provided by the Contract Documents, subcontracting shall be in accordance with applicable Codes governing subcontracting, including but not limited to San Francisco Administrative Code section 6.21 and the California Subletting and Subcontracting Fair Practices Act (California Public Contract Code section 4100 et. seq.), and the policies of the SFMTA, and if applicable, federal laws and requirements. Administrative Code section 6.21 shall govern the designation of, failure to specify, and substitution of Subcontractors and the assignment, transfer and performance of subcontracts.
- B. Contractor shall not employ a Subcontractor, Supplier or other person or entity that the City has determined is unqualified to perform the Work or is otherwise not responsible. The City may give written notice of such determination prior to Award or at any time during the term of the Agreement , and upon receipt thereof Contractor shall provide a replacement with a qualified subcontractor. The City shall have the right of approval of such replacement and shall not be responsible for added costs to Contractor, if any, of terminating and replacing the unqualified or not responsible subcontractor. Contractor shall not utilize any subcontractor, supplier or other person or entity that is debarred by any public agency that is a recipient of federal Department of Transportation capital grant funds. If so directed by the City, Contractor shall at its own expense replace such subcontractor, supplier or other person or entity with a qualified substitute approved by the Agency.

- C. Upon request by the Engineer, the Contractor shall immediately provide the Agency a copy of each Contract that it proposes to enter or has entered into for subcontracting or assigning any portion of the Work, with such information as will enable the Agency to determine the responsibility and standing of the proposed Subcontractor or assignee. No subcontract or assignment will be approved unless this Contract is incorporated by reference therein. The City will not approve a subcontract or assignment unless the City determines that the proposed Subcontractor or assignee is in every way reliable and responsible and fully able to perform and complete the portion of the Work covered by the proposed subcontract or assignment in accordance with the Contract Documents. Should the Agency determine that the Subcontractor proposed for any portion of the Work does not have the necessary experience or financial qualifications to perform said portion of the Work, or that the proposed Subcontractor does not and cannot obtain in due time the necessary equipment to perform said portion of the Work, or is otherwise unacceptable, the Contractor shall substitute an acceptable Subcontractor or shall itself perform said Work (without subcontracting), subject to the Agency's approval.
- D. The Contractor shall not sublet or subcontract any portion of the Work in excess of one-half of one percent (.5%) of the total original bid when no Subcontractor was designated in the original Proposal to perform that Work, nor shall any Subcontractor assign or transfer its subcontract or permit the same to be performed by any other contractor, except with the written approval of the Agency, subject to the provisions of the California Subletting and Subcontracting Fair Practices Act and the applicable provisions of the San Francisco Administrative Code.
- E. No subcontract or assignment shall relieve the Contractor or its sureties of any liabilities or obligations under this Contract.
- F. No assignment by the Contractor of this Contract or any part thereof, or of the funds to be received there under by the Contractor, will be recognized unless the Agency has approved such assignment and the surety has been given due notice of such assignment in writing.
- G. The Agency will not approve an assignment of subcontracted Work, unless the instrument of assignment contains a clause to the effect that it is agreed that the funds to be paid the assignee under the assignment are subject to a stop-notice or other prior lien for services rendered or Materials supplied for the performance of the Work (prior to such assignment) called for in said Contract in favor of all persons, firms, or corporations rendering such services or supplying such Materials.

#### 4.02 SUBCONTRACTUAL RELATIONS

- A. Contractor shall have an appropriate written agreement specifically binding each Subcontractor or Supplier to Contractor by the applicable terms and conditions of this Contract, in the same manner as Contractor is bound to the City. Each subcontract agreement shall preserve all rights of the City with regards to the Work to be performed by the Subcontractor or Materials to be provided by the Supplier. All Subcontractors and Suppliers shall have similar agreements with Lower-Tier Subcontractors and Lower-Tier Suppliers. All Subcontractors and Suppliers shall be given copies of the Contract Documents to which the Subcontractor or Supplier will be

bound, and upon written request of the Subcontractor or Supplier, shall have identified written terms and conditions of their proposed subcontract agreement that vary from the Contract Documents. Subcontractors and Suppliers shall fulfill the same requirements toward their respective proposed Lower-Tier Subcontractors and Lower-Tier Suppliers.

- B. All Subcontractors performing Work under the Contract will be considered as employees of the Contractor and will be held responsible for their work, which shall be subject to the provisions of the Contract Documents.

#### 4.03 ASSIGNABILITY OF SUBCONTRACTS

- A. All subcontracts of Subcontractors and Lower-Tier Subcontractors and purchase agreements of Suppliers and Lower-Tier Suppliers shall provide that they are freely assignable to the City under any of the following conditions:
  - 1. the City terminates the Contract for cause under provisions of Article 14;
  - 2. the City requests such assignment;
  - 3. the surety providing the performance bond for the Work fails to timely fulfill its obligations under the Performance Bond.
- B. The City will notify the Subcontractors, Lower-Tier Subcontractors and Suppliers in writing of those agreements the City wishes to accept.

#### 4.04 SUCCESSORS AND ASSIGNS

- A. Contractor shall constantly give its personal attention to the faithful performance of the Work. Contractor shall keep the Work under its personal control and shall not assign the Work or any part of it by power of attorney or otherwise, nor subcontract the whole or any part of the Work, except as provided in the Contract.
- B. All transactions with Subcontractors will be made through Contractor, and no Subcontractor shall relieve Contractor of any of its liabilities or obligations under the Contract.
- C. When a Subcontractor fails to prosecute a portion of the Work in a manner satisfactory to the City, Contractor shall remove such Subcontractor immediately upon written request of the City, and shall request approval of a replacement Subcontractor to perform the Work, in accordance with San Francisco Administrative Code section 6.21(a)(9) and the Subletting and Subcontracting Fair Practices Act, California Public Contract Code section 4100 et seq., at no added cost to the City.
- D. The Contract shall not be assigned except upon the approval of the SFMTA, in accordance with applicable law and the Agency's policies and procedures.



**ARTICLE 5 - CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS****5.01 CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS**

- A. Should the Contract Documents indicate that construction work, or work of any other nature, will or is being performed by other contractors or other forces within or adjacent to the limits of the Work, or is underway at the time the Work was advertised for Bids, Contractor shall cooperate with all such contractors or forces to avoid delay or hindrance to their work. The cost of such cooperation is Incidental Work, and no direct or additional payment will be made therefor.
- B. The City reserves the right to perform other or additional work within or adjacent to the limits of Work at any time during the Contract by the use of other forces or contractors. If the performance of such other or additional work that is not indicated in the Contract Documents or is underway at the time of advertising for Bids for this Contract materially increases Contractor's costs, then Contractor may submit a Change Order Request therefor in accordance with Section 6.02.
- C. If the City gives Contractor written notice to vacate a location so that other work may be performed by other forces or contractors at the location(s) where Contractor is already performing Work, Contractor shall promptly suspend Work at that location and clean up and demobilize its operations from the location to the extent necessary as determined by the City to allow the other forces or contractors to perform their work. Contractor shall provide the Engineer written notice when cleanup and demobilization has been completed. The Engineer will issue to the other forces or contractors a notice to proceed with their work. After the date of said notice to proceed, Contractor shall allow proper and safe access to the Work at the subject location, and shall schedule and coordinate its Work with the other contractors' work.
- D. If Contractor requires access to a location where another contractor is performing work, Contractor shall request such access in writing from the Engineer. The Engineer will provide written notice to Contractor when the work of other forces or contractors at the subject location is completed, and upon receipt of such notification, Contractor shall have full access and shall commence or resume its operations in that location.
- E. If Contractor believes it is entitled to a Contract Time extension caused by its obligations under Subsections 5.01.C or 5.01.D above, it shall comply with the notification requirements of Section 7.02.
- F. When it is necessary for Contractor and another contractor or utility owner to work in the same location at the Site, each shall assume the following mutual responsibilities for the benefit of the other at no additional cost to the City:
  - 1. The Contractor and the other contractor(s) shall execute identical agreements mutually indemnifying each other from any loss, damage, or injury that may be incurred as a result of the performance of work by the other while both are performing work in the same location; and
  - 2. each shall add the other as an additional insured under their respective liability policies; and

3. the party seeking to use portions of the construction site of the other party to perform its work shall pay all direct costs incurred by the other party to accommodate its operations.
- G. The City shall not be a party to any agreement between Contractor and other contractors or utility owners, and the City shall have no liability to any party with regard to the lack of coordination and cooperation or the inability of a party to execute specific work requirements. Contractor agrees to defend, indemnify and hold the City harmless for all claims or losses that Contractor or the other contractors may incur as a result of their inability to successfully coordinate or obtain timely access to work areas under the control of another party.

## 5.02 COORDINATION

- A. Cooperation. Where multiple contractors are working at the Site, Contractor shall afford other contractors and the City reasonable opportunity for storage of Materials at the Site, shall ensure that the execution of the Work properly coordinates with work of such contractors, and shall cooperate with such other contractors to facilitate the progress of the Work in such a manner as the Engineer may direct.
- B. Notice of Conflicting Conditions. Where Contractor's Work is adjacent to or placed on top of that of another contractor, Contractor shall examine the adjacent work and substrate and report in writing to the City any visible defect or condition preventing the proper execution or increased cost of its Contract. If Contractor proceeds without giving notice, it shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own Work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. This provision shall be included in any and all other contracts or subcontracts for Work to be performed where such a conflict could exist. The foregoing does not apply to latent defects (that is, defects not observable by reasonable inspection by Contractor) in another contractor's work. Contractor shall report to the City latent defects in another contractor's work promptly upon discovery.
- C. Other Contractor's Failure to Cooperate. Contractor shall notify the City promptly in writing when another contractor working at the Site fails to coordinate its work with the Work of this Contract or otherwise cooperate, as the Engineer may direct.
- D. Conflict. Any difference or conflict that may arise between Contractor and the other contractors or City forces in regard to their work shall be adjusted as determined by the City.
- E. Documents. If so directed by the City, Contractor shall prepare coordination drawings as necessary to satisfactorily coordinate and interface the Work of its Contract with the work of all other contractors thereby avoiding conflicts that may otherwise arise. If such coordination drawings are not required elsewhere in the Contract Documents, then Contractor may submit a Change Order Request as provided under Section 6.02 for additional costs incurred by it in preparation of such coordination drawings.
- F. Contractor Conference. At any time during the progress of the Work, the City may, by providing reasonable notice, require Contractor to attend any conference of any or all

of contractors engaged in the Project or otherwise performing work at or adjacent to the Site.

- G. Non-cooperation. If the City determines that Contractor is failing to coordinate its Work with the work of other contractors as directed by the Engineer, the City may upon 72-hour written notice:
1. Withhold any payment otherwise owed under the Contract until Contractor complies with the City's directions; or
  2. Direct others to perform portions of the Contract and charge the cost of Work against the Contract Sum; or
  3. Terminate any and all portions of the Contract for Contractor's failure to perform in accordance with the Contract.

### 5.03 CLEAN UP RESPONSIBILITIES

- A. Contractor and other contractors shall each bear responsibility for maintaining their respective work areas on the Site, Construction Area and adjoining areas impacted by their Work free of waste, rubbish, graffiti, debris, or excess materials and equipment at all times.
- B. In the event of conflicts between Contractor and other contractors concerning clean up, the City, after issuing 24 hour written notice to the contractors involved, may itself clean up the premises and deduct from the amount due Contractor under the Contract the costs of said clean up in such amount as the City determines equitable.

## ARTICLE 6 - CLARIFICATIONS AND CHANGES IN THE WORK

### 6.01 GENERAL REQUIREMENTS

- A. The City may, at any time between the Notice to Proceed and Final Acceptance, on its own initiative or in a RFI Response, and without notice to Contractor's surety, may issue Clarifications of Specifications and make other Clarifications to Contract requirements. Such Clarifications shall be binding on Contractor, and Contractor shall promptly comply with said Clarifications.
- B. The City may, at any time between the Notice to Proceed and Final Acceptance, on its own initiative and without notice to Contractor's surety, may order additions, deletions, or revisions in the Work and Materials by Change Order or Unilateral Change Order. Contractor shall promptly comply with such orders and proceed with the Work as directed by the Engineer and required by the Contract Documents.
- C. If changes directed by City to the Specifications are of such a nature as to increase or decrease the cost of any part of the Work, the price fixed in the Contract shall be increased or decreased by such amount as the Contractor and the Agency may agree upon as the reasonable and proper allowance for the increase or decrease in the cost of the Work.

- D. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time if Contractor performs work that is not required by the Contract Documents.
- E. The procedures set forth in this Article 6 are intended to ensure that when Clarifications and Changes in the Work are proposed, the Contractor provides the City with its best estimate of the costs and impacts associated with each Clarification and/or Change, so that the City may evaluate each potential Change and proceed on an informed basis. The City also intends that the Clarification and Change Order procedures (including the use of Unilateral Change Orders and Force Account) facilitate payment to the Contractor of additional, undisputed amounts of compensation for changed Work, if such compensation is due Contractor.
- F. Should the City's Clarification or other written directive, in the opinion of Contractor, exceed the requirements of the Contract Documents, Contractor shall submit a written Change Order Request (COR) to the City within seven (7) Days of receipt of the Clarification, and before proceeding with the Work thereof, as provided in Section 6.02, below. The City shall be relieved of any claim for compensation if said written COR is not received prior to Contractor beginning the affected Work. The Contractor waives its rights to request or claim for additional compensation or extension of time due to the Clarification or written directive if the Contractor fails to submit a written COR to the Engineer within the said 7 Days. The City shall not be under any obligation to respond to any statement or attempt made by the Contractor to reserve or reactivate such rights in the future.
- G. Failure by the Contractor to comply with the procedures of this Article, including the failure to provide timely, sufficient information and/or documentation to the City at the time of any Clarification or Change Order Request, shall constitute a waiver of any subsequent claim by the Contractor arising out of such Clarification or Change Order.

#### 6.02 CHANGE ORDERS (CONTRACT MODIFICATIONS)

- A. Initiation. Either the City or Contractor may initiate Change Orders. The City may initiate Change Orders by issuing a Proposed Contract Change (PCC), which will include a detailed description of the proposed additions, deletions or revisions with supplementary or revised Drawings and Technical Specifications. A PCC from the City will request from Contractor a quotation of cost and time for completing the proposed modifications. Contractor may initiate Change Orders by submitting a Change Order Request (COR) in accordance with the requirements of this Article 6. After the City issues a PCC, Contractor shall not submit a COR for the same Work addressed in the City's PCC.
- B. PCC Quotation Time Period. Contractor shall submit a PCC cost proposal and PCC time extension proposal, in accordance with Section 6.04 (Cost of the Work) and Section 7.02 (Contract Time Extension), if applicable, to the City within 14 days after receipt of a PCC. If Contractor fails to submit a PCC cost Proposal and/or PCC time extension Proposal within the 14-Day period, or if the price or time extension cannot be agreed upon, the City may either (1) direct Contractor to proceed with the Work by issuing a Unilateral Change Order (in accordance with Section 6.03) instructing Contractor to proceed with the PCC Work based on the City's estimate of the cost

and/or time extension, or (2) direct Contractor to proceed on a Force Account basis (in accordance with Section 6.05).

- C. PCC and COR Cost Proposal Requirements. Contractor shall furnish to the Engineer two (2) copies of its PCC or COR cost Proposal, which shall include a full and complete itemized breakdown of labor, material, equipment, taxes, insurance, bonds, and markup for overhead and profit for both addition and deletions on a form supplied by the City. The same shall be required for Subcontractor and Lower-Tier Subcontractor cost proposals, which shall be furnished on the same form as required for Contractor. A COR shall reference all related progress schedule activities, Specification Sections and Drawings directly pertaining to COR. In addition, Contractor shall provide the following documentation to the Engineer in support of Contractor and subcontractor cost proposals:
1. Material quantities and type of products;
  2. Labor breakdown by trade classification, wage rates, and estimated hours;
  3. Equipment breakdown by make, type, size, rental rates, and equipment hours;
  4. Taxes, insurance and bonds.
- D. SFMTA Review of COR. The Engineer will review the validity of Contractor's written COR and within 30 Days after receipt of the COR will render his/her determination in writing. Contractor shall diligently proceed with the Work in accordance with the Engineer's determination, which shall be final and binding on the City and Contractor unless Contractor submits a written Notice of Potential Claim as specified under Section 13.03.
- E. Execution of Change Orders (Contract Modification): When the SFMTA and Contractor agree on the total cost and time of a COR or PCC, the City will prepare for signatures of Parties a Change Order to formally implement the changed Work. Only a properly approved Contract Modification or Unilateral Change Order may amend the Contract, No oral instructions of any person whomsoever or other written documents, including but not limited to emails, letters or meeting minutes, shall in any manner or degree modify or otherwise affect the terms of this Contract. Contractor assumes all risks and responsibility for acting on oral instructions or any document other than a fully executed Contract Modification or Unilateral Change Order.
- F. Release of Claims. Contractor agrees that a negotiated Change Order fully compensates Contractor for all costs, expenses, and time impacts of every nature arising out of or related to the Work to be performed under that Change Order. Contractor agrees to release the City from any and all claims for additional compensation or time relating to the changes in the Work described in said Change Order(s) and agrees that it shall not seek additional time or compensation for said Work. Said agreed waiver is included in the exchanged consideration of such Change Order and is memorialized in the paragraph set out in Subsection 6.02.F.5, below. In addition, the following terms and conditions shall apply to all Change Orders:
1. If Contractor fails to provide timely notice and documentation of delay to the City as required by Article 7, which shall be sufficient to establish that Contractor is entitled

to a time extension pursuant to Section 7.02, Contractor shall execute the Change Order without being granted any extension of time.

2. It shall be a material breach of the Contract for Contractor to refuse to execute a Change Order and thereby delay the Project based on Contractor's failure to demonstrate that Contractor is entitled to a time extension to perform the Work under said Change Order.
3. Contractor shall not condition or qualify any Change Order with a reservation of rights to seek at a later time additional compensation (Contract Amount) or Contract Time for the changed Work addressed in the Change Order, and such reservation even if not noticed and rejected by the Engineer shall have be severed and have no effect or authority .
4. All delays caused to the progress schedule as a result of Contractor's failure to execute timely a Change Order in accordance with this Article 6 shall be the responsibility of Contractor and shall subject Contractor to liability for liquidated damages as specified in the Special Provisions, Liquidated Damages.
5. Each executed Change Order shall include the following paragraph:  
 "The compensation (time and cost) set forth in this Change Order comprises the total compensation due to Contractor, all Subcontractors and all Suppliers, as a result of the events giving rise to the Change Order and for the Work described in this Change Order, including any impact on unchanged Work. The execution of this Change Order constitutes an accord and satisfaction of any claim for additional compensation or time for the work described in this Change Order, and Contractor on behalf of itself, and all Subcontractors and Suppliers, specifically waives and releases any and all claims rights or interest, including but not limited to legal and equitable claims for direct, indirect, and overhead costs, delay, impact, disruption, loss of efficiency or other extraordinary or consequential costs arising from or related to the Work described in the Change Order, without exception or reservation of any kind.

- G. Warranty Not Impacted. Change Orders issued under this Article 6 or extensions of Contract Time made necessary by reason thereof shall not in any way release any guarantees or warranties given by Contractor under the provisions of the Contract Documents, nor shall they relieve or release Contractor's sureties of bonds executed under such provisions. All guarantees and warranties to the Work set out in the Contract apply equally to Work performed under any Change Order. The sureties, in executing such bonds, shall be deemed to have expressly agreed to any such Change Orders and to any extension of Contract Time made by reason thereof. Contractor shall be solely responsible for giving notice of any change affecting the Work, Contract Sum or Contract Time that is required to be given to its sureties by the provisions of any bond. Contractor shall be liable for any damages to the City arising from Contractor's failure to provide such required notice to the surety.

### 6.03 UNILATERAL CHANGE ORDERS

- A. General. When due to the requirements of the Project there is insufficient time to negotiate a Change Order through the PCC process described in Section 6.02, or when the City and Contractor are unable to agree on the cost or time required to complete the change in the Work described in a PCC, the City may issue a Unilateral

Change Order instructing Contractor to proceed with a change in the Work based on the City's estimate of cost and time to perform the change in the Work. Upon receipt of a Unilateral Change Order, Contractor shall proceed with the ordered Work.

- B. Protest: Should Contractor disagree with any terms or conditions set forth in a Unilateral Change Order, Contractor shall submit, within 7 Days of receipt of the Unilateral Change Order, a Change Order Request (COR) in accordance with the requirements of Section 6.02. If a COR is not submitted as required by Section 6.02, Contractor waives all rights to additional compensation for said Work, and payment, which shall constitute full compensation for Work included in the Unilateral Change Order, will be made as set forth in the Unilateral Change Order.
- C. Claim Notification. Contractor waives all costs exceeding the City's estimate for the Unilateral Change Order Work unless Contractor submits a written Notice of Potential Claim in accordance with the requirements of Section 13.03. Said Notice shall be submitted no later than 7 Days after occurrence of one of the following, whichever occurs first:
  - 1. Contractor submits an invoice for completion of the Unilateral Change Order Work; or
  - 2. Upon Contractor's receipt of written notice from the City that the City considers the Work under said Unilateral Change Order to be substantially complete.

#### 6.04 COST OF THE WORK

- A. The additional costs to the Contractor or the credit to SFMTA resulting from a Change Order shall be determined by one of the following methods.
  - 1. By Unit Prices stated in the Contract Documents. (No mark-up for overhead and profit will be allowed if Unit Prices established in the Contract Documents are utilized for pricing Change Orders); or
  - 2. By mutual acceptance of a lump sum, properly itemized and supported by sufficient substantiating data by the Contractor to permit evaluation by SFMTA. When the mutual acceptance of a lump sum method is utilized, the following allowable costs must be itemized and substantiated by Contractor.
- B. When mutual acceptance of a lump sum method is utilized, the following allowable costs must be itemized and substantiated by Contractor:
  - 1. Labor Costs. Labor costs shall be itemized by trade, based on the prevailing wage scale for each craft or type of work used in the changed Work, as well as payroll taxes and fringe benefits, as applicable. Payroll taxes shall be calculated on base wage only and not on fringe benefits. Fringe benefits shall be applied only to the straight-time component of cost and shall not apply to the premium component unless otherwise required by the California Labor Code. Compensable prevailing wages shall not exceed the wages and benefits established by law as prevailing in the locality and at the time the Work under the Change Order is performed, as determined by the State Director of Industrial Relations pursuant to the California Labor Code. The City shall have no liability for wages or benefits paid by Contractor that exceed said prevailing wage rates.

2. Labor Classification. Contractor's use of a labor classification that would increase extra work costs will not be permitted unless the Contractor establishes to the Engineer's satisfaction the necessity of using such labor classification. Non-direct labor costs, including costs for foremen not physically performing Work on the Site and other costs of superintendents and supervision of the Work shall be considered as included within markup and payments for overhead and profit.
3. Materials. The City will pay Contractor on Change Orders only for those materials actually furnished by Contractor and directly required for performing the Change Order Work or incorporated into the Work. The cost of such materials shall be the direct cost, including sales tax, to the purchaser, whether Contractor, Subcontractor or Lower-Tier Subcontractor, from the Supplier thereof and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Change Order Work. If a trade discount by an actual Supplier is available to Contractor, such discount shall be credited to the City notwithstanding the fact that such discount may not have been taken. If the Materials are obtained from a Supplier or source owned wholly or in part by Contractor, payment thereof shall not exceed the current wholesale price for the Materials as determined by the City. The term "trade discount" includes the concept of cash discounting.
4. General Equipment. Payment for costs of General Equipment on Change Orders will be made at the lesser of the rental rates listed for such equipment that are listed in and as specified in the current edition, at the time of the Change Order, of:
  - (a) the Labor Surcharge & Equipment Rental Rate Book published by the California Department of Transportation and available for download at <http://www.dot.ca.gov/hq/construc/equipmnt.html>; or
  - (b) "Rental Rate Blue Book," published by Machinery Information Division of PRIMEDIA Information, Inc., 1735 Technology Drive Suite 410, San Jose, California 95110-1313. Such rental rates shall be adjusted as appropriate and will be used to compute payments for equipment, regardless of whether the equipment is under Contractor's control through direct ownership, leasing, renting, or other method of acquisition. Daily, weekly, or monthly rates shall be used, whichever are lower. Hourly rates including operator shall not be used. Unless otherwise specified, manufacturer's ratings and manufacturer-approved modifications shall be used to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, the cost shall be calculated at the rental rate for equipment of proper size and type.
  - a. The actual time (rental period) to be paid for equipment shall be the time the equipment is in productive operation on the Work under the Change Order. In the event that use of hourly rental rates is appropriate in computing the rental of equipment, any time less than 30 minutes shall be considered one-half hour. No payment will be made for time while equipment is inoperative due to breakdown or for non-Working Days. In addition, the rental time shall not include the time required to move the equipment to and from the Site. Loading and transportation costs will be paid, in lieu of rental time, only if the equipment does not move under its own power and is utilized solely for the Work of the Change Order. No mobilization or demobilization will be allowed for equipment already on the Site.



- b. Individual pieces of equipment having a replacement value of \$1,000 or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment are included as part of Contractor's markup for overhead and profit, as set out in Subsection 6.04.C.
  - c. Payment to Contractor for the use of equipment as set forth herein shall constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Contractor incidental to the use of the equipment.
  - d. Costs of General Equipment not listed in the publications specified in Subsection 6.04.B.4 shall be based on actual rental invoices. Copies of all invoices shall be provided as support documentation with each PCO cost proposal.
5. Specialized Equipment. Payment in Change Orders for Specialized Equipment shall be as provided in Technical Specifications (Division 1).
- C. Overhead and Profit. To the total of the direct costs computed as provided in Subsection 6.04.B as part of a Change Order, there will be added only one of the following:
1. For Change Orders not involving compensable time, a Markup as specified in Subsection 6.04.D, which shall fully compensate Contractor for all overhead costs and profit. The Markup shall constitute full compensation for all direct and indirect overhead costs and profit for that Change Order, which shall be deemed to include all items of expense not specifically listed in Subsection 6.04.B as direct costs; Contractor shall not submit and the City shall not consider any separate allowance or itemization for overhead costs except specifically provided in Subsection 6.04.D.
  2. For Change Orders involving compensable time; payment as specified in Subsection 6.04.E which shall fully compensate Contractor for all overhead costs and profit for that Change Order, which shall be deemed to include all items of expense not specifically listed in Subsection 6.04.B as direct costs. <sup>4</sup>
- D. Contractor's Markup for Overhead and Profit. The following limitations shall apply to Contractor's markup for overhead and profit on all Change Orders that do not involve compensable time as described in Section 7.02:
1. For Work performed by Contractor, the Markup shall not exceed of 15 percent of its direct costs, as defined in Subsection 6.04.B.
  2. For Work performed by a Subcontractor, the markup shall not exceed 15 percent of its direct costs, as defined in Subsection 6.04.B. Contractor shall receive a maximum five percent (5%) markup on the Subcontractor's total cost.
  3. For Work performed by a Lower-Tier Subcontractor or supplier, the markup shall not exceed 15 percent of said subcontractor's direct costs, as defined in Subsection 6.04.B. Contractor and said subcontractor may each receive a mark-up not to exceed five percent (5%) of the total cost of the Lower-Tier Subcontractors below them.

4. In no case shall the total sum of all markups applied to a Change Order exceed 25 percent of direct costs, regardless of the number or tiers of subcontractors or Suppliers associated with said Change Order.
  5. For Change Orders that result in a net decrease in direct costs for Work performed by Contractor or a Subcontractor, the City shall receive a credit based on the actual net decrease in direct costs plus ten percent (10%) of the direct cost credit amount. Neither Contractor nor the Subcontractor shall receive a markup on their respective lower-tier Subcontractors to administer the credit Change Order.
  6. When both additions and credits are involved in any one Change Order, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Work. For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units.
- E. Compensable Time Change Orders. Section 6.04.D above shall not apply to Payment for Change Orders that include compensable time per Section 7.02. Payment for Change Orders that include compensable time shall be computed on the basis of the Extended Daily Rate for Delay multiplied by the number of approved compensable days of time extension. In addition, a markup not to exceed 5% of all direct costs as set out in Subsection 6.04 for Work performed. No other markups will be allowed.
- F. Costs Not Included in the Work. Contractor shall be solely responsible for determining which of its Subcontractors receive Change Orders. No additional compensation will be provided to Contractor for the costs incurred by subcontractors to review, post, coordinate, and perform related tasks to administer Change Orders which do not result in direct cost charges from such Subcontractors. Such costs shall be considered Incidental Work and normal business costs, which are contractually determined between Contractor and its Subcontractors prior to Bid, and such costs shall be included in Contractor's Total Bid Price and the Contract Sum.
- G. Records. Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Contract Work. This requirement pertains to all types of Change Orders, including but not limited to Unilateral Change Orders and Force Account, as well as the additions, deletions, revisions, CORs, and Claims initiated by Contractor.

## 6.05 FORCE ACCOUNT WORK

- A. General. Force Account is subject to the following terms and conditions:
1. When additions, deletions, or revisions in the Work are to be paid for on a Force Account basis, all direct costs itemized in Subsection 6.04.B.
  2. The City will direct Contractor to proceed with the Work on a Force Account basis, and the City will establish a "not to exceed" budget.
  3. The City will pay only the actual necessary costs for the Work that are verified in the field by the City on a daily basis.

4. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for such costs shall be fully covered by the markup for overhead and profit markup as provided in Subsection 6.04.D.
- B. Notification and Verification. Contractor shall notify the City in writing at least 24 hours in advance of its schedule before proceeding with Force Account Work. Contractor shall document all Force Account Work, including identification of the name, trade and labor class (e.g., laborer, apprentice, journeyman carpenter) of each worker assigned to perform that Work, the specific equipment used to perform that Work, and the labor and equipment hours actually expended performing said Work. Contractor shall identify the equipment used to perform the Work by the equipment types or identifiers used in the CalTrans Labor Surcharge and Equipment Rental Rate Book or the Primedia Rental Rate Book (referenced in Subsection 6.04.B.4) and the equipment or vehicle identification number. Contractor's failure to provide full, accurate, contemporaneous, and verifiable information as required herein shall excuse the City's obligation to compensate Contractor for undocumented or poorly documented Force Account Work. Changes made to daily logs, work tickets or other Force Account Work documentation made after the day the Work was performed shall not be accepted and the charges for such added labor or equipment shall not be compensated. The City shall have no obligation to compensate Contractor for Force Account Work if Contractor fails to provide timely notice to the City before commencing said Force Account Work. It is Contractor's obligation at the end of each Working Day or shift, as applicable, to obtain City's verification of Work performed, and equipment and personnel utilized in the Force Account Work during that Day or shift performed on that Day or shift. In addition, Contractor shall notify the City when the cumulative costs incurred by Contractor for the Force Account Work equal 80 percent of the budget established by the City for that Work. The City shall have no obligation to compensate Contractor for Force Account Work that exceeds the "not to exceed" budget amount, if Contractor fails to provide the required notice before exceeding 80 percent of the Force Account budget.
- C. Work Performed by Special Forces or Other Special Services.
1. For procurement of Special Track work, poles, fabricated assemblies, software and operating equipment and when the Engineer and the Contractor, by agreement reached prior to commencement of the effected Work, determine that a special service or an item of extra work cannot be performed by the forces of the Contractor or those of any of its Subcontractors, such service or extra work item may be performed by a specialist. Invoices for such service or item of extra work on the basis of the current market price thereof may be accepted without complete itemization of labor, material, and equipment costs when it is impracticable and not in accordance with the established practice of the special service industry to provide such complete itemization.
  2. In those instances wherein Contractor is required to perform extra work necessitating a fabrication or machining process in a fabrication or machine shop facility away from the Site, the charges for that portion of the extra work performed in such facility may, by agreement, be accepted as a specialist billing. The Engineer must be notified in advance of all Work that will not be performed at the Site.

3. An amount not to exceed five percent (5%) mark-up will be added to the specialist invoice price, less a credit to the Agency for any cash or trade discount offered or available, whether or not such discount may have been taken. Said five percent increase is in lieu of the percentage increase provided in Subsection 6.04.D for work performed by a Subcontractor.
- D. Reports. Contractor shall diligently proceed with the approved Force Account Work and shall submit to the City no later than 12:00 p.m. of the Day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Contractor's authorized representative shall complete and sign the report. Contractor will not be compensated for Force Account Work for which said timely report is not completed and submitted to the City.
  - E. Records. Contractor shall maintain detailed records of all Work done on a Force Account basis. Contractor shall provide a weekly Force Account summary indicating the status of each Force Account Work directive in terms of actual costs incurred as a percent of the budget for the respective Force Account Work directive and the estimated percentage completion of the Force Account Work.
  - F. Agreement. If Contractor and the City reach a negotiated, signed agreement on the cost of a Change Order while the Work is proceeding on a Force Account basis, Contractor's signed written reports shall be discontinued and all previously signed reports shall have no further contractual effect.

#### 6.06 ORAL MODIFICATIONS ARE INVALID

No oral statement of any person shall in any manner or degree modify or otherwise affect the terms of this Contract. This Contract may be modified only by a properly executed written Change Order as provided in this Article 6.

### ARTICLE 7 - TIME

#### 7.01 PROGRESS AND COMPLETION

- A. Commencement of Work. When the Contract has been certified by the Controller, the Agency will designate the official date for commencement of the Work (NTP) and will notify the Contractor by a Notice to Proceed. The Contractor shall take no action that shall obligate the City to, and the City shall not be obligated for, the expenditure of funds before said official commencement date. The Contractor shall begin the Work within 10 Days after said official commencement date, and shall prosecute the same diligently thereafter at a rate sufficient to enable it to complete the Work within the Contract Time.
- B. Notice of Commencement of Work. The Contractor shall notify the Engineer in writing, not less than three (3) Working Days in advance, of the actual date the Contractor will begin the Work under the Contract. Said notice shall contain information as to the time

and place at which the Contractor wishes to commence the Work, and the nature of the Work to be done. Similar notice shall be given by the Contractor before commencement of any portion of the Work specifically identified in the Bid Documents as separate, option, or phase Work .

C. Baseline and Progress Schedules.

1. Prior to commencing Work, the Contractor shall submit to the Engineer for approval a Baseline Schedule showing the order in which Contractor proposes to carry out the Work; the dates on which Contractor will start the various important features, phases and milestones of the Work, including procurement of Materials, plant and equipment; and the contemplated dates for completion of said Work.
2. The Baseline Schedule shall utilize the "critical path" method (CPM), be drawn to scale as to time, and shall be in general accordance with the use of CPM in construction, published by the Associated General Contractors of America, unless other schedule requirements are stated in Technical Specifications (Division 1) or the Special Provisions.
3. Contractor's Baseline Schedule shall be consistent in all respects with the Contract Time, scheduling and order of Work requirements of the Contract.
4. The City's obligation to issue progress payments is contingent on Contractor's submittal of acceptable and updated Work progress schedules, as required under this Agreement.

D. Performance of the Work.

1. Except as to those causes for delay that are specifically recognized in Section 7.02 as extending time for Contractor's performance of the Work, Contractor shall be fully responsible for performing Work according to the Baseline Schedule, as that schedule may be amended by the Engineer's written approval
2. Contract Time shall include attendance at pre-construction conferences; joint survey and documentation of existing conditions, if required by the Contract Documents; preparation and submittal of shop drawings, equipment lists, Schedule of Values, progress schedule, submittal schedule, and requests for substitutions; and other similar activities.
3. The Work of this Contract shall be brought to Substantial Completion and Final Acceptance, as determined by the City, in the manner provided for in the Contract Documents within the limits of Contract Time set forth in the Special Provisions, from and after the official start date established in the written Notice to Proceed.
  - a. Issuance of a Notice of Substantial Completion may not precede the issuance of a Temporary Certificate of Occupancy, if such Temporary Certificate of Occupancy is required by any regulatory authority that has jurisdiction over the Work.
  - b. During the period between Substantial Completion and Final Acceptance, Contractor shall complete the Punch List Work, but Contractor shall not disrupt the City's Beneficial Use of the Work or any public use of the Work.

- c. Final Acceptance is a condition precedent to final payment. Final Acceptance will be effected when the City issues formal notice to the Contractor that the Work is complete and is acceptable to the City and that Contractor has met all substantive and administrative obligations of the Contract. The City will issue final payment following Final Acceptance.
- d. The limits of Contract Time as specified in the Special Provisions shall not be affected by the City's exercise of any of the Alternate Bid Items described in the Contract Documents, provided that said Alternate Bid Items were incorporated into the Contract within the number of months after Award, as specified in the Special Provisions.
- e. The specified limits of Contract Time may be changed only by a Change Order. Claims for compensation based on adjustment of the limits of Contract Time shall be made in accordance with the requirements of Section 6.02 (Change Orders) and Article 13 (Claims).

E. Substantial Completion.

1. Contractor shall notify the City in writing when Contractor considers that the Work has reached Substantial Completion and request that the City inspect the Work and prepare a Notice of Substantial Completion. Completion of start-up services; close-out of all Non-Compliance Reports; and submittal of warranties, guarantees, and record documents shall be a condition precedent to requesting an inspection for and the City's issuing a notice of Substantial Completion. Attached to Contractor's request for a Substantial Completion inspection shall be a preliminary Punch List items to be completed or corrected before Final Acceptance.
2. Within seven (7) Days from receipt of Contractor's written notification, the City will make an inspection to determine whether the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will provide Contractor with a Punch List that will list all Items that Contractor must correct or complete before the City may determine whether the Work has reached Substantial Completion.
3. Once Contractor has completed all items on the Punch List, Contractor shall request a second inspection by the City to verify that the Work is Substantially Complete. If the City determines that the Work is not Substantially Complete, the City will follow the same procedure as for the first inspection as described in Subsection 7.01.E.2. Contractor shall reimburse the City for costs incurred by the City and its consultants related to all additional inspections necessary to achieve Substantial Completion.
4. As a condition precedent to Substantial Completion, Contractor shall obtain a temporary certificate of occupancy from the City's Department of Building Inspection or other agency having jurisdiction over the Work in the event that such temporary occupancy permit or other required permit(s) are necessary for the City to utilize the Work for the purposes for which it is intended.

5. When the City determines that the Work is Substantially Complete, the City will issue a Notice of Substantial Completion, which shall establish the Substantial Completion date.
  6. At the time of delivery of the Notice of Substantial Completion, the City will deliver to Contractor: (a) a Punch List identifying deficient items the Contractor must correct as a condition of Final Acceptance; and (b) a written determination as to the division of responsibilities regarding close-out requirements including, but not limited to, security, operation, safety, maintenance, heat, utilities, insurance and warranties.
- F. Availability of Materials and Personnel. Contractor shall at all times keep at the Site or readily available sufficient material and employ sufficient supervision and workers to prosecute the Work at the rate necessary to reach Substantial Completion of the Work and final completion of all Punch List Items within the specified limits of Contract Time required by the Contract Documents. Contractor shall not start the Work unless it has sufficient equipment and Materials available for the Work to support said diligent and continuous performance of the Work. Should Contractor at any time during the progress of Work, refuse, neglect, or be unable for avoidable reasons to supply sufficient resources to prosecute the Work continuously and at the rate necessary to complete the Work within the Project Schedule or the specified limits of Contract Time, in accordance with the currently accepted progress schedule update, the City shall have the right to determine Contractor to be in Default and terminate the Contract for cause as set forth in Section 14.01.
- G. Scheduling of Work. Contractor shall be responsible to schedule the Work and maintain the Project Schedule so as not to delay the progress of the Project or the schedules of other contractors. Contractor is required by virtue of this Contract to cooperate in every way possible with other contractors in order to maintain the Schedule and complete the Work within the specified limits of Contract Time. No additional compensation will be paid for such cooperation.
- H. Night and Weekend Work. The Contractor may be permitted or required to prosecute the Work at night or on Saturdays, Sundays, and/or Holidays, if at any time the Engineer deems it necessary for the proper progress of the Work. Contractor shall not perform Work at night, or on Saturdays or Sundays or Holidays unless permitted or required by the Engineer. The Contractor shall, for the duration of this Contract, have adequate workers and equipment readily available on short notice to protect adjoining property, maintain the Work, or to make emergency repairs on Saturdays, Sundays and Holidays or during other than the Regular Working Hours. Contractor shall furnish the Engineer with names and telephone numbers of at least three (3) persons to call should any such emergency arise, and these persons shall be authorized to perform such work as the Engineer deems necessary.

## 7.02 EXTENSIONS OF TIME, DELAYS, ACCELERATION

- A. Extension of Contract Time. The Agency may extend Contract Time if and to the extent that the Agency determines that the Work cannot be completed within the Contract Time because of an Unavoidable Delay, as described in this Section. Extensions of time that cumulatively extend the Contract Time in excess of 10 percent

of the original Contract duration shall be subject to the approval of the SFMTA Board of Directors. Such extensions shall be in writing but in no event shall any extension be granted subsequent to the Final Acceptance of the Contract Work by the Agency.

- B. PCC and COR Time Adjustment Proposal Requirements. If Contractor asserts it is entitled to a time extension due to work to be performed under a Proposed Contract Change or Change Order Request, Contractor shall provide a separate Notice of Delay (in accordance with Subsection 7.02.K) prior to submitting a PCC or COR time extension Proposal. Failure to provide said Notice of Delay in accordance with Subsection 7.02.K, or failure to provide the supporting documentation required under Subsection 7.02.C. within the 14-Day period provided in Subsection 6.02.B, or within 14 days after submission of a COR, will result in Contractor waiving its right for additional time.
- C. Documentation Required. At a minimum, Contractor shall provide the following documentation to the City in support of Contractor and Subcontractor time extension proposals:
1. Contractor shall submit to the City a CPM time impact evaluation using sub-network or fragmentary network and including a written narrative and a schedule diagram or other written documentation acceptable to the City, showing the detailed work activities involved in a change that may affect the Contract Time and impact of the change on other Work and activities of the proposed schedule adjustment. This sub-network shall be tied to the complete progress schedule network with appropriate logic so that a true analysis of critical path can be made.
- D. Extensions of Time Do Not Effect Warranty.
1. In the event the City agrees to extend Contract Time, such extensions shall in no way release any guarantees or warranties or shorten any guaranty or warranty period given by Contractor pursuant to the provisions of the Contract Documents, nor shall such extension of time relieve or release the sureties on the bonds executed pursuant to said provisions.
  2. The sureties in executing such bonds shall be deemed to have expressly agreed to any such extension of Contract Time.
  3. The length of any extension of time shall be limited to the extent that the commencement, performance and completion of the Work are delayed by the event as determined by the City in accordance with San Francisco Administrative Code section 6.22.H.2.d.
- E. No Waiver of Liquidated Damages. Granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or to collect other damages or to pursue other rights and interests to which the City is entitled.
- F. Proof Required. Should contractor, any subcontractor of any tier or any supplier of any tier seek an extension of time for the completion of the Work under the provisions of this Section 7.02 (or other Contract provision), Contractor and its subcontractor or supplier shall submit justification for the extension of the time requested and otherwise comply with all provisions of these Contract Documents with respect to requests for



extensions of time. In no event shall such extensions of Contract Time be granted subsequent to the date of Final Completion.

- G. **City's Sole Negligence.** Neither this Section, nor any other provision of the Contract Documents, is intended by the parties to be contrary to any express provision of law. The parties specifically agree, acknowledge and warrant that neither this provision nor any other provision of the Contract Documents has for its object, directly or indirectly, the exemption of the City, City representatives, the City's consultants, and their respective directors, officers, members, employees and authorized representatives from responsibility of their own sole negligence, violation of law or other willful injury to the person or property of another.
- H. **Unavoidable Delays.** Pursuant to San Francisco Administrative Code section 6.22.H.2.c and for the purposes of the Contract Documents the term Unavoidable Delay shall mean an interruption of the Work beyond the control of Contractor that could not have been avoided by Contractor's exercising care, prudence, foresight, and diligence. Moreover, in accordance with the progress schedule requirements of Section 3.11, Contractor shall demonstrate that the Unavoidable Delay actually extends the Substantial Completion date established in the approved Project Schedule. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor (that is, an Avoidable Delay).
1. If approved by the SFMTA, upon Contractor's showing that Contractor could not by due diligence have anticipated or avoided delay, Contractor will be entitled to a non-compensable time extension only for the following types of Unavoidable Delay. Acts of God (as used herein, Acts of God include only earthquakes in excess of a magnitude 3.5 on the Richter Scale and tidal waves); acts of the public enemy; adverse weather conditions (in excess of the number of days specified in the Supplemental Provisions); fires; floods; windstorms; tornadoes; earthquakes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes; lockouts; sit-downs; slowdowns; other labor trouble; labor shortages; inability of Contractor to procure labor; material shortages; inability of Contractor to procure material or equipment; fuel shortages; freight embargoes; acts of a government agency; priorities or privileges established for the manufacture, assembly or allotment of Materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the Work; the prevention by the City of Contractor from commencing or prosecuting the Work; the prevention of Contractor from commencing or prosecuting the Work because of the acts of others, excepting Contractor's Subcontractors or Lower-Tier Subcontractors; and, inability to procure or failure of public utility service.
    - a. Whenever Contractor has knowledge that any actual or potential labor dispute is delaying or is threatening to delay the timely performance of its Contract, Contractor shall immediately give written notice thereof, including all relevant information with respect thereto, to the City.
    - b. In addition, Contractor shall take all appropriate measures to eliminate or minimize the effect of such labor dispute on the current, City-approved Project Schedule, including but not limited to such measures as. promptly seeking

appropriate injunctive relief; filing appropriate charges with the National Labor Relations Board under the applicable provisions of the Labor Management Relations Act of 1947, as amended; filing appropriate damage actions; taking such measures as establishing a reserved gate, as appropriate; if reasonably feasible, seeking other sources of supply or service; or any other measures that may be appropriately utilized as deemed by the City to limit or eliminate the effect of the labor dispute on the Work. To the extent Contractor fails to initiate appropriate measures, it is not entitled to an extension of Contract Time. In addition, any delay impact caused by said failure on the progress schedule will be considered a Contractor-caused delay under any and all applicable provisions of the Contract Documents.

2. Contractor shall be entitled to a compensable time extension for an Unavoidable Delay caused solely by (a) the failure of the City to furnish necessary rights-of-way in accordance with the schedule set forth in the Contract Documents; (b) failure by the City to deliver materials or equipment shown in the Contract Documents to be furnished by the City in accordance with the schedule specified in the Contract Documents; or (c) for the suspension of the Work by the City for its own convenience or benefit,, provided such Unavoidable Delay is critical, extends the most current Contract Substantial Completion Date, and is not concurrent with a Contractor-caused delay or other type of Unavoidable Delay as previously defined (not caused by the City). If for any reason one or more of the conditions prescribed above is held legally unenforceable, the remaining conditions must be met as a condition to obtaining a compensable time extension. All other types of Unavoidable Delay shall not entitle Contractor to a compensable time extension.
  3. Contractor shall be entitled to a non-compensable time extension in the event a City-caused delay is concurrent with either a Contractor-caused delay or a non-compensable Unavoidable Delay.
- I. Adverse Weather Delays .
1. Adverse weather shall mean rain, windstorm, flood, or other natural phenomena occurring at the Project Site which exceeds the anticipated number of Days of adverse weather as provided herein. Adverse weather shall not be a prima facie reason for the granting of a non-compensable time extension, and Contractor shall make every effort to continue work under prevailing conditions. Such efforts by Contractor shall include, but are not limited to, providing temporary gravel roads; installing a rain dewatering system; protecting interior and exterior areas exposed to rain, wind, and extreme temperatures; and providing temporary heat where required for Work to proceed without delay. .
  2. The City may grant a non-compensable extension of time (as Unavoidable Delay) for each Day of adverse weather that is so severe as to prevent Contractor from performing work, provided Contractor made reasonable efforts to perform Work during adverse weather and to avoid the impacts of adverse weather to its schedule. If Contractor is prevented by adverse weather or conditions from proceeding with at least 75 percent of the scheduled labor, material and equipment resources for at least 5 hours per Day on activities shown in the critical path on the most current City-approved progress schedule, the delay will be classified as an Unavoidable Delay, and Contractor will be granted a non-compensable day-for-day time extension. Contractor shall obtain the Engineer's approval before suspending Work due to adverse weather conditions, and the City shall not be obligated to

grant time extension(s) for such Days for which Contractor has not obtained the Engineer's approval . .

3. Regardless of the type and severity of the adverse weather, Contractor shall be responsible for all costs of rescheduling Work, redirecting forces and resource, and other efforts to mitigate the impacts of adverse weather to the progress schedule.
4. Adverse weather shall mean rain, windstorm, flood, or other natural phenomenon occurring at the Site which exceed the anticipated number of days of inclement weather as provided herein and which are proven by Contractor to be detrimental to the progress of the Work.
5. Contractor's Baseline Schedule shall incorporate allowance for the anticipated number of Days of inclement weather as specified below. Contractor shall plan the Work to allow for the following number of days of inclement weather during Regular Working Hours for which Contractor shall not claim Unavoidable Delay:

Month	Rain Days
January	3
February	3
March	2
April	1
May	0
June	0
July	0
August	0
September	0
October	1
November	1
December	3

- a. Contractor's progress schedule shall incorporate prudent allowance for the anticipated number of days of inclement weather specified herein.
- b. The Contract Time allowed for completion of Work specified in the Special Provisions regarding Contract Time and Liquidated Damages is predicated on the anticipated number of days of inclement weather specified herein.
- c. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event has been exceeded.
- d. In the event that there are months with less than the anticipated number of inclement weather days specified herein, the City reserves the right to transfer the unused inclement weather days to other months of the Contract Time for which Contractor has requested a time extension because of adverse weather.

- e. In the event that there is a month with more than the anticipated number of inclement weather days specified herein, and Contractor has requested a time extension because of adverse weather, the City reserves the right to transfer unused inclement weather days from other months of the Contract Time to the month in question. Contractor shall not be entitled to receive a time extension related to weather until the anticipated number of days specified herein for the month of occurrence of the inclement weather event, plus any inclement weather days transferred by the City from other months of the Contract Time, has been exceeded.
- J. Avoidable Delays. The term Avoidable Delay shall include, but is not limited to, the following:
1. Any delay which could have been avoided by the exercise of care, prudence, foresight and diligence on the part of Contractor, its Subcontractors or Suppliers of any tier; or
  2. Any delay in the performance of parts of the Work, which may in itself be Unavoidable, but which does not necessarily prevent or delay the performance of other parts of the Work, nor delay the date of Substantial Completion based on the specified limits of Contract Time; or
  3. Any delay caused by the untimely review by Contractor of the Contract Drawings and Specifications (refer to Section 3.02); or
  4. Any delay caused by Contractor's untimely submission of a cost proposal or time extension proposal or other documentation required under Section 6.02 and Section 7.02; or
  5. Any delay arising from an interruption in the performance of the Work resulting from a reasonable interference from other contractors employed by the City, but does not delay the date of Substantial Completion based on the specified limit of Contract Time; or
  6. Contractor shall not be entitled to, and hereby conclusively waives, any right to recovery of compensation, costs or damages for delay, disruptions, hindrances or interferences (including without limitation interruption of schedules, extended, excess of extraordinary field and indirect overhead costs, loss of productivity and the impact, ripple or cumulative effect on other Work) that are the result of Avoidable Delay.
- K. Notice of Delay.
1. Pursuant to San Francisco Administrative Code section 6.22.H.2.d, Contractor shall notify the City in writing immediately of all anticipated delays in the performance of the Work and, in any event, not less than 24 hours from the occurrence of a delay. The City may take steps to prevent the occurrence or continuance of the delay, and the City may determine to what extent Substantial Completion is delayed thereby.
  2. Said notice shall constitute an application for an extension of time and payment for a compensable time extension, if applicable, only if it requests such time extension, specifies whether the request is for a compensable or non-compensable time extension, sets forth Contractor's estimate of the additional time required

together with a full recital of the causes of Unavoidable Delays relied upon, and meets all requirements for a Notice of Potential Claim as set forth in Section 13.01, including the requirement that such Notice be submitted to the City within one Day of the event which the Contractor contends affected the performance of the Work.

3. The City's determination of whether an extension of time will be granted and the extension is compensable or noncompensable will be based on Contractor's demonstration to the City's satisfaction that such Unavoidable Delays will extend Contractor's current critical path on the current, City-approved updated progress schedule or require the formulation of a new extended critical path.
4. If Contractor does not submit a notice as set forth in Subsection 7.02.K.2, above, Contractor thereby admits the occurrence had no effect on the length of its duration of Work and no extension of time is necessary, and Contractor understands and agrees that no extension of time or adjustment of the Contract Sum will be granted by the City.

L. Acceleration.

1. If, in the opinion of the City, Contractor falls behind schedule according to Contractor's most current and accepted update of the progress schedule submitted as set forth in Technical Specifications (Division 1), Section 01 32 13, Scheduling of Work, or if Contractor delays the progress of other contractors, and is not entitled to an extension of time as provided in these Contract Documents, Contractor shall take some or all of the following steps to improve its progress, at no additional cost to the City, and shall submit operational plans to the City to demonstrate the manner in which the desired rate of progress will be regained:
  - a. Increase construction manpower in such quantities and crafts as will substantially eliminate the backlog of Work;
  - b. Increase, when permitted in writing by the City, the number of working hours per shift, shifts per or the number of hours or Days in which Contractor is permitted to perform Work, or the amount of construction equipment or any combination of the foregoing, sufficiently to substantially eliminate the backlog of Work;
  - c. Reschedule activities to achieve maximum practical concurrence of accomplishment of activities;
  - d. Expedite delivery of Materials and equipment, by use of air freight or other means;
  - e. Accelerate the priority of manufacture, fabrication and shipment preparation of Work on order with supplier(s) should such priority lists exist as a normal course of its business; and
  - f. Any other means deemed appropriate by the City.
2. The City may direct Contractor to take steps enumerated in Subsection 7.02.L.1 to accelerate the Work for the convenience of the City and if Contractor is not at fault. Should the Engineer direct Contractor to take said measures, the City will reimburse Contractor for its reasonable costs of complying. In order to facilitate

reaching an agreement, the Contractor shall cooperate and submit estimates in such detail as necessary to substantiate the Contractor's proposed price for accelerating the completion of the Work. In the event that the Contractor and the Engineer should fail to agree upon the amount of an adjustment for accelerating the Work, such adjustment shall be determined as follows:

- a. For overtime or additional shifts of work required by the City beyond that provided in the Contract Documents, the City will pay One Hundred Ten Percent (110%) of the difference between the labor cost at straight time rates and such cost at the occasioned premium and differential rates computed on a time and Materials basis, for the labor force engaged in such overtime work to compensate for the costs of such overtime or additional shifts.
- b. For equipment and labor required by the City beyond that provided in the Contract Documents, the City will pay an additional amount equal to Ten Percent (10%) of the cost of such additional equipment and labor, computed on a time and material basis, to compensate for the employment of the additional equipment and labor.

### 7.03 LIQUIDATED DAMAGES

- A. Determination of Damages. By entering into this Contract, Contractor agrees that in the event completion of this Contract is delayed beyond the Contract Time or the scheduled completion date(s) stated in the Project Schedule (as provided in the Special Provisions), as extended for Unavoidable Delays, City will suffer actual damages by that of breach of the Contract by Contractor. The actual fact of the occurrence of damages and the actual amount of the damages which the City would suffer if the Work is not completed within the specified limits of Contract Time are dependent upon many circumstances and conditions which could prevail in various combinations and would be impracticable and extremely difficult to determine the actual damages at the time of such delay. Damages which the City would suffer in the event of delay include, but are not limited to, costs of renting equivalent space, expenses of prolonged employment of an architectural, engineering and construction management staff comprised of both City staff and consultants; costs of administration, inspection and supervision; loss of efficiency and productivity to the construction of other parts of the Project, impacts to other projects and work performed by other contractors, and the loss suffered by the public within the City and County of San Francisco by reasons of the delay in the construction of the Project to serve the public at the earliest possible time. Contractor therefore agrees that the sum set forth in the Special Provisions per Day for each and every calendar Day of delay of Substantial Completion of the Work or identified Milestone for completion of an identified portion of the Work beyond the scheduled completion date (as that may be modified in accordance with the Contract Documents), as adjusted for Unavoidable Delays, is not a penalty but is a reasonable amount that approximates the value of said damages under the circumstances existing at the time the Contract is awarded.
- B. Calculation of Damages.
  1. From NTP to Substantial Completion. When the actual progress of the Work indicates that Substantial Completion of the Work or identified Milestone may be delayed beyond the scheduled relevant completion date, as extended for

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Unavoidable Delays, as provided in the Special Provisions, a sum representing the projected liquidated damages shall be deducted from any money due to the Contractor. If subsequent to the withholding of such projected liquidated damages, the progress of the Work indicates that the number of Days relative to such withheld amount is reduced or eliminated, the corresponding amount will be paid to Contractor at the time of the next payment.

2. From Substantial Completion to Punch List. Contractor and City agree that the amount of liquidated damages set forth in the Special Provisions represents the Parties' reasonable estimate of the approximate damages which the City will sustain for each and every Day of delay beyond the number of Days specified in Special Provisions for completing the Punch List of remedial Work and achieving Final Acceptance (as such date may be modified in accordance with the Contract Documents).
3. Agreement to Pay. It is therefore agreed that Contractor shall pay such amount of liquidated damages as specified in Special Provisions, and in case such amount is not paid, Contractor agrees that the City may deduct the amount therefor from any money due or that may become due Contractor under the Contract. Should the money due or to become due to the Contractor be insufficient to cover such agreed liquidated damages, then the Contractor forthwith shall pay the remainder to the City.

#### C. Payment of Damages.

1. Should Contractor become liable for liquidated damages, the City, in addition to all other remedies provided by law, shall have the right to withhold any and all retained funds as provided in Section 9.09 which would otherwise be due or become due Contractor until the liability of Contractor for liquidated damages has finally been determined.
2. The City shall have the right to use and apply retained funds, in whole or in part, to reimburse the City for all liquidated damages due or to become due to the City. To satisfy assessed liquidated damages, the City may by notice to the relevant escrow agent recall funds held in escrow in lieu of retention, as provided in Public Contract Code section 22300. Any remaining balance of such retained percentages shall be paid to Contractor only after discharge in full of all liability incurred by Contractor. If the retained percentage is not sufficient to discharge all such liabilities of Contractor, Contractor and its sureties shall continue to remain liable to the City until all such liabilities are satisfied in full. Should the retention of moneys due or to become due to Contractor be insufficient to cover such damages, Contractor shall pay forthwith the remainder to the City.

#### 7.04 CONTRACTS AWARDED IN CONSIDERATION OF RELATIVE TIME ESTIMATES OF BIDDERS FOR COMPLETION OF THE WORK.

When any award has been made in consideration, in whole or in part, of the relative time estimates of Bidders for the completion of the Work, the provisions of Subsections 7.02.H (Unavoidable Delays), 7.02.J (Avoidable Delays), and 7.02.L (Acceleration) shall not apply

and no extension of time may be granted on such contracts beyond the time specified for completion, unless the liquidated damages for each Day the Work is not completed beyond the specified time shall be collected; provided, however, that this provision shall not apply to Unavoidable Delays due to Acts of God.

## ARTICLE 8 - INSPECTION AND CORRECTION OF WORK

### 8.01 UNCOVERING OF WORK

- A. No Work or portion of Work shall be covered until inspected by the City or other public authorities having jurisdiction.
- B. If any part of the Work is covered contrary to the request or direction of the City Representative or other public authority having jurisdiction, or contrary to the requirements of the Contract Documents, Contractor must upon written request by the City, uncover it for inspection by the City or other public authorities having jurisdiction and subsequently cover the Work in accordance with the requirements of the Contract Documents without adjustment to the Contract Time or Contract Sum. The provisions and obligations set forth in this Subsection shall apply even if the City or other public authorities having jurisdiction ultimately determine (after uncovering and inspection) that the underlying Work in question conforms to the requirements of the Contract Documents.
- C. Should the City or other public authorities having jurisdiction wish to either (1) re-inspect a portion of the Work that has been covered by Contractor in compliance with Subsection 8.01A, above, or (2) inspect a portion of the Work that has been covered by Contractor which is not required by the Contract Documents to be observed or inspected prior to its being covered and which the City or other public authorities having jurisdiction did not specifically request to observe prior to its being covered, Contractor shall uncover the applicable portion of the Work upon written request. If the City or other public authorities having jurisdiction determine that the Work uncovered conforms to the requirements of the Contract Documents, then the City will pay the costs of uncovering and replacement of the cover through a Change Order and will adjust the Contract Time by Change Order if the uncovering and replacement Work extends the most current Substantial Completion or Final Completion date, as applicable.; If, however, the City or other public authority having jurisdiction determine that the Work uncovered does not conform to the requirements of the Contract Documents, then Contractor shall pay the costs of uncovering and replacement and shall not be entitled to an adjustment of the Contract Time or the Contract Sum.

### 8.02 TESTS AND INSPECTIONS

- A. The Contractor shall be responsible for quality control inspections, testing, and examination of all Contractor-furnished (including suppliers and Subcontractors) Materials, equipment and Work, including issuing test and inspection reports, certificates of compliance, and Punch Lists. The Contractor shall perform all material, mechanical and electrical assembly, dimensional and operational tests to confirm that equipment meets the requirements of the Contract Documents and all applicable Codes and standards. The Contractor shall reject any Contractor-furnished material,



equipment or Work that does not meet the Technical Specifications, or that was not inspected, tested, or examined in full compliance with the applicable standards and Technical Specifications. The Contractor shall be responsible for rectifying all defects revealed as a result of the above. The Contractor shall provide to the Engineer copies of all reports, test results, and quality control documentation relating to the Work. All testing and inspection of the Work required by the Contract Documents shall be arranged and paid for by Contractor through an independent testing laboratory, unless specifically indicated in the Contract Documents to be the responsibility of the City or other authority having jurisdiction.

- B. Special inspections to be performed by the City as specified in the Contract Documents or as required to comply with applicable Codes or directives and requirements of other agencies that have jurisdiction shall be performed at the City's expense. Contractor shall give the Engineer, the City's independent testing laboratory, special inspectors, and representatives from other authorities having jurisdiction a minimum of 10 Working Days notice of when and where such special inspections are required, so the City may arrange for the appropriate City personnel, consultants, inspectors, and representatives from other public authorities having jurisdiction, to be present to perform the necessary inspections or tests. The City reserves the right to modify the scope of, or to reassign, any of the testing and inspection services specified in the various Sections of the Contract Documents to be performed by a testing agency or consultant retained by the City in connection with the Work.
- C. If the City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included in Subsection 8.02.A, the City will order the performance of such services by qualified independent testing agencies, or consultants as may reasonably be required. The City will bear such costs except as otherwise provided in Subsection 8.02.D.
- D. If such testing, inspection or approval reveal that the part of the Work tested does not comply with the requirements of the Contract Documents, Contractor shall bear all costs made necessary by such failure including costs of repeated procedures and compensation for the City's additional testing and inspection services and expenses.
- E. If the City's observation of any inspection or testing undertaken pursuant to this Section 8.02 reveals a failure in any one of a number of identical or similar items or elements incorporated in the Work to comply: (1) with the requirements of the Contract Documents or (2) with applicable Codes or directives or requirements of any public authority that has jurisdiction over the Work, the City will have the authority to order inspection and testing of all such items or elements of the Work, or of a representative number of such items or elements of the Work, as it may consider necessary or advisable. Contractor shall bear all costs for that testing, including reimbursement to the City for the City's additional testing and inspection services if any are required, made necessary thereby. However, neither the City's authority to act under Subsection 8.02.C nor any decision made by the Engineer in good faith either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the City to Contractor, to any Subcontractor, or to any of their agents or employees, or any other person performing any of the Work.

- F. Neither observation by the City nor inspections, tests, or approvals by the City's inspectors or testing agencies and consultants, or by other public authorities having jurisdiction, shall relieve Contractor from Contractor's obligation to perform and provide quality control services to assure that the Work conforms to the requirements of the Contract Documents.
- G. Unless otherwise required by the Contract Documents, required certificates of testing, inspection or approval shall be secured by Contractor and furnished to the City in accordance with the Technical Specifications.
- H. Contractor shall provide promptly all facilities, labor, equipment and material reasonably needed for performing such safe and convenient inspection and test as may be required by the City. Tests or inspections conducted pursuant to the Contract Documents will be made promptly to avoid unreasonable delay to completing the Work in accordance with the Project Schedule. The City reserves the right to charge to Contractor any additional cost of inspection including travel, transportation, lodging, etc. or test when the Work, material or workmanship is not ready for testing or inspection at the specified time.
- I. In order that the Engineer may determine whether the Contractor has complied or is complying with the requirements of the Contract not readily enforceable through inspection and tests of the Work and Materials, the Contractor shall at any time when requested submit to the Engineer properly authenticated documents or other satisfactory proof of its compliance with such requirements.
- J. Failure or neglect on the part of the City or any of its authorized agents or representatives to inspect, observe, discover, condemn or reject Non-conforming Work or defective materials shall not be construed:
  - 1. To imply acceptance of such Nonconforming Work or materials; or
  - 2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
  - 3. To relieve Contractor from the responsibility of correcting Non-conforming Work or materials.

### 8.03 CORRECTION OF NON-CONFORMING WORK

- A. The City shall have the sole and unfettered authority to disapprove or reject Non-conforming Work. Upon receipt of written notification from the City that Work or Materials installed in the Work are Non-conforming Work, Contractor shall without delay remove same from the Site and replace it promptly with Work and Materials that conform to the Contract Documents, regardless of when the Non-conformance is determined. Contractor shall pay all claims, costs, losses, and damages, including the City's expenses at the labor rates included in the contracts between the City and the City's testing and inspection services, of removal and replacement including but not limited to all costs of repair or replacement of work of others.
- B. Failure or neglect on the part of the City or any of its authorized agents or representatives to condemn or reject Non-conforming Work or defective Materials shall not be construed:

1. To imply acceptance of such Non-conforming Work or Materials; or
  2. As barring the City at any subsequent time from the recovery of money needed to build anew all portions of such Non-conforming Work; or
  3. To relieve Contractor from the responsibility of correcting Non-conforming Work or Materials.
- C. If Contractor fails to correct Non-conforming Work or proceed with corrections within 5 Working Days of the date of written notification from the City, the City may correct the Non-conforming Work in accordance with Section 2.04 or may remove it and store the salvageable Materials and equipment at Contractor's expense. If Contractor does not pay the costs of such removal and storage within 5 Working Days after written notice, the City may sell, auction, or discard such Materials and equipment. The City will credit Contractor's account for the excess proceeds of such sale, if any. The City will deduct from Contractor's account the costs of damages to the Work, rectifying the Non-conforming Work, removing and storing any salvageable Materials and equipment, and discarding the Materials and equipment that cannot be salvaged, if any. If the proceeds fail to cover said costs and damages, the Contract Sum shall be reduced by the deficit. If the current Contract unpaid balance and retention is insufficient to cover such amount, Contractor shall reimburse the City.
- D. Payment to the Contractor does not constitute acceptance of Work by the City. Neither payment nor any provision in these Specifications shall relieve the Contractor from responsibility for correction of the Non-Conforming Work, or replacement or of faulty Materials , and unless otherwise specified, the Contractor shall remedy any defects due thereto and pay for any damages to other work resulting therefrom. The Engineer shall give notice of observed defects with reasonable promptness. All questions arising under this Section shall be administratively determined by the Engineer.
- E. Should the Contractor fail to make necessary corrections promptly or should the exigency of the situation require immediate repairs before the Contractor can be notified, SFMTA shall have the right to make the necessary repairs or replacements at the expense of the Contractor.
- F. If variations from these requirements should be established elsewhere in these Technical Specifications for specific parts of the Work and Materials, such variations shall not affect the application of this Section to other work and Materials.

#### 8.04 CORRECTION PERIOD

- A. Contractor shall repair or replace Non-conforming Work or damage resulting from such Non-conforming Work promptly at no additional cost to the City, whether due to: (1) faulty Materials or workmanship; or (2) defective installation by Contractor of Materials or equipment manufactured by others; or (3) disturbance of, or damage to, City improvements by Contractor's operations contrary to the Specifications; or (4) other failure to conform to the requirements of the Contract Documents. Such repair or replacement shall commence within seven (7) Days of the date of the City's written notification directing Contractor to correct such Non-conforming Work and shall forthwith be diligently prosecuted to completion during the following correction periods, or such longer period of time as may be prescribed by laws and regulations or by the

terms of any applicable guarantees required elsewhere in the Contract Documents, as applicable:

1. Any time during construction of the Work; or
  2. One year following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of the surface Work or in surface improvements of the City such as building superstructures, pavements, curbs, walks, tracks, walls, stairways, poles, mechanical and electrical equipment, Materials, appurtenances and accessories, or other surface structures; or
  3. Two years following the date of the Notice of Substantial Completion for Non-conforming Work or damage resulting therefrom in any part of subsurface Work or in subsurface improvements of the City not included in the Work, such as building foundations, sewers, side sewers, culverts, other drainage structures, pipes, valves, conduits, conductors, or other subsurface structures.
- B. This requirement to correct Non-conforming Work shall be extended and shall continue until one year after the date of correction of repaired or replaced Items.
- C. This requirement to correct Non-conforming Work and all similar requirements applicable to equipment of Subcontractors of any tier or suppliers used in or as a part of the Work (whether on equipment of the nature above specified or otherwise) shall inure to the benefit of the City without necessity of separate transfer or assignment thereof.
- D. The remedies provided for in this Section 8.04 shall not be restrictive but shall be cumulative and shall be in addition to all other legal remedies the City may possess with respect to latent defects or frauds.

#### 8.05 ACCEPTANCE OF NON-CONFORMING WORK

- A. If, in the sole and unfettered judgment of the City, it is undesirable or impractical to replace or repair any defective or Non-conforming Work, the City may accept such Non-conforming Work in exchange for a reduction in the Contract Sum by such amount as the City or its authorized representatives deem equitable, or Contractor shall rebate moneys previously paid by the City.

### ARTICLE 9 - PAYMENTS AND COMPLETION

#### 9.01 CONTRACT SUM

- A. Payment to Contractor of the Contract Sum shall be full compensation for: (1) furnishing all labor, Materials, equipment and tools necessary to the Work; (2) performing and completing all Work in accordance with the requirements of the Contract Documents; and, (3) all expenses incurred by Contractor for any purpose incidental to performing and completing the Work (Incidental Work).
- B. Whenever the Contract Documents specify that Contractor is to perform Work or furnish Materials of any class for which no price is fixed in the Contract, such Work

shall be performed or such Materials furnished without extra charge, allowance or direct payment of any sort, and that the cost of performing such Work or furnishing such Materials is included in Contractor's Total Bid Price (Contract Sum).

## 9.02 SCHEDULE OF VALUES FOR LUMP SUM WORK

- A. Within Thirty (30) Days after receipt of the Notice to Proceed, or as otherwise specified in Technical Specifications (Division 1), Contractor shall submit a detailed cost breakdown of each of the lump sum Items in the Schedule of Bid Prices, including Alternate Bid Items selected by the City, coordinated with the progress schedule. This breakdown shall be referred to as the Schedule of Values and shall serve as the basis for progress payments for lump sum Items. No progress payments will be made on account of lump sum Items until the City has reviewed and accepted Contractor's Schedule of Values.
1. The specific format, detail and submittal requirements for the Schedule of Values shall be as specified in Technical Specifications (Division 1) or as directed by the City to facilitate and clarify progress payments to Contractor for completed Work.
  2. The sum of the individual costs listed in the Schedule of Values for each lump sum Item shall equal the lump sum price Bid therefor under the Bid Item named in the Schedule of Bid Price.
- B. The total cost of performing each lump sum Item, including all labor, material, equipment, fixed cost elements, incidental expenses, and overhead and profit, shall be shown on Contractor's Schedule of Values. All budgeted costs and manpower shown on the Progress Schedule shall be allocated to direct cost Bid Items. Unless otherwise provided in the Contract Documents, Contractor's overhead, profit, insurance, bonds, and other similar costs, shall be prorated through all Items so that the sum of the cost for all Items shall equal Contractor's Total Bid Price.
- C. The City will review and return Contractor's Schedule of Values with comments within seven (7) Days of receipt. Contractor shall make all corrections requested by the City and resubmit for approval.
1. The City shall be the sole judge of the sufficiency in detail and proper proportioning of Contractor's Schedule of Values.
  2. Contractor's Schedule of Values will be acceptable to the City as to form and substance if it provides a reasonable allocation of Contractor's Bid amount to component parts of the Work.
- D. Upon concurrence by the City, a written formal approval of Contractor's Schedule of Values will be issued. If the City later determines that the Schedule of Values is insufficient or incorrect, further adjustment shall be made as specified in Subsection 9.02.C.

## 9.03 DETERMINATION OF QUANTITIES FOR PAYMENT

- A. The quantity of Work to be paid to Contractor under any item for which a unit price is fixed in the Contract shall be the number, as determined by the Engineer, of units of Work satisfactorily completed in accordance with the Specifications. Unless otherwise provided, the determination of the number of units of Work so completed will be based, so far as practicable, on actual measurement or count, within the limits or lines indicated on the Drawings or specified, and no payment will be made for work done or effort expended outside of such limits and lines. No allowance will be made for tolerances indicated or specified.
- B. Measurement will be by the units in place or removed and shall be in accordance with this Section, except as otherwise required by other Sections of these General Provisions or the Special Provisions. Unless otherwise indicated, measurement for items, components, or work to be measured linearly will be taken along the centerline of the item in place.
- C. Engineer's Measurements and Marks
1. The Contractor shall keep the Engineer informed a reasonable time in advance of the times and places at which it wishes to perform Work, in order that necessary measurements for record and payment may be made with the minimum of inconvenience to the Engineer and of delay to the Contractor. At the request of the Engineer, the Contractor shall, without charge, provide workers from its force, and tools and materials, to assist the Engineer temporarily in making measurements and surveys and in establishing temporary or permanent reference marks. The marks shall be carefully preserved.
  2. It may be necessary at times that portions of the Contractor's Work be discontinued, in order that the Engineer may make measurements or surveys without interruptions or other interference that might impair the accuracy of the results. At any time, on request of the Engineer, the Contractor shall discontinue its Work to such extent as may be necessary for the purposes of the Engineer.
  3. No direct payment will be made for the cost to the Contractor of any work or delay occasioned by making measurements, or by inspection, and no extension of time will be allowed for such delays.

#### 9.04 UNIT PRICE WORK AND ADJUSTMENTS IN QUANTITIES

- A. General. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Sum will be deemed to include for all Unit Price Work an amount equal to the product of the established unit price Bid for each Item of Unit Price Work times the estimated quantity of each Item as indicated in the Schedule of Bid Prices. The estimated quantities of unit price Items are not guaranteed and are solely for the purpose of comparing Bids and determining an initial Contract Total Bid Price. Determination of the actual quantities and classifications of Unit Price Work will be made in accordance with Technical Specifications (Division 1), and the Contract Sum will be adjusted based on the actual quantities of Work performed. Each unit price on the Schedule of Bid Prices shall include an amount considered by Contractor to cover Contractor's markup for overhead and profit as defined in Section 6.04.

- B. Quantity Increases. Should the pay quantity of actual Work required under any Bid Item be, or be increased to, more than 125 percent of the quantity shown in the Schedule of Bid Prices, the City may request a reduction in the unit price bid for that particular Bid Item. Such reduction in price will be negotiated in accordance with the provisions of Articles 6 and 9.
1. When the compensation payable for the number of units of an Item of Unit Price Work performed in excess of 125 percent of the quantity as indicated on the Schedule of Bid Price is less than \$5,000 at the unit price Bid therefor, the City reserves the right to make no adjustment in said unit price if the City so elects, except that an adjustment will be made if Contractor submits a Change Order Request (COR) in accordance with the requirements of Section 6.02.
  2. At the City's option, payment for Unit Price Work in such excess may be made on a Force Account basis as provided in Section 6.05 in lieu of adjusting the unit price in accordance with Subsection 9.04.B.1.
- C. Quantity Decreases. Should the pay quantity of actual Work required under any Bid Item be, or be reduced to, less than 75 percent of the quantity shown in the Schedule of Bid Prices and the value of the depletion, based on Contract bid prices, exceeds Two Thousand Dollars (\$2,000.00), the Contractor may request an increase in the unit price bid for that particular Bid Item, but must prove to the SFMTA's satisfaction that any price increase was caused by the reduction in quantity. Such increase in price, adjusted to compensate for fixed costs, will be negotiated in accordance with Articles 6 and 9.
1. Payment for the total pay quantity for such Bid Item will in no case exceed the payment which would have been made for 75 percent of the quantity set forth in the Schedule of Bid Prices at the original unit price therefor.
  2. At the City's option, payment for the Work involved in such deficiency will be made on a Force Account basis as provided in Section 6.05 in lieu of adjusting the unit price in accordance with Subsection 9.04.C.

#### 9.05 ALLOWANCE

- A. Progress payments on account of allowances named in the Schedule of Bid shall be made for such sums as may be acceptable to the City. Prior to final payment, an appropriate Contract Modification will be issued as directed by the Engineer to reflect actual amounts due Contractor and amounts to be credited to the City of on account of Work covered by allowances, and the Contract Sum will be adjusted accordingly.

#### 9.06 MEASUREMENT

A. General.

1. In addition to the general requirements in this Section, reference is made to the more specific requirements in other Sections of these General Provisions or the Special Provisions or Technical Specifications (Division 1) covering the methods of measuring and paying for particular Materials and types of work.

2. Except where payment for the Work is made at the lump sum or other set price bid for the particular item, payment shall be based on measurements of the completed Work in accordance with, and by instruments and devices calibrated to, United States Standard Measures, and the units of measurement for payment, and the limits thereof, shall be as shown on the Drawing or specified in the Special Provisions or the Technical Specifications, or in the absence thereof, as set forth in these General Provisions. The Engineer will make the measurements at no cost to the Contractor except as otherwise specified.
3. In estimating progress payments and final quantities, all lengths and areas shall be based on horizontal measurements, unless otherwise specified. The polar planimeter may be used for measurement of areas in estimating quantities under the Contract.
4. Volumes of excavation and embankment, unless otherwise specified, shall be computed by the method of average end areas and appropriate horizontal distances.

B. Weight Measurements.

1. For Material paid for by the ton, local material or material not shipped by rail shall be weighed on platform scales furnished by the Contractor or on public scales at the expense of the Contractor. A ton shall consist of 2,000 pounds avoirdupois. The platform scales shall be of sufficient size and capacity to concurrently weigh the load and vehicle carrying the load. The Contractor shall furnish the Engineer with a Certificate of Inspection from the Sealer of Weights and Measures of the County having jurisdiction, or from the Bureau of Weights and Measures of the State of California, attesting to the accuracy of the scales furnished by him/her; and further, she/he shall furnish additional certificates as often as the Engineer may deem necessary to assure the continued accuracy of the scales; all at no cost to the City.
2. If the Contractor elects to use public scales, they shall bear a current valid seal of approval of the Sealer of Weights and Measures.
3. Whenever material is weighed on scales used for any commercial purpose, the scales shall be operated by a weighmaster licensed in accordance with the provisions of Division 5, Chapter 7 of the California Business and Professions Code. The Contractor shall furnish a weighmaster's certificate, or certified daily summary weigh sheets. A representative of the City may, at the discretion of the Engineer, be present to witness the weighing and to check and compile the daily record of such scale weights.
4. The City reserves the right to require that no weighing shall be done on scales furnished by the Contractor or on public scales, except in the presence of an authorized representative of the City, and further reserves the right to check the tire weight of each truck used to haul Materials paid for by weight at any time specified by the Engineer.



5. The weight of aggregate, crushed rock, or aggregate base to be paid for by the ton will be determined by deducting from the weight of the material incorporated in the Work, the weight of water in the material at the time of weighing, in excess of that allowed by the Specifications.

C. Truck Measurements.

1. Material specified to be measured by "Truck Measurement" or similar designation indicating that the material shall be measured by volume in the transporting vehicles, shall be hauled in approved vehicles of such type that the actual cubic contents can be readily and accurately determined. Such vehicles shall be made available to the Engineer for the purpose of measurement prior to use. The water level volume of each truck body, to the top of sideboards, shall be determined by actual measurements checked and approved by the Engineer. Unless all such approved vehicles are of uniform capacity, each shall bear a plainly legible identification mark indicating the specific approved capacity.
2. All vehicles shall be loaded to at least the approved capacity. In the event of a controversy, and when requested by the Engineer, all loads under dispute shall be struck off to a level surface at the point of delivery.
3. Loads will be tallied by truck numbers and respective truck capacities, on the Site by the Engineer. All trucks shall be tallied and inspected before being dumped, and shall be dumped where directed.

D. Miscellaneous Measurements.

1. When concrete is specified in the Special Provisions to be paid for by volume, the volume shall be the actual volume within the neat lines of the structure shown on the Drawings. A deduction of one cubic foot of concrete will be made for each linear foot of piling, other than sheet piling, projecting into the concrete. No deduction will be made on account of the displacement of concrete by reinforcing steel, by structural steel shapes used in encasement work, by dowels, or unless otherwise specified in the Special Provisions, by conduits, raceways or ducts.
2. When steel, cast iron or other metals, or metal products, are specified in the Special Provisions to be paid for by weight, the weighing thereof shall be done on shop scales in the presence of the Engineer or his/her authorized representative. Payment will be made at the price bid per pound.

## 9.07 DELETED ITEMS

- A. Should any Bid Item be deleted by Change Order in its entirety, the Contract Sum shall be reduced by the amount Bid for that Bid Item. Where a portion of the Work is deleted by Change Order, the reduction of the Contract Sum shall be computed on the basis of one or more of the following: (1) Unit Prices stated in the Contract Documents; (2) Where Unit Prices are not applicable, a lump sum based upon the costs which Contractor would have incurred in performing the deleted portions of the Work, as calculated and documented in accordance with Article 6 of this Contract. Neither Contractor nor the Subcontractor shall receive a markup on their respective lower-tier

subcontractors to administer the credit Change Order. When both additions and credits are involved in any one Change Order, Contractor's mark-up shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Work. (For example, if a Change Order adds 14 units on one Drawing and deletes 5 units on another Drawing, the markup shall be based on the net addition of 9 units.) No mark-up will be given if the deductive cost exceeds the additive cost in a Change Order.

- B. If the City issues written notice of deletion of a Bid Item after the commencement of such Work or after Contractor has ordered acceptable Materials for such Work which cannot be cancelled, or if part or all of such Work is not performed by Contractor because it is unnecessary due to actual Site conditions, payment will be made to Contractor for direct costs of such Work actually performed plus markup for overhead and profit as provided in Subsection 6.04.
- C. Contractor shall not be compensated for costs incurred after receipt of the City's written notice deleting the Bid Item.
- D. Materials ordered by Contractor prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, the material shall be returned and Contractor will be paid only for the actual charges made by the vendor for returning the material including restocking charges.

#### 9.08 PROGRESS ESTIMATES AND PAYMENTS

- A. General. Progress payments will be made if so stipulated in the Contract Documents, otherwise, no payment will be made before all Work required under the Contract is completed. If the Contract provides for periodic progress payments, subject to the conditions set forth in these General Provisions, and subject to the authorization of the City or the authorized representatives of the City, payment shall be made upon demand of Contractor. The preparation of invoices and supporting documents are Incidental Work and included in the Contract Sum, and Contractor shall not receive additional compensation for the administrative or other costs incurred in preparing invoices, seeking compensation, or for complying with the requirements of this Section 9.08.
- B. Basis for Payment. If the Contract provides for progress payments, on or about the 20th Day of each month, Contractor shall schedule a progress payment meeting. After the progress payment meeting(s), before the last day of each month, Contractor shall submit to the Engineer for review an Application for Progress Payment, on a form approved by the City and signed by Contractor, covering the Work completed by Contractor as of the date of the Application and accompanied by such supporting documentation as specified in the Contract Documents.
  - 1. Contractor shall make a good faith estimate the value of the Work completed, in due proportion to the whole amount of money, including payments previously made, that will have become due according to the Contract when all Work has been completed.

2. Unless otherwise specifically provided in the Special Provisions, no allowance will be made in these estimates for Materials or equipment not incorporated into the Work.
  3. Progress payments made on the basis of Unit Price Work shall be based on the number of units of Work satisfactorily completed as determined by the City and the unit prices Bid by Contractor, as they may be adjusted as provided in Article 6 and Sections 9.03 and 9.04 for the actual quantities of Work performed.
  4. The monthly value of lump sum Work shall be estimated by Contractor pursuant to the Schedule of Values prepared in accordance with Section 9.02.
  5. The Application for Progress Payment shall identify the amount of Contractor's total earnings to date.
- C. City's Review of Payment Application. After receipt of an Application for Progress Payment, the Engineer will, on or about the last Day of each month, review the Contractor's Application for Progress Payment, and make an estimate of the value of the Work completed by the Contractor in the performance of the Contract. The first such estimate will be of the value of the Work completed after the Contractor commenced the performance of the Contract, and every subsequent estimate, except the final estimate, will be of the value of the Work done after that included in the last preceding estimate, except as indicated for Unit Price Items or other items otherwise provided for in the Special Provisions. Monthly Applications for Payment shall be based on information developed at monthly progress meetings and shall be prepared by Contractor as specified in the Technical Specifications (Division 1). Submission of acceptable monthly progress schedule updates for same period as the Application for Progress Payment shall be a condition precedent to submitting the Application for Progress Payment. No partial progress payment shall be made to Contractor until all cost information requested by the City is submitted and reviewed. No inaccuracy or error in said monthly estimates shall operate to release Contractor or its sureties from damages arising from such Work or from the enforcement of each and every provision of the Contract Documents, and the City shall have the right to correct any error made in any estimate for payment.
- D. Payment for Mobilization/Demobilization. Estimates of progress payments for mobilization/demobilization will be made as follows:
1. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization items other than Baseline Schedule, traffic regulation and allowances, is two percent (2%) or more of the total Baseline Schedule amount, twenty-five percent (25%) of the accepted value for mobilization/demobilization will be included in said estimate.
  2. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization Items other than Baseline Schedule, traffic regulation and allowances, is five percent (5%) or more of the total Baseline Schedule amount, fifty percent (50%) of the accepted value for mobilization/demobilization will be included in said estimate.

3. When the Engineer's estimate of the value of the Work completed, exclusive of mobilization/demobilization Items, traffic regulation and allowances, is ten (10%) percent or more of the total Baseline Schedule amount, sixty-five percent (65%) of the accepted value for mobilization/demobilization will be included in said estimate.
  4. When all required Contract Work, including all required testing, start-up work and all required training of City personnel, furnishing of all required Operations and Maintenance Manuals, is completed, ninety-five percent (95%) of the accepted value for mobilization/demobilization will be included in said estimate.
  5. The remaining value for mobilization/demobilization shall be included in the final payment made pursuant to Section 9.17.
- E. Payment for Traffic Regulation Work. Traffic regulation work satisfactorily performed shall be paid in proportion to the amount of on-Site construction Work completed during the payment period.
- F. Submission of Electronic Certified Payrolls. No monthly progress payments will be processed until Contractor has submitted weekly certified payrolls to the City for the applicable time period, as required under Subsection 11.02.A.
- G. Unpriced Work. Whenever it is indicated on the Drawings or Technical Specifications that the Contractor is to do Work or furnish Materials for which no price is fixed in the Contract, it is understood and agreed, that there is included in each lump sum, or unit price bid item, the entire cost of all Work incidental to the completion of that part of the Work covered by such lump sum, or unit price bid item, or if not directly incidental to any specific bid item, the cost thereof has been distributed among and is included in those Items deemed most appropriate by the Contractor.

#### 9.09 RETENTION AND ESCROW AGREEMENT

- A. Retention. As provided herein and as authorized by San Francisco Administrative Code section 6.22(J)(2), the SFMTA shall withhold retention from each progress payment. Unless otherwise provided in the Special Provisions, progress payments will be made in the following manner:
1. As soon as practical after estimating the progress of the Work, the City will pay to Contractor in a manner provided by law an amount equal to 95 percent of the value, based upon Contract prices, of labor and Materials incorporated in the Work at the Site until midnight of the 25th Day of the current month, less the aggregate of the amount of previous payments. Payments, however, may be withheld at any time that the Work, in the City's estimation, is not proceeding in accordance with the Contract, or as otherwise provided in this Section.
  2. A Subcontractor may request and the City may grant early release of retention as provided in San Francisco Administrative Code section 6.22(J)(4). To obtain early release of retention, a Subcontractor shall submit a request to the Contractor, and the Contractor shall forward the request to the Engineer with a recommendation to approve or deny the request and the reasons for that recommendation. The

Engineer and the Contractor shall confer regarding such request, and the Engineer shall make the final determination as to request for release of retention.

3. Any reduction in retention prior to Final Acceptance of the Work must be approved in writing by the surety on the Performance Bond and by the surety on the Labor and Material Bond. The signature of the officer executing the approval for the surety shall be properly acknowledged and the power of attorney authorizing him to give such consent must either accompany the document or be on file with SFMTA.
- B. Escrow Agreement. In accordance with the provisions of the California Public Contract Code section 22300, Contractor will be permitted to substitute securities for any moneys withheld by the City to ensure performance under the Contract or place retained payments in an interest bearing escrow account, as provided below:
1. At the Contractor's expense, the Contractor shall enter into an escrow agreement with the Agency and a financial institution acceptable to the SFMTA and the Contractor. The Escrow Agreement shall conform to the requirements of Section California Public Contract Code section 22300. The SFMTA will furnish the Contractor with the Escrow Agreement forms to be used.
  2. At the request and expense of Contractor, securities listed in California Government Code section 16430, bank or savings and loan certificate of deposits, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by the City and Contractor which are equivalent to the amount withheld under the retention provisions of the Contract Documents shall be deposited with the City Controller who shall then pay such moneys to Contractor. Upon satisfactory completion of all Work under the Contract, the securities shall be returned to Contractor.
  3. Before any progress payment or the final payment is made, the Contractor may be required to submit satisfactory evidence that it is not delinquent in payments to its employees or creditors for labor and Materials incorporated into the Work, and that it is not delinquent in payments to its employees and/or creditors for labor and Materials included in the payments.
  4. Contractor shall enter into an escrow agreement with the City specifying the amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of the Contract. The SFMTA shall provide the form agreement to be used.

## 9.10 TITLE TO PROPERTY

- A. Title to the Property (as that term is defined below), shall vest in the City upon payment by the City of any Progress Payment in which Contractor seeks payment for Property acquired for and used in the performance of the Work or incorporated into the Work. Title to any Property acquired or produced before the Effective Date of the Contract shall vest in the City immediately upon the Effective Date and are chargeable to the Contract.

- B. "Property," as used in this Section, includes all of the Items described below that are acquired or produced by the Contractor and that are or should be allocable or properly chargeable to this Contract (under sound and generally accepted accounting principles and practices and applicable Codes) and that are to be used in the performance of the Work or incorporated into the Work.
1. Parts, Materials, inventories, and Work in process;
  2. Special tooling and special test equipment to which the City is to acquire title under any other clause of the Contract;
  3. Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under this Section; and
  4. Drawings and technical data, to the extent the Contractor or Subcontractors are required to deliver them to the City by other provisions of this Contract.
  5. Specialized Equipment obtained by Contractor on behalf of the City.
- C. To acquire for its own use or dispose of Property to which title is vested in the City under this Section, the Contractor must obtain the Engineer's advance approval of the action and the terms. The Contractor shall (a) exclude the allocable costs of the Property from the costs of performing the Contract, and (b) repay to the City any amount of unliquidated progress payments allocable to the Property. Repayment may be by cash or credit memorandum, or as otherwise approved by the Engineer.
- D. Notwithstanding transfer of title of Property to the City, Contractor shall bear all costs security, storage and transportation and all risk of loss of the Property until the Agency's Final Acceptance of the Work. Contractor shall be responsible for insuring the Property against loss for One Hundred Percent (100%) of the value of the Property until Final Acceptance of the Work.
- E. All warranties and guarantees applicable to the Property shall commence and run as provided elsewhere in the Contract and shall not be triggered by the transfer of title. The requirements of the Contract, including all duties and liabilities of Contractor, shall continue after transfer of title as if no transfer had occurred. Contractor shall secure all Property in a manner and at a location agreed to in advance, in writing, by the City. The Contractor shall repay the City an amount equal to the unliquidated progress payments that are based on costs allocable to Property that is damaged, lost, stolen, or destroyed.
- F. Contractor shall prepare invoices for payment for Property in the same manner as it prepares Applications for Payment for the Work. The Contractor shall maintain an accounting system and controls adequate for the proper administration of this Section.
- G. No payment made for Work or Property or vesting of title of Property shall excuse the Contractor from performance of obligations under this Contract or constitute a waiver of any of the rights or remedies of the parties under the Contract or under law.

#### 9.11 PAYMENTS DO NOT IMPLY ACCEPTANCE OF WORK

- A. The granting of any progress payment, or the receipt thereof by Contractor, shall not constitute acceptance of the Work or any portion thereof and shall in no way lessen the liability of Contractor to replace unsatisfactory Work or material, though the unsatisfactory character of such Work or material may not have been apparent or detected at the time such payment was made.

#### 9.12 SUMS CHARGED AGAINST CONTRACTOR

- A. It is mutually understood and agreed that the City may withhold from any payment otherwise due Contractor such amounts as may be necessary to protect the City to ensure completion of the Work pursuant to the requirements of this Contract. The failure or refusal of the City to withhold any moneys from Contractor shall in no way impair the obligations of any surety or sureties under any bonds furnished under this Contract. If any payment or portion of payment is withheld by the City, Contractor will be notified in writing of the cause(s) of such action.

#### 9.13 PAYMENT WILL BE MADE ONLY FOR APPROVED CHANGE ORDERS

- A. Only Change Orders and undisputed portions of Unilateral Change Orders completely approved, executed, and certified by the City shall be included on the payment authorization, and only that portion of the Change Order Work actually performed shall be submitted for payment. Contractor shall submit a breakdown for each Change Order by clearly identifying Change Order number on Contractor's Application for Progress Payment.

#### 9.14 PAYMENT AUTHORIZATION AND TIMELINE

- A. The City will, after receipt of Contractor's Application for Progress Payment, approve such amount as the City determines is properly due.
- B. Payment will be issued by the City based on the City's determination that the Work has progressed satisfactorily to the point stated in the Application for Progress Payment. The City is entitled to rely on statements made in Applications for Progress Payments that the Work for which compensation is sought has been performed as specified by the Contract. Payment will not be a representation that the City has:
  - 1. Inspected the Work exhaustively to check that the quality or quantity are in conformance to the requirements of the Contract Documents; or
  - 2. Reviewed Contractor's means, methods, techniques, sequences or procedures of construction; or
  - 3. Ascertained how or for what purpose Contractor has used money paid, or determined that title to any of the Work, Materials, or equipment has passed to the City free and clear of any liens.
- C. The City shall endeavor to make progress payments for undisputed amounts within 21 Days, but no later than 70 Days, of receiving a payment request and the required documentation including, without limitation, certified payrolls and San Francisco Human Rights Commission program participation forms. In no event shall the City

become liable for interest or other charges for late payment except as set forth in San Francisco Administrative Code section 6.22.J.6. No monthly progress payments will be processed until Contractor has submitted certified payrolls to the City for the applicable pay periods, as provided in Section 11.02.

#### 9.15 PROMPT PAYMENT TO SUBCONTRACTORS

The Contractor shall pay any Subcontractors approved by SFMTA for Work that has been satisfactorily performed no later than three (3) Work Days from the date of Contractor's receipt of progress payments by the SFMTA. Within five (5) Work Days of such payment, Contractor shall provide City with satisfactory evidence that it has promptly paid such Subcontractors for the Work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractor. Within thirty (30) Days of satisfactory completion of all Work required of the Subcontractor, Contractor shall release any retention withheld to the Subcontractor. If the Contractor does not pay its Subcontractors as required in this Section, Contractor shall pay interest to the Subcontractors at the legal rate set forth in California Code of Civil Procedure section 685.010(a).

Contractor shall include these payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier subcontractors.

#### 9.16 WITHHOLDING PAYMENT

- A. The City may withhold payment at any time if in the judgment of the Engineer, the Work is not proceeding in accordance with the requirements of the Contract, or the Contractor is not complying with the requirements of the Contract. The City may withhold payment, in whole or in part, to the extent reasonably necessary to protect itself if, in the Engineer's judgment, the amount of Work completed less amounts previously paid cannot be determined by the procedures set out in Section 9.08. If the City does not authorize payment in the amount of the application, the City will notify Contractor of the reasons for withholding payment.
- B. The City may also decline to authorize payment based on subsequently discovered evidence, and the City may nullify the whole or a part of a payment previously issued, for one or more of the following reasons:
1. The City determines the existence of Non-conforming Work or completed Work that has been damaged, requiring correction or replacement.
  2. Third party claims have been filed against the City alleging damages arising or likely arising from Contractor's activities, or there is reasonable evidence indicating probable filing of such claims.
  3. The City determines that the Work cannot be completed for the unpaid balance of the Contract Sum.
  4. The Contract Sum has been reduced by Change Orders.
  5. Damage has occurred to the City or another contractor.



6. The City determines that the Work will not be completed within the Contract Time and that the current unpaid balance and retention will not be adequate to cover actual or liquidated damages for the anticipated delay.
7. The City determines that Contractor persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, any of the grounds for default stated in Subsection 14.01.A).
8. The City determines that Contractor fails to submit timely PCC cost proposal breakdowns in accordance with the Contract Documents.
9. The City determines that Contractor fails to submit timely progress schedules, revised schedules, schedule updates and reports in accordance with the Contract Documents.
10. The City determines that Contractor fails to maintain timely updated Contract Documents or record documents.
11. The City determines that Contractor fails to submit certified payroll records in accordance with the Contract Documents.
12. The City determines that Contractor fails to comply with any other requirements of the Contract Documents.

#### 9.17 FINAL ESTIMATE, ACCEPTANCE AND PAYMENT

- A. When all Work has been satisfactorily completed in accordance with the requirements of this Contract, the Engineer will make final and exact measurements of the amount of each class of Work performed and make a final estimate thereof at the prices named in the Contract, and the City will pay to the Contractor in the manner provided by law, the balance due under such estimate, excepting such sums as may be lawfully deducted under any provision of the Contract. All prior estimates and payments shall be subject to correction in the final estimate and payment. This estimate of the Engineer shall be final and conclusive evidence of the amount of Work performed by the Contractor under this Contract, and shall be taken as full measure of compensation to be received by Contractor.
- B. The City shall have no obligation to make final payment until Contractor furnishes the Engineer with the following: (a) All Drawings, records, documentation, information, training and spare parts as required herein; (b) Original signed copy of the Release specified in Section 9.18; (c) Evidence satisfactory to Engineer to establish that the Contractor is not delinquent in payments to its employees and/or creditors for labor and Materials included in the payments; (d) releases for any unpaid or otherwise unresolved stop notices or other liens actions.
- C. The remaining amount owed for Work completed under this Contract, if unencumbered, shall be paid within 35 Days after the date of the Final Acceptance, except that the City may withhold from the final payment an amount not to exceed five percent (5%) of the Contract Sum to ensure the correction of Non-conforming Work, amounts assessed as liquidated damages, and other amounts withheld under the Contract. Acceptance by Contractor of said final payment shall constitute a waiver of

all Claims against the City arising under the Contract Documents. As a condition precedent to final payment, Contractor shall furnish a release as required by Section 9.18.

- D. Notwithstanding the requirements of Section 9.18 that Contractor provide the City with a release of all claims, should such release fail or not be properly executed, the Acceptance by the Contractor of the Final Payment shall constitute a complete release of the City by the Contractor for any and all further claims against the City for compensation or damages under the Contract to the same extent as provided in Subsection 6.02.F.5.

## 9.18 RELEASE

The Contractor and each assignee under an assignment in effect at the time of final payment shall execute and deliver as a condition precedent to final payment, a release in form and substance satisfactory to and containing such reservation of rights as to those items in dispute as may be found appropriate by the Agency, discharging the Agency, its officers, agents and employees of and from liabilities, obligations, and claims arising under this Contract. The reservation of rights shall be in a form approved by the City Attorney and SFMTA.

## 9.19 RIGHTS AND REMEDIES

- A. All of City's rights and remedies under the Contract Documents will be cumulative and in addition to and not in limitation of all other rights and remedies of City under the Contract Documents or otherwise available at law or in equity.
- B. No action or failure to act by the City or the City Representative will constitute a waiver of a right afforded them under the Contract Documents, nor will such action or failure to act constitute approval of or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by City or the City Representative of any condition, breach or default will constitute a waiver of any other condition, breach or default; nor will any such waiver constitute a continuing waiver.

## ARTICLE 10 - INSURANCE AND BONDS

### 10.01 INSURANCE REQUIREMENTS

Refer to Special Provisions.

### 10.02 PERFORMANCE BOND AND PAYMENT BOND

- A. Within 10 Days of the City's issuing notice of award of the Contract to Contractor, Contractor shall submit to City the following bonds on the forms provided for bonds in the Contract Documents:
1. A corporate surety bond, in a sum not less than 100 percent of the Contract Sum, to guarantee the faithful performance of the Contract ("Performance Bond"); and

2. A corporate surety bond, in a sum not less than 100 percent of the amount of the Contract Sum, to guarantee the payment of wages for services engaged and of bills contracted for Materials, supplies, and equipment used in the performance of the Contract ("Payment Bond").
- B. Said Performance Bond shall cover all replacement, repair or other correction of Non-conforming Work and all warranty and maintenance Work required by the Contract Documents, and any and all work required to correct latent defects.
  - C. Corporate sureties issuing the Performance Bond, Payment Bond, and Bid Bond must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best Rating not less than "A-, VIII" and shall be listed in the current version of the United States Department of the Treasury's listing of Approved Sureties (Treasury Dept. Circular 570), and shall be satisfactory to the City.
  - D. The Contract Sum, as used to determine the amounts of the bonds, shall be the total amount fixed in the Contractor's Proposal for the performance of the Work (or the corrected total if errors are found).
  - E. During the period covered by the Contract, if any of the sureties upon the bonds shall become insolvent or unable in the opinion of SFMTA to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within 30 Days after notice given by the Agency to the Contractor, shall by supplemental bonds or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such 30-Day period to substitute another sufficient surety, the Contractor shall, if the Agency so elects, be deemed to be in default in the performance of its obligations hereunder and upon the said bonds, and the Agency in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against monies then due or which thereafter may become due the Contractor under the Contract for the amount for which the surety, insolvent or unable to pay as aforesaid, shall have justified on the bonds, and the monies so deducted shall be held by the City as collateral for the performance of the conditions of the bonds.

## **ARTICLE 11 – LABOR STANDARDS**

### **11.01 PREVAILING WAGES**

- A. All provisions California Labor Code section 1770 et seq. are required to be incorporated into every contract for any public work or improvement and are provisions of this Contract.
- B. All provisions of San Francisco Administrative Code sections 6.22E and 6.22F are incorporated as provisions of the Contract Documents including, but not limited to, the following:
  1. Contractor shall pay to all persons performing labor in and about the Work not less than the highest general prevailing rate of wages determined as set forth

herein for the respective crafts and employments, including such wages for holiday and overtime work.

2. Contractor shall insert in every subcontract or other arrangement, which it may make for the performance of any Work or labor on the Work, a provision that said Subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement the highest general prevailing rate of wages determined as set forth herein for the respective crafts and employments, including such wages for holiday and overtime work.
  3. Contractor shall keep or cause to be kept an accurate record showing the name, place or residence, occupation, and per diem pay, of each person engaged in the execution of the Work, and every Subcontractor who shall undertake the performance of any part of the Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives.
  4. Should Contractor, or any Subcontractor who shall undertake the performance of any part of the Work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the Work, the highest general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Contractor and the Subcontractor shall jointly and severally forfeit, to the City back wages due plus the penal sum of \$50 per Day for each laborer, worker or mechanic employed for each calendar Day or portion thereof, while they shall be so employed and not paid the highest general prevailing rate of wages. The City, when certifying any payment which may become due under the terms of the Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture or forfeitures as so certified.
  5. No person performing labor or rendering service in the performance of the Contract or a subcontract for the Work herein required shall perform labor for a longer period than five Days (Monday Friday) per calendar week of eight hours each (with two 10-minute breaks per eight-hour Day), except in those crafts in which a different work Day or week now prevails by agreement in private employment. Any person working hours in addition to the above shall be compensated in accordance with the prevailing overtime standard and rates. Contractor or any Subcontractor who violates this provision shall forfeit to the City back wages due plus the penal sum of \$50 per Day for each laborer, mechanic or artisan employed for each calendar Day or portion thereof whereon such laborer, mechanic or artisan is compelled or permitted to work more than the Days and hours specified herein.
- C. A copy of the most current highest general prevailing wage rates will be posted at the Site by the City, and such highest prevailing wage rate determinations made at the time of the advertisement for Bids are hereby incorporated as part of the Contract Documents. No adjustments in the Contract Sum will be allowed for increases or decreases in prevailing wage rates that may occur during the Contract Time.

1. Copies of the prevailing wage rates are available from the contracting department, and are also available on the Internet at <http://www.dir.ca.gov/DLSR/PWD>.
2. Payments to a craft or classification not shown on the prevailing rate determinations shall comply with the rate of the craft or classification most closely related to it. Contact the California Division of Labor Statistics and Research, Prevailing Wage Unit at telephone (415) 703-4774 for job classifications not listed in the General Prevailing Wage Determinations of the Director of Industrial Relations.

#### 11.02 PAYROLL RECORDS.

- A. Submission of Certified Electronic Payroll Records. Contractor shall no less than monthly, and more often if directed by Engineer, submit certified payrolls to the City for each week of the term of the Agreement in which Contractor performs Work. Certified payrolls shall be prepared pursuant to California Labor Code section 1770 et seq. for the period involved for all employees and owner-operators, including those of Subcontractors and Suppliers of all tiers, for all labor and Materials incorporated into the Work.
1. Contractor shall submit certified payrolls to the City electronically via the Project Reporting System ("PRS") selected by the City, an Internet-based system accessible on the World Wide Web through a web browser. The Contractor and each Subcontractor and Supplier will be assigned a log-on identification and password to access the PRS.
  2. Use of the PRS may require Contractor, Subcontractors and Suppliers to enter additional data relating to weekly payroll information including, but not limited to, employee identification, labor classification, total hours worked under this Contract and on other projects, and wage and benefit rates paid. Contractor's payroll and accounting software may be capable of generating a "comma delimited file" that will interface with the PRS software.
  3. The City will provide basic training in the use of the PRS at a scheduled training session. Contractor and all Subcontractors and Suppliers and/or their designated representatives must attend the PRS training session.
  4. Contractor shall comply with the requirements of this Subsection 11.02.A at no additional cost to the City.
  5. The City will not be liable for interest, charges or costs arising out of or relating to any delay in making progress payments due to Contractor's failure to make a timely and accurate submittal of certified payrolls.
- B. Certification and Retention of Payroll Records. Contractor shall comply with the requirements of section 1776 of the California Labor Code, or as amended from time to time, regarding the keeping, filing and furnishing of certified copies of payroll

records of wages paid to its employees and to the employees of its Subcontractors of all tiers.

1. The payroll records shall be certified and shall be submitted electronically to the City as set forth in Section 11.02.A. In addition, Contractor shall make the payroll records available for inspection at all reasonable hours at the job Site office of Contractor on the following basis:
  - a. A certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his or her authorized representative upon request.
  - b. A certified copy of all payroll records shall be made available for inspection or furnished to a representative of the City upon request.
  - c. A certified copy of all payroll records shall be made available upon request to the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through the City, the Division of Apprenticeship Standards, or the Division of Labor Standard Enforcement. The public shall not be provided access to such records at the job Site office of Contractor.
  - d. Contractor shall file a certified copy of the payroll records with the entity that requested such records within 10 Days after receipt of a written request.
2. In providing copies of payroll records to any requestor, the City shall redact or obliterate such information as may be required under California Labor Code section 1776(e), as that section may be amended from time to time.
3. Contractor shall inform the City of the location of the payroll records, including the street address, city and county, and shall, within 5 Working Days, provide a notice of a change of location and address.
4. In the event that Contractor receives a written notification of noncompliance with section 1776, Contractor shall have 10 Days from receipt of such written notice to comply. Should noncompliance still be evident after such 10-Day period, Contractor shall, as a penalty to the City, forfeit \$25 for each Day, or a portion thereof, of non-compliance, for each worker, until strict compliance is effected. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, such penalties shall be withheld from the Contract Sum.
5. Contractor is solely responsible for compliance with section 1776. The City shall not be liable for Contractor's failure to make timely or accurate submittals of certified payrolls.

### 11.03 APPRENTICES

- A. Contractor and its Subcontractors of every tier shall, as a material term of the Contract, comply with the requirements of the State Apprenticeship Program (as set

forth in the California Labor Code, division 3, chapter 4 [commencing at section 3070], and section 1777.5) and San Francisco Administrative Code section 6.21(O). Contractor shall be solely responsible for securing compliance with section 1777.5 for all apprenticeable occupations.

1. Contractor shall comply with all requests by the City to provide proof that Contractor and all of its Subcontractors at every tier are in compliance with the State Apprenticeship Program.
  2. Contractor shall include in all of its subcontracts the obligation for Subcontractors to comply with the requirements of the State Apprenticeship Program.
  3. Section 1777.5 shall not apply to contracts of general contractors involving less than thirty thousand dollars (\$30,000) and less than twenty Working Days, or to contracts of specialty contractors not bidding for work through a general or prime contractor, involving less than two thousand dollars (\$2,000) or fewer than five Working Days.
- B. Should Contractor fail to comply with the apprenticeship requirements of section 1777.5, Contractor shall be subject to the penalties prescribed in section 1777.7 of the California Labor Code. The interpretation and enforcement of section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.
- C. Contractor, if not signatory to a recognized apprenticeship training program under Chapter 4 of the California Labor Code, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its Subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City. The City reserves the right to demand such evidence upon request.

#### 11.04 LABOR STANDARDS ENFORCEMENT

- A. In accordance with Administrative Code sections 6.22(E)(7) and 6.24, Contractor further acknowledges and agrees as follows:
1. Contractor will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter and Chapter 6 of the San Francisco Administrative Code.
  2. Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks.
  3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job Site.

4. Contractor shall prominently post at each job-Site a sign informing employees that the Work is subject to the City's prevailing wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer.
5. The Labor Standards Enforcement Officer may audit such records of Contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter and this Chapter on public works contractors.

#### 11.05 DEBARRED CONTRACTORS INELIGIBLE

Under California Public Contract Code section 6109, Contractor or Subcontractors who are ineligible to bid or work on or be awarded a public works project under California Labor Code sections 1777.1 or 1777.7 are prohibited from performing Work on the Project.

- A. Any contract for the Project entered into between Contractor and a debarred Subcontractor is void as a matter of law.
- B. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works project. Contractor shall return to the City any public money that may have been paid to a debarred Subcontractor by Contractor.
- C. Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor that has been allowed to work on the Project.

### ARTICLE 12 - SAFETY

#### 12.01 PRECAUTIONS AND PROGRAMS

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Contractor shall be solely responsible for any and all fines, penalties or damages which result from Contractor's failure to comply with applicable health and safety laws and regulations during performance of the Work.
- B. Contractor shall designate in writing a responsible competent person of Contractor's organization at the Site as the Contractor's Safety Representative whose principal duties shall be the prevention of accidents and the maintenance and supervision of safety precautions and programs in accordance with the requirements of applicable laws and regulations. This person shall be available 24 hours a Day, 7 Days a week by telephone or other approved means.
- C. In the event Contractor encounters on the Site material Contractor believes to be hazardous that may present a substantial danger to persons or property exposed thereto in connection with the Work, Contractor shall stop Work in the area affected promptly and before disturbing the conditions believed to be hazardous, shall notify the City in writing in accordance with the requirements of Section 3.04. The Work in the affected area shall not be resumed thereafter except by written notification of the City.



- D. Contractor shall perform all Work relating to hazardous materials as required by the Contract Documents. Should hazardous materials be encountered that were not indicated in the Contract Documents and not contemplated to be part of the Work at the time that Bids were received, and Contractor incurs additional costs or is delayed thereby, Contractor shall be given an adjustment in the Contract Sum and Contract Time, as specified in Section 3.04.

## 12.02 PERSONS AND PROPERTY

- A. The Contractor shall protect the Work and Materials from damage due to the nature of the Work, the action of the elements, the carelessness of other contractors, or any other cause whatever, until the completion and acceptance of the Work. Should any damage occur to the Work or Materials, the Contractor shall repair or replace it at its own expense to the satisfaction of the Engineer. Prior to Final Acceptance, neither the City nor any of its agents assume any responsibility for seeking indemnity or collecting costs, damages or other restitution from any person or persons causing damage to the Work performed under this Contract.
- B. To the maximum extent provided under law, Contractor shall bear all responsibility for damage to persons and property arising from or in consequence of Contractor's performance of this Contract.
- C. Contractor shall obey and enforce all applicable safety orders, rules and recommendations of the Division of Industrial Safety of California.
- D. Contractor shall provide guards, fences, warning signs, walks and lights and shall take all other necessary precautions to prevent damage or injury to persons and property. Contractor shall take all necessary precautions for safety of, and shall provide the necessary protection to prevent damage, injury or loss to the following:
1. All persons on the Site or others who may be affected by the Work;
  2. The Work and the Materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  3. Other property at the Site or adjacent thereto including, but not limited to, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not indicated to be removed, relocated or replaced on the Contract Documents.
- E. As much of the moneys due and retained by the City under this Contract as may be considered necessary by the Engineer may, at the Agency's option, remain unpaid until all suits or claims for damages as described above shall have been settled and resolved and satisfactory evidence of settlement and final resolution has been provided to the Agency.
- F. Contractor shall give all notices pursuant to California Civil Code section 832 and shall comply with all applicable Codes and lawful orders of public authorities bearing on the safety and protection from injury, damage or other loss of persons or property that may potentially be affected by the Work.

- G. Contractor shall notify owners of adjacent property, underground facilities and utilities, including but not limited to PG&E, AT&T, BART, the San Francisco Municipal Railway, the San Francisco Department of Public Works, Hetch Hetchy Water and Power, and the San Francisco Public Utilities Commission, of Contractor's operations a reasonable time in advance thereof so as to permit the owners said utilities to make suitable markings on the street surface of the locations of their facilities. After such markings have been satisfactorily made, Contractor shall maintain them as long as necessary for the proper conduct of the Work.
- H. Contractor shall not hinder or interfere with an owner or agency that owns underground facilities and utilities when Contractor removes, relocates, or otherwise acts to protect such facilities. Contractor shall perform all Work in such manner as to avoid damage to existing underground facilities and other utilities in the process of the removal or adjustment of such utilities and to avoid damage to such facilities lying outside of or below a required excavation or trench area that are intended to remain in place.
- I. The Contractor shall take all reasonable precautions to prevent fires, on the Site or in the vicinity of the Work, and shall be responsible for all damage from fires due directly or indirectly to any fault of the Contractor, any Subcontractor, or any of its or their employees. The Contractor shall observe all applicable regulations pertaining to the prevention of fires in areas in which it performs the Work. Contractor shall at all times have readily available at the Site, fully charged and operational fire extinguishers appropriate to the work being performed.
- J. Contractor shall be responsible for coordinating the exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with applicable Codes.
- K. In the event of damage or loss to property referred to in the previous Subsections, whether caused by Contractor, its Subcontractors or Lower-Tier Subcontractors, Contractor shall promptly remedy such damage or loss, except such damage or loss attributable to the sole negligent acts or omissions of the City. The foregoing obligations of Contractor are in addition to Contractor's general obligations as to cleaning and debris removal set out in Section 3.19.
- L. Pursuant to California Labor Code section 6705, excavation for trenches 5 feet or more in depth shall not begin until Contractor has received acceptance from the City of Contractor's detailed plan for worker protection from the hazards of caving ground during excavation of such trenches. Contractor's shoring plan shall be submitted in accordance with the requirements of the Technical Specifications and shall show the details and supporting calculations of the design of shoring, bracing, sloping, or other provisions to be made for worker protection during such excavation. No plan shall allow the use of shoring, sloping or other protective system that is less effective than those required by the Construction Safety Orders of the Division of Occupational Safety and Health and other applicable Codes. If Contractor's shoring plan varies from the shoring system standards established by the Construction Safety Orders and other applicable Codes, the plan shall be prepared and sealed by an engineer retained by Contractor who is registered as a civil or structural engineer in the State

of California. The City's review and acceptance of Contractor's shoring plan shall not be construed to relieve Contractor of its sole responsibility for damage or injuries resulting from excavation and shoring.

- M. Contractor shall be responsible for each operation and all Work, both permanent and temporary. Contractor shall protect the Work and Materials and fully or partially completed work of the City or separate contractors from damage due to construction operations, the action of weather and other natural forces, the carelessness of its Subcontractors, vandalism, graffiti, or any other cause whatsoever, until Final Acceptance of the Work. Should improper work of any trade be covered by another contractor and damage or defects result, Contractor shall make the whole Work affected good to the satisfaction of the City and without expense to the City.

### 12.03 SAFETY PERMITS

- A. Contractor shall obtain at its cost a California industrial safety permit if the Work includes any of the following:
1. The construction of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
  2. The demolition of a building, structure, false work or scaffolding more than 3 stories or the equivalent of 35 feet height; or
  3. The excavation of a trench 5 feet deep or deeper into which a person must descend.
- B. Contractor shall obtain and pay for all other required safety permits.

### 12.04 EMERGENCIES

In emergencies affecting the safety or protection of persons or property at the Site, Contractor shall act promptly to prevent damage, injury or loss. Contractor shall give prompt written notice to the City if Contractor believes that, due to the nature of the emergency or circumstances related thereto, any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If the City determines that a change in the Contract Documents is required because of action taken by Contractor in response to such an emergency, a Change Order or Unilateral Change Order will be issued as provided in Article 6.

## ARTICLE 13 - CONTRACT AND GOVERNMENT CODE CLAIMS

### 13.01 CLAIMS GENERALLY

- A. The City and Contractor acknowledge and agree that early identification and resolution of potential claims or disputes benefits all parties and advances the success of the Project.
- B. The notice requirements and procedures set forth under this Article 13 are necessary for the City to address potential claims and disputes. Having knowledge of potential

claims prior to the Contractor performing disputed Work and having documentation from the Contractor concerning a dispute as Work is being performed is critical for the City to make informed decisions that may impact the budget and schedule for the Project. Timely notice of all facts and circumstances concerning a dispute and the preservation of contemporaneous documentation of those facts and circumstances is necessary for the efficient and fair resolution the dispute.

- C. Compliance with the Notice of Potential Contract Claim and Contract Claim submission procedures prescribed in this Article are condition precedents to the right to file a Government Code Claim under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10. Contractor's submittal of timely and proper Notice of Potential Contract Claims and Contract Claims as set out in Section 13.04, except as to those claims listed in Subsection 13.01.D., below, toll Contractor's compliance with the Government Code Claim requirements until the Contract Claim administrative process is finally completed. The timely submission of both a properly completed Contract Claim and a Government Code Claim are conditions precedent to commencing litigation against the City for disputes arising out of or related to this Contract that are not expressly excluded from the Contract Claim process per Subsection 13.01.D, below. Disputed issues not timely raised and properly documented in conformance with this Article shall be deemed waived by the Contractor and may not be asserted in a Government Code Claim, subsequent litigation, or other legal action. Furthermore, by executing this Contract, Contractor waives any and all claims or defenses of waiver, estoppel, release, bar, or any other type of excuse of non-compliance with the Contract Claim submission requirements.
- D. The Contract Claim procedures specified in this Article 13 do not apply to the following: (1) claims respecting penalties for forfeitures prescribed by statute or regulation which a government agency is specifically authorized to administer, settle, or determine; (2) claims respecting personal injury, death, reimbursement, or other compensation arising out of or resulting from personal injury or death; (3) claims by the City; or (4) claims respecting Stop Notices filed under the California Civil Code.
- E. The requirements of this Article 13 shall survive expiration or termination of this Contract.

### 13.02 OVERVIEW OF CLAIMS PROCESS

As more specifically described in this Article 13, the following process for addressing Contractor claims shall apply:

- A. No later than 7 Days from the time when Contractor knows (or reasonably should know) of a potential Contract Claim, Contractor shall submit to the City a Notice of Potential Claim. The Engineer will review a Notice of Potential Contract Claim and may respond or otherwise act upon said Notice, but has no obligation to do so.
- B. No later than 30 Days from the time when Contractor knows (or reasonably should know) of a potential Contract Claim, Contractor shall submit to the Engineer a certified, complete, and fully documented Contract Claim.

- C. The Engineer will respond in writing to a Contract Claim within 30 Days of receipt. If the Contractor is not satisfied with the Engineer's response, the Contractor may appeal the Engineer's response to the Contract Claim to the Central Subway Program Director.
- D. As a prerequisite to filing a Government Claim under California Government Code section 900, et seq., and San Francisco Administrative Code Chapter 10 and filing a lawsuit as authorized under that authority, Contractor must first appeal to the Central Subway Program Director the Engineer's denial of Contract Claim, which would be the basis of the Government Claim. The time limits for filing a Government Claim are tolled until the Central Subway Program Director issues a final determination of a Contract Claim.

### 13.03 NOTICE OF POTENTIAL CONTRACT CLAIM

- A. If, during the course of the Work, the Contractor disputes any directive, determination (including determination concerning delay), Proposed Contract Change, rejection of Change Order Request (COR), Unilateral Change Order, payment, or other act by the City impacting or potentially impacting Contractor's performance of the Work (collectively, "Potential Claim Events"), the Contractor shall submit to the Engineer a Notice of Potential Claim. The Contractor shall submit such Notice within 7 Days ) that it has knowledge (or reasonably should have knowledge of) the Potential Claim Event. A Notice of Potential Claim shall describe the Potential Claim Event, provide a good faith estimate of any impact (as to cost and time, as applicable), A Notice of Potential Claim must reference any relevant provisions of the Contract Documents and any schedules with sufficient specificity for the Engineer to review the matter. Any claim concerning a request for additional time must include a time/schedule impact analysis.
- B. Failure to submit a timely, properly documented Notice of Potential Claim shall constitute a waiver of any claim arising out of such potential claim event.

### 13.04 CONTRACT CLAIMS

- A. General Contract Claim Requirements.
  - 1. No later than 30 Days from the date that Contractor has or reasonably should have knowledge of the Potential Claim Event, Contractor must submit to the Engineer a Contract Claim for additional compensation or time based on any dispute concerning: (a) the true value of any Work performed or any changes in the Work which Contractor may be required to perform; (b) grant or denial of time extensions; (c) the amount of payment due Contractor for Work; and/or (d) the performance of obligations by any party. The City is not obligated to consider a Contract Claim submitted after 30 Days from the Potential Claim Event.
  - 2. A Contract Claim shall be the Contractor's sole and exclusive administrative remedy for additional compensation or time associated with its performance of the Work. Failure to submit a timely, certified, and documented Contract Claim in conformance with this Article shall constitute a waiver by the Contractor as to any claim or action relating to the Work and the Contract, and such failure to timely

file a fully documented and certified Contract Claim shall constitute a failure by Contractor to exhaust its administrative remedies.

3. Contractor shall be solely responsible for any and all costs it incurs in preparing, filing, presenting, appealing or otherwise pursuing a Contract Claim, which costs shall not be reimbursed or otherwise recovered from the City.
4. A voucher, invoice, COR, RFI or other routine request for payment or information submitted by Contractor shall not be considered a Contract Claim, unless and until it is specifically titled as a Notice of Potential Contract Claim and it meets the notification and documentation requirements of this Article. If such routine request is disputed as to liability or amount, then the disputed portion of the submission may be converted into a Contract Claim by submitting a separate Contract Claim in compliance with this Section.<sup>7</sup>

B. Contract Claim Certification Requirement.

1. Contractor shall certify under penalty of perjury and in writing in each Contract Claim that Contractor submits on behalf of itself and on behalf of any Subcontractor(s), as applicable, that:
  - a. the Contractor has in good faith and with due diligence investigated its claim and gathered and reviewed such relevant evidence and documents that it possesses to support the Contract Claim;
  - b. supporting data and documents submitted in support of the Contract Claim are accurate and complete to the best of Contractor's (and/or Subcontractor's) knowledge and belief; and
  - c. the amount requested accurately reflects the Contract adjustment as to compensation or time for which Contractor believes the City is liable.
2. An individual or officer who is authorized to act on Contractor's behalf shall execute the certification.
3. If Contractor submits a Contract Claim or portion of a Contract Claim on behalf of a Subcontractor, Contractor shall fully review the Subcontractor's Claim and shall certify that the Subcontractor's Claim or such relevant portion(s) of the Subcontractor's Contract Claim, under penalty of perjury, in the same manner the Contractor would certify its own Contract Claim under the foregoing Subsection 13.04.B(1). The City will not consider a direct claim by any Subcontractor. Subcontractors at any tier are not third-party beneficiaries of this Contract.
4. Contractor hereby agrees that failure to furnish certification as required in this Article shall constitute a waiver by the Contractor as to the subject Contract Claim.
5. Contractor further acknowledges and agrees that if it submits a false claim, on behalf of itself or a Subcontractor, Contractor will be deemed in breach of the

Contract and may be subject to civil penalties, damages, debarment, and criminal prosecution in accordance with local, state, and federal statutes.

C. Format of a Contract Claim.

1. The Contractor shall document its Contract Claim in the following format:
  - a. Cover letter and certification.
  - b. Narrative Summary of Claim merit and amount of compensation and / or time requested, and provisions of the Contract on which Contractor bases the Claim.
  - c. List of documents relating to Contract Claim:
    - 1) Technical Specifications
    - 2) Drawings
    - 3) Clarifications/RFIs
    - 4) Correspondence
    - 5) Schedules
    - 6) Other
  - d. Chronology of events and correspondence.
  - e. Explanation and analysis of Contract Claim merit. Any claim concerning additional time must include a time/schedule impact analysis as provided in Subsection 13.04.D, below.
  - f. Explanation and analysis of Contract Claim costs, including materials, labor, and time related costs.
  - g. Attachments.
    - 1) Technical Specifications
    - 2) Drawings
    - 3) Clarifications/RFIs
    - 4) Correspondence
    - 5) Schedules
    - 6) Other

D. Additional Requirements for Contract Claims Regarding Time Extensions.

1. All Contract Claims regarding extension of Contract Time shall include, in addition to all other applicable requirements of this Article 13, an analysis of the delays impacting the as-built critical path. The as-built critical path shall be determined by (1) comparing the late dates for schedule activities indicated

within the Contractor's "as-planned" CPM schedule (as approved by the City) with the actual dates for the same activities, and then (2) determining the longest path through the as-built schedule using the Contractor's originally-approved as-planned activity to activity logic. The "as-built" CPM shall reflect the exact manner in which the Work was actually constructed (including start and completion dates, actual sequence and durations of work activities, and logic).

2. The City will not review or consider any Contract Claim regarding extension of Contract Time based upon an impacted as-planned CPM, collapsed as-built schedule, time impact analysis or similar method that does not take into account actual events on the Project.

E. Procedure For Review of a Contract Claim.

1. The City will review only timely, certified, and properly documented Contract Claims.
2. The Engineer will respond to a Contract Claim in writing, within 30 Days of receipt of such Contract Claim. In its response, the Engineer will either grant or deny the Claim in whole or in part. If the Engineer does not respond to a Claim within the 30-Day period, the Contract Claim shall be deemed denied in its entirety.
3. Within 10 Days of the date of the Engineer's response or expiration of the 30-Day period, whichever is earlier, the Contractor may request review of (appeal) the Contract Claim and the City's response by the Central Subway Program Director. The request must be in writing, directed to the Program Director. Failure by the Contractor to appeal the Contract Claim to the Central Subway Program Director within said 10 Day period, shall constitute acceptance by the Contractor of the Engineer's original response to the Contract Claim.
4. Upon a timely and proper request for appeal, the Central Subway Program Director , shall review the relevant documents, meet with the Contractor and City personnel assigned to the Work, and confirm or revise the City's response to the Contract Claim. The Central Subway Program Director shall issue such determination within 60 Days of the date of the request for review. The determination by the Central Subway Program Director shall constitute the final administrative determination of the City. If the Central Subway Program Director takes no action on a request for review within the 60-Day period, the Engineer's original response to the Contract Claim shall constitute the final administrative determination by the City.
5. The determination of the Central Subway Program Director as to any appeal from Contractor concerning a Contract Claim shall be administratively final as to the matters addressed in that claim.



### 13.05 GOVERNMENT CODE CLAIM

- A. Contractor shall comply with the requirements of San Francisco Administrative Code Chapter 10 and California Government Code section 900, *et seq* as prerequisite to filing a lawsuit against the City relating to or arising out of Contractor's performance of the Work or any provision or requirement of the Contract. For the purposes of this Contract, the City and the Contractor hereby agree that any action at law against the City arising out of or relating to Contractor's performance of the Work shall accrue no later than on the effective date of the termination of the Contract as provided in Article 14, or upon Substantial Completion, whichever comes first. Notwithstanding the foregoing, the timely submittal of a complete and proper Contract Claim under the administrative procedure specified in this Article 13 shall toll Contractor's compliance with the Government Code Claim requirements under California Government Code section 900, *et seq.*, and San Francisco Administrative Code Chapter 10 until the Central Subway Program Director issues a final administrative determination per Section 13.04, above. But said tolling shall not operate to waive or otherwise excuse Contractor's compliance with the Government Code Claim requirements under California Government Code section 900, *et seq.*, and San Francisco Administrative Code chapter 10.

### 13.06 DEBARMENT, SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

- A. Contractor acknowledges that any contractor, subcontractor or consultant who commits any of the acts listed in Subsection 13.06.B shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant.
- B. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim, where contractor:
1. Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
  2. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
  3. Conspires to defraud the City by getting a false claim allowed or paid by the City;
  4. Knowingly makes uses or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City;<sup>7</sup>
  5. Is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.<sup>7</sup>
- C. In addition to the penalties described in this Section, any contractor, subcontractor, supplier, consultant or subconsultants who submits false claims may be declared an

irresponsible bidder/contractor or an unqualified consultant and debarred according to the procedures set forth in Chapter 6 of the San Francisco Administrative Code.

#### 13.07 AGREEMENT MADE IN CALIFORNIA; VENUE.

Contractor hereby stipulates that: (1) this Contract was advertised, let, executed, and performed in the City and County of San Francisco; (2) the formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to any conflict of laws provisions therein; and, (3) venue for all litigation concerning this Contract shall be in San Francisco to the extent that a court located in San Francisco has subject matter jurisdiction.

#### 13.08 APPLICATION OF THE FEDERAL ACQUISITION REGULATIONS

The City has not adopted the Federal Acquisition Regulations ("the FAR"). Except where specific requirements or standards of the FAR are referenced in the Contract, the City shall not in interpreting or enforcing this Contract be bound by the FAR or by legal precedent applying or interpreting the FAR.

#### 13.09 NO SUSPENSION OF WORK

In no event shall Contractor suspend, delay or stop Work, including disputed Work, pending resolution of the dispute administratively or in a court of law. The provisions of this Article 13 shall survive termination or completion of this Contract.

### **ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT**

#### 14.01 GROUNDS FOR AND NOTICE OF DEFAULT; TERMINATION BY THE CITY FOR CAUSE

A. Grounds for Default. Contractor is in Default of the Contract if Contractor:

1. Refuses or fails to supply enough properly skilled workers, adequate and proper Materials, or supervision to prosecute the Work at a rate necessary to complete the Work within the specified limits of Contract Time, in accordance with the currently accepted updated progress schedule; or
2. Is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
3. Refuses or fails in a material way to replace or correct Non-Conforming Work; or
4. Repeatedly fails to make prompt payment due to Subcontractors or for labor; or
5. Materially disregards or fails to comply with any law, ordinance, rule, regulation or order of any government agency that has jurisdiction over any portion, means, or methods of the Work; or

6. Intimidates or sexually harasses a City employee, agent, or member of the public; or
  7. Is otherwise in material breach of any provision of the Contract Documents.
- B. Notice of Default. When any of the above grounds for Default exist, the City may, without prejudice to any other rights or remedies that the City may have, issue a written Notice of Default to the Contractor. The City shall provide a copy of any Notice of Default to the Contractor's surety.
1. The Notice of Default shall identify the ground(s) for Default and provide the Contractor with a 14-Day cure period to complete necessary corrective Work and/or actions.
  2. In the event that necessary corrective Work and/or actions cannot be completed within the 14-Day cure period through no fault of Contractor or its Subcontractors and suppliers, Contractor shall, within the 14-Day cure period, (a) provide the City with a schedule, acceptable to the City, for completing the corrective Work and/or actions; and (b) commence diligently the corrective Work and/or actions. The City, after accepting Contractor's proposed schedule, will amend the Notice of Default in writing to set forth the agreed-upon cure period. The City will provide a copy of the amended Notice of Default to the Contractor's surety.
- C. Termination for Cause. If Contractor fails to completely cure the Default either within the 14-Day cure period set forth in the Notice of Default or within the agreed-upon cure period set forth in an amended Notice of Default, then the City may, without prejudice to any other rights or remedies that the City may have, immediately terminate employment of Contractor and, subject to the prior rights and duties of the surety under any bond provided in accordance with the Contract Documents:
1. Take possession of the Site and use any Materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor to complete the Work;
  2. Accept assignment of subcontracts and agreements pursuant to Section 4.03; and/or
  3. Finish the Work by whatever reasonable method the City may deem expedient.
- D. Payment. When the City terminates the Contract for one of the grounds set forth in Subsection 14.01.A, Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum exceeds the sum of the cost to the City of finishing the Work and the value of liquidated damages for delays and other damages owed by Contractor to the City, such excess shall be paid to Contractor. If the sum of such costs exceed the unpaid balance, Contractor shall pay the difference to the City. The amount to be paid to Contractor or City, as the case may be, upon application, shall be an obligation for payment that shall survive termination of the Contract. Upon completion of all Work, Contractor shall be entitled to the return of all its Materials which have not been used in the Work, its plant, tools, equipment and other property provided, however, that Contractor shall have no claim on account of usual and ordinary depreciation, loss, wear and tear.

- E. Termination for Convenience If Good Cause Not Found. If, after termination of the Contractor's right to proceed with the Work, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties, including adjustment of the Contract Sum, shall be the same as if the termination had been issued for the convenience of the City, as provided under Section 14.03.

#### 14.02 SUSPENSION BY THE CITY FOR CONVENIENCE

- A. The City may, with or without cause, order Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the City may determine.
- B. An adjustment shall be made as provided in Subsection 7.02.A for increases to the Contractor's cost to perform the Contract caused by suspension, delay or interruption directed by the City, but no adjustment shall be made to the extent:
  - 1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible; or
  - 2. That an equitable adjustment is denied under another provision of this Contract; or
  - 3. Such suspension is specifically provided for in the Contract Documents, and was therefore included in the Contract Sum.

#### 14.03 TERMINATION BY THE CITY FOR CONVENIENCE

- A. Pursuant to section 6.22L of the San Francisco Administrative Code the City may terminate the performance of Work under this Contract in accordance with this Section 14.03 in whole or, from time to time, in part, whenever the City shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which performance of Work under the Contract is terminated, and the date upon which such termination becomes effective.
- B. After receipt of a notice of termination, and except as otherwise directed by the City, Contractor shall comply with all of the following requirements.
  - 1. Stop Work under the Contract on the date and to the extent specified in the notice of termination.
  - 2. Place no further orders or subcontracts for Materials, services, or facilities except as necessary to complete the portion of the Work under the Contract that is not terminated.
  - 3. Terminate all orders and subcontracts to the extent that they relate to the performance of Work terminated by the notice of termination.
  - 4. Assign to the City, in the manner, at the times, and to the extent directed by the City, all of the right, title, and interest of Contractor under the orders and subcontracts so terminated. The City shall have the right, at its discretion, to

- settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all Claims arising out of such termination of orders and subcontracts with the approval or ratification of the City, in writing, to the extent it may require. The City's approval or ratification shall be final for all the purposes of this Section 14.03.
  6. Transfer title to the City, and deliver in the manner, at the times, and to the extent, if any, directed by the City, (a) the fabricated or unfabricated parts, Work in process, completed Work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the Work terminated by the notice of termination, and (b) the completed or partially completed drawings, information, and other property which, if the Contract had been completed, would have been required to be furnished to the City.
  7. Use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices that the City directs or authorizes, any property of the types previously referred to herein, but Contractor (a) shall not be required to extend credit to any purchaser, and (b) may acquire any such property under the conditions prescribed and at a price or prices approved by the City. The proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the City to Contractor under this Contract or shall otherwise be credited to the price or cost of the Work covered by this Contract or paid in such other manner as the City may direct.
  8. Complete performance of such part(s) of the Work as shall not have been terminated by the notice of termination.
  9. Take such action as may be necessary, or as the City may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which the City has or may acquire an interest.
- C. After receipt of a notice of termination, Contractor shall submit to the City its termination Contract Claim, in the form and with the certification the City prescribes. Such termination Contract Claim shall be submitted promptly, but in no event later than 90 Days from the effective date of termination, unless one or more extensions in writing are granted by the City upon written request of Contractor within such 3-month period or an authorized extension period. However, if the City determines that the facts justify such action, it may receive and act upon any such termination Contract Claim at any time after such 90-Day period or extension period. If Contractor fails to submit its termination Contract Claim within said 90-Day period or extension period, the City may determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination. The City shall then pay to Contractor the amount so determined as a Unilateral Contract Change (see Section 6.03).
- D. Subject to the previous provisions of this Section 14.03, Contractor and the City may agree upon the whole or any part of the amount or amounts to be paid to Contractor because of the total or partial termination of Work. The amount or amounts may include a reasonable allowance for profit on Work properly performed. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as

- further reduced by the Contract Sum of Work not terminated. The Contract shall be amended accordingly, and Contractor shall be paid the agreed amount. The provisions of this Section that limit the amount to be paid to Contractor in the event that the Contractor and the City fail to agree upon the whole amount to be paid to Contractor because of the termination of Work shall also serve to limit, the amount or amounts that the parties may agree shall be paid to Contractor following termination of the Work.
- E. If Contractor and the City fail to agree, as Subsection 14.03.D provides, on the whole amount to be paid to Contractor following the City's termination of Work under Section 14.03, the City shall reasonably determine, on the basis of information available to the City, the amount, if any, due to Contractor because of the termination and shall pay to Contractor the amounts determined as follows:
1. For all Contract Work performed before the effective date of the notice of termination, the total (without duplication of any items) of the following items:
    - a. The cost of Work performed before the effective date of the notice of termination.
    - b. The cost of settling and paying claims arising out of the termination of Work under subcontracts or orders as previously provided. This cost is exclusive of the amounts paid or payable on account of supplies or Materials delivered or services furnished by Contractor before the effective date of the notice of termination. These amounts shall be included in the cost on account of which payment is made for the cost of Work previously provided.
    - c. A sum, as profit on the cost of the Work as provided in Subsection 14.03.D, that the City determines to be fair and reasonable. But, if it appears that Contractor would have sustained a loss on the entire Contract had it been completed, no profit shall be included or allowed, and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated loss.
  2. The reasonable cost of the preservation and protection of property incurred as previously provided. The total sum to be paid to Contractor shall not exceed the total Contract Sum as reduced by the amount of payments otherwise made and as further reduced by the Contract price of Work not terminated. Except for normal spoilage, and except to the extent that the City shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to Contractor the fair value, as determined by the City, of property which is destroyed, lost, stolen, or damaged, to the extent that it is undeliverable to the City, or to a buyer as previously provided.
- F. In accordance with the claims and venue requirements of the Contract, Contractor shall have the right to dispute in a court of competent jurisdiction any determination the City makes under Subsection 14.03.E. But, if Contractor has failed to submit its termination Contract Claim within the time provided and has failed to request extension of such time, it shall have no such right to dispute the City's determination. In any case where the City has determined the amount owed, the City shall pay to Contractor the following:
1. If there is no right to dispute hereunder or if a right to dispute has not been timely exercised, the amount so determined by the City; or

2. If a proceeding is initiated in a court of competent jurisdiction , the amount finally determined in said proceeding.
- G. In arriving at the amount due Contractor under this clause, the City shall deduct:
1. All unliquidated advance or other payments on account theretofore made to Contractor, applicable to the terminated portion of this Contract;
  2. The value of any claim that the City or any of its departments or agencies may have against Contractor; and
  3. The agreed price for, or the proceeds of sale of, any Materials, supplies, or other things kept by Contractor or sold, under the provisions of this Section 14.03, and not otherwise recovered by or credited to the City.
- H. If the termination hereunder is only a partial termination, before the settlement of the terminated portion of this Contract, Contractor may file with the City a request in writing for an equitable adjustment by Change Order of the price or prices specified in the Contract relating to the continued portion of the Contract (the portion not terminated by the notice of termination). Such equitable adjustment as the City and Contractor may agree upon shall be made in accordance with the prices provided in Contractor's Proposal and bid documents. Nothing contained herein shall limit the right of the City and Contractor to agree upon the amount or amounts to be paid to the continued portion of the Contract when the Contract does not contain an established Contract price for the continued portion. If the City denies said Change Order Request, Contractor may pursue its remedies only in accordance with the claims requirements of the Contract.

## **ARTICLE 15 - LEGAL REQUIREMENTS**

### **15.01 COMPLIANCE WITH LAWS AND REGULATIONS; INDEMNIFICATION.**

- A. Contractor shall keep itself fully informed of and comply with the Charter, ordinances and regulations of the City and other local agencies having jurisdiction over the Work, and all federal and state laws, regulations, orders or decrees in any manner affecting or applicable to the Contract Documents, the performance of the Work, or those persons engaged therein.
- B. All services, Work and Materials provided under the Contract shall be in full accordance with the latest laws and requirements, or the same as may be amended, updated or supplemented from time to time, of applicable Codes, including but not limited to the Code(s) referenced in the Contract Documents, Americans with Disability Act Accessibility Guidelines, CAL-OSHA regulations, and requirements of the State Division of Industrial Safety of the Department of Industrial Relations, the Division of the State Architect – Access Compliance, and the regulations of the Public Utilities Commission of the State of California, the State Fire Marshal, the National Fire Protection Association, the San Francisco Department of Public Health, and state and federal laws and regulations, and of other bodies or officials having jurisdiction or authority over same. Contractor and any and all persons, firms and corporations employed by or under Contractor shall observe and comply with all said Codes, laws, regulations and requirements.

- C. As required by and in accordance with Section 3.24, Contractor shall assume the defense of, indemnify and hold harmless the City, its boards and commissions, other Indemnitees, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them, from all claims or liability arising from the violation of Codes, law, regulation, order or decree by Contractor or its Subcontractors or Suppliers of all tiers in connection with arising or resulting from performance of the Work.
- D. If the City incurs any fines or penalties because of Contractor's (or a Subcontractor's or Supplier's) failure to comply with Codes, laws, regulations, administrative or court orders or decrees, the City may deduct the amount of the fine or penalty from the Contract Sum.
- E. Authorized persons may at any time enter upon any part of the Work to ascertain whether Contractor and/or the Work complies with applicable laws, regulations, orders or decrees.. Contractor shall promptly notify the City Representative if a regulatory agency requests access to the Site or to records. Contractor shall provide the City Representative with a list of documents provided to the regulatory agency and enforcement actions issued against Contractor.
- F. Contractor's compliance with this Section 15.01 is compensated within the Contract Sum and time required for such compliance is Incidental Work included with the Contract Time..

## 15.02 NONDISCRIMINATION IN CONTRACTS AND BENEFITS

- A. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or Subcontractor, applicant for employment with such contractor or Subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.
- B. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code, and shall require all Subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this Subsection shall constitute a material breach of this Agreement.
- C. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or



membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in San Francisco Administrative Code section 12B.2(b).

- D. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Document by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to San Francisco Administrative Code sections 12B.2(h) and 12C.3(g), a penalty of \$50 for each person for each calendar Day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

#### 15.03 MINIMUM COMPENSATION ORDINANCE FOR EMPLOYEES (MCO)

- A. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of sections 12P.5 and 12.P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- B. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any Subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any Subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.
- C. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 Days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

- D. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.
- E. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor
- F. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in section 12P.6.2 of Chapter 12P.
- G. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 Days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 Days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.
- H. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.
- I. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### 15.04 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at

<http://www.sfgov.org/olse>. Capitalized terms used in this Section 15.04 and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- A. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- B. Notwithstanding the above, if the Contractor is a small business as defined in section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- C. Contractor's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Contractor if such a breach has occurred. If, within 30 Days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 Days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in sections 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- D. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 15.04. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section 15.04 against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- E. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- F. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- G. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- H. Contractor shall keep itself informed of the current requirements of the HCAO.

- I. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- J. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business Days to respond.
- K. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- L. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- M. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### 15.05 MACBRIDE PRINCIPLES - NORTHERN IRELAND

Under San Francisco Administrative Code section 12F.5, the City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

#### 15.06 PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

Under San Francisco Administrative Code chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this Section 15.06, the City may, in addition to any other rights and remedies available hereunder, (1) terminate this Agreement, and (2) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this Section 15.06.

#### 15.07 PROTECTION OF PRIVATE INFORMATION

Contractor has read and agreed to the terms set forth in San Francisco Administrative Code section 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor

to comply with the requirements of section 12M.2 shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Agreement, bring a false claim action against Contractor under Chapter 6 or Chapter 21 of the Administrative Code, or debar Contractor.

#### 15.08 ASSIGNMENT UNDER PUBLIC CONTRACT CODE SECTION 7103.5

Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:

- A. In entering into the Agreement or subcontract to supply goods, services, or Materials under this Agreement, Contractor or its Subcontractors offer and agree to assign the City all rights, title, and interest in and to all causes of action they may have under section 4 of the Clayton Act (15 U.S.C. section 15) or under the Cartwright Act (chapter 2, commencing with section 16700, of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services or Materials pursuant to the Agreement or subcontract.
- B. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.
- C. Contractor shall include the provisions of this Section 15.08 in its subcontracts and purchase agreements to supply goods, services, or Materials pursuant to the Agreement.

#### 15.09 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

Except as expressly permitted by the application of sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City or use as Materials in performance of this Contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. The City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood or virgin redwood wood product.

#### 15.10 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor shall not use as Materials for the Work or otherwise purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term

“saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### 15.11 COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA).

Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

#### 15.12 CONFLICT OF INTEREST.

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the Term of this Agreement it shall immediately notify the City.

#### 15.13 DEBARMENT

Any contractor, Subcontractor, supplier, consultant or subconsultants who fails to comply with the terms of its contract with the City; or who violates any provision of Administrative Code Chapter 6; or who fails to abide by any rules and/or regulations adopted pursuant to Administrative Code Chapter 6; or who submits false claims; or who has violated against any government entity a civil or criminal law relevant to its ability to perform under or comply with the terms and conditions of its contract with the City, may be declared an irresponsible Bidder or an unqualified consultant and debarred according to the procedures set forth in said Chapter 6. See also Section 13.06.

#### 15.14 DRUG-FREE WORKPLACE POLICY.

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns, shall be deemed a material breach of the Contract.

#### 15.15. SAN FRANCISCO SUNSHINE ORDINANCE.

Pursuant to San Francisco Administrative Code section 67.24(e), all Bidders are advised as follows that:

- A. Contracts, Contractors' bids, responses to requests for proposals, and all other records of communications between SFMTA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded.

- B. As to the person or organization awarded the Contract or benefit, information regarding net worth or other proprietary financial data submitted for qualification for a contract or other benefit will be made available to the public upon request.

#### 15.16 FOOD SERVICE WASTE REDUCTION REQUIREMENTS

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

### ARTICLE 16 - PARTNERING AND DISPUTE RESOLUTION

#### 16.01 PARTNERING.

- A. Policy. The City encourages a cooperative partnering between the Contractor, its Subcontractors and suppliers, and the City.
- B. Goals.
  - 1. To complete the Contract as smoothly and rapidly as practicable with the minimum adverse impact to the Public.
  - 2. To have cooperative working relationships and open communication that facilitate the satisfactory completion of the Contract.
  - 3. To avoid claims and litigation among the parties.
- C. Process.
  - 1. Partnering consists of an effort by the Contractor and the City that draws on the strength of each to achieve cooperation by establishing clear communication and mutual goals in the performance of the Work.
  - 2. If deemed necessary by the Engineer, prior to commencement of construction work under this Agreement, Contractor's Key Personnel (including Subcontractors and suppliers) and key City construction and design personnel will participate together in a partnering development and team building workshop meeting. Prior to the workshop, the Contractor will review the Contract Documents, with special attention to the Drawings and Technical Specifications, will visit the Site, and will meet with Subcontractors and suppliers to identify potential problems, conflicts and needed clarifications. During the workshop, the

Contractor will present its analysis of potential problems, conflicts, and needed clarifications, and the parties will engage in open discussions to reach a consensus as to approach and means to resolve problems and meet Project goals. Thereafter, as needed, the parties may conduct periodic follow-up evaluations, discussions, and reinforcement workshops as needed to facilitate completion of the Work. The workshop will be facilitated by the Central Subway Program Director or a professional facilitator jointly selected by the SFMTA and the Contractor.

3. Partnering provisions set out in the Specifications, (Division 1), if applicable, shall take precedence over the provisions of this Section.
- D. Cost. The Contractor shall be responsible for payment of the Professional Facilitator and meeting expenses and the City will reimburse the Contractor for one-half (1/2) of these expenses without markup. Refer to Technical Specifications (Division 1), Section 01 21 00 - Allowances. There will be no reimbursement of the salaries and costs of the participants, which shall be included within the Contract Sum.
- E. Contract Rights. Partnering will not alter the Contractor's or the City's respective legal rights and obligations under the Contract.

#### 16.02. DISPUTE RESOLUTION.

- A. For any dispute involving a question of fact that does not involve a claim for additional compensation or extension of Contract Time under Article 6 or Article 7, respectively, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (14) Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.
- B. Disputes arising in the performance of this Contract which are not resolved by negotiation between the parties shall be decided in writing by the Engineer. The decision shall be administratively final and conclusive unless within ten (10) Days from the date of such decision, unless the Contractor mails or otherwise furnishes a written appeal to the Central Subway Program Director. In connection with such an appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. Upon hearing of the appeal, the Central Subway Program Director will issue a written decision. This decision shall be administratively final and conclusive unless within ten (10) Days from the date of such decision, the Contractor mails or otherwise furnishes a written appeal to the Central Subway Program Director. In connection with this appeal, the Contractor shall be afforded another opportunity to be heard and to offer evidence in support of its position. The decision of the Department Head shall be administratively final and conclusive. This Section applies to all disputes unless a specific provision of this Contract provides that the Engineer's decision as to a particular dispute is final.
- C. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of the Engineer.



- D. If agreed to by both parties, disputes may be resolved by an alternative dispute resolution process.

**END OF GENERAL PROVISIONS**

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**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**THIRD STREET LIGHT RAIL PROJECT  
PHASE 2 - CENTRAL SUBWAY**

**PAGODA PALACE DEMOLITION**

**CONTRACT NO. 1277**

**SPECIAL PROVISIONS**

**SP-1 SCOPE AND AWARD OF CONTRACT**

- A. The Work includes the demolition of the Pagoda Palace building at 1731-1741 Powell Street in San Francisco, California. Demolition includes removal of all above grade exterior walls and roof structures, interior structures and finishes, and mechanical, electrical and plumbing systems and equipment as described in the Contract Documents. The Work also includes the installation of compensation grouting tube-a-machettes for use by follow-on contractor as described in the Contract Documents
- B. Evaluation of Bids and Bid Price.
  - 1. The Contract, if awarded, will be awarded to the responsible Bidder that submits the lowest responsive Bid based on the lowest Total Bid Price.
  - 2. The Total Bid Price of each Proposer will be calculated with the assumption that the Agency will exercise all Additive Options.
  - 3. In case of a tie between two or more Bidders' whose Total Bid Prices are equal, the SFMTA will award to the Contract to the Bidder that has the better safety record as measured by the relevant information submitted by Bidders in Contractor Safety and Health Program Questionnaire in Contract Specification Section 01 45 13.
- C. Base Bid and Optional Bid Item
  - 1. The Base Bid shall cover all Work under the Contract, except for Work identified as Optional Bid Item(s).
  - 2. The price listed on Contractor's Schedule of Bid Prices for an Optional Bid Item shall cover all costs of that Option Work only and shall not include Base Bid Work. The bid price for an Optional Bid Item shall include all markups for overhead and profit.
  - 3. The City will determine in its sole discretion if an Option will be exercised and that Work added or deducted, as applicable to the Contract.
  - 4. Bids must be balanced. The Contractor will not receive any additional compensation for Work described under the Base Bid if the City elects not to exercise any Option.
  - 5. The Bidder further proposes and agrees that the City may exercise Option 1 within 15 (fifteen) Days after Notice to Proceed (NTP), unless parties agree to a later date.

**IF THE CITY EXERCISE AN OPTION, THE CONTRACT SUM WILL BE ADJUSTED BY THE AMOUNT(S) LISTED FOR THAT OPTION IN THE CONTRACTOR'S SCHEDULE OF BID PRICES.**

**SP-2 NOT USED**

**SP-3 NOT USED**

**SP-4 TIME ALLOWANCE FOR COMPLETION OF WORK**

- A. Time is of the essence in the Contractor's performance and completion of all Work under this Contract. The Contractor shall especially avoid interruptions and interference with and inconvenience to transit services, vehicular and pedestrian traffic, local businesses and residents, and the general public in the performance and completion of the Work under this Contract.
- B. The Contractor shall bring the Work to Substantial Completion within ~~50~~30 calendar days from and including the official date of commencement of the Work as designated by the SFMTA in accordance with Article 1.03 of the General Provisions, "Award, Execution And Certification Of Contract; Contract Time"
- C. Substantial Completion shall be the state of progress in the Work under this Agreement when all elements of the Pagoda Palace building have been demolished and removed from the Site, the Site is cleared of all debris and is ready to be turned over to the contractor hired by the City to construct the tunnel boring machine retrieval shaft under SFMTA Contract No. 1278.
- D. When SFMTA determines that all the Work has reached Substantial Completion, the SFMTA shall establish the Substantial Completion date in accordance with Section 01 77 00 - Closeout Procedures.
- E. Following Substantial Completion, the Contractor shall complete all remaining Work within thirty (30) calendar days after Substantial Completion date, at which time the Work shall be considered to be at Final Completion.

**SP-5 LIQUIDATED DAMAGES  
(SUPPLEMENTING GENERAL PROVISION SECTION 7.03)**

- A. Liquidated Damages General:
  - 1. The provisions of this Section SP-5 supplement but do not replace General Provision Section 7.03.
- B. Liquidated Damages for Delay in Completion of the Work:
  - 1. The Contractor shall pay the sum of FiveThousand Dollars (\$5,000) per Day for each and every Day of delay in the Substantial Completion of the Work under the Contract beyond the number of Days specified in SP-4 for the Substantial Completion of the Work, with the actual number of Days counted from and including the official date for commencement of the Work (as stated in the Notice to Proceed issued to Contractor by the SFMTA), and continuing to the date at which the Engineer determines that the Work has reached Substantial Completion.

- C. Liquidated Damages for Interference to Muni Transit Operations:
1. The Contractor shall pay the sum of Five Hundred Dollars (\$500) per vehicle per hour or fraction thereof for any delay or interruption of Muni transit operations.
- D. Liquidated Damages for Traffic Routing and Traffic Control Violations:
1. The Contractor shall pay the sum of Two Hundred Dollars (\$200) per Day for each and every Day of delay in submitting the required Traffic Control Plans and schedule. Contractor shall not perform Work at the Site or in the Construction Area until it has submitted the Traffic Control Plans and schedule to the Engineer. The Contractor will be permitted to perform Work upon approval of the Traffic Control Plans and schedule by SFMTA, through the Engineer.
  2. Contractor shall pay the sum of Two Thousand Dollars (\$2,000) as well as the penalty amounts of any San Francisco Police Department (SFPD) citation for each occasion that the Contractor performs Work on City streets without approved Traffic Control Plans.
  3. Contractor shall pay the sum of Two Hundred Dollars (\$200) per incident for failing to provide notice of intersection traffic signal shutdown with detailed contact information, as required by this Agreement. When Contractor determines it is necessary to shut down existing intersection traffic signals, Contractor shall provide forty-eight (48) hours written notification to the Engineer, Traffic Engineer (fax no. 415-701-4737), Signal Shop (fax no. 415-550-2930), and SFPD Traffic Bureau to coordinate the shutdown and to control traffic at the intersection by a police officer. The notification shall include a contact name and 24-hour phone number of a Contractor's field supervisor to be used in case of an emergency.
  4. Contractor shall pay the sum of Five Hundred Dollars (\$500) per hour, or portion thereof, per lane for failure to provide traffic lanes as required per Section 01 55 26 - Traffic Regulations, of the Technical Specifications. In addition, if the Contractor's failure to provide the required traffic lanes causes traffic congestion requiring by the City to provide Parking Control Officers or Police Officers to control traffic manually, the Contractor shall reimburse the City its costs for a minimum of 2 hours and an additional one hour travel time per officer.
  5. Contractor shall pay the sum of Five Hundred Dollars (\$500) per Day for each and every Day that a required solar operated Flashing Arrow Sign and/or Changeable Message Sign is not furnished, in place in and operating accordance with Section 01 55 26 - Traffic Regulations, of the Technical Specifications.
  6. Contractor shall pay the sum of Two Hundred Dollars (\$200) per Day for each and every Day that a required traffic sign, traffic device, and/or non-skid steel plate not furnished and in place in accordance with Section 01 55 26 - Traffic Regulations, of the Technical Specifications.
  7. Contractor shall not restrict parking or stopping in any part of the Construction Area unless Contractor is performing or will perform

construction Work in that specific location within 24 hours of posting such restriction, and such restriction is necessary for the safe performance of Work. Contractor shall pay the sum of Five Hundred Dollars (\$500) per Day per block or portion of a block for each and every Day when the Contractor does not perform continuous construction activity within 24 hours of the posted effective date and time of the temporary "Tow-Away, No Stopping" zone restricting parking.

8. The Contractor shall pay the sum of One Thousand Dollars (\$1,000) per Day for each and every Day that it does not to furnish and install temporary pavement markings in accordance with Section 01 55 26 - Traffic Control, of the Technical Specifications.
- E. Liquidated Damages for Failing to Provide Accessible Path-of-Travel:
1. The Contractor shall pay the sum of One Thousand Dollars (\$1,000) per Day for each and every Day of failing to provide an accessible path-of-travel meeting ADA requirements.
- F. Liquidated Damages for Environmental Permit and Environmental Regulation Violations:
1. The Contractor shall pay liquidated damages in the amount of One Thousand Dollars (\$1000) for each and every Day in which Contractor violates or otherwise fails to meet the requirements of the environmental permit, mitigation requirements and measures, regulations and City Ordinances specified in Section 01 57 19, Environmental Mitigation Measures, as related to or concerning the control of dust and air borne particles, the control, removal, transport, and disposal of excavated materials, control of storm water, waste water, sediment, and noise. Contractor shall pay particular attention to: (a) the prevention of accumulation and prompt clean-up of spills of dirt, debris and other excavated materials onto streets, sidewalks, and roadways; (b) sediment control, the protection of catch basins, and prevention of soil and sediment from falling or washing into storm drains and sewers; (c) the prevention and control of dust created by the Work; (d) proper treatment and disposal of storm water and ground water prior to discharge; (e) adherence to noise restrictions; (f) adherence to equipment emissions requirements and restrictions.
  2. The liquidated damages provided under this subsection are compensation to the City for the nuisance to the public and additional administrative costs to the City from Contractor's failure to abide by such environmental requirements and regulations, and that the amount of liquidated damages is a reasonable estimate of the actual value of said damages, which would otherwise be extremely difficult if not impossible to determine. Said liquidated damages do not include the actual costs to the City of cleaning or repairing damage or otherwise mitigating the adverse impacts to the City, public and private property and infrastructure arising from or otherwise related to Contractor's violation of said environmental regulations or requirements. Said Liquidated Damages are in addition to any fine or other regulatory penalty assessed against the Contractor for the same event or occurrence of non-compliance or violation.

- G. Notice of Assessment of Liquidated Damages. For each violation, the Engineer will provide the Contractor report citing the relevant Contract provision(s) and/or Code requirement violated, stating the nature of the violation, and the date(s), duration of violation, and the amount of liquidated damages to be assessed. If Contractor disagrees with the assessment liquidated damages or disagrees with the amounts assessed, Contractor shall file a written protest within fifteen (15) Days from the issuance of the report. Contractor shall state in its protest the reasons it disputes the assessment of the liquidated damages, and shall provide sufficient documentation or cite to evidence supporting its protest. Contractor's failure to timely protest or provide support for its protest to the assessment of liquidated damages shall constitute acceptance of the assessment and waiver of further action to contest said assessment.
- H. Collection of Liquidated Damages. The City shall deduct the amount of liquidated damages assessed from any progress and/or final payment due and payable to Contractor.
- I. Contractor's Liability is Cumulative. Contactor's liability for liquidated damages is cumulative. Except as expressly otherwise stated in the Contract, payment of liquidated damages under any one provision of the Contract shall not relieve the Contractor from liability for liquidated damages for separate violations of that provision or concurrent violations of any other provision of the Contract, each to the full extent of the specified amount, regardless of whether the times for which liquidated damages are to be paid do or do not run concurrently, or whether each liability is or is not a consequence of the other.
- J. Contractor's liability for liquidated damages to the City for delay in Substantial Completion of the Work, as provided in SP-5 section B, shall be limited to an amount equivalent to ten percent (10%) of the Contract Sum. Said liquidated damages shall be the SFMTA's sole monetary remedy to recompense the City for Contractor's delay to the Substantial Completion of the Work, but the City's assessment of such liquidated damages shall not delay or preclude the City from seeking any other remedy at law or in equity, including but not limited to termination of the Contract. At any time that the City determines that the Contractor is failing to perform the Work as required by the Contract or that Contractor is not capable of completing the Work within such time as the overall schedule for the Central Subway Project may reasonably allow, following such period for cure as provided in the Contract or that is otherwise reasonably required under the circumstances, the SFMTA shall have the right to terminate the Contract, require the surety that issued the performance bond to assume control of the Work, and/or initiate action against Contractor for breach or specific performance of the Contract.

#### **SP-6 SPECIAL INSTRUCTIONS TO THE CONTRACTOR**

- A. Conditions of the Work and Site:
  - 1. The Work is located in and adjacent to major arterial streets on which significant commercial, retail and tourist business operations are located . The Work is adjacent to residential buildings. The Work is located on a major utility corridor and pedestrian vehicle, SFMTA surface transit routes, and interstate on-ramp.

2. Contractor shall perform all Work in a manner that minimizes impact and disturbance to the public, residents and businesses in the Construction Area, to SFMTA transit operations, and to pedestrian and vehicle traffic. The performance of the Work at night and over weekends, as allowed by City Codes and regulations is encouraged, and in some cases may be required to comply with access and/or schedule completion requirements of the Contract. All costs of Work performed at night or on weekends are Incidental Work.
  3. Contractor's attention is directed to the conditions and environment of the Construction Area and the Site. The Work is to be performed in a densely occupied and congested urban environment that contains commercial and retail buildings, with a major shopping, theater, vacation/hotel and work destinations, and public transportation/transit access. Access to the Site and Construction Area is in places available only through narrow and congested streets. Contractor shall investigate and consider: (a) the conditions of the Construction Area; (b) coordination and permitting required to perform the Work as indicated on the Drawings and the applicable provisions of the Contract Documents, including but not limited to provisions addressing traffic controls, emergency vehicle access, ADA access; (c) Project environmental conditions and requirements; (d) Project geotechnical conditions and utility cut over coordination and requirements. The Contractor shall visit, review, and thoroughly familiarize itself with the Site and Construction Area prior to bidding.
  4. Work shall not prevent pedestrians from entering operating businesses.
  5. At any time that the Contractor occupies the sidewalk along any block, the Contractor shall coordinate with the businesses that are located on or require access through occupied area to maintain daily delivery access and access to garbage/recycling removal services.
  6. Contractor shall daily remove all graffiti on all barricades, equipment, buildings, and pavement in the Work area. Contractor shall no less than daily and as often as may be required by the Engineer remove trash, litter, and debris from sidewalks and streets immediately adjacent to the Site.
- B. Public Relations:
1. Contractor and all Subcontractors/Suppliers shall be courteous and cooperative with the local businesses and the general public, and shall be responsive to their concerns.
  2. When requested by the Engineer or required under this Contract, the Contractor shall attend meetings with the local general public, residents, businesses, and other stakeholders and interested parties.
  3. Communications between the Contractor and businesses in the Construction Area shall be performed under the direction of and supervision of the Engineer. Verbal agreements or other communications between the Contractor and local businesses shall be immediately disclosed to the Engineer.
  4. ~~The Contractor shall provide notice (via written flyer, approved by the SFMTA) to all businesses and residences within 300 feet of the Project~~



~~Site and the Construction Area (i.e., any area that may be impacted by construction activities) for a period of 10 Days in advance of the following:~~

- ~~a. The beginning of construction Work at each location.~~
- ~~b. Restrictions or changes in parking or curb or street access.~~
- ~~c. Other activities as deemed necessary by the Engineer.~~

5. Contractor shall notify affected businesses and the Engineer on a weekly basis on the status of the Work, planned changes, and expected completion date(s) for the Work in the area of the affected businesses.

**SP-7 CONTRACTOR PROVIDED INSURANCE (REPLACING GENERAL PROVISION SECTION 10.01)**

A. Contractor's Liability Insurance

1. Contractor shall maintain in full force and effect, for the period covered by the Contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:
  - a. Commercial General Liability insurance that is project specific (i.e., specific to the Work under this Contract) or is a corporate policy/policies with limits not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broadform Property Damage, products, and completed operations. Insurance shall not contain any limitation or exclusion that would preclude a claim provided for by the insurance provision of the Contract. Administrative costs of claims, including but not limited to legal costs and attorneys fees, shall not be accounted against or otherwise reduce the value of the insurance available to cover an insured loss. Contractor may meet the insurance requirements by use of a single corporate policy, a project specific policy, or a combination of the two. Any project specific insurance used to satisfy the requirements of this Agreement shall reinstate its limits annually. Contractor shall also provide Products/Completed Operations coverage through the statutory period for repose for defects in the Work.
  - b. Workers' Compensation Insurance in statutory amount, including Employers' Liability coverage with limits not less than Two Million Dollars (\$2,000,000) each accident, injury, disease, or illness, including coverage for U.S. Long Shore and Harbor Workers' Act benefits and Jones Act benefits, and Federal Employers Liability Act, as applicable. (It is the Contractor's responsibility to determine whether insurance coverage for worker injury, disability and death other than Workers' Compensation insurance is required for the Work.)
  - c. Commercial Automobile Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single

limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

B. Additional Coverages

1. **Builder's Risk Insurance:** Contractor shall provide "Special Form" Builder's Risk Insurance meeting the requirements set out in this Section. All builder's risk insurance forms, policy certificates, and policy endorsements for the insurance coverage described in this subsection C.1 must meet the requirements of and be approved by the Director of the City's Risk Management Division.
  - a. **Amount of Coverage:** The amount of coverage shall be equal to the full replacement cost on a completed value basis, including periodic increases or decreases in values through Change Orders. Said insurance policy will provide for no deduction for depreciation and shall also provide coverage for "soft costs," such as but not limited to design and engineering fees and inspection costs caused by an insured peril, provided that these "soft costs" are specifically listed and quantified in the bid specifications.
  - b. **Insureds:** The Builder's Risk insurance policy and all certificates and endorsements shall name as sole loss payee the City and County of San Francisco, its boards, commissions, directors, officers, employees, and agents, the Architect or Engineer, and the Construction Manager, if applicable, and the Contractor as their interests may appear. The Contractor and its subcontractors of every tier shall be named as insureds.
  - c. **Each insured shall waive all rights of subrogation against each of the other insureds to the extent that the loss is covered by the Builder's Risk Insurance.**
  - d. **Included Coverage:** The Builder's Risk Insurance shall include, but shall not be limited to, the following provisions and coverages:
    - (1) All damages of loss to the Work and to appurtenances (including but not limited to electrical, mechanical, control systems, software, computer hardware and systems), to materials and equipment to be incorporated into the Project while the same are in transit, stored on or off the Site, to construction plant and temporary structures.
    - (2) The perils of fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, civil commotion, smoke damage, damage by aircraft or vehicles, vandalism and malicious mischief, theft, collapse, and flood.
    - (3) The costs of debris removal, including demolition as may be made reasonably necessary by such covered perils, resulting damage, and as may be required by Code.
    - (4) Start up and testing and machinery breakdown including electrical arcing.
    - (5) Consequential loss (including but not limited to lost revenues due to delay in completing the Work ).

- (6) Terrorism coverage.
    - (7) The policy shall provide the City the right to occupy and have beneficial use of the Site without termination of the policy until Final Acceptance of the Project.
    - (8) The policy shall not exclude coverage for technology, including but not limited to software and computer hardware and control systems.
  - e. Deductibles: The Builder's Risk Insurance may have a deductible clause not to exceed the amounts below. Contractor shall be responsible for paying any and all deductible costs.
    - (1) The deductible for coverage for any damage to the work caused by an Act of God, as defined by Section 7105(b)(2) of the Public Contract Code shall not exceed five percent (5%) or \$250,000, whichever is less, of the sum of the value of the Work at risk (that is, completed and in progress) at the time of the loss.
    - (2) The deductible for coverage of All Other Perils shall not exceed Two Hundred Thousand Dollars (\$200,000).
  - f. Application of Loss Proceeds: In the event of a covered loss, proceeds of Builder's Risk Insurance shall be applied first to reimburse actual costs of demolition, debris removal, reconstruction, and repair or replacement incurred in the discharge of the Contractor's obligations of repair or replacement under this Contract. Insurance proceeds shall be deposited in a separate account in a local bank satisfactory to the City and shall be withdrawn only with the City's written approval to reimburse such actual costs as the Builder's Risk carrier has agreed to reimburse. The City shall have no liability for failure of the Builder's Risk carrier to pay for any particular cost of repairs. In the event of the termination of the Contractor for default, the Contractor shall forfeit all rights to Builder's Risk Insurance proceeds and the City may expend such proceeds to complete the Project as if such proceeds were unpaid contract funds.
2. Professional Liability Insurance: In the event that Contractor employs professional engineering or land surveyor services for performing field engineering or preparing design calculations, Plans and Specifications, Contractor shall require the retained engineers and land surveyors to carry professional liability insurance with limits not less than \$2,000,000 each claim with respect to negligent acts, errors, or omissions in connection with professional services to be provided under this Contract. Contractor's professional liability policy should not have an exclusion for environmental compliance management or construction management professionals.
3. Environmental Pollution Liability: In the event that hazardous / contaminated material is discovered during the course of the Work, and the Contractor or its subcontractors is required to perform abatement or disposal of such materials, then the Contractor, and its sub-contractor, who perform abatement of hazardous or contaminated materials removal shall maintain in force, throughout the term of this Contract, contractor's

pollution liability insurance with limits not less than Ten Million Dollars (\$10,000,000) each occurrence combined single limit, including coverages for on-site or off-site third party claims for bodily injury and property damage, with any deductible not to exceed \$50,000. Such policy shall not contain any claims-based or occurrence-based restrictions. Coverage shall include Contractor and Subcontractors' legal liability for contaminated soils and rock, in-ground or airborne asbestos, lead, PCBs and other hazardous material that may be encountered on the Site.

D. Forms Of Policies And Other Insurance Requirements

1. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from Contractor's insurance carrier identifying as additional insureds the parties indicated under Article "Insurance for Others" above, shall be furnished to the City, with complete copies of policies to be furnished to the City promptly upon request. No more than 5 Working Days after the date on which the Contract is awarded, Contractor shall deliver to the SFMTA all required bond and insurance certificates and endorsements.
2. Approval of the insurance by the City shall not relieve or decrease the extent to which Contractor or subcontractor of any tier may be held responsible for payment of any and all damages resulting from its operations. Contractor shall be responsible for all losses not covered by insurance, excluding damage caused by earthquake and flood (whether caused by storm or tidal wave) consistent with section 7105 of the California Public Contract Code in excess of 5 percent of the Contract Sum, including the deductibles. All policies of insurance and certificates are subject to review by the City and shall be satisfactory to the City.
3. The Contractor and its subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of Work, the Contractor and all of its subcontractors shall submit to the City a certificate of insurance against liability for Workers' Compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.
4. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.
5. To the extent permitted by law, Contractor waives all rights of recovery by subrogation arising out of deductible clauses, inadequacy of limits of any insurance policy, limitations or exclusions of coverage, or any other reason against the City. All insurance policies provided by Contractor, including but not limited to workers' compensation, general liability, and builder's risk, shall be endorsed with a waiver of subrogation in favor of

the City covering all claims arising from Work performed by the Contractor, its employees, agents and subcontractors.

6. Additional Premium: If, due to Change Orders authorized by the City that add Work or extend Contract Time, Contractor is charged additional premium, the City will reimburse Contractor the actual cost of such additional premium actually incurred (without mark-up) and that was directly caused by the authorized change in the scope of the Work or extension of Contract Time. Such additional payment shall be subject to proof and audit as the Engineer may require, but shall include at a minimum proof of such additional premium either by:
  - a. copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk Policy is issued on a declared-project basis; or
  - b. copy of Evidence of Property Insurance if the Builder's Risk policy is placed on a reporting form-basis.

Such additional premium payment must be calculated using the Experience Modification Rating (EMR) applied to Contractor at the time of Award of the Contract. The City shall have no liability for increases in premiums or other insurance costs that are not directly attributable to authorized changes in the Contract Time or Work or that are due to Contractor's work on other projects or due to changes to the Contractor's EMR.

7. Except for professional liability insurance and commercial general liability insurance, should any of the required insurance be provided under a form of coverage that included an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general aggregate limit shall be two times the occurrence limits stipulated.
8. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Contract, and without lapse, for a period of five (5) years beyond the Contract Final Completion date, to the effect that, should occurrences during the Contract Term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.
9. All insurance policies required to be maintained by Contractor hereunder shall be endorsed to provide for thirty (30) Days prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to the City. All notices shall be conform to noticing requirements of GP1.12 with additional notice provided to:

Risk Management Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 750 Floor  
San Francisco, CA 94102

10. Contractor, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 Days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.
  11. If, at any time during the life of this Contract, Contractor fails to maintain any item of the required insurance in full force and effect, all Work of this Contract may, at City's sole option, be immediately suspended, and all Contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding Paragraph 7 that such insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to the City.
  12. If Contractor is a joint venture partnership, the liability of each partner to the joint venture shall be joint and several. No insurance policy providing coverage under this Contract shall contain any provision prohibiting coverage of a joint venture partnership or otherwise limiting coverage any joint venture partner. No cross Suits Exclusions shall apply.
- E. Indemnitees
1. For liability insurance, Contractor shall include as additional insureds the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
  2. With the exception of professional liability insurance, Contractor shall include as additional insured and sole loss payee on all policies the City and County of San Francisco, its board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.
  3. For commercial general liability insurance, Contractor shall also include as an additional insured to the limit of Five Million Dollars (\$5,000,000) coverage each, the entities listed below, which are adjacent to the Site or are otherwise in the Construction Area and could be impacted by the Work. Said coverage to be limited to damage to those properties that arises out of and due to the Contractor's performance of the Work.

<b>Building Block-Lot No.</b>	<b>Building Address</b>	<b>Owner *</b>	<b>Owner Address*</b>
0101-031	721-725 Filbert Street	Boschetto Family Partnership	C/O Mike Boschetto 411 Parrott Dr. San Mateo, CA 94402
0101-045	659 Columbus Ave	Gaetano Biradelli	587 San Bruno Ave. San Francisco, CA 94107
0101-005	1717-1719 Powell Street	Casa Flynn LLC	1717 Powell Stree Suite 300 San Francisco, CA 94133
* Information on property owners subject to confirmation			

**F. Insurer Qualifications**

Insurance companies providing coverage for this Contract shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

**SP-8 NOT USED**

**SP-9 NOT USED**

**SP-10 SBE 100% SET-ASIDE REQUIREMENT**

- A. The Agency has established 100% SBE Set-Aside for this Contract 1277.
- B. An SBE is a for-profit, small business concern that has annual average gross revenues over the last three (3) year average gross revenue over the last three years that do not exceed \$12 million and is certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE Program (See the SFMTA SBE Program).
- C. SFMTA will monitor and enforce the SBE set-aside requirements in accordance with the provisions of the SBE Program included in the Contract Documents. Failure to comply with the set-aside requirements may subject Contractor to the enforcement mechanisms provided for in the SBE Program. Refer to Part One, Sec. IV.C.5 of the SBE Program.
- D. SFMTA will report to the DOT any false, fraudulent, or dishonest conduct in connection with the Program so that DOT may take appropriate action, which may include referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules, as provided in 49 CFR Part 26, Subpart F.
- E. Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code, or liquidated damages under the Contract for failure to meet particular contract SBE requirements. Failure to

comply with the requirements of the SBE Program constitutes a material breach of Contract and may be grounds for termination of the Contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE Program.

- F. If Contractor fails to meet the requirements of the SBE set-aside specified in the Contract, and has failed to demonstrate good faith efforts to meet those requirements, the SFMTA will suffer actual damages that will be impractical or extremely difficult to determine. Such damages may include, but are not limited to, potential loss of all or part of FTA grant(s), and the costs of implementation, administration, and enforcement of SFMTA's SBE Program. Said liquidated damages shall not be considered a penalty, but rather monetary damages agreed by the parties that SFMTA has sustained because of Contractor's failure to comply with the SBE requirements. Said liquidated damages shall be calculated as an amount equal to the difference between the SBE participation goal/set-aside requirement and the actual SBE goal/set-aside attainment at the time a deficiency is determined, multiplied by the liquidated damage assessment as set forth below. The Contractor shall pay an amount of \$100,000.00 for each tenth (0.1%) percentage point below the SBE goal/set-aside. Example: For this Contract there is a 100% SBE participation goal. Should Contractor achieve only 98.59% SBE participation at Contract closeout and fail to demonstrate good faith efforts to meet the goal, the liquidated damages would be as follows: 100 minus 98.59, or 1.41 percentage points, multiplied by \$100,000 for each .1% point, for a total of \$1,410,000.00. The SFMTA may deduct these liquidated damages from any payments due the Contractor or from any funds retained.

#### **SP-11 KEY PERSONNEL**

- A. Contractor shall not assign to other projects or otherwise remove from performing the Work under this Contract those persons identified as Key Personnel in Contractor's Proposal, without the express written permission of the Engineer. If a person who is identified as Key Personnel leaves Contractor's employment or becomes unavailable due to circumstances beyond Contractor's control, Contractor shall immediately provide notice to the City and within 15 Days of said notice, propose replacement personnel for the Engineer's review and approval. Persons replacing Key Personnel must have equivalent experience and expertise as the Key Personnel they replace.
- B. Contractor shall through the Engineer seek the SFMTA's prior approval if it wishes to reassign to another project any person identified in its Proposal as Key Personnel. The SFMTA shall not unreasonably deny such request, as long as such reassignment does not delay, cause a loss or reduction in productivity, or otherwise impair the Work.

**SP-12 NOT USED**

**SP-13 NOT USED**

**SP-14 NOT USED**

**SP-15 NOT USED**



## SP-16 LIABILITY FOR DAMAGE TO ADJACENT PROPERTY

- A. To the maximum extent provided by law, Contractor shall be solely liable for any damage to private property within the Construction Area where such damage is caused by or is otherwise related to or arising from the Work.

## SP-17 RELATIONS WITH PROPERTY OWNERS AND ENTRY TO PRIVATE PROPERTY

- A. Contractor shall at all times maintain a professional and courteous demeanor in its interactions with owners of property adjacent to the Site, in the Construction Area and commercial and residential tenants of those properties. Contractor shall promptly advise the Engineer of any complaints it receives from said property owners and tenants concerning the Work and the impacts of the Work. As authorized by the Engineer, the Contractor shall meet with individual property owner(s), tenants, business owners, and residents of the Construction Area to discuss the means and methods of constructing the Work and protecting the properties, businesses and residences that may be impacted by the Work.

- B. Contractor is not expected and shall not under this Contract act as a design consultant to any private property owner, but shall confer and cooperate with any property owner or engineer or architect retained by a property owner as to appropriate means and methods of protecting said property. Contractor shall not enter into any contract with a property owner that may be impacted by the Work to perform preventative or remedial work, or correct or repair damage to said property caused by the Work, without the express written permission of the Engineer.

- ~~C. Prior to the Effective Date, the City will obtain a license or other permission or right to enter private properties (725 Filbert Street, 659 Columbus Ave, 1717 Powell Street) for the purposes of preconstruction inspection and documentation of the condition of the property and improvements, enter, inspect, and place, maintain, repair and remove monitoring equipment and install compensation grouting tube-a-manchettes. The City will assign such license to Contractor and Contractor shall accept such assignment, or the City may name Contractor as permittee or licensee on such license.~~

~~An example license agreement between the City and County of San Francisco and a private property owner ('License Agreement for Access and Installation of Subsurface Grouting Pipes and Settlement Monitors') properties is provided in the attachment SP-17 Appendix A as a reference document.~~

~~The terms and conditions described in the example license may have been revised and supplemented through SFMTA's negotiations with various property owners.~~

~~The Contractor shall allow for reasonable variation of the following as incidental to the Work:~~

- ~~1. Notices required to be made to property owners and the required notice periods may vary, notices may be required to be mailed returned certified mail.~~
  - ~~2. Preconstruction Documents to be provided to property owners (such as survey photographs, survey video, and photographs of proposed locations of building monitoring equipment) may vary and will be subject to approval of the Engineer. The timing for delivery of survey photographs and video to property owners may vary.~~
  - ~~3. An 'Equipment Map' will be required for each property as described in the example license. The 'Equipment Map' shall clearly detail the proposed location and type of all building monitoring equipment to be installed at each property (including elements of each instrument such as connective tubing for liquid levels or connections to power supply and communications if required). Written approval of the property owner will be required for the location of all proposed equipment. The 'Equipment Map' will be required to be submitted for approval of the property owner (as described in the example license) and as instructed by the Engineer prior to installation of monitoring equipment.~~
  - ~~4. Access to properties may be contingent upon delivery of pre-construction documentation to the satisfaction of the Engineer and the property owner.~~
  - ~~5. Access to properties may be contingent upon meeting security requirements of property owners and owners' tenants.~~
  - ~~6. Access hours and duration available for contractor to access properties to conduct pre-construction inspections, surveys, installation, monitoring, maintenance and removal of building monitoring equipment may vary to suit the operational needs of property owners, tenants and users.~~
  - ~~7. Periodic reporting of the status of upcoming or ongoing work at each property may be required (subject to approval of the Engineer).~~
  - ~~8. Periodic reporting summarizing the status of building settlement suitable for distribution to non-technical stakeholders may be required (subject to approval of the engineer).~~
  - ~~9. Provision of as-built information (including level and alignment) for monitoring and compensation grouting equipment may be required.~~
  - ~~10. Protection of building monitoring equipment from interference or damage may be required.~~
- ~~D. If Contractor determines any other property and its improvements located adjacent to the Site or in the Construction Area requires monitoring equipment, other equipment, compensation grouting, or other materials to protect such property and improvements from the Work, Contractor shall obtain a license or other permission or right to enter, inspect, and place, maintain, repair and remove such monitoring equipment, other equipment, compensation grouting or other material.~~
- ~~E. The Engineer shall provide Contractor a list of properties and property owners for which the City has obtained a license for the purposes described in the~~

~~preceding paragraph C. As directed by City, for any property for which the City has not obtained a license or other permission to enter and for which access is necessary to perform or safeguard the Work, Contractor shall obtain permission by license agreement for the activities described in the preceding paragraph D. Contractor shall use only the form license agreement provided by the Engineer; any changes to the form license agreement must be approved by the City in writing. Contractor shall immediately notify the Engineer if a property owner refuses access or is otherwise uncooperative with Contractor. The Engineer will assist the Contractor in obtaining the property owner's permission to enter, but that assistance shall not relieve Contractor of its responsibility to document the preconstruction condition of properties, to monitor said properties during construction, and repair any damage arising from the Work.~~ <sup>ADD. NO. 3</sup>

~~F. The work and tasks described in this Special Provision and in related provisions of the Contract Documents are Incidental Work.~~

## **SP-18 FEDERAL CONTRACTING REQUIREMENTS**

### **18.01 COMPLIANCE AND PRECEDENCE**

Contractor shall comply with all applicable federal contracting requirements, including but not limited to those set out in this Section SP-18. If there is any conflict between any federal contracting requirement and any provision of this Contract, the federal requirement shall prevail. The provisions contained in the document entitled "FTA Requirements for Construction Contracts" are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Contract, the FTA terms and conditions shall take precedence."

### **18.02 DEFINITIONS**

- A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.
- E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and

Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

- F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. Government means the United States of America and any executive department or agency thereof.
- H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.
- K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or Contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

### 18.03 BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (less than \$100,000) made with capital, operating, or planning funds. Contractor agrees to be solely responsible for all costs relating to compliance with the Buy America requirements. Failure to comply with these requirements constitutes a material breach of this Contract. See 49 CFR § 661.17. Contractors who intentionally or willfully fail to comply with the Buy America requirements may also be subject to debarment or suspension proceedings. 49 CFR §§ 661.18, 661.19.

### 18.04 CARGO PREFERENCE REQUIREMENTS - Use of United States-Flag Vessels

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 Working Days following the date of loading for shipments originating within the United States or within 30 Working Days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

#### 18.05 SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

#### 18.06 ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in any state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### 18.07 ACCESS TO RECORDS AND REPORTS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.
- B. In all contracts between the City and County of San Francisco and the Contractor for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) entered into through other than competitive bidding, the Contractor shall make available records related to the Purchaser, the Secretary of Transportation and

the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

- C. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- D. The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until the City and County of San Francisco, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

#### 18.08 CLEAN AIR REQUIREMENTS

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and County of San Francisco and understands and agrees that the City and County of San Francisco will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 18.09 CLEAN WATER REQUIREMENTS

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### 18.10 RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

#### 18.11 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

- A. Minimum Wages

1. All laborers and mechanics employed or working upon the Site or otherwise performing the Work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph A.4 of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph A.2 of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the Site of the work in a prominent and accessible place where it can be easily seen by the workers.

- a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
  - i. Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - ii. The classification is utilized in the area by the construction industry; and

- iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
    - iv. With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 Days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-Day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 Days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-Day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.2.b. or c. of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
2. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
3. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.



- a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
    - i. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
    - ii. The classification is utilized in the area by the construction industry; and
    - iii. The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
  - b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 Days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-Day period that additional time is necessary.
  - c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 Days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-Day period that additional time is necessary.
  - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.5.b or c. of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- B. Withholding - The Municipal Transportation Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal Contract with the same prime Contractor, or any other federally-assisted Contract subject to Davis-Bacon prevailing wage

requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the Site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, MTA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the Site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
  - a. The Contractor shall submit weekly for each week in which any Contract Work is performed a copy of all payrolls to the MTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.

- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
    - i. That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
    - ii. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
    - iii. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
  - c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C.2.b. of this section.
  - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
2. The Contractor or subcontractor shall make the records required under paragraph C.1 of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
- D. Apprentices and Trainees
1. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a

State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 Days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that

there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.
- E. Compliance with Copeland Act requirements - The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
- F. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.
- G. Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a Contractor and a subcontractor as provided in 29 CFR 5.12.
- H. Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- I. Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- J. Certification of eligibility
  1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

#### 18.12 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

- A. Overtime requirements - No Contractor or subcontractor contracting for any part of the Contract Work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A. of this Section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A. of this section, in the sum of \$10 for each Day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in paragraph A. of this section.
- C. Withholding for unpaid wages and liquidated damages - The MTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B. of this section.
- D. Subcontracts - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A. through D. of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A. through D. of this section.

#### 18.13 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract

and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### 18.14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA-assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C. The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### 18.15 CIVIL RIGHTS REQUIREMENTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Contract:
1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project.
  2. During the performance of this Contract the Contractor agrees as follows:
    - a. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
    - b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.
    - c. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
    - d. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.



- e. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
  - f. The Contractor will include the provisions of subsections 1 and 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the City and the United States to enter into such litigation to protect the interests of the City and the United States.
3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. Equal Opportunity Clauses
1. As used in these specifications:
    - a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;

- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes persons who are:
    - i. Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - ii. Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - iii. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - iv. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority

and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, as amended, or the regulations promulgated pursuant thereto.
6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other supervisory personnel assigned to the Work are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.
  - c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and

minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any the Site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female

- students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the Site and in other areas of a Contractor's work force.
  - k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
  - l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - n. Ensure that all facilities and company activities are nonsegregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
  - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subsections 7.a through 7.p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under subsection 7.a through subsection 7.p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide

access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.
12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

D. DBE/SBE Assurances.

1. Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:
2. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

18.16 SUBSTANCE ABUSE

Contractor shall comply with U.S. DOT regulations, "Drug Free Workplace Requirements (Grants)" 49 C.F.R. Part 29, Subpart F, and other applicable U.S.DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) that may be promulgated.

18.17 BONDS

See Section 10.02 of General Provisions.

18.18 DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

18.19 FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

#### 18.20 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

#### 18.21 FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

#### 18.22 FEDERAL RULES OF ACQUISITION NOT APPLICABLE

The City has not adopted the Federal Rules of Acquisition (FRA). Except as specifically stated in this Contract: (1) this Contract is not subject to the FRA; and, (2) for purposes of interpreting or enforcing the Contract, the City shall not be bound by the FRA or any court decision interpreting the FRA.

#### 18.23. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 "Federal Leadership on Reducing Text Messaging While Driving", Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm> ) and DOT Order 3902.10 "Text Messaging While Driving", Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

#### 18.24. SEAT BELT USE

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

### **SP-19 GUARANTEES OF SURETY**

Upon request by the City, the surety or sureties that issued the performance and payment bonds specified in the General Provisions shall provide evidence of reinsurance or other capital or security to establish to the satisfaction of the SFMTA



that said surety or sureties have sufficient assets to guarantee completion of the Work.

END OF SPECIAL PROVISIONS

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Free Recording Requested Pursuant to  
Government Code Section 27383

Recording requested by and  
when recorded mail to:

City and County of San Francisco  
SFMTA Real Estate Section  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Senior Manager

with a copy to:

Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

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(Space above this line reserved for Recorder's use only)

LICENSE AGREEMENT FOR ACCESS AND INSTALLATION OF  
SUBSURFACE GROUTING PIPES AND SETTLEMENT MONITORS  
(\_\_\_\_\_, APN Block \_\_\_\_ Lot \_\_\_\_)

THIS LICENSE AGREEMENT FOR ACCESS AND INSTALLATION OF  
SUBSURFACE GROUTING PIPES AND SETTLEMENT MONITORS (this "**Agreement**"),  
dated for reference purposes only as of \_\_\_\_\_ 2013 (the "**Agreement Date**"),  
is made by and between \_\_\_\_\_, ("**Owner**"), and the City and County of  
San Francisco, a municipal corporation, acting by and through its Municipal Transportation  
Agency ("**City**").

RECITALS

A. Owner owns the real property commonly known as \_\_\_\_\_ Street, in San  
Francisco, California, and more particularly described in the attached Exhibit A (the  
"**Property**").

B. City will be performing certain subsurface work on the portion of \_\_\_\_\_  
Street that abuts the Property as part of City's construction of its Central Subway Project (the  
"**Project**") and, in connection with the construction of the Project, City wishes to perform the  
Work (as defined in Section 2).

C. City needs access to the Property for the performance of the Work, and Owner  
agrees to provide such access on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for  
such other good and valuable consideration, the receipt and adequacy of which are hereby  
acknowledged, Owner and City hereby agree as follows:

1. License; Fee. Owner hereby grants City a temporary, non-exclusive and non-possessory right for City and its employees, contractors, subcontractors, representatives, agents or consultants (collectively, "**City's Agents**") to enter upon and use the Property for the limited purposes, and subject to the terms, conditions and restrictions, set forth below. This Agreement gives City a license only and does not constitute the grant of any ownership, leasehold, easement or other property interest or estate in all or any portion of the Property. City shall deliver a license fee of \$\_\_\_\_\_ to Owner at the time this Agreement is fully executed and delivered.

2. Permitted Uses of the Property. City and City's Agents shall have the right to enter the Property for the purpose of performing the following work (collectively, the "**Work**"), which shall all be at City's sole cost and expense:

(i) Installing subsurface, thin-diameter grout piping (collectively, the "**Pipes**") in the portion of the Property depicted on the attached Exhibit B and in substantial compliance with the Work Plan (as defined in Section 3(c)) and filling the Pipes with grout as needed;

(ii) Installing settlement monitor markers, crack gauges and automated motorized total stations (collectively, the "**Exterior Monitors**") on the exterior of the building located on the Property (the "**Building**") in substantial compliance with the Work Plan;

(iii) Installing \_\_\_ liquid level monitors and related tubing, \_\_\_ pairs of tape extensometers, \_\_\_ tilt meters and \_\_\_ crack gauges (collectively, the "**Interior Monitors**") in the interior Building locations specified in the Equipment Map (as defined in Section 3(d)), and installing any Additional Interior Crack Gauges (as defined in Section 3(d)) and any Additional Interior Monitors (as defined in Section 3(d));

(iv) Repairing and maintaining the Exterior Monitors, the Interior Monitors, any Additional Interior Crack Gauges, and any Additional Interior Monitors (collectively, the "**Monitoring System**"), taking readings from the Monitoring System, and removing the Monitoring System;

(v) Performing any other activities shown and/or described in the Work Plan in substantial compliance with the Work Plan; and

(vi) Performing any of City's rights or obligations under this Agreement.

Owner acknowledges that City will need physical access to the Monitoring System during the term of this Agreement for maintenance, repair, and eventual removal, together with physical access to any Additional Interior Crack Gauges during the term of this Agreement to take readings therefrom. Owner agrees that it shall not, nor permit any other party to, cover or otherwise permanently block access to the Monitoring System.

3. General Conditions for Performance of the Work.

(a) Permits and Approvals. City shall obtain, at its sole cost and expense, all applicable permits, licenses and approvals (collectively, "**Approvals**") of any regulatory agencies required for the performance of the Work by or for City. Owner shall cooperate in good faith with City to submit any necessary consents or other documents reasonably required to enable City or City's Agents to apply for and obtain such Approvals.

(b) Baseline Report. Prior to installing the Pipes or any Monitoring System components at the Property, City shall inspect the Property (the "**Pre-Construction Inspection**")

during a mutually agreeable time and shall prepare a written report detailing the condition of the Property as of the date of the Pre-Construction Inspection (the "**Baseline Report**"). City shall provide Owner with at least ten (10) days' prior written notice of the date that City intends to perform such inspection, and Owner shall have the right to accompany the persons performing such inspection for City. City shall deliver the draft Baseline Report to Owner for review, and Owner shall notify City in writing (the "**Owner Report Comments**") of any item that needs to be modified, deleted or added in the draft Baseline Report to accurately describe the condition of the Property as of such inspection date. Owner shall deliver the Owner Report Comments to City within ten (10) days of receiving the draft Baseline Report from City. If Owner does not timely deliver the Owner Report Comments to City, the draft Baseline Report shall be deemed to be the final Baseline Report. If the Owner timely delivers Owner Report Comments to City, City shall respond to Owner in writing within ten (10) days of receiving the Owner Report Comments (the "**City Report Comments**"), and the draft Baseline Report, the Owner Report Comments and the City Report Comments shall be collectively deemed to be the final Baseline Report. The final Baseline Report shall be completed, with a copy thereof delivered to Owner, before City commences with the installation of the Pipes or the Monitoring System.

(c) Work Plan. City has delivered the final plans and specifications for the Work to Owner, which were Pages \_\_\_\_\_ of the plans prepared by Central Subway Design Group for Contract \_\_\_\_\_, dated \_\_\_\_\_ (the "**Work Plan**"). Owner acknowledges the Work Plan contains sensitive security information and Owner shall not disclose the Work Plan to any other party without City's prior written consent unless Owner is legally required to make such disclosure under applicable law.

(d) Equipment Map. Prior to City commencing with the installation of the Monitoring System, City shall deliver a depiction of the proposed locations for the Interior Monitors (the "**Draft Equipment Map**") to Owner for review, and Owner shall notify City in writing of any Owner comments to the Draft Equipment Map (the "**Owner Map Comments**"); provided, however, that Owner shall not unreasonably withhold its consent to any of the Interior Monitor locations proposed by City. If the Baseline Report reveals interior Building cracks that City reasonably determines should be monitored, City shall have the right to install crack gauges provided that Owner consents to the location of such crack gauges, which consent shall not be unreasonably withheld (the "**Additional Interior Crack Gauges**"). If City reasonably determines that the monitoring of any Building settlement would be better conducted by replacing or supplementing the Interior Monitors with additional or alternative interior monitoring equipment, and such supplementation or replacement would not have a materially greater impact on Building operations than the Interior Monitors, City may install such supplemental or replacement interior monitoring equipment if Owner consents to the location thereof, which consent shall not be unreasonably withheld (the "**Additional Interior Monitors**"). The proposed location of any proposed Additional Interior Crack Gauges and any Additional Interior Monitors shall be included in the Draft Equipment Map.

Owner shall deliver the Owner Map Comments to City within ten (10) days of receiving the Draft Equipment Map from City. If Owner does not deliver the Owner Map Comments to City within such ten (10) day period, the Draft Equipment Map shall be deemed to be the "**Equipment Map**" hereunder. If the Owner timely delivers Owner Map Comments to City within such ten (10) day period, City shall revise the Draft Equipment Map and resubmit same to Owner for review, which review shall be completed as set forth in the preceding two sentences of this Section 3(d). This review and approval process shall continue until all updates and revisions to the Draft Equipment Map are finalized by City and approved by Owner, and such finalized report shall be deemed to be the "**Equipment Map**" hereunder. Once established, the Equipment Map shall not be further modified unless City and Owner agree to such modification in writing. If City and Owner mutually agree in writing to modify the placement of any of the

Interior Monitors at any time after establishing the Equipment Map, the Equipment Map shall be accordingly modified. Commencement of the installation of the Monitoring System may begin only following establishment of the Equipment Map.

(e) Exercise of Due Care; Existing Utilities. City shall use, and shall cause City's Agents to perform, all Work in a good and workmanlike manner and to use due care and commercially reasonable efforts at all times to avoid any damage or harm to the Property in performing the Work. City shall locate any utilities located within the portion of the Property that will be affected by the Work and protect them from damage.

(f) Installation Work Schedule. City shall complete its installation of the Pipes and the Monitoring System no later than December 31, 2015; provided, however, that such date shall be automatically extended to the extent necessary due to any reasonably unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond City's reasonable control. City shall notify the Owner if City determines that completion of such installation work will be materially delayed.

(g) Restoration of the Property. At the times immediately following the completion of the installation of the Pipes and the Monitoring System, the completion of any maintenance or repairs to the Monitoring System, the reading of any Additional Interior Crack Gauges, and the removal of the Removable Monitoring Components, City shall remove any debris on the Property resulting from such activity, and restore any physical damage to the Property caused by such activity or by the acts City or City's Agents in performing such activity, to the condition existing immediately prior to City's use hereunder (except for reasonable use and wear and damage by fire or other casualty that is not caused by City or City's Agents) to the Owner's reasonable satisfaction. Notwithstanding anything to the contrary in the foregoing sentence, City shall have the right to leave the Pipes on the Property at all times and to leave the entire Monitoring System on the Property during the Term (as defined in Section 4). City shall not store or place any debris upon the Property during the course of any demolition or removal work performed in connection with the Work.

(h) Notification of Commencement of Work; Coordination for Access. Owner shall cooperate with City and City's Agents in scheduling the Work on the Property. Owner shall grant City and the City's Agents permission and reasonable access to the Building and any other improvements on the Property to the extent reasonably necessary to perform any of the Work, including the ability to access the existing entrances at the Building and the Property, subject to the rights of tenants that have written leases to occupy the Property at the time of such access.

City shall perform the Work in a manner that will not obstruct access to the Building for deliveries and customers during the hours between 8:00 am and 5:00 pm, excepting any holidays. City shall promptly maintain and clean any area of the Property soiled or stained by the performance of any of the Work and remove any debris dropped on the Property in the performance of any of the Work.

(i) No Liens. City shall keep the Property free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Property pursuant to this Agreement. In the event any such liens are recorded, removal thereof shall be the sole cost and responsibility of City with no cost to Owner.

(j) Repair of Damage. If any portion of the Property or any property of Owner located on or about the Property is damaged by any of the activities conducted by City or City's

Agents hereunder, City shall, at its sole cost, repair any and all such damage and restore the Property to the condition it was in immediately prior to such damage (subject to reasonable use and wear or any damage caused by a casualty that is not caused by the performance of the Work), provided, however, that City shall have no obligation to repair any damage to the extent that it resulted from the negligence or willful misconduct of Owner or any of its employees, contractors, subcontractors, representatives, agents, tenants or invitees.

(k) Monitoring System Components. The Monitoring System may be comprised of various components and connective tubing between any such components, as required. The placement and description of the Monitoring System components are shown on the Work Plan. City shall not relocate any of the Monitoring System components installed in or on the Building without obtaining Owner's prior written consent to such relocation.

4. Term. This term of this Agreement (the "**Term**") shall commence on the date it is fully executed and shall expire on December 31, 2017 (the "**Termination Date**"); provided, however, that City shall have an option to extend the Termination Date for a period of up to two (2) additional years under the same terms and conditions stated herein. City shall exercise, if at all, such extension option by giving Owner a written notice of extension at least thirty (30) days prior to the original Termination Date. Owner acknowledges and agrees that City's notice of its intent to exercise such extension option shall be exercisable by the Director of Transportation of City's Municipal Transportation Agency.

5. City's Right to Terminate Work. City shall have no obligation to commence or complete any of the Work. Without limiting the foregoing, City reserves the right, at its sole option, to withdraw from the Work at any time prior to completion if City determines, in its sole and absolute discretion, that it is inappropriate or impractical to complete the Work for any reason whatsoever, including, by way of example only and without limitation, economic unfeasibility, unavailability of funds, impracticality or difficulty of site conditions, or City's re-evaluation of the need for the Work. If City elects to terminate the Work prior to completion, City shall restore the Property to its substantially same physical condition prior to the commencement of Work (except for City's right to leave the Pipes and except for reasonable use and wear and damage by fire or other casualty) to the extent the Property is affected by the Work. If the Pipes have not been installed prior to such early termination date, then within fifteen (15) days of such early termination date, Owner shall return an amount equal to the license fee referenced in Section 1.

6. Project Contacts. City has designated \_\_\_\_\_ (the "**Construction Manager**"), as the individual for Owner to contact if any problems with respect to the Property arise while City is conducting the Work. Prior to commencement of any of the Work, City shall provide Owner with the telephone numbers of the Construction Manager. City may change the designation and telephone numbers of the Construction Manager by delivering written notice of such change to Owner. Owner has designated \_\_\_\_\_ (the "**Project Manager**") as the individual for City to contact if any problems with respect to the Property arise while City is conducting the Work. Prior to commencement of any of the Work, Owner shall provide City with the telephone numbers of the Property Manager. Owner may change the designation and telephone numbers of the Property Manager by delivering written notice of such change to City.

7. Remaining Improvements. City shall remove the Monitoring System prior to the end of the Term. If the Pipes are installed in substantial compliance with the Work Plan, the City shall have the right to leave them on the Property after the expiration of the Term. As of the expiration of the Term, the Pipes shall be deemed part of the Property and owned in fee by Owner and City shall have no remaining interest or obligations thereto. Owner may remove the Pipes any time after they are installed to accommodate excavation work on the Property by or on

behalf of Owner; provided, however, that Owner shall perform such removal work in a manner that does not damage the Project or any City property abutting the Project.) City's rights in connection with any such excavation and removal of any remaining Pipes shall be governed by the provisions of Section 832 of the California Civil Code, as such section may be amended or replaced.

8. **Insurance.** Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement. City shall cause the third party general contractor performing any of the Work ("**City Contractor**") to procure and keep in effect during any construction work performed prior to the termination of this Agreement, at no expense to Owner, insurance in the following amounts and coverages:

(i) comprehensive general liability insurance with limits of not less than \$2,000,000 each occurrence for bodily injury and property damage, including coverages for premises and operations, independent contractors, contractual liability, broad form property damage, personal injury, explosion, collapse, and underground (XCU), products, and completed operations with respect to the Project; (ii) comprehensive automobile liability insurance with limits of not less than \$2,000,000 each occurrence for bodily injury and property damage, including coverages for owned, hired and non-owned vehicles, as applicable; and (iii) worker's compensation insurance, including employer's liability coverage with limits of not less than \$1,000,000 each accident, or satisfactory evidence of self-insurance.

9. **Compliance with Laws.** City shall, at its expense, conduct and cause to be conducted all activities on the Property allowed hereunder in a safe and prudent manner and in compliance with all laws, regulations, codes, ordinances and orders of any governmental or other regulatory entity, whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. City shall, at its sole expense, procure and maintain in force at all times during its use of the Property any and all licenses or approvals necessary to conduct the activities allowed hereunder.

10. **Surrender.** Within thirty (30) days after completion of the Work or the earlier termination of this Agreement, City shall surrender the Property in substantially the same condition as received, free from hazards and clear of all debris, except for City's right to leave the Pipes and except for reasonable use and wear and damage by fire or other casualty. At such time, City shall, at its sole cost, remove all of its property from the Property and repair any damage to the Property caused by such removal. City's obligations under this Section shall survive any termination of this Agreement.

11. **Condition of Property.** Owner has provided City with all information in its possession regarding the environmental condition of the Property, the condition of the Property soils, the foundation and structural integrity of the Building, and the location of underground utilities and underground storage tanks that may be in or under the portions of the Property affected by the Work. Owner has no actual knowledge of the presence of any Hazardous Material (defined as follows) in the soil or groundwater beneath the Property.

**"Hazardous Material"** means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Property



or are naturally occurring substances in the Property, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Property.

City accepts the Property in its "AS IS" condition, without representation or warranty of any kind by Owner other than any made in this Agreement, and subject to all applicable laws, rules and ordinances governing the use of the Property, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. Notwithstanding anything to the contrary in the foregoing, City shall have no obligation to remediate any Hazardous Materials existing on the Property prior to the commencement of the Work; provided, however, that City shall remediate any such pre-existing Hazardous Material to the extent it was negligently released through the performance of the Work.

12. Indemnity. City shall indemnify, defend and hold harmless Owner and its employees, contractors, subcontractors, representatives, and agents, and their successors and assigns (collectively, the "**Indemnified Parties**" and individually, an "**Indemnified Party**"), from and against any and all claims, demands, losses, damages, liens, causes of action, legal actions, judgments, awards, liabilities, costs and expenses, including, without limitation, reasonable attorneys' fees, (collectively, "**Losses**") caused by (1) physical damage to the Property caused by the performance of the Work, (2) personal injury or death caused by the performance of the Work, (3) disruption in utility service to the Property caused by the performance of the Work, (4) City's default in its obligations hereunder, or (5) any release of Hazardous Materials in or on the Property as a result of the actions of City or City's Agents on the Property pursuant to this Agreement. Notwithstanding anything to the contrary in the foregoing, City's obligations hereunder shall not include any Loss to the extent it results from (i) the willful misconduct or negligence of any Indemnified Party, (ii) the discovery of any pre-existing Hazardous Material or deficient condition affecting the Property, or (iii) the non-negligent release of any pre-existing Hazardous Material existing on the Property discovered by City through the performance of the Work; provided, however, that once City learns of such pre-existing Hazardous Material, City shall modify its performance of the Work to prevent any further release thereof. Owner must give notice of any claim for Losses it may have against City under this indemnity within one hundred eighty (180) days after learning of the Loss. City's obligations under this Section shall terminate on the first anniversary of the date that this Agreement expires or terminates.

13. Ownership; Transfer by Owner. Owner represents and warrants to City that it is the sole owner in fee of the Property, that no other person or entity has any ownership or possessory interest in the Property, that Owner has full right and authority to grant the license contained in this Agreement to City without the consent of any other person or entity, and that the person signing on behalf of Owner has the authority to bind Owner to this Agreement. If Owner's title to or possession of all or any portion of the Property is sold, conveyed or otherwise transferred for any reason before the termination of this Agreement, Owner shall assign its rights and obligations under this Agreement to the new owner (who shall assume Owner's obligations hereunder) and shall immediately notify City in writing of such assignment and assumption and the name and address of the new owner.

14. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges

San Francisco companies to do business with corporations that abide by the MacBride Principles. City acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

15. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, virgin redwood wood product.

16. Notification of Limitations on Contributions. Through its execution of this Agreement, Owner acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

17. Notices. Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and shall be deemed duly given: (i) when delivered if personally delivered to the recipient; (ii) when transmitted by facsimile device during normal business hours, provided such device generating a written confirmation of such transmission and receipt and the original notice is deposited in first class mail within the first business day immediately following such transmission by facsimile; (iii) on the first business day following delivery to an overnight delivery service, provided delivery is confirmed by the delivery service; and (iv) on the earlier of actual receipt or three (3) days following deposit in United States registered or certified mail, postage prepaid and return receipt requested, addressed to the parties as set forth below. Any party may change its address for notices by giving written notice to the other parties in the manner set forth below.

If to City: San Francisco Municipal Transportation Agency  
SFMTA Real Estate Section  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attention: Senior Manager  
Fax No.: 415-701-4341

San Francisco Municipal Transportation Agency  
Central Subway Project  
821 Howard Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94103  
Attention: \_\_\_\_\_  
Fax No.: (415) 701-5222

If to Owner: Name  
Address  
City, State, Zip Code

18. Attorneys' Fees. If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes of this Agreement, the reasonable fees of attorneys of the Office of the City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the

subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

19. Assignment. City shall have the right to assign its rights and obligations under this Agreement to a City Contractor provided that either City or City Contractor shall deliver written evidence of City Contractor's assumption of all such rights and obligations to Owner.

20. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of City requested, required or contemplated hereunder may be made by the Director of Transportation of City's Municipal Transportation Agency or any other authorized City official. All approvals and determinations of Owner requested, required or contemplated hereunder may be made by \_\_\_\_\_. (d) This instrument (including the exhibits hereto) contains the entire agreement between the parties with respect to the Work and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (e) The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement. (f) Time is of the essence. (g) This Agreement shall be governed by California law and City's Charter. (h) If Owner consists of more than one person, then the obligations of each person shall be joint and several. (i) City shall have the right to record this Agreement or any memorandum hereof provided, however, that at any time after this Agreement terminates, City shall deliver documentation reasonably necessary to remove the lien resulting from any such recorded document to Owner within thirty (30) days of receiving Owner's written request therefor. (j) This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (k) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, heirs, administrators, executors and assigns. Any reference in this Agreement to "City" or "Owner", respectively, shall be deemed to include and apply to any successor, heir, administrator, executor or assign of such party. (l) This Agreement does not create a partnership or joint venture between Owner and City as to any activity conducted by City on, in or relating to the Property. (m) Nothing herein shall be deemed a gift or dedication of any portion of the Property to the general public or for the general public, it being the intention of the parties that the license granted hereunder and any other rights granted hereby shall be limited to and for the purposes specified herein. (n) This Agreement shall become effective only when duly signed and delivered by the parties. (o) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**[REMAINDER OF PAGE INTENTIONALLY BLANK]**

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands and seals and have executed this contract in triplicate the day and year first above written.

<p>CONTRACTOR</p> <p>By: <u><i>Matthew Gray</i></u> Signature</p> <p><u>Matthew Gray</u> Printed Name</p> <p>Title: <u>President</u></p> <p>By: _____ Signature</p> <p>Printed Name</p> <p>Title: _____</p>	<p>CITY AND COUNTY OF SAN FRANCISCO by and through its MUNICIPAL TRANSPORTATION AGENCY</p> <p><u><i>[Signature]</i></u> Edward D. Reiskin Director of Transportation</p> <p>ATTEST:</p> <p>Authorized by the Municipal Transportation Agency Resolution No. <u>N/A</u></p> <p>Adopted: <u>N/A</u></p> <p><u>N/A</u> Secretary, Municipal Transportation Agency</p> <p>Approved as to form:</p> <p>Dennis J. Herrera City Attorney</p> <p><u><i>[Signature]</i></u> Robert K. Stone <u>7-12-2013</u> Deputy City Attorney</p>
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State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California            )  
  ) ss  
County of San Francisco    )

On \_\_\_\_\_, before me, \_\_\_\_\_, a notary public in and for said State, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.  
WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Legal Description of Property**

**EXHIBIT B**

**Location of Pipes**

[see attached]

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