

SPECIFICATION NO. HD-S3195

AND

DRAWINGS LISTED ON DRAWING NO. HD10-02464

CITY OF LONG BEACH, CALIFORNIA

HARBOR DEPARTMENT

FOR

POLB MAINTENANCE BUILDING C PUMP SHOP CONVERSION

AT

725 HARBOR PLAZA

LONG BEACH, CALIFORNIA

OFFICES OF

MARIO CORDERO,
CHIEF EXECUTIVE OFFICER


AND

SUZANNE PLEZIA, P.E.,
SENIOR DIRECTOR/ CHIEF HARBOR ENGINEER

JANUARY 2025

Specification No.: HD-S3195
POLB MAINTENANCE BUILDING C PUMP SHOP CONVERSION

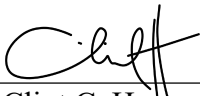
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Date

Specification No. HD-S3195
POLB PIER G MAINTENANCE BUILDING C
PUMP SHOP CONVERSION

The text portions of the Technical Specifications were prepared by, or under the responsible charge of the following engineers:

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12/5/2024

Date: September 20, 2024

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Specification No. HD-S3195
PIER G MAINTENANCE BUILDING C
PUMP SHOP CONVERSION

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Professional Engineer Seal in accordance with the Professional Engineers Act (Business and Professions Code 6700-6799).

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INSTRUCTIONS TO BIDDERS

ITB - 1. GENERAL

Information contained in this Section is supplemental to information contained in the Notice Inviting Bids ("NIB") of this Specification. The meanings of all capitalized terms not defined in these Instructions to Bidders ("ITB") are contained in the General Conditions ("GC") of this Specification. Bidders are directed to the Special Conditions ("SC") of this Specification for additional Bid requirements.

ITB - 2. BID FORMS AND DOCUMENTS AND TIME FOR SUBMISSION

2.1. Submit Bid PRIOR TO Bid Deadline:

- Bidder's Proposal (Form BP)
- Schedule of Bid Items (Form SB)
- Noncollusion Declaration (Form ND)
- Bidder's Security (Form BS)
- Iran Contracting Act Compliance Affidavit (Form ICA)
- Trade Sanctions Compliance Affidavit (Form TSCA)
- Subcontractor List (Form SL)
- Bidder Responsibility Questionnaire (Form CR1)
- Experience Requirements (Form CR2)
- SBE/VSBE Commitment Plan for Construction Contracts (Form SBE-2C)

Electronic Bid (eBid) Submit eBid online in the Port of
Submittal Location: Long Beach PB System

2.2. Submit Original Hard Copies Postmarked via Certified Mail or shipped by the Third (3rd) Working Day After Bid Deadline From Three (3) Lowest Bidders.

- Original Bidder's Security (Form BS): Bid Bond with wet signatures and seals; or Certified/Cashier's Check
- Certification Regarding Release of Financial Information (Form CR3)
- Financial Statements
- SBE/VSBE Good Faith Effort (GFE) Documentation (if SBE/VSBE participation goals are not met)

Address Hard Copy Submittal: Port of Long Beach Administration Building
Attn: HD-S3195 Post Bid Submittal
415 W. Ocean Bl.
Long Beach, CA 90802

(Hand-carried submittals to the building are prohibited.)

Attach the corresponding cover sheet (included in the Bid Proposal Package) to each of the hard copy submittals with a paperclip. Place all the hard copies, unfolded, into a single, large-sized sealed envelope. Write the following on the outside of the envelope:

Specification Number: HD-S3195
Bidder Company Name: _____
Envelope Contents: (list items)

The submitted envelope will be date/time stamped at POLB. Faxes, hand-carried deliveries, or emails will not be accepted.

2.3. Submit Original Hard Copies Within Thirty (30) Calendar Days After Conditional Award of Contract:

- Executed Construction Contract
- Executed Performance Bond
- Executed Payment Bond
- Port Insurance Endorsement Forms or certified copies of complete policies
- Appendix S - Labor Code Compliance Form

ITB - 3. OBTAINING CONTRACT DOCUMENTS

- 3.1.** Bidders (including contractors, subcontractors, suppliers, and service providers) shall download Contract Documents from the PB System under the “Documents” tab. Bidders are required to be registered on the PB System in order to download, view Contract Documents, and be listed on the required subcontractor’s list. Registered Bidders who download the Contract Documents will automatically be included on the Prospective Bidders list located under the “Prospective Bidders” tab. Only Bidders on the Prospective Bidders list shall receive notifications for Addenda, if so issued.
- 3.2.** It is the responsibility of each Bidder to regularly check the PB System up until the Bid Deadline for updates, answers to questions, and Addenda. Although the PB System automatically sends notices to Bidders on the Prospective Bidders list when changes occur to Contract Documents, Bidders shall not rely solely on these notices for obtaining the most current information during the bidding period.

ITB - 4. BIDDER REPRESENTATIONS CONCERNING EXAMINATION OF SITE AND CONTRACT DOCUMENTS

- 4.1.** Bidder shall thoroughly examine and be familiar with the Contract Documents.
- 4.2.** Bidder shall, at its sole cost and expense, prior to submission of its Bid, examine the Project Site, the Work and sites adjacent to the Work, compare them with any other work being bid or presently under construction which may relate to the Project, examine the grounds and all improvements, and determine by examination, or other means the Bidder may prefer the actual conditions and requirements under which the Work must be performed. Any site photographs, videos or maps that may be included in the Contract Documents do not constitute a complete visual depiction of the site and should neither be considered nor are warranted as such.
- 4.3.** If upon examination by the Bidder there is any existing improvement, condition, matter or thing, or condition or requirement of the Work which Bidder does not completely understand, or which appears to be in error, Bidder shall inquire as set forth in ITB-7 of these Instructions to Bidders.
- 4.4.** The failure of Bidder to examine any provision of any Contract Documents or other document or to be acquainted with existing conditions shall not relieve Bidder from any obligations with respect to the Bid, the Contract or the Work required under the Contract Documents.
- 4.5.** The City assumes no responsibility or liability to any Bidder for, nor shall the City be bound by, any understandings, representations or agreements of the City's agents, employees or officers concerning the Contract Documents or the Work made prior to execution of the Contract.
- 4.6.** Bidder shall certify that it has received and reviewed all Contract Documents including, but not limited to, all Addenda and attachments.
- 4.7.** The submission of a Bid shall be deemed conclusive evidence of the Bidder's full compliance with the requirements of this Article.
- 4.8.** The City makes no guarantee that existing conditions in the field match construction depicted on as-built Reference Documents in Appendix CC.

ITB - 5. CITY'S RIGHT TO MODIFY CONTRACT DOCUMENTS

Before the Bid Deadline, the City may modify the Work, the Contract Documents, or any portion(s) thereof by the issuance of written Addenda.

ITB - 6. INTERPRETATION OF CONTRACT DOCUMENTS

- 6.1.** The Bidder shall carefully study and compare the Contract Documents with each other and with other Work being Bid concurrently or presently under construction to the extent that it relates to Work for which the Bid is submitted, shall examine the Site and local conditions, and shall at once report to City discrepancies, errors, inconsistencies, ambiguities and omissions discovered.
- 6.2.** If any Bidder contemplating submitting a Bid for the Project is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies, errors, inconsistencies, ambiguities or omissions therein or finds variances in any of the Contract Documents with Applicable Law, such Bidder must submit a written request for an interpretation or correction thereof as directed for Pre-Bid Questions.
- 6.3.** Any interpretation or correction will be made only by Addendum issued by the City, in its sole discretion. No person is authorized to render an oral interpretation or correction of any Contract Documents and no Bidder may rely on any such oral interpretation or correction.
- 6.4.** City reserves the right to extend the Bid Deadline by issuing an Addendum no later than **seventy-two (72) hours prior to the Bid Deadline.**

ITB - 7. PRE-BID QUESTIONS

Pre-bid questions including requests for interpretation or correction of the Contract Documents must be submitted electronically through the PB System under the "Q&A" tab. The PB System will only accept questions up until the time and date identified in the PB System. Questions submitted to City staff will not be addressed and Bidder will be directed to the PB System. Responses from the City will be communicated via the PB System.

ITB - 8. ADDENDA

Addenda, including any attachments, issued by the City will be made available to Bidders through the PB System under the "Addenda/Emails" tab. The Bidder must acknowledge online all Addenda so issued in the PB System and the cost of performing Work described in the Addenda shall be included in the Bid. Bidder's failure to acknowledge receipt of each Addendum will prevent a Bidder from placing an eBid by the PB System. Addenda issued after a Bidder has submitted an eBid will invalidate the submitted eBid and require the Bidder to acknowledge the new Addenda and resubmit their eBid with any modifications as required to address the Addenda requirements.

ITB - 9. NOT USED.

ITB - 10. CONTRACTOR'S LICENSE REQUIREMENTS

Bidders must possess a current and valid State of California Contractors License in the classification specified in the Special Conditions, except as otherwise provided in California Business and Professions Code Section 7028.15, and per NIB-6, and at all times during performance of the Work. Bidder shall complete and sign the certification on the Bidder's Proposal form under penalty of perjury. At the time of submitting Bids, any partnership or joint venture submitting a Bid shall have a license in the classification specified in the Special Conditions in the name of the entity submitting the Bid. Subcontractors shall be licensed at all times during the performance of their Work. In addition, the Contractor and all Subcontractors shall be licensed according the provisions of Title 5 of the Long Beach Municipal Code at all times during the performance of the Work.

ITB - 11. BIDDER TRUSTWORTHINESS, QUALITY, FITNESS, CAPACITY, AND EXPERIENCE

- 11.1.** The trustworthiness, quality, fitness, capacity and experience of Bidders are important to the City. In order to ensure that all contractors bidding on Port of Long Beach projects have the necessary trustworthiness, quality, fitness, capacity, and experience to perform the work of the particular project, all Bidders must complete and submit the required forms identified in these Instructions to Bidders.
- 11.2.** In making and reviewing findings regarding Bidder or Contractor trustworthiness, quality, fitness, capacity, and experience, City staff, hearing officers and the Board of Harbor Commissioners, may consider, among other things: **(1)** any act or omission or pattern or practice of acts or omissions that negatively reflect on quality, fitness or capacity to perform; **(2)** any act or omission that indicates a lack of integrity or honesty; **(3)** the making of a false claim against the City or any other public entity or engaging in collusion; **(4)** financial capability to perform; **(5)** experience with sureties and insurance companies; **(6)** ability to perform on time and on budget, either in the present or as performed in the past; **(7)** past performance on contracts with the City or any other public entity, including, but not limited to , whether there was a default under a contract with the City or any other public entity; **(8)** safety record; **(9)** history of claims, litigation, and termination or disqualification on public projects; and **(10)** contract management skills, including, but not limited to, the use of scheduling tools, submission of schedules, compliance with prevailing wage rates, and certification of accurate payroll documents.

ITB - 12. ELECTRONIC BIDDING

- 12.1.** All Bidders are required to submit their Bids electronically online through the PB System. The PB System will automatically close the bidding period exactly at the Bid Deadline date and time set forth in the PB System. In the event of a discrepancy between the time of the Bid Deadline stated in the Notice Inviting Bids and the time of the Bid Deadline stated on the PB System, the Bid Deadline stated on the PB System shall govern, and, therefore, any such discrepancy shall not be grounds for a Bid Protest.
- 12.2.** Bidders may begin their electronic Bid (eBid) submission on the PB System at any time, add information, save information, modify information, delete information, or withdraw their eBid up to the Bid Deadline. Until the Bid Deadline, information contained in an eBid can only be seen by the Bidder. Results of all submitted eBids will be publicly visible after the Bid Deadline. The PB System will not accept late or incomplete eBid submittals.
- 12.3.** Bidders are cautioned that although the PB System is capable of allowing more than one user to simultaneously access their eBid, this practice is strongly discouraged as doing so is likely to result in lost and/or inconsistent information and result in an incomplete and/or erroneous eBid. A Bidder who accesses their eBid with more than one user shall assume the sole risk and no relief will be given for an incomplete and/or otherwise erroneous or late eBid and shall not be grounds for a Bid Protest.
- 12.4.** Bidders shall be solely responsible for understanding and correctly utilizing the PB System, for ensuring the capability of their computer system to upload documents, and for the stability of their internet service provider and connection. Failure of the Bidder to utilize the PB System and successfully submit an eBid shall be the Bidder's sole risk and no relief will be given for late and/or improperly submitted eBids and shall not be grounds for a Bid Protest.
- 12.5.** Bidders experiencing any technical difficulties with the electronic bidding process shall contact PlanetBids Support using their contact information listed on the PB System. Neither the City nor PlanetBids make any guarantee as to the timely availability of assistance, or assurance that any given problem will be resolved by the Bid Deadline.

ITB - 13. PREPARATION OF BID FORMS

- 13.1. Bid Forms.** Bids shall include pre-printed forms provided by the City in the Bid Proposal Package. Bids submitted using any other forms may be rejected as non-responsive. All forms and the timing for submission are identified in the Bid Proposal Package and described in these Instructions to Bidders. All information required in the Bid Proposal Package must be completely and accurately provided.

Failure to complete and submit all required forms with the Bid, or incomplete or disqualified Bids, may be rejected as non-responsive.

- 13.2. Modifications.** Changes to or additions to the required Bid forms which are not specifically called for or permitted may result in the City's rejection of the Bid as being non-responsive. No oral, facsimile, emailed or telephonic modification of any submitted Bid will be considered.
- 13.3. Erasures, Inconsistent or Illegible Bids.** Bid forms must not contain any erasures, interlineations, strike-through or other corrections unless the same are suitably authenticated by affixing in the margin immediately opposite such erasure or correction the initials of the person(s) signing the Bid forms. If any Bid form, or portion thereof, is determined by the City to be illegible, ambiguous or inconsistent, City may reject such a Bid as being non-responsive.
- 13.4. Bid Responsibility.** Each Bidder is solely responsible for all costs and expenses incurred in preparing a Bid.
- 13.5. Uploading Bid Forms.** Completed Bid forms and all required attachments and additional sheets shall be scanned in PDF format and uploaded to the Bidder's eBid using the PB System.

ITB - 14. BIDDER'S PROPOSAL (FORM BP)

- 14.1.** Bidder shall complete and sign Form BP identifying and confirming: 1) Incorporation of all bid forms required as part of the Bid; 2) Acknowledgement of receipt of Addenda; 3) Certification of Inspection of the Site and Contract Documents; 4) Bidder's Representations Regarding Insurance, Bonds and Signatures; 5) Contractors License Certification; 6) Bidder's legal name and business entity information providing evidence of legal authority to perform within the jurisdiction of the Work; and 7) signature(s) under penalty of perjury. A Bid by a corporation shall give the State of Incorporation.
- 14.2.** In addition to Form BP, Bidder is responsible for attaching the required proof of license certification as identified in Part E.

ITB - 15. SCHEDULE OF BID ITEMS (FORM SB)

- 15.1. Bid Line Items.** The line items in the Schedule of Bid Items are provided in the online form in the PB System under the "Line Items" tab. Bidder is required to complete the required information online only.
- 15.2. Prices.** Bidders shall include a Unit Price for each line item contained in the Schedule of Bid Items. All Unit Prices provided by Bidder in the Schedule of Bid

Items are subject to verification and correction by the City. All Unit Prices including, but not limited to, measured and lump sum Unit Prices are deemed to include the cost of all materials, equipment, labor, transportation, delivery, installation, supervision, overhead, profit, licenses, permits, fees, bonds, insurance, all sales, use and other taxes legally chargeable and all other costs and expenses incidental to the Work. The cost of all Work included in the Contract Documents for which a specific line item is not provided in the Schedule of Bid Items shall be allocated among the measured and lump sum Unit Prices most closely related to such Work and included in the total Base Bid.

15.2.1. In the event the bidding documents, conditions, or Specifications set a maximum value for a bid item (whether set as a percentage, a dollar value, or by some other measure or combination) and the Bidder prices that bid item higher than the maximum value, then the Bidder shall be deemed to have bid that bid item at the specified maximum price and any sum over the maximum value shall be subtracted from that bid item for all purposes including the determination of the total Bid amount, the lowest responsive Bid, award of Contract, and the Contract price.

15.2.2. In the event the bidding documents, conditions or Specifications set a minimum value for a bid item (whether set as a percentage, a dollar value, or by some other measure or combination) and the Bidder prices that bid item lower than the minimum value, then the Bidder shall be deemed to have bid that bid item at the specified minimum price for all purposes including the determination of the total Bid amount, the lowest responsive Bid, award of Contract, and the Contract price.

15.2.3. Each Bidder agrees by submitting a Bid that it consents to the price adjustments made in accordance with ITB-15.2.1 and ITB-15.2.2 and waives any right it may otherwise have to withdraw its Bid or to file a bid protest as a result of these adjustments.

15.3. Estimated Quantities. The information in the Schedule of Bid Items is supplied to give an indication of the general scope of Work but the accuracy of the quantities is not guaranteed. The quantities provided are solely for the purpose of comparison of Bids. The Contractor will be required to provide greater or lesser quantities of measured Unit Price Work, as may be necessary to complete the Work described in the Contract Documents. Changes in the Work involving measured Unit Prices will be compensated in accordance with the General Conditions. The selected Contractor's compensation will be calculated on the basis of actual quantities of Work installed based upon field measurements and required documentation. The City does not represent that the actual amount of installed Work will correspond with the estimated quantities. The City has the right to increase or decrease the quantity of

any Work item in accordance with the Contract Documents and to delete any Bid line item from the Contract.

15.4. Alternate Bid Items. Alternate Bid Items **are not** called for in this Specification:

15.4.1. The lowest Bid shall be determined by the lowest Base Bid; and

15.4.2. If a Bid includes alternate prices for any Bid Item the City may reject the Bid.

15.5. Allowance Work. Not Used.

ITB - 16. NONCOLLUSION DECLARATION (FORM ND)

16.1. Bid Forms. The Noncollusion Declaration, in the form provided by the City, shall be signed under penalty of perjury certifying that the Bid is not the result of and has not been influenced by collusion. Bidder shall submit this form with its Bid. Any Bid made without such declaration, or believed to be made in violation of the requirements set forth in the declaration form, may be rejected.

16.2. Bidders Interested in More Than One Bid. No individual, firm, partnership, corporation or other entity shall be allowed to make, or file, or be interested in more than one Bid; provided, however, a person, firm or corporation that has submitted a sub-bid to a Bidder or that has quoted materials prices to a Bidder, is not thereby disqualified from submitting a sub-bid or quoting prices to other Bidders or from making a Bid as a prime Bidder. It is the intent of this subdivision to prevent collusion. There is no intention of prohibiting a Bidder from offering products or services under one separate section of the Bid and also bidding on the same products or services as a portion of a separate section of the same Bid where provision is made therein for separate prices.

16.3. City Remedies for Contractor Collusion.

16.3.1. If at any time prior to the execution of a Contract, it is found that any Bidder, in the preparation of his/her/their Bid, colluded with any other person, firm, or corporation, then all Bids in which such Bidder is interested shall be rejected. If evidence of collusion is discovered after Conditional Award, the City shall be under no obligation to award the Contract to the Bidder. In either event, City may award to the next lowest responsible Bidder or reject all Bids and re-bid and Bidder and its Bidder's Bond surety shall be liable to the City for all loss and damage that may be sustained by the City as a result of Bidder's collusion.

16.3.2. If, after execution of a Contract, it is found that the Contractor, in the preparation of his/her/their Bid, colluded with any other person, firm or

corporation, then the Contract so executed may be cancelled, if the City so elects. The Contractor, and its sureties, shall be liable to the City for all loss and damage that may be sustained by the City as a result of Contractor's collusion.

ITB - 17. BID SECURITY (FORM BS)

- 17.1.** Each Bid shall be accompanied by bid security in the form of: a) a cashier's check or a certified check drawn on a solvent bank doing business in the United States payable to the City Auditor of the City of Long Beach; or b) a satisfactory Bidder's Bond on the Bid form included in the Bid Proposal Package in favor of the City and its Board of Harbor Commissioners signed by the Bidder, as principal, and a California admitted surety insurer (as defined by California Code of Civil Procedure §§ 995.120 and 995.311), as surety, given as a guarantee that the Bidder shall execute the Contract in conformity with the Contract Documents and shall provide the insurance, bonds and other required documents within **thirty (30) calendar days** after Board's Conditional Award of the Contract ("Bid Security"). Bid Security shall be in an amount not less than **ten percent (10%)** of the total amount of the Bid. Any Bid submitted without Bid Security will be rejected as non-responsive.
- 17.2.** Scanned and uploaded images of Form BS, Bid Bond or cashier's or certified check, including corporate seals, power of attorney and notarized signatures shall be submitted with the eBid before the Bid Deadline.
- 17.3.** The original Form BS, Bid Bond or original cashier's or certified check, including corporate seals, power of attorney and notarized signatures of the three (3) lowest Bidders must be **postmarked via Certified Mail or shipped by the third (3rd) Working Day** after the Bid Deadline or the Bid may be considered non-responsive.
- 17.4.** Bidders will be entitled to return of Bid Security provided, however, that a Bidder will forfeit Bid Security to the City in the event that the Bidder withdraws its Bid prior to the expiration of **ninety (90) calendar days** after the Bid Deadline, or attempts to withdraw its Bid when the requirements of Public Contract Code §§ 5101 *et seq.* are not met; or refuses or fails to execute a Contract and provide the required insurance bonds and required documents within **thirty (30) calendar days** after City's Conditional Award of the Contract. In the event of a Bidder's default, if the City awards the Contract for the Work to the next lowest responsible Bidder, the amount of the lowest Bidder's Bid Security will be applied to the Contract Price differential between the lowest Bid and the second lowest Bid and the surplus, if any, will be returned to the lowest Bidder. If the City rejects all other Bids presented and re-advertises, the lowest Bidder's Bid Security will be used to offset the City's cost of re-advertising and receiving new Bids and the surplus, if any, will be returned to the lowest Bidder. After the Conditional Award of Contract, Bid Security shall be released for all Bidders, except the three (3) lowest Bidder's will be held for **ninety**

(90) calendar days after the Bid Deadline or until posting by the successful Bidder of the payment and performance bonds, proof of insurance, return of executed copies of the Agreement and other necessary documentation, whichever first occurs, at which time the Bid Security will be returned to all Bidders.

ITB - 18. SUBCONTRACTOR LIST (FORM SL)

- 18.1. List of Designated Subcontractors.** Bidder shall compile a list of designated Subcontractors online in the PB System under the “Subcontractors” tab. Bidder is required to complete the required information in the online Subcontractor Detail Form only.

Each Bid shall include a list of proposed Subcontractors in accordance with Public Contract Code Section 4100 *et seq.* (“Subcontractor Listing Law”), setting forth the name, California contractor license number, location of the place of business, and dollar amount and description of the portion of the Work to be performed by each Subcontractor performing Work with a value in excess of one-half of one-percent of the Bidder’s Base Bid. It is mandatory to include the Subcontractor license number, type, and expiration date with the Bid.

- 18.2. Alternate Bid Items.** Not Used.

- 18.3. Contractor-Performed Work and Specialty Items.** The Notice Inviting Bids establishes a minimum monetary value of the Work that must be performed by Contractor. Contractor shall perform such Work with its own employees under the Contractors’ License classification(s) designated in the Bidder’s Proposal unless otherwise specifically authorized by City, except that any Specialty Items designated by City may be performed by Subcontractors and the amount of any such Specialty Items shall be deducted before calculating the amount of Work required to be performed by the Contractor with its own employees.

- 18.4. Work of Subcontractors.** The organization or arrangements of the Technical Specifications and Drawings shall not limit the extent of the Work of the Contract Documents. Accordingly, all Bidders are encouraged to disseminate all of the Technical Specifications, Drawings and other Contract Documents to all persons or entities submitting sub-Bids to the Bidder. The omission of any portion or item of Work from the Bid or from sub-Bids, which is reasonably inferable from the Contract Documents, is not a basis for adjustment of the Contract Price or the Contract Time.

- 18.5. Ineligible Subcontractors.** The successful Bidder is prohibited from performing Work on the Project with any Subcontractor who is ineligible to perform work on a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code. In submitting its Bid, the Bidder certifies that it has investigated the eligibility of each

and every listed Subcontractor and has determined that none is ineligible to perform work pursuant to the above provisions.

ITB - 19. BIDDER RESPONSIBILITY QUESTIONNAIRE (FORM CR1)

- 19.1.** The information provided on Form CR1 (Bidder Responsibility Questionnaire) must relate exclusively to the Bidder.
- 19.2.** If the Bidder is a Joint Venture, both members of the Joint Venture shall complete Form CR1 (Bidder Responsibility Questionnaire).
- 19.3.** A Bidder shall be found ineligible for contract award for answering “Yes” to any of the questions in Sections B through D on Form CR1 (Bidder Responsibility Questionnaire).

ITB - 20. EXPERIENCE REQUIREMENTS (FORM CR2)

- 20.1.** On Form CR2 (Experience Requirements), the Bidder, Bidder’s listed subcontractor(s), or both shall demonstrate such experience.
- 20.2.** If the Bidder is a Joint Venture, at least one party to the Joint Venture or subcontractor(s) or a combination of both shall complete Form CR2 (Experience Requirements) to demonstrate the requisite experience.
- 20.3.** If the Bidder is a Joint Venture, only the entities with demonstrated experience on Form CR2 (Experience Requirements) shall perform the work requiring such experience.
- 20.4.** A Bidder shall be found ineligible for contract award for failure to demonstrate the minimum required experience on Form CR2 (Experience Requirements).

ITB - 21. SBE/VSBE PROGRAM PROCEDURES

This Project is subject to the Port of Long Beach Small Business Enterprises (SBE)/Very Small Business Enterprises (VSBE) Program. The Port promotes utilization of Small Business Enterprises (SBEs) and Very Small Business Enterprises (VSBEs), per Ordinance Number HD-2259 included in Appendix E. The Port will validate the SBE/VSBE Commitment declared on the Bidder’s submitted SBE-2C Commitment Plan (included in the Bid Proposal Package); once the Contract is awarded, this Commitment is a contractual obligation and shall not be altered without written approval by the Port. A Contractor may be considered in material breach of the Contract for, inter alia, failure to meet the committed SBE/VSBE participation percentages and/or failure to report SBE/VSBE utilization monthly. The

Port, in its sole discretion, may elect to withhold payment of up to ten percent (10%) of a monthly progress payment for material breaches of contract.

- 21.1. SBE/VSBE Goals.** The combined SBE/VSBE participation goal for this Project is twenty-seven percent (27%) of total bid value. The combined SBE/VSBE participation goal shall include a minimum five percent (5%) of total bid value as VSBE.

21.2. SBE and VSBE Eligibility

- 21.2.1.** SBE eligibility is determined by utilizing federal U.S. Small Business Administration (SBA) size standards and/or by the standards set by the State of California's Department of General Services (DGS).

21.2.1.1. The SBA size standards are based on the North American Industrial Classification System (NAICS) codes. To identify the NAICS code(s) that a business may qualify under, log on to the NAICS website at www.census.gov/naics; use the Code Search link to find the qualifying code(s); and click on the SBA Small Business Size Standards link to see if the business falls within the standard(s).

21.2.1.2. DGS has established a separate set of SBE eligibility standards and classification codes. For complete DGS certification information, log on to www.dgs.ca.gov

21.2.2. VSBE and/or Micro-business eligibility is determined utilizing criteria set by the DGS "micro-business" designation: Contractors, consultants, and vendors with gross annual receipts, averaged over the past three tax years, of \$5 million or less, or small business manufacturers with 25 or fewer employees.

21.3. Certification

21.3.1. All businesses wishing to receive SBE and VSBE status on a Port contract are required to be certified by either the Port or by the DGS.

21.3.2. A link to the Port's online procurement system is provided on the Port's website at www.polb.com/sbe

21.3.3. To access the DGS procurement system, businesses may log on to it at www.dgs.ca.gov.

21.3.4. Port-issued SBE certifications are generally valid for three (3) years. However, the Port may ask an SBE/VSBE to update its SBE qualifying information at any time. The Port does not issue separate VSBE certifications.

21.3.5. For the Bidder to receive credit for a small business as part of its commitment to meeting the established SBE/VSBE goal for a Contract, the SBE must be certified by the due date of the Bidder's SBE/VSBE Commitment Plan (POLB Form SBE-2C).

21.3.6. Prior to Contract award, SBE/VSBE status shall be verified and may be audited by the Port.

21.4. SBE/VSBE Participation Requirement

21.4.1. Bidders shall submit a completed Form SBE-2C: SBE/VSBE Commitment Plan for Construction Contracts, indicating the dollar value and percentage of SBE/VSBE Contract participation, **before the Bid Deadline as part of the Bid.** SBE staff shall evaluate each Commitment Plan, verify the SBE/VSBE status of small businesses listed on the Commitment Plan, and determine the actual percentage of SBE/VSBE commitment.

21.4.1.1. The amount and percentage of SBE/VSBE commitment shall be applied to the total amount of the Bid.

21.4.1.2. Each Bidder shall submit an SBE/VSBE Commitment Plan regardless of whether or not the Bidders commit to meeting the SBE/VSBE participation goal established for the Contract.

21.4.2. If any of the three lowest Bidders does not demonstrate intent to meet the combined SBE/VSBE participation goal, that Bidder shall submit its Good Faith Effort (GFE) documentation **postmarked via Certified Mail or shipped by the third (3rd) Working Day** after the Bid Deadline. A Bidder that does not demonstrate intent to meet the combined SBE/VSBE participation goal and does not submit its GFE documentation is non-responsive and may forfeit its Bidder's Security.

21.4.3. If all three lowest Bidders are declared non-responsive and the fourth lowest Bidder's Commitment Plan does not demonstrate intent to meet the combined SBE/VSBE participation goal, the fourth lowest Bidder shall submit its Good Faith Effort (GFE) documentation within **two (2) working days** of request by the Port. If the fourth lowest Bidder does not demonstrate intent to meet the combined SBE/VSBE participation goal and does not pass the GFE evaluation, the Port may repeat this process until a responsive Bid is found.

21.4.4. Bidders will be notified by email if they fail to meet the SBE/VSBE participation goal and fail to document an acceptable Good Faith Effort (GFE). Bidders receiving such notice may request an administrative reconsideration hearing **within three (3) working days from the date of the notice.** The Bidder shall make this request for a hearing by email to the Managing Director

of Engineering, who will serve as the SBE Reconsideration Official. The SBE Reconsideration Official will not be involved in the initial evaluation of the Bid. Contractors shall have no right for reconsideration if they fail to provide timely notice.

21.4.5. The reconsideration process provides an opportunity for the affected Bidder to meet with the SBE Reconsideration Official to discuss the basis of the Port's determination. The SBE Reconsideration Official will send the affected Bidder a written decision on reconsideration explaining the basis for finding that the Bidder did or did not meet the participation goal or demonstrate an acceptable Good Faith Effort. Any appeal of the SBE Reconsideration Official's decision must be made to the Board of Harbor Commissioners in writing, and must be submitted **within three (3) working days from the date of written notice of the SBE Reconsideration Official's decision.**

21.5. Compliance with Good Faith Effort Evaluation Criteria. A Bidder whose bid fails to meet the SBE/VSBE participation goal shall be deemed responsive if an acceptable Good Faith Effort (GFE) is demonstrated. The Bidder must achieve a passing score determined by several criteria in order for the SBE Administrator to determine that the Bidder has made an acceptable GFE. The GFE criteria and associated scoring is included in Appendix E.

21.6. Utilization of SBEs/VSBEs

21.6.1. During the term of the contract, the prime Contractor shall be required to utilize all Subcontractors and Material Suppliers (as defined in General Conditions Section 1.1 Definitions) listed on its SBEs/VSBEs Commitment Plan (POLB Form SBE-2C), in the amount and percentage specified on the form.

21.6.2. All Subcontractors listed on a Bidder's SBE/VSBE Commitment Plan (POLB Form SBE-2C), whose defined work is greater than ½ of one percent of the Bid, shall be listed on the Bidder's Subcontractor List submitted as part of the Bid. If an SBE/VSBE Subcontractor is added after submittal of the Bidder's Subcontractor List, the Bidder shall follow Subcontractor listing/substitution procedures pursuant to the Subletting and Subcontracting Fair Practices Act, 4107 et seq.

21.6.3. If an SBE or VSBE firm listed on a prime Contractor's POLB Form SBE-2C loses its SBE or VSBE status prior to contract award, the firm will not receive SBE/VSBE status for that Port contract unless it becomes eligible for recertification and is recertified.

21.6.4. If an SBE or VSBE firm listed on a Bidder's SBE/VSBE Commitment Plan (POLB Form SBE-2C) loses its SBE or VSBE status prior to Contract award and is

no longer eligible for certification, the Contractor shall, to the extent consistent with the Subletting and Subcontracting Fair Practices Act, replace the affected SBE/VSBE dollar amount/percentage and shall submit for approval, a revised POLB Form SBE-2C, in order to proceed with Contract award.

21.6.5. Substitution of any SBE or VSBE Subcontractor listed on a Contractor's SBE/VSBE Commitment Plan prior to contract award must be approved by the Director of Program Management.

21.6.6. Substitution of any SBE or VSBE Subcontractor listed on a Contractor's SBE/VSBE Commitment Plan after contract award must be approved by the Director of Construction Management.

21.6.7. Nothing herein shall be construed to supersede or limit the requirements of the Subletting and Subcontracting Fair Practices Act.

21.7. SBE/VSBE Contract Compliance Requirements. Refer to Appendix E for instructions and criteria for SBE/VSBE monitoring and achieving the contract requirements.

ITB - 22. CERTIFICATION REGARDING RELEASE OF FINANCIAL INFORMATION (FORM CR3)

22.1. The three apparent lowest Bidders must submit the following financial information **postmarked via Certified Mail or shipped by the third (3rd) Working Day** after the Bid Deadline, or the Bid may be considered non-responsive:

- Form CR3 Certification Regarding Release of Financial Information. If Bidder is a joint venture, each member of the joint venture must submit Form CR3.
- The Bidder's "reviewed" or "audited" annual financial statements for the fiscal year ending not more than two years before the Bid Deadline. Financial statements shall consist of a balance sheet and income statement, at a minimum, and a statement of cash flows, if available. The auditor's audit or review opinion letter, prepared in accordance with AICPA standards, shall accompany the financial statements. "Compiled" financial statements shall not satisfy this submission requirement. If Bidder is a joint venture, each member of the joint venture must submit "reviewed" or "audited" financial statements as described in this paragraph.

22.2. A Bidder shall be found ineligible for contract award for failure to demonstrate that Bidder satisfies the City's Financial Stability Evaluation.

22.3. The financial information submitted by the Bidder accompanying Form CR3 is confidential, to the extent permissible by law.

ITB - 23. BID SUBMITTAL

- 23.1.** Bidders are solely responsible for the timely submission of their eBids and having them fully accepted by the PB System **prior to** the Bid Deadline established in the PB System.
- 23.2.** Contractor shall be aware that clicking the “Submit” button to place an eBid on the PB System is not instantaneous; it may take time for the Bidder’s Bid Proposal Documents to upload and transmit through the Bidder’s internet service provider, and for the eBid to be accepted and the Bidder issued an eBid ID (confirmation) number and time stamp by the PB System.
- 23.3.** The City shall have no responsibility for eBids that are not fully accepted by the PB System by the Bid Deadline, no matter what the reason, and shall have no obligation to compensate any unsuccessful Bidder for its efforts in preparing a Bid.

ITB - 24. REFUSAL OF IMPROPER BIDS

- 24.1.** The PB System automatically prevents eBids from being submitted **on or after** the Bid Deadline. Only eBids submitted through the PB System are allowed.
- 24.2.** Oral, telephonic, telegraphic, emailed, mailed, delivered, and facsimile transmitted Bids will not be accepted.

ITB - 25. WITHDRAWAL OF BIDS

- 25.1.** Any Bidder may withdraw their eBid on the PB System prior to the Bid Deadline by clicking the “Withdraw” button. Bidder is advised that an eBid withdrawal may not be instantaneous and should allow enough time for a complete eBid withdrawal before the Bid Deadline.
- 25.2.** Once submitted, all Bids are irrevocable after the Bid Deadline, except as otherwise provided by law. Requests for withdrawal of Bids after the Bid Deadline shall be made only in accordance with Public Contract Code § 5100, *et seq.* Each Bidder agrees by submitting a Bid that its Bid shall remain open, is irrevocable, and may not be modified, withdrawn or cancelled for a period of **ninety (90) calendar days** after the Bid Deadline.

ITB - 26. OPENING AND EVALUATION OF BIDS AND CONDITIONAL AWARD OF CONTRACT

- 26.1. Bid Deadline.** The eBids received by the PB System will be electronically opened (revealed) and the Bid results displayed under the “Bid Results” tab in the PB System after the Bid Deadline has expired. The eBid results are public information and will

be viewable on the PB System; see ITB-31 Public Records regarding confidential documents. Unless so identified in the Notice Inviting Bidders, there will not be a physical opening of Bids at the City offices.

26.2. Conditional Award of Contract

26.2.1. Waiver of Irregularities or Informalities. The City reserves the right to reject any and all Bids or to waive any irregularities or informalities in any Bid or in the bidding process.

26.2.2. Conditional Award to Lowest Responsive Responsible Bidder. The Conditional Award of the Contract, if any, will be to the responsible Bidder submitting the lowest responsive Bid on the basis of the Base Bid or the Base Bid and Alternate Bid Items, if any, selected in accordance with these Instructions to Bidders.

26.3. Evaluation of Bids and Bidder

26.3.1. Mandatory Qualifications. A Bid shall be rejected if the Bidder fails to meet the mandatory requirements for qualification, if any, set forth in the Instruction to Bidders and the Special Conditions.

26.3.2. Responsive Bid. A responsive Bid is a Bid which conforms, in all material respects, to the Contract Documents. A Bid may be found unresponsive due to omission of any requested information or submission of inaccurate or false information.

26.3.3. Responsible Bidder. Pursuant to Public Contract Code Section 1103, a responsible Bidder means a Bidder who has demonstrated the attributes of trustworthiness, quality, fitness, capacity, and experience to satisfactorily perform fully the requirements of the Contract Documents and the moral and business integrity and reliability that will assure good faith performance in the sole discretion of the City. The City's determination of a Bidder's responsibility or non-responsibility shall be based on the fitness and capacity of the Bidder to satisfactorily perform the obligations of the Contract, whether or not the Bidder is qualified to perform those obligations, whether or not the Bidder is trustworthy, and such other bases as may be relevant.

26.3.4. Evidence of Competency of Bidders. The ability of a Bidder to provide the required bonds will not of itself demonstrate competency of the Bidder. Upon request of the City, Bidder must promptly submit satisfactory evidence of competency in addition to the factors listed in the Instructions to Bidders and any mandatory Project qualifications established in the Special Conditions. By submitting a Bid, each Bidder agrees that the City, in determining the successful Bidder and its eligibility for the award, may check references and

consider the Bidder's experience with a similar type of construction project and facilities, conduct and performance under other contracts, financial conditions, reputation in the industry, and other factors which could affect the Bidder's performance of the Work.

26.3.5. Contractor Performance Evaluation. A Bidder shall be found ineligible for contract award for receiving a failing score on Form CR4 (Contractor Performance Evaluation) on any previous City contracts if Bidder has not demonstrated that it has remedied any deficiencies. Refer to Special Conditions SC-24, Contractor Performance Evaluation During Construction for more information.

ITB - 27. BID IRREGULARITIES

Bids may be considered irregular and may be rejected for reasons that include, but are not limited to the following:

- 27.1.** If the forms furnished in the Contract Documents are not used or are altered by the Bidder.
- 27.2.** If there are material alterations, additions, qualifications, conditions, or irregularities of any kind which may make the Bid incomplete, indefinite, or ambiguous.
- 27.3.** If the Bidder adds any provisions reserving its rights to accept or reject any award of the Contract.
- 27.4.** If prices, including (but not limited to) the Base Bid Price, or the measured or lump sum Unit Prices, provided by Bidder are obviously unbalanced, excessive or may materially affect the final cost of the Work.
- 27.5.** If the Bidder fails to complete in any manner the Contract Documents where information is requested so that the Bid may not be properly evaluated.
- 27.6.** If Bidder's Security does not accompany the Bid.
- 27.7.** If the Bid is received on or after the Bid Deadline.
- 27.8.** If the Bid is oral, telephoned, emailed, mailed, delivered, or submitted via telegraph/facsimile.

ITB - 28. CITY'S RESERVATION OF RIGHTS

- 28.1.** The City reserves the right, in its sole discretion, to: judge the Bidder's representations as stated in the Bid forms concerning the suitability of the products, services or supplies offered, and any post-Bid information to determine whether or

not Bidder is responsible and qualified to perform the Work including, without limitation, the ability, experience and commitment of the Bidder to properly and reasonably plan, schedule, coordinate, and execute the Work of the Contract Documents and whether the Bidder has ever been debarred from Bidding or found ineligible for Bidding on any other projects; reject any or all Bids; waive any irregularities or informalities in any Bids or in the Bidding process; modify, cancel or withdraw the Notice Inviting Bids; issue a new Notice Inviting Bids; negotiate in the open market for a contract at a reasonable price; perform the Work with City's own forces; suspend or abandon the Project; appoint evaluation committees to review Bids; seek the assistance of outside technical experts in Bid evaluation; waive deficiencies, informalities and minor irregularities in Bids; require a Bidder to provide a guaranty (or guaranties) of the Contract by a third party; not issue a Notice to Proceed after execution of the Contract. In submitting a Bid in response to the Notice Inviting Bids, the Bidder is specifically acknowledging City holds these rights. The Notice Inviting Bids does not commit City to enter into a Contract, to reject, in its sole discretion, all Bids, nor does it obligate the City pay for any costs incurred in preparation and submission of a Bid or in anticipation of a Contract. By submitting a Bid, the Bidder disclaims any right to be paid for such costs.

- 28.2.** If staff recommends that the Board of Harbor Commissioners find a Bidder ineligible for contract award, staff shall provide written notice, via email or fax, to the Bidder of the proposed findings. The Bidder shall have five (5) Working Days from the date of the notice to request an administrative hearing. The administrative hearing officer shall report his/her/their findings to the Board of Harbor Commissioners. The Board of Harbor Commissioners will make the final determination on the findings and the award of the contract.

ITB - 29. BID PROTEST PROCEDURES

Any interested Bidder submitting a Bid through the PB System may file a protest provided that each and all of the following are complied with:

- 29.1.** The Bid protest is in writing;
- 29.2.** The Bid protest is accompanied by a certified or cashier's check payable to the City of Long Beach Harbor Department in the sum of \$1,000 for each Bid that the Bid protest is challenging. The amount of this Bid protest fee is mandatory, nonrefundable, and is based on the City's estimated reasonable costs to process each Bid protest.
- 29.3.** Protests based upon alleged defects or improprieties in the Contract Documents are filed with the City prior to the Bid Deadline.

- 29.4.** All other protests are filed and received by the City (Port of Long Beach, Attention: Chief Harbor Engineer, 415 W. Ocean Bl., Long Beach, CA 90802) not more than **five (5) working days** following Bid Deadline; and
- 29.5.** The written Bid protest sets forth, in detail, all grounds for the Bid protest, including without limitation all facts, supporting documentation, legal authorities and argument in support of the grounds for the Bid protest. All factual contentions must be supported by competent, admissible and credible evidence.
- 29.6.** Any matters not set forth in the written Bid protest shall be deemed waived.
- 29.7.** Any Bid protest not conforming to all of the foregoing requirements shall be deemed invalid and shall be rejected by the City and the Bid protest fee will be forfeited. The City's decision on the Bid protest will be made in a public meeting of the Board.

ITB - 30. AGREEMENT, BONDS, INSURANCE AND OTHER SUBMITTALS AFTER CONDITIONAL AWARD OF CONTRACT

- 30.1. Insurance Conference.** At the direction of the Engineer, the Contractor, Contractor's risk manager and Contractor's insurance broker shall participate in a mandatory conference with the Port's Risk Management Division representative within **ten (10) calendar days** after the Conditional Award of the Project. The purpose of this mandatory conference will be to discuss the insurance requirements and forms. Failure to participate in this mandatory conference in person or by telephone may result in rescission of the Conditional Award, and the Port may award the Project to the next lowest qualified Contractor.
- 30.2. Execution of Contract and Delivery of Documents.** Within **thirty (30) calendar days** after City's conditional award of the Contract, the Contractor shall complete, sign and submit the following documents to the **Engineer** for approval:
 - 30.2.1.** Construction Contract;
 - 30.2.2.** Performance Bond;
 - 30.2.3.** Payment Bond;
 - 30.2.4.** Port Insurance Endorsement forms or certified copies of complete policies; and
 - 30.2.5.** Any other documents required by the Instructions to Bidders or Special Conditions.
- 30.3. Contract Price and Bonds.** For this Project, the Contract Price (maximum payment obligation) will be determined by the successful Bidder's Base Bid and any Alternate

Bid Items selected by the City at the time of Conditional Award, however payment to the Contractor will be based upon actual installed quantities. The successful Bidder shall furnish a Performance Bond and a Payment Bond, each equal to one hundred percent (100%) of the Contract Price. Samples of required Bond forms are included in the **Appendices**. Bond forms for execution will be provided by the City when the Contract is awarded to the successful Bidder. Bonds may be secured through the Bidder's usual sources. All costs of furnishing the Bonds shall be included in the Bid Price. Bonds issued by a California admitted surety listed on Treasury Circular 570 shall be deemed accepted unless specifically rejected by the City. Bonds issued from admitted surety insurers not listed in Treasury Circular 570 must be accompanied by all documents enumerated in California Code of Civil Procedure Section 995.660. The Bonds are subject to the requirements set forth in the General Conditions and the Special Conditions.

- 30.4. Insurance.** As a condition precedent to the effectiveness of the Contract and without limiting the indemnity provisions of the Contract, the Contractor shall procure and maintain in full force and effect, the insurance required by the Contract and provide evidence of the required insurance as approved by the City in accordance with the terms and conditions of the Contract. Such insurance evidence as described herein shall be maintained until the date of Final Completion unless otherwise set forth in the Special Conditions.

ITB - 31. PUBLIC RECORDS

- 31.1.** City seeks to conduct its business openly. Upon opening and except as otherwise expressly provided in the Contract Documents, all Bids shall become a matter of public record and shall be regarded as public, with the exception of those elements of each Bid that are identified by the Bidder and plainly marked as "trade secret," "confidential," or "proprietary," including any CR Forms and financial statements to be submitted by Bidders. Each element of a Bid which a Bidder desires not to be considered a public record must be clearly marked as set forth above, and any blanket statement (i.e. regarding entire pages, documents, or other, non-specific designations) shall not be sufficient and shall not bind the City in any way whatsoever. If City receives a request from a third party to make a Bid available for inspection and copying, the City will notify the Bidder of the request. If a Bidder instructs the City that the information is not to be released, City will withhold the information, provided, the Bidder expeditiously seeks a protective order from a court of competent jurisdiction to prevent such release. If disclosure is required under the California Public Records Act or otherwise by law (despite the Bidder's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

- 31.2.** All forms submitted with a Bid are public records and information contained therein will be available for public review except as described above. Only information

entered in the PB System's online forms will be publicly viewable on the PB System, if so made available by the City. Bid documents that are scanned and uploaded by the Bidder are not publicly viewable on the PB System.

ITB - 32. COMPLIANCE WITH IMMIGRATION REFORM AND CONTROL ACT OF 1986

Bidder is solely and exclusively responsible for employment of individuals for the Work of the Contract in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§ 1101 et seq. (the "IRCA"); the successful Bidder shall also require that any person or entity employing labor in connection with any of the Work of the Contract shall so similarly comply with the IRCA.

ITB - 33. PREVAILING WAGES AND APPRENTICES

33.1. Payment of Prevailing Wage Rates. The Bidder and all Subcontractors shall utilize the relevant prevailing wage rate determinations established by the Director of the Department of Industrial Relations in effect on the first advertisement date of the Notice Inviting Bids in preparing the Bid and all component price quotations. Copies of rate schedules are available on the Internet at www.dir.ca.gov/dlsr/DPreWageDetermination.htm, and on file at the City, available upon request.

33.2. Apprenticeship Committee Contract Award Information. Pursuant to Labor Code §1777.5 and Title 8 California Code of Regulations §230, the Contractor and Subcontractors of any tier who are already approved to train by an apprenticeship program shall provide contract award information (DAS Form 140) to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information (DAS Form 140) to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. The DAS Form 140 shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. Contractors and Subcontractors must also submit a copy of the DAS Form 140 with proof of submittal to the City.

33.3. Statement of Employer Fringe Benefit Payments. Within five (5) calendar days of signing the Contract or Subcontract, as applicable, the Statement of Employer Payments (**DSLE Form PW 26**) must be completed and submitted to the City by each Contractor and Subcontractor of any tier. The form must contain, for each worker classification, the fund or trust name, address, administrator, and amount per hour

contributed and frequency of contributions. Training fund contributions must also be reported on this form.

- 33.4. Notice to Subcontractors.** Bidders shall notify all potential Subcontractors submitting price quotations for portions of the Work of requirements concerning payment of prevailing wage rates, payroll records, hours of work, and employment of apprentices.

ITB - 34. COLLECTION OF TAXES

The Contractor shall cooperate with the City in all matters relating to taxation and collection of taxes, particularly with respect to the self-accrual of Use Tax. Additional information regarding self-accrual is available from the City of Long Beach Purchasing Division upon request. However, nothing in this provision shall alter the requirement that the Bid shall include the California State Sales or Use Tax and all other taxes legally chargeable in connection with the Work.

ITB - 35. DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No Contractor or Subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)). No Contractor or Subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

ITB - 36. NOT USED

ITB - 37. IRAN CONTRACTING ACT OF 2010

In accordance with Public Contract Code sections 2200-2208, every person who submits a bid or proposal for entering into or renewing contracts with the City for goods or services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit" located in the Bid Forms section of these specifications.

ITB - 38. EXECUTIVE ORDER N-6-22

To ensure compliance with Executive Order N-6-22, issued by Governor Newsom on March 4, 2022, the various economic sanctions and export controls measures imposed by the U.S. government referenced therein and as amended, and all other applicable economic sanctions and export control measures imposed by the U.S.

government, all bidders shall complete and sign the “Trade Sanctions Compliance Affidavit” located in the Bid Proposal Package.

END OF INSTRUCTIONS TO BIDDERS

**GENERAL CONDITIONS
OF THE
CONSTRUCTION CONTRACT**

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GENERAL CONDITIONS

ARTICLE 1 DEFINITIONS, CORRELATION, INTERPRETATION AND CONTRACTOR REPRESENTATION CONCERNING THE CONTRACT DOCUMENTS

GC – 1.1 Definitions

- 1.1.1** Acceleration Proposal Request. City's written request to Contractor to submit an itemized proposal for Extraordinary Measures to achieve early completion of all or a portion of the Work when not due to the fault of the Contractor.
- 1.1.2** Addenda. The Addenda or Addendum consist of the written or the graphic instruments issued by the City prior to opening of Bids, which clarify, correct or change the Contract Documents.
- 1.1.3** Affidavit of Final Completion. The formal written declaration by the Contractor to City per the Milestone established in the Special Conditions, affirming that the entire Work has been fully completed, the Contractor has submitted all required closeout documents and the Contractor has completed all closeout procedures in accordance with the Contract Documents.
- 1.1.4** Agency. The Harbor Department of the City of Long Beach.
- 1.1.5** Agreement. The document signed by the City and Contractor for Contractor's performance of the Work, including all exhibits, attachments and documents incorporated by reference therein.
- 1.1.6** Allowance. A line item or an amount established by the City to be carried in the Bid and the Contract Price for a particular item of Work, which cannot be sufficiently defined so as to allow the Contractor to adequately determine fair value before the Bid Deadline. The Contractor will be required to perform Allowance Work if so ordered by the Engineer and described in the Bidder's Schedule of Bid Items.
- 1.1.7** Alternate Bid Item. An "Alternate Bid Item" is an item of Work described as such in the Contract Documents and the amount stated in the Bidder's Schedule of Bid Items to be added or deducted from the Bid if accepted by City.
- 1.1.8** Applicable Law. State, federal and local laws, statutes, codes, ordinances, rules, and regulations governing the Work.
- 1.1.9** Application for Final Payment. The Contractor's written request for Final Payment of the Contract Price including reconciliation of all partial payments, Claims, changes or other proper adjustments to the Contract.

- 1.1.10** Base Bid. The “Base Bid” is the total sum stated in the Bidder’s Schedule of Bid Items for which the Bidder offers to perform Work described in the Contract Documents as the base Contract Work.
- 1.1.11** Beneficial Use. Stage of construction of the Work before the Final Completion, at which the City can occupy the work area for the purpose it was constructed.
- 1.1.12** Bid. A “Bid” is a complete and properly executed offer by a Bidder to perform the Work for the prices stated therein.
- 1.1.13** Bid Deadline. The date and time when Bids are due for submission to the City, as established in the Notice Inviting Bids, the PB System, or as changed by Addenda.
- 1.1.14** Bid Opening. The action of viewing Bid results subsequent to the Bid Deadline, either manually for paper Bid submittals or online for electronic Bid submittals.
- 1.1.15** Bid Security. Bid Security is defined in Paragraph ITB-17 of the Instructions to Bidders.
- 1.1.16** Bidder. Any individual, partnership, corporation, joint venture or other business entity, submitting a Bid for the Work, acting directly or through a duly authorized representative. If the Bidder is a joint venture, the Bidder may be represented by any of its parties for the purposes of compliance with the requirements of the Contract Documents.

With respect to the Port of Long Beach PlanetBids System (PB System), the term “Bidder” may be synonymous with “Vendor” and include a prime contractor, subcontractor, supplier, or service provider.

- 1.1.17** Board. The Board of Harbor Commissioners of the City of Long Beach, California acting for and on behalf of the City of Long Beach, constituting the awarding authority.
- 1.1.18** Change Order. A Change Order is a written document prepared by the City using a form in substantially the same form as the City’s standard form of Change Order or other City-approved form reflecting the agreement between the City and Contractor for: (A) a change in the terms or conditions of the Contract, if any; (B) a specific Scope Change in the Work; and (C) the amount of the adjustment, if any, in the Contract Price; and the extent of the adjustment, if any, in the Contract Time. The City’s standard form of Change Order is included in Appendix H in the Project Specification.
- 1.1.19** Change Order Request (COR). As more specifically described in GC-7.7 herein, a Change Order Request is a written document originated by the Contractor,

describing an instruction issued by the City after the effective date of the Contract, which Contractor believes to be a Scope Change that may result in changes to the Contract Price or Contract Time or, which describes the need for or desirability of a change in the Work proposed by Contractor.

- 1.1.20** Chief Executive Officer. The Chief Executive Officer of the Harbor Department of the City of Long Beach, California.
- 1.1.21** City. The City of Long Beach, California, acting by and through the Board of Harbor Commissioners directly or by authorized representatives.
- 1.1.22** Claim. The term “Claim” or “Claims” shall mean a separate demand by the Contractor for: (i) a time extension; (ii) payment of money or damages arising from Work done by or on behalf of the Contractor pursuant to this Contract and payment of which is not otherwise expressly provided or the Contractor is not otherwise entitled to; or (iii) an amount submitted for payment by the Contractor which is disputed by the City.
- 1.1.23** Conditional Award. The action by the Board indicating the Board’s intent to execute a Contract with the responsible Bidder submitting the lowest responsive Bid, upon Bidder’s compliance with required conditions, including submission of completed insurance forms, Performance Bond, Payment Bond and a signed Contract within a specified number of days after the Board’s action.
- 1.1.24** Consultant. A firm under contract with City to perform planning, engineering or construction management services in connection with the Project, if any, and identified in writing.
- 1.1.25** Construction Manager. City’s Construction Manager, if any, as designated by the Engineer prior to the Notice to Proceed, is the City’s on-Site Project Representative.
- 1.1.26** Contract. The Contract Documents form the Contract (“Contract”).
- 1.1.27** Contract Documents. The Contract Documents consist of the documents enumerated as such in the Agreement and the Special Conditions, including all Addenda issued prior to and all Change Orders issued after the effective date of the Agreement.
- 1.1.28** Contract Price. The Contract Price is stated in the Agreement and, including authorized adjustments, is the total maximum amount payable by the City to the Contractor for performance of the Work under the Contract Documents.

- 1.1.29** Contract Time. The Contract Time is the period of time allocated in the Contract Documents from the date of commencement established in City's Notice to Proceed for Contractor to issue an approved Affidavit of Final Completion of the Work.
- 1.1.30** Contractor. The individual, partnership, corporation, joint venture or other legal entity whose Bid is accepted and to whom the Contract for the Work is awarded.
- 1.1.31** Critical Path. The sequence of activities yielding the longest path in a CPM schedule that has a Float value of zero indicating that any delay in any one activity along this path will delay the completion of the overall Work.
- 1.1.32** Critical Path Method (CPM). A schedule network of all Work to be performed that has been defined and organized by activities. All activities are defined by interrelationships, resources and durations.
- 1.1.33** Day. The terms "day" or "days", whether or not capitalized, shall mean calendar days unless otherwise specifically designated in the Contract Documents.
- 1.1.34** Department. The City of Long Beach Harbor Department.
- 1.1.35** Design-Build. The terms "Design-Build" and Design-Build Services" mean a method of project delivery in which the Contractor furnishes both professional design services and construction services for portions of the Work so designated in the Contract Documents. Contractor shall be solely responsible for all design, construction means and methods, cost overruns, defects, errors, omissions and delays arising from its Design-Build Services delegated to Contractor by Contract Documents.
- 1.1.36** Drawings. The terms "Drawings" and "Plans" are the graphic and pictorial portions of the Contract Documents showing the design, location, character, details and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.37** eBid. A "Bid" that is submitted electronically through the Port of Long Beach PB System.
- 1.1.38** Engineer. The Senior Director/ Chief Harbor Engineer (or his/her/their designee) of the Harbor Department of the City of Long Beach, California.
- 1.1.39** Extraordinary Measures. Measures implemented by Contractor at City's direction to expedite the progress of design or construction of all or a portion of the Work, including, without limitation, (i) working additional shifts or overtime, (ii) supplying

additional manpower, equipment and facilities, and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures.

- 1.1.40** Final Completion. The stage of performance when all Work has been completed in accordance with the Contract Documents including, without limitation, correction or completion of all Punch List items noted upon Substantial Completion and submission of the documentation identified in GC-9.9.3 herein.
- 1.1.41** Final Payment. City's last payment of the Contract Price due to Contractor for the entire Work, less only the sums which City is specifically allowed to withhold under the terms of the Contract and Applicable Law.
- 1.1.42** Float or Total Float. The amount of time that any activity or path of activities may be delayed without delaying the completion dates for Substantial Completion of the Work.
- 1.1.43** Fragnet. A section or fragment of the network diagram comprising a group of activities used to illustrate changes and impact to the whole network.
- 1.1.44** Government Code Claim. Claims or actions specified by Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the Government Code.
- 1.1.45** Greenbook. Those provisions of the latest edition of the Standard Specifications for Public Works Construction, written and promulgated by Public Works Standards, Inc. and the latest edition of supplements in effect at the time of Advertisement. Whenever portions of the Greenbook are incorporated in the Contract Document, the terms "Agency" and/or "Board" shall refer to the Board of Harbor Commissioners.
- 1.1.46** Hazardous Substances. Any substance or chemical product defined as such in California Health and Safety Code Section 25501.
- 1.1.47** Hazardous Waste. Any substance or chemical product defined as such in California Health and Safety Code Section 25117.
- 1.1.48** Harbor Development Permit (HDP). Permit issued by the Harbor Department under delegated authority from the California Coastal Commission for the development in the Harbor District as set forth in the California Coastal Act, California Public Resources Code, Division 20.
- 1.1.49** Liquidated Damages. Liquidated Damages are the monetary amounts established in the Special Conditions to be forfeited to the City for each day of Contractor's delay in completion of the Work within the Contract Time and specified

Milestones, as provided in Government Code Section 53069.85 and Public Contract Code Section 7203.

- 1.1.50** Material Supplier. The terms “Material Supplier” or “Supplier” mean any person, firm, or entity, other than employees of the Contractor, that provides commodities, wares, merchandise, construction equipment or other tangible items to the Project necessary for completion of the Work.
- 1.1.51** Milestone. A deadline for completion of a portion of the Work established in the Special Conditions.
- 1.1.52** Noncompliance Notice. As related to Correction of Work specifically described in GC-12.2 herein, a Noncompliance Notice is a written document originated by the Engineer, to notify the Contractor of any portion of the Work that requires correction to conform to the requirements of the Contract Documents.
- 1.1.53** Notice to Proceed. A written document issued by the City establishing the date of commencement of the Contract Time. The Contract Time for Contractor’s performance of the Work is measured in calendar days from the date of commencement established in the Notice to Proceed.
- 1.1.54** Notice of Substantial Completion. When the Engineer believes the Work or designated portion thereof is Substantially Complete, the Engineer shall recommend that the Board declare Substantial Completion and will prepare a written notice of Substantial Completion for submission to and consideration by the Board including Punch List I which shall establish the date of Substantial Completion. Warranties required by the Contract Documents shall commence when the Work, including Punch List I, is complete.
- 1.1.55** Or Equal Substitution. The material, product equipment proposed by the Contractor for use in the Work at no additional cost to the City. Approval of an Or Equal Substitution shall be based on the sole judgment of the Engineer that the proposed item is equal to or better than the material, product or equipment specified in the Contract Document as to function, performance reliability, quality and general configuration.
- 1.1.56** Owner Initiated Change (OIC). As more specifically described in the procedures of GC-7.6 herein, an Owner Initiated Change is a written document originated by the Engineer, describing a proposed change to the Work after the effective date of the Contract, and requesting the Contractor to submit an itemized proposal.
- 1.1.57** Parties. The City and Contractor may be referred to in the Contract Documents from time to time as the Parties.

- 1.1.58** Payment Bond. Security provided by the Contractor and a California admitted surety insurer on City's bond form guaranteeing the payment of all legal debts that may be incurred by reason of the Contractor's performance of the Work.
- 1.1.59** PB System. The Port of Long Beach's web-based online procurement system hosted by PlanetBids.
- 1.1.60** Performance Bond. Security provided by the Contractor and a California admitted surety insurer on City's bond form guaranteeing the Contractor's faithful performance of the requirements of the Contract Documents.
- 1.1.61** Port/POLB. The terms "Port" or "POLB" mean the Port of Long Beach, California. Port of Long Beach and the Long Beach Harbor Department are one and the same. The Port is a Department of the City.
- 1.1.62** Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the City or by Separate Contractors.
- 1.1.63** Project Representative. Those individuals designated by the Parties in writing with authority to communicate with the other Parties in connection with the Work and the Contract.
- 1.1.64** Project Specification. The term "Project Specification" or "Specification" refers to the assembly of Contract Documents provided to Bidders.
- 1.1.65** A. Punch List I: The list of Work, generally physical in nature, remaining to be completed after Contractor achieves Substantial Completion of the Work and is limited to minor incidental items of Work necessary to correct imperfections, which have no effect on the safety, function or operability of the Work.
- B. Punch List II: The list of Work, generally administrative in nature, remaining to be performed and consisting of documents to be submitted to and/or approved by City after the Contractor achieved Substantial Completion of the Work and includes those items described in GC-9.9.3 and 9.9.3.1.
- 1.1.66** Reference Documents. Drawings and documents showing existing Site conditions or previous improvements. No guarantee is made that existing improvements or conditions are accurately shown or described on the Reference Documents.
- 1.1.67** Request for Information ("RFI"). A document issued by the Contractor requesting information or clarification of the Contract Documents.

- 1.1.68** Schedule of Bid Items. The list of bid line items included with the Contractor's Bid establishing the total Bid price to be used as the basis for determining the lowest Bid and establishing the Unit Prices for lump sum bid items and measured quantity bid items for payment of installed Work.
- 1.1.69** Scope Change. A Scope Change is Work that is not reasonably inferable from the Contract Documents upon which the Contract Price is based, by a contractor familiar with Project, exercising the skill, diligence, and expertise necessary for the proper, timely, and orderly completion of the Work or a project of this type and quality, and is (i) materially inconsistent with, or (ii) a material change in the quantity, quality, requirements, or other substantial deviation from the Contract Documents upon which the Contract Price is based.
- 1.1.70** Separate Contractor. The term Separate Contractor(s) or City's Separate Contractor(s) means licensed contractors or consultants performing portions of the Project under separate contracts with the City.
- 1.1.71** Site. The physical area designated in the Contract Documents for Contractor's performance of the Work.
- 1.1.72** Small Business Enterprise (SBE). A firm which has been determined to satisfy Federal U.S. Small Business Administration (SBA) size standards, based on North American Industrial Classification System (NAICS) codes.
- 1.1.73** Special Conditions. Any provisions that supplement or modify these General Conditions.
- 1.1.74** Specialty Item. An item of Work identified by the City in the Schedule of Bid Items. Designated Specialty Items may be performed by Subcontractors and the amount of any such Specialty Items so performed may be deducted from the Base Bid and Contract Price before computing the amount required to be performed by the Contractor with its own employees.
- 1.1.75** Subcontractor. A Subcontractor is any individual, firm or entity having a direct contract with the Contractor or with any other Subcontractor to perform a portion of the Work. Unless otherwise specified, Subcontractor includes a Subcontractor of any tier and excludes Material Suppliers, manufacturers and distributors. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number 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.

- 1.1.76** Submittals. Submittals, comprised of Shop Drawings, Manufacturer Fabrication Prints, Product Data and Samples and Construction Documents, are defined in GC-3.12 herein.
- 1.1.77** Substantial Completion. Substantial Completion is the stage in the progress of the Work when the Work is sufficiently complete in accordance with the Contract Documents as determined by the Board on advice of the Engineer so that the City can occupy or utilize the Work for its intended purpose, as evidenced by the City's issuance of a written notice of the date of Substantial Completion of the Work.
- 1.1.78** Tenant. An entity (e.g., shipping line or cargo handling firm) which leases Port facilities.
- 1.1.79** Technical Specification/Specifications. That portion of the Contract Documents consisting of written requirements for materials, equipment, for construction systems, standards, criteria for workmanship for the Work and related services.
- 1.1.80** Unilateral Change Order. A Unilateral Change Order is a written order prepared and signed by the Chief Executive Officer directing Contractor to perform a change in the Work prior to agreement on adjustment, if any, in the Contract Price or Contract Time, or both. A Unilateral Change Order may be issued by the City in the form of a letter.
- 1.1.81** Unit Price. A "Unit Price" is an amount entered by Bidder for a bid line item in the Schedule of Bid Items as a price per unit of measured quantity or as a lump sum price for payment for materials, equipment or services including supervision, overhead and profit for a portion of the Work as described in the Contract Documents.
- With respect to the Contract Documents, references to Unit Prices and Unit Price Work shall refer to bid items with a measured quantity unit of measure, and references to Lump Sum Prices and Lump Sum Work shall refer to bid items with a lump sum unit of measure.
- 1.1.82** Vendor. A term used in the PB System to describe an entity interested in doing business with the Port of Long Beach including contractors, subcontractors, suppliers, and service providers.
- 1.1.83** Very Small Business Enterprise (VSBE). A VSBE is an SBE firm which has been determined to satisfy the eligibility standards of the State of California's Department of General Services' "micro-business" designation.

- 1.1.84** Weather Delay Day. Impact of precipitation, wind or other inclement weather conditions to Critical Path Activity(ies) for four (4) hours or more on a work day or extended inclement weather impact in continuation of a Critical Path Activity.
- 1.1.85** Work. The term “Work” means the construction and other services required by, and reasonably inferable from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.
- 1.1.86** Work Directive. A Work Directive is a unilateral written order issued by the Engineer directing Contractor to perform or continue performance of the Work or a disputed item of Work pending resolution of a dispute concerning the scope.
- 1.1.87** Workers Compensation Experience Modification Factor. The factor assigned to the Contractor or Subcontractor by the Workers Compensation Insurance Rating Bureau of California or the National Council of Compensation Insurers, commonly referred to as the “Ex-Mod Factor.”
- 1.1.88** Working Day. The term “Work Day” or “Working Day” shall mean any calendar day except Saturdays, Sundays and City-recognized legal holidays listed in Government Code Sections 6700 and 6701.

GC – 1.2 Correlation and Intent of the Contract Documents

- 1.2.1** Complementary Documents. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. All Work mentioned or indicated in the Contract Documents, and all Work reasonably inferable from them, shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.
- 1.2.2** Order of Precedence. In the event of conflict between any of the Contract Documents, the provision placing a more stringent requirement on the Contractor shall prevail. The Contractor shall provide the better quality or greater quantity of Work and/or materials unless otherwise directed by City in writing. In the event none of the Contract Documents place a more stringent requirement or greater burden on the Contractor, the controlling provision shall be that which is found in the document with higher precedence.
- 1.2.2.1** Nothing herein shall relieve the Contractor of its obligation to notify the City of any inconsistencies in the Contract Documents. Should it appear that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained in the Contract Documents or in the

event of a conflict, inconsistency or discrepancy in the Contract Documents, the Contractor shall immediately submit an RFI to the City in writing for such further written explanations as may be necessary. Any adjustment(s) to the Work made by Contractor without first obtaining written clarification from the Engineer shall be at Contractor's risk and expense and shall be subject to removal if required by Engineer.

1.2.2.2 All Work shall conform to the Contract Documents. Finish surfaces shall conform to the lines, grades, cross-sections and dimensions shown on the Contract Documents. No change or deviation from the Contract Documents shall be made without review and written acceptance by Engineer.

1.2.3 Organization Not Controlling. Organization of the Contract Documents into divisions, sections, and articles, and sequential order of Drawings shall not limit the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed.

1.2.4 Well-Known Terms. Unless otherwise stated in the Contract Documents words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.5 Contractor Deviations. No deviation by the Contractor from the Contract Documents relating to any portion of the materials, labor services or equipment required for the Work shall be construed to set a precedent with respect to subsequent interpretation of the Contract Documents or performance of the Work unless such a deviation is memorialized in a Change Order or Unilateral Change Order to the Contract.

1.2.6 Abbreviations, Units of Measure and Symbols. Unless otherwise specifically defined herein, or unless the context requires a different meaning, all abbreviations and symbols shall conform to Part 1, Sections 1-3, 1-4 and 1-5 of the Greenbook, which are incorporated herein by this reference.

GC – 1.3 Capitalization

Terms capitalized in these General Conditions include those which are (i) specifically defined, (ii) the titles of numbered articles, and identified references to paragraphs, subparagraphs and clauses in the document or (iii) the titles of other Contract Documents or forms.

GC – 1.4 Interpretation

- 1.4.1** Omitted Articles. In the interest of brevity the Contract Documents frequently omit articles such as “the” and “an”, but the fact that an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.
- 1.4.2** Reference to Contract Documents. Where “as indicated”, “as detailed”, or words of similar import are used, it shall be understood that the reference is made to anyone of the Contract Documents.
- 1.4.3** Reasonably Inferable. The expression “reasonably inferable” and similar in the Contract Documents means reasonably inferable by a contractor familiar with the Project and exercising the care, skill, diligence and expertise necessary for the proper, timely and orderly completion of the Work required by the Contract Documents.
- 1.4.4** Severability. In the event any provision or clause contained in the Contract Documents shall be deemed, determined, declared, or adjudged invalid, illegal, unconstitutional, void or otherwise unenforceable such provision or clause shall be deemed to be severed and deleted from the Contract Documents, and all remaining provisions shall continue in full force and effect.
- 1.4.5** Provisions Deemed Inserted. Each and every provision and clause required by law to be inserted in the Contract Documents shall be deemed to be inserted herein and the Contract Documents shall be read and enforced as though such provision or clause is included herein and, if through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon application of either Party, the Contract Documents shall forthwith be physically amended to make such insertion or correction.
- 1.4.6** Headings Not Controlling. The various headings contained in the Contract Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Contract or any provision thereof.

GC – 1.5 Contractor Representation

- 1.5.1** Contractor Representation Concerning Contract Documents and Site Investigation. By executing the Agreement, Contractor represents and warrants that: **(i)** the Contract Documents are sufficiently detailed to enable Contractor to determine the Cost of the Work within the Contract Price and Contract Time; **(ii)** it has familiarized itself with the local conditions under which the Work is to be performed including, without limitation, the conditions contained in any test results and/or reports provided to or obtained by the Contractor, and the conditions reflected on any Site surveys provided to or obtained by the Contractor; **(iii)** it is fully experienced, qualified and competent to perform the Work set forth

in the Contract Documents; **(iv)** it is properly equipped, organized and financed to perform the Work; **(v)** it is properly permitted and licensed by the State of the Project and all other governmental entities to perform the Work required by the Contract and that will retain only properly licensed Subcontractors to perform the Work required by the Contract; **(vi)** it has familiarized itself with all conditions bearing upon transportation, disposal, handling, and storage of materials; **(vii)** it has familiarized itself with the availability of labor, water, electric power, and roads; **(viii)** it has familiarized itself with uncertainties of weather or similar observable physical conditions at the Project Site; **(ix)** it has familiarized itself with the character of equipment and facilities needed preliminary to and during performance of the Work; **(x)** it has familiarized itself with the staging and material storage constraints of the Project Site and surrounding buildings and will confine its staging and storage operations to areas acceptable to Engineer; **(xi)** it shall maintain the immediate surrounding areas of the Project Site in a clean and safe manner at all times; **(xii)** it will coordinate its construction activities with City's Separate Contractors performing work on the Project Site; **(xiii)** it will adhere to the assigned transit route identified by the City; and **(xiv)** it will adhere to and be bound by conditions set forth in the Contract Documents and any regulatory agency, utility, or governmental entity with jurisdiction over the Project. In addition and without limiting the foregoing warranties, Contractor represents and warrants to City that prior to executing the Agreement:

- (a)** Contractor has familiarized itself and will continuously familiarize itself throughout performance of the Work with the nature and extent of the Contract Documents, the Work, the Project Site, the identified as-built conditions of the Project Site and locality, and all laws, rules, ordinances, and regulations of all government authorities and utilities having jurisdiction over the Project that may affect costs, progress, performance, or furnishing of the Work;
- (b)** Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all Reference Documents which pertain to the physical conditions at or contiguous to the Project Site or conditions which otherwise may affect the cost, progress, performance or furnishing of the Work, as Contractor considers necessary for the performance hereinafter defined, within the Contract Time and construction schedule and in accordance with the other terms and conditions of the Contract Documents;
- (c)** Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing underground facilities at or contiguous to the Project Site;

- (d) Contractor has coordinated the results of all observations, examinations, investigations, explorations, tests, reports, and studies provided to the Contractor as part of the Contract Documents;
- (e) As of the effective date of the Agreement, Contractor has no knowledge of any conflicts, errors, or discrepancies in the Contract Documents other than those which Contractor has notified City of in writing prior to executing the Agreement;
- (f) Contractor is experienced and competent in the interpretation and use of Specifications and Drawings, and in the use of materials, equipment and construction techniques as are required to successfully complete the Project. Contractor shall, at its own expense, employ any and all experts necessary to successfully complete the Project. Contractor shall, at its own expense, employ any and all experts necessary to successfully complete the construction Work required by the Contract Documents;
- (g) The City assumes no responsibility for any unreasonable conclusions, inferences or interpretations made by the Contractor based on the information made available by the City.

GC – 1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service

- 1.6.1** Ownership of Contract Documents. All Drawings, Specifications, sketches and other documents, and copies thereof furnished by the City are and shall remain the property of the City. They are to be used only with respect to this Project and are not to be used on any other project. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the City’s common law copyright or other reserved rights.

ARTICLE 2 CITY RIGHTS AND RESPONSIBILITIES

GC – 2.1 Authority of Engineer

The Engineer shall decide any and all questions that may arise as to the quality or acceptability of materials furnished and Work performed and as to the rate of progress of the Work performed, and shall decide all questions concerning compliance with Contract Documents and compensation due Contractor. The Engineer’s decisions shall be final and the Engineer shall have authority to enforce

and make effective such decisions and orders as the Contractor may fail to carry out promptly.

GC – 2.2 Information and Services Required of the City

2.2.1 Building and Construction Permits. Except for the permits, fees and other such items set forth under GC – 3.7 that are the responsibility of the Contractor under the Contract Documents, the City shall pay for fees associated with construction and building permits issued by the City.

2.2.2 Existing Utilities; Removal, Relocation and Protection. In accordance with California Government Code § 4215, the City shall assume the responsibility for the timely removal, relocation or protection of existing main or trunkline utility facilities located on the Project Site, if such utilities are not identified in the Contract Documents. Contractor shall be compensated for the costs of locating, repairing damage not due to the Contractor's failure to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Contract Documents with reasonable accuracy, and for equipment on the Project Site necessarily idled during such work. Contractor shall not be assessed Liquidated Damages for delay in completion of the Work when such delay is caused by the failure of the City or the utility provider to provide for removal or relocation of such utility facilities. Nothing in Government Code § 4215 shall be deemed to require the City to indicate the presence of existing service laterals or appurtenances whenever presence of such utilities on the Project Site can be inferred from the presence of other visible facilities, such as buildings, meters and junction boxes, on or adjacent to the Project Site, provided, however, nothing in Government Code § 4215 shall relieve the public agency from identifying main or trunklines on in the Contract Documents. Contractor shall be responsible for locating, and shall locate prior to performing any Work, all utility lines, including telephone, cable, television, and fiber optic lines and cables, sewer lines, water pipes, gas lines, electrical lines, including without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such manner so as to avoid damaging any such lines, cables, pipes and pipelines. If the Contractor encounters utility facilities not identified by the City in the Contract Documents, the Contractor shall immediately notify, in writing, the City and the utility. In the event that such utility facilities are owned by the City, the City shall have the sole discretion to perform repairs or relocation work or permit the Contractor to do such repairs or relocation work at a price determined in accordance with Article 7 herein.

2.2.3 Surveys. The City will furnish survey lines and grades as requested by the Contractor and as determined by the Engineer to be reasonable and necessary to complete the Work. When the Contractor requires construction staking, the Contractor shall notify the Engineer of their requirements, in writing, on the

supplied forms, a minimum of two (2) Working Days before survey services will commence. In no event shall a notice of less than two (2) Working Days be considered a sufficient length of time to commence surveying. The Contractor shall allow sufficient time in their schedule for City survey crews to complete the requested survey work. A corresponding cut or fill to finished grade (or flowline) will be indicated on a grade sheet in connection with the laying-out of any portion of the Work.

The City will furnish grade stakes one time only to establish lines and grades required for the completion of the Work. Marks or stakes are to be used within a reasonable amount of time to prevent exposure to deterioration or destruction. The Contractor shall take proper precautions to prevent disturbance or damage to marks or stakes. In case such marks or stakes are damaged or destroyed they will be replaced at the Engineer's discretion and convenience. Remarketing, re-staking, or rechecking of survey will be charged to the Contractor at the current rate and will be deducted from final payment.

The Contractor shall provide a grade checker on site for all earthwork and grading activities to set working grades for their equipment; all grade checking work will be the responsibility of the Contractor. Per California Business and Professions Code Section 6731.1(d) and Section 8726(n), the Registered Engineer or Professional Land Surveyor in responsible charge working for the Contractor shall sign and seal a certification letter stating the area has been verified to be in compliance with the specified tolerance and is ready for City as-built.

If the area or facility is not prepared satisfactorily for staking, as determined by the Engineer, the request for such staking will be voided by the Engineer and the Contractor shall submit a new request for staking when the area or facility has been properly prepared. If a survey crew has been assigned to an area that is not ready for stakes, the Engineer may charge the Contractor with the re-staking charges for the survey crew's time.

The Contractor is responsible for the verification that all concrete forms and structures are in compliance with specified tolerance of the approved plan set before pouring concrete. The Registered Engineer or Professional Land Surveyor in responsible charge working for the Contractor shall sign and seal a certification letter stating that the forms have been set within the specified tolerance prior to City as-built.

The Contractor shall notify the Engineer at least five (5) Working Days before starting work that may disturb existing construction survey control. The Contractor shall not disturb any horizontal or vertical construction survey control without the consent of the Engineer. The Contractor shall bear the expense of

replacing any control points that may be disturbed without permission. Replacement shall be done at the direction of the City surveyors.

When a change is made in the finished elevation of the pavement in which a permanent survey monument is located, the Contractor shall adjust the monument cover to the new grade within seven (7) calendar days.

The Contractor shall notify the Engineer at least seven (7) calendar days before starting work to allow for preservation of survey monuments per California Business and Professions Code Section 8771 (b). The Contractor shall not disturb any survey monuments that control the location of subdivisions, tracts, boundaries, roads, streets, or highways, or provide horizontal and/or vertical survey control without the consent of the Engineer. The Contractor shall bear the expense of replacing any monuments that may be disturbed without permission. Replacement monuments shall be installed per City of Long Beach Public Works Engineering Standard Plan 202. Replacement shall be done only under the direction of the Engineer by a Licensed Land Surveyor or a Registered Engineer authorized to practice land surveying in California.

No backfill shall be placed until the City surveyors have accurately recorded the installed depth, alignment, locations of bends, valves, vaults, maintenance holes and all other items or conditions to provide an accurate record of all below-grade utilities. The Contractor shall notify the Engineer that work is ready for as-built survey only after the Contractor verified that the work is in compliance with the drawing and specifications. These surveys will be conducted within two (2) Working Days of proper notification. In the event that below grade utilities are covered with backfill without prior notification, the Contractor shall, at their expense, expose those utilities in such a manner that the as-built survey can be performed.

Land Surveying work on the project shall be in conformance with the Professional Land Surveyors' Act. All Land Surveying work as defined in California Business and Professions Code Section 8726 shall be signed, sealed and delivered to the City as defined in California Business and Professions Code Section 8761.

GC – 2.3 City's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with requirements of the Contract Documents as required by GC-12.2 or fails to carry out Work in accordance with the Contract Documents, the Engineer may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Engineer to stop the Work shall not give rise to a duty on the part of the City to exercise this

right for the benefit of the Contractor or any other person or entity. The City's right to stop the Work is in addition to and without prejudice to any other rights or remedies of the City.

GC – 2.4 City's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a **forty-eight (48) hour** period after receipt of written notice from the City to commence and continue correction of such default or neglect with diligence and promptness, the Engineer may after such **forty-eight (48) hour** period give the Contractor a second written notice to correct such deficiencies a second **forty-eight (48) hour** period. If the Contractor within the **forty-eight (48) hour** period after receipt of such second notice fails to commence and continue to correct any deficiencies, the City, without prejudice to other remedies the City may have, may correct such deficiencies. In such case an appropriate Unilateral Change Order shall be issued deducting from payments then or thereafter due the Contractor, the cost of correcting such deficiencies, including without limitation, compensation for any additional design services and expenses made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City. The City's right to carry out the Work is in addition to and without prejudice to any other rights or remedies of the City.

GC – 2.5 Suspension of Work

In addition to the City's right to stop the Work set forth in these General Conditions, the Contractor shall, upon receipt of Engineer's written notice and within the time stated therein, suspend shipment and delivery of material and stop any part or all of the Work and operations under the Contract for such period or periods of time as the Engineer may deem advisable and designate in said notice. Upon receipt of such notice to suspend Work, the Contractor shall immediately confer with the Engineer concerning the probable duration of such suspension and stoppage, delays and extensions of time resulting therefrom as well as the reduction and possible elimination of the Contractor's field costs and such other costs and expenses as may result directly from such Work suspension. Upon written notice from the Engineer to resume operations, the Contractor shall promptly resume all or any part of the Work and operations including securing of materials required by said resumption notice. Contractor shall be compensated for suspension in accordance with Article 14 herein.

GC – 2.6 City's Right to Order Extraordinary Measures

- 2.6.1** Non-Compensable Extraordinary Measures. In the event the City determines that the performance of the Work, or any portion thereof, has not progressed or reached the level of completion required by the Contract Documents due to

causes within the control of Contractor, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities and (iii) submitting a recovery schedule for re-sequencing performance of the Work or other similar measures. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion as required by the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price in connection with the Extraordinary Measures required by the City under or pursuant to this section. The City may exercise the rights furnished the City under or pursuant to this section as frequently as the City deems necessary to ensure that the Contractor's performance of the Work will comply with the Contract Time or interim completion dates set forth in the Contract Documents. If Contractor or its Subcontractors fail to implement or commence Extraordinary Measures within **ten (10) calendar days** of City's written demand, City may, without prejudice to other remedies take corrective action at the expense of the Contractor and shall reduce the Contract Price.

- 2.6.2** Compensable Extraordinary Measures. City, at its discretion, may issue a written request to the Contractor asking Contractor to submit an itemized proposal for Extraordinary Measures in order to achieve early completion of all or a portion of the Work, due to no fault of the Contractor, in a form acceptable to City within **ten (10) calendar days** after City's issuance of the Acceleration Proposal Request.

ARTICLE 3 CONTRACTOR REQUIREMENTS AND RESPONSIBILITIES

GC – 3.1 General

The Contractor shall perform the Work in accordance with the Contract Documents. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the City or City's Separate Contractors in their administration of the Contract, or by tests, inspections, reviews, approvals, or acceptances required of or performed by persons other than the Contractor.

GC – 3.2 Review of Contract Documents and Field Conditions By Contractor and Subcontractor

- 3.2.1** Field Measurements. Prior to commencement of the work, or portions thereof, the Contractor shall take field measurements and verify field conditions at the site and shall carefully compare such field measurements and conditions and other information known to the Contractor with the information provided in the Contract Documents. The primary Horizontal and Vertical survey control information provided in the plans are derived from Port geodetic control and Port

benchmark elevations at the time of survey. The Long Beach Harbor District and general vicinity have a history of subsidence and rebound due to groundwater withdrawal from aquifers in the Long Beach area, regional basin sediment compaction, oil operations, natural geologic factors, and tectonic effects of local faulting. The Contractor shall field verify the primary survey control information to be used prior to starting work and promptly notify the Engineer of any discrepancies, errors, inconsistencies or omissions discovered must be reported to the Engineer and/or City at once. For further information on this subsidence and rebound, a copy of the report "Elevation Changes in the City of Long Beach" can be obtained from the Long Beach Energy Resources Department.

3.2.2 Request for Information ("RFI"). If the Contractor encounters any condition which the Contractor believes, in good faith and with reasonable basis, is the result of an ambiguity, conflict, error or omission in the Contract Documents (collectively the "Conditions"), it shall be the affirmative obligation of the Contractor to timely notify the City, by written RFI, of the Conditions encountered and to request information from the City necessary to address and resolve any such Conditions before proceeding with any portion of the Work which may be affected by such Conditions. If the Contractor fails to timely notify the City in writing of any Conditions encountered and the Contractor proceeds to perform any portion of the Work containing or affected by such Conditions, the Contractor shall bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment to the Contract Time or the Contract Price. The Contract Time shall not be subject to adjustment in the event that the Contractor fails to timely request information from the City.

3.2.3 Resolution of Uncertainties. City and Contractor acknowledge that questions may arise concerning the level and scope of performance required under the Contract Documents. City and Contractor will in good faith attempt to resolve such conflicts and uncertainties in a manner that is consistent with the design intent of the Contract Documents and without adjustment to the Contract Price or Contract Time. In the event that they are unable, after good faith efforts, to resolve such differences, then , in recognition of their mutual desire that such questions not result in compromise of the high standards they mutually intend be followed for design and construction of the Project, City and Contractor agree that all such unresolved conflicts or uncertainties in respect to the standard of quality shall be interpreted so as to require Contractor to perform the Work, without adjustment to the Contract Price or Contract Time, in a manner that reflects the higher or better standard indicated by the Contract Documents.

GC – 3.3 Supervision and Construction Procedures

3.3.1 Contractor's Means and Methods. The Contractor shall supervise and direct the Work, using the Contractor's best skills and attention. The Contractor shall be

responsible for and have control over construction means, methods, techniques, sequences, and procedures for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the job safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, the Contractor shall give **timely written notice within ten (10) calendar days** to the City and shall not proceed with that portion of the Work without further written instructions from the City. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by the Contractor, the City shall be solely responsible for any resulting loss or damage. The Contractor is responsible for execution of all Work described in the Contract Documents, including how the Work may be divided into scopes and allocated among Subcontractors and suppliers and trades.

3.3.2 Contractor's Vicarious Liability for Employees and Subcontractors. Contractor shall be responsible to City for acts and omissions of Contractor's employees, Subcontractors, Material Suppliers and their agents and employees, and any other persons or entities performing any of the Work under a direct or indirect contract (or other arrangement) with Contractor. The Contract is between the Contractor and the City, and as such, it is the Contractor's sole responsibility to coordinate, execute, and complete all Work performed by the Subcontractors, Material Suppliers and their agents and employees, and any other entities or tradespeople under Contractor's direct or indirect contract (or other arrangement).

3.3.3 Property Lines and Encroachments. After all lines are staked out and before Work is commenced, Contractor shall review with City the placement of all buildings and other permanent facilities to be constructed on the Site. Any encroachments resulting from the Contractor's locating or constructing the Work on adjacent properties to the Project Site as revealed by a survey of the foundations or an "as-built" survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall commence the remedy of such encroachments within **thirty (30) calendar days** after discovery thereof (unless circumstances require a more rapid response), at Contractor's sole cost and expense, by the removal of the encroaching improvement (and the subsequent reconstruction of such improvement on the Project Site).

- 3.3.4** Inspection of Work in Place. The Contractor shall be responsible for the inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

GC – 3.4 Labor and Materials

- 3.4.1** Coordination. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for space requirements, locations, and staging of its equipment in areas and location acceptable to the Engineer. Where the proper and most effective space requirements, locations, and routing cannot be made as indicated in the Contract Documents, the Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

- 3.4.2** Temporary or Permanent Work. Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, sewer and electrical utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

- 3.4.2.1** Temporary Water Services. Water for construction purposes will be furnished by the City, without charge, from a fire hydrant or other source adjacent to the Project site if available. The Contractor shall make application for temporary water service a minimum of **three (3) Working Days** prior to requiring said service by contacting the Harbor Department's Maintenance Division at (562)283-7300. In accordance with applicable Sections in the City of Long Beach Utilities Department, "Rules, Regulations and Charges Governing Water and Sewer Service" (latest edition), a \$1700.00 deposit will be required for each 2-inch or less temporary service connection and shall be made at the time the service connection is requested. Service connections larger than 2-inches will require a deposit amount based upon meter and backflow device replacement costs. The deposit shall be in the form of a bank certified cashier's check made payable to the City of Long Beach Harbor Department drawn on a solvent bank in California. The deposit will be held until the service connection is no longer needed and the meter and backflow devices are returned to the Harbor Department in good condition. After application for temporary water service is made, the Harbor Department will install approved backflow prevention and metering devices on the hydrant prior to the withdrawal of any water. The Contractor will not be charged for the installation or removal of these temporary service connections. The Contractor shall be liable for

the loss, stolen, or damage to the backflow prevention and metering devices, and if said devices are lost, stolen, or damaged, the Contractor will be charged their full replacement value plus a fifteen percent (15%) administration charge.

3.4.3 Labor Discipline. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

3.4.4 Skilled Labor. None but skilled and competent personnel shall be employed on any portion of the Work. When required in writing by the City, the Contractor or any Subcontractor shall immediately remove from the Project site any person who is, in the reasonable opinion of the City, incompetent, intemperate, troublesome, disorderly or otherwise objectionable, or who fails to properly perform the Work, and shall not again employ such discharged person on the Work. Such discharge shall not be the basis of any claim for compensation or damages against the City or any of its officers or agents.

3.4.5 Control of Materials

3.4.5.1 All materials furnished must be new, unless otherwise specified herein, and satisfactory to the Engineer. The Contractor is fully responsible for quality control of all materials used on the Project. Materials shall be subject to inspection by the Engineer. If, in the opinion of the Engineer, materials do not comply with the Contract Documents, said materials shall be made to conform thereto. Material found to be unsatisfactory will be rejected and, if so ordered by the Engineer, shall be immediately removed from the Site at the expense of the Contractor. If the Contractor fails to comply with any such order, the Engineer may cause said unsatisfactory material to be removed, and shall require that the defective material be replaced. The cost of the removal of the defective material, and the replacement thereof, shall be deducted from any money due, or to become due, to the Contractor. All articles and materials shall be of the quality specified herein and fully equal to accepted samples, when samples are required.

3.4.5.2 Before delivering to the Project any dirt, rock, gravel, or sand, the Contractor shall notify the Engineer of the source(s) of said materials, and the Engineer shall have an opportunity to examine and test materials. No materials shall be obtained from City-owned property unless otherwise specified herein.

3.4.5.3 All Unit Price Work will be measured by the Engineer in accordance with *U.S. Standard Weights and Measures* and the Greenbook, unless otherwise specified. A “ton” shall consist of 2,000 pounds avoirdupois.

3.4.6 Procurement and Installation of Materials and Equipment. Contractor shall: **(i)** place orders for all materials and equipment, taking into account current market and delivery conditions necessary to meet the construction schedule and Contract Time; **(ii)** purchase and expedite the procurement of long lead time items to obtain their delivery by the required dates; and **(iii)** arrange for alternate sources for the supply of critical materials and equipment to maintain the schedule. Should Contractor fail in this duty, City reserves the right to order such materials and equipment as the City may deem advisable to maintain the schedule for the Work or the Contract Time and all expenses shall be charged to and paid for by Contractor within the Contract Price. Contractor shall keep the City informed of the status of procurement and shall promptly notify City in writing of any materials or equipment which may not be available within the time scheduled or necessary for the Project. The Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, the Contractor shall meet with all others involved, including, but not limited to, City and Subcontractors before installation, to plan the most effective and efficient method of overall installation.

3.4.7 Or Equal Substitution of Equivalent Materials, Products or Equipment

3.4.7.1 The materials, products and equipment specified in the Contract Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution of an equivalent item. Whenever any particular material, product, or equipment is indicated in the Contract Documents by patent, proprietary or brand name, or by manufacturer name, such wording is used for the purpose of facilitating its description and it shall be deemed to be followed by the words “or equal”, unless the Notice Inviting Bids sets forth a finding in accordance with Public Contract Code §3400 that substitutions of equivalents are not permitted for such particular material, product or equipment. Only such specified items shall be provided unless the City’s prior written acceptance is obtained for the Or Equal Substitution of the equivalent item. The burden of proving the quality of any material, product, or equipment proposed for an Or Equal Substitution shall rest with the Contractor.

3.4.7.2 If any request for an Or Equal Substitution offered by the Contractor is not found to be equivalent or cannot be delivered to the Site in compliance with the Project Schedule, Contractor shall furnish and install

the material specified in the Contract Documents.

3.4.7.3 Requests for Or Equal Substitutions shall be submitted to the City using the City-provided Or Equal Substitution request form, Appendix A. Unless otherwise accepted in writing by City, no request for an Or Equal Substitution of an equivalent item will be considered or allowed by the City without Contractor's delivery of the following to City:

- (1)** A full explanation of the proposed Or Equal Substitution and submittal of all supporting data including technical information, complete manufacturers catalogs, brochures, drawings, samples, warranties, certified copies of test results, installation instructions, operating procedures, and other descriptive information to substantiate Contractor's claim of equivalent quality and necessary for a complete evaluation of the Or Equal Substitution request;
- (2)** A complete description of the difference between the requirements of the Contract Documents and the proposed Or Equal Substitution, the comparative advantages and disadvantages of each, and the reasons the Or Equal Substitution is advantageous and necessary, including the benefits to the City and the Work;
- (3)** A description of aspects of the Contract Documents affected by the Substitution Request;
- (4)** The proposed reduction, if any, in the Contract Price;
- (5)** The impact, if any, to the construction schedule;
- (6)** The estimated cost of any engineering, design, or agency fees required for Work of all trades directly or indirectly affected by substitution;
- (7)** A list of projects, to the extent known, where the subject of the Or Equal Substitution request was used and the results; and
- (8)** Other information reasonably necessary to fully evaluate the Or Equal Substitution request.

3.4.7.4 By submitting an Or Equal Substitution request, Contractor will be deemed to certify to the City that **(i)** the proposed Or Equal Substitution is equal to or exceeds all requirements of the pertinent Contract Documents; **(ii)** Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally

specified; **(iii)** the cost data presented is complete and includes all related costs under Contract, including an estimate of the redesign costs and Contractor will reimburse City for all additional costs to the Project arising from the Or Equal Substitution , **(iv)** Contractor will coordinate the installation of the accepted Or Equal Substitution, making such changes as may be required for the Work to be complete in all respects; **(v)** Contractor waives all claims for additional costs or extensions of the Contract Time related to the Or Equal Substitution that subsequently become apparent; and **(vi)** Contractor accepts all responsibility or direct and indirect costs and/or time impacts that result from the approved Or Equal Substitution, unless the Or Equal Substitution is required due to one or more of conditions 1 through 5 set forth in the following paragraph.

3.4.7.5 The Contractor shall submit all Or Equal Substitution requests, together with substantiating data, after Conditional Award and no later than **fourteen (14) calendar days after City's issuance of Notice to Proceed, per Appendix A.** Thereafter, Or Equal Substitution requests from the Contractor may be considered by the City when one or more of the following conditions are met and documented by Contractor:

- (1)** Specified item fails to comply with regulatory requirements; or
- (2)** Specified item has been discontinued by the manufacturer; or
- (3)** Specified item, through no fault of the Contractor, is unavailable in the time frame required to meet the Project Schedule; or
- (4)** Specified item, through subsequent information disclosure, will not perform properly or fit in designated space; or
- (5)** Manufacturer declares specified product to be unsuitable for intended use or refuses to warrant installation of product.

3.4.7.6 The City has reviewed the technical and aesthetic qualities of materials specified, and may refuse to accept an Or Equal Substitution of an item with a lower cost that does not extend credit to the City. Or Equal Substitutions requiring an increase to the Contract Price or Contract Time may be approved only if one or more of the above conditions are met and documented by Contractor.

3.4.7.7 No incomplete request for an 'Or Equal Substitution' will be considered by the City and items for which insufficient information is submitted will

be rejected by the City for lack of substantiating data.

3.4.7.8 Failure of the Contractor to submit proposed Or Equal Substitutions for City's acceptance in the manner described may be deemed sufficient cause for rejection by the City of any Or Equal Substitution otherwise proposed.

3.4.7.9 Contractor shall proceed with performance of the Work as required by the Contract Documents and shall not modify such requirements in accordance with any Or Equal Substitution request unless the City accepts such request in writing.

3.4.8 Compliance with Reference Standards. Any material specified by reference to the number, symbol, or title of a standard, rule, bulletin, method of analysis or test, code, or specification of other agencies, engineering societies, or industrial association referenced to in the Contract Documents such as that of the American Society for Testing Materials ("ASTM"), Underwriters Laboratories, Factory Mutual, a product or commercial standard, or similar standards, shall comply with the requirements of the latest revisions thereof and any supplement or amendment thereto in effect on the date of Advertisement. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed in full within the Contract Documents. Whenever a product is specified in accordance with such a Reference Standard, the Contractor shall present a certification from the manufacturer and test data to substantiate compliance, when requested by the City or required in the Specifications, certifying that the product complies with the particular standard or specification.

3.4.9 Manufacturer's Instructions. Where it is required in the Contract Documents that materials, products, processes, equipment or the like be installed or applied in accordance with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the Site. Unless otherwise stated, Contractor shall furnish one copy of said instructions to Engineer. If there is a conflict between manufacturer's instructions and Applicable Law or the Contract Documents, Contractor shall notify Engineer in writing to request clarification.

3.4.10 Storage of Materials. Materials shall be stored so as to ensure the preservation of their quality and fitness for the Work. When considered necessary by the Engineer, materials shall be placed on timber platforms or other hard, clean surfaces not on the ground, and shall be under cover, when so requested. Stored

materials shall be located so as to facilitate prompt inspection.

- 3.4.11** Responsibility for City-Furnished Materials. In accordance with Article 10 herein, the Contractor is held responsible for all materials furnished by the City after such materials have been delivered to the site, and until such materials are incorporated in the Work and accepted by the City. Deductions will be made from any monies due, or to become due, the Contractor to make good any loss, damage, shortage, or deficiency from Contractor's failure to protect such materials including, but not limited to, demurrage charges due to delinquency in unloading. In case of suspension of the Work for any cause whatever, the Contractor shall be responsible for protection of all materials, whether furnished by Contractor or by the City, and shall properly store such, if necessary.

GC – 3.5 Warranty and Correction

- 3.5.1** Warranty. The Contractor warrants to the City that: **(i)** materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents; **(ii)** the Work will be of good quality and free from defects; **(iii)** the Work will conform to the requirements of the Contract Documents; and **(iv)** Contractor will deliver a Project free of stop notice claims. Work not conforming to these requirements, including substitutions not properly accepted by the City, shall be deemed defective. Contractor's warranty obligations to repair, correct and/or replace the Work shall extend for a period of at least one year from the date of the completion of the Punch List 1 Milestone set forth in the Special Conditions. Contractor's warranty excludes improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the City, the Contractor shall furnish satisfactory evidence as to the kind and quality of the materials and equipment. This warranty is not limited by the correction obligations of GC-12.2 herein.
- 3.5.2** Overlap. Where any warranties provided under the Contract Documents overlap, conflict, or are duplicative, Contractor shall be bound by the more stringent requirements.
- 3.5.3** Procurement and Assignment of Warranties. Contractor shall obtain in the name of City, or transfer or assign to City or City's designee prior to the time of Final Completion of the Work, any and all warranties or guarantees which Contractor is required to obtain pursuant to the Contract Documents and which Contractor obtained from any other person or entity other than Contractor including, but not limited to, Subcontractors and manufacturers, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties. Contractor shall secure written warranties from all Subcontractors in the form approved by City. Contractor and its Subcontractors shall offer any warranty upgrades or extensions that are offered by manufacturers of any equipment or system installed

in the Work to the City.

- 3.5.4** Survival of Warranties. The provisions of GC-3.5 shall survive Contractor's completion of the Work or termination of Contractor's performance of the Work.

GC – 3.6 Taxes

- 3.6.1** Payment. The Contractor shall pay all applicable sales, consumer, use, and similar taxes for the Work provided by the Contractor and such taxes shall be included in the Contract Price.

- 3.6.2** Liability for Employee Payments. Contractor accepts full liability for the payment of any and all contributions, deductions, or taxes for social security, unemployment insurance, old age and survivor's benefits, medical and health benefits, or for any other purpose now or hereafter imposed under any Applicable Law measured by the wages, salary or other remuneration paid to persons employed by or on behalf of Contractor for the Work. Contractor covenants and agrees to observe and fully comply with all Applicable Law, including procurement of any necessary occupational licenses, permits and inspection certificates.

- 3.6.3** Sub-Permit (Use Tax). The Contractor and/or Subcontractor is encouraged to register the job-site as a Sub-Permit with the Board of Equalization, if appropriate, and allocate to the City the local tax due on purchases of materials from out of state suppliers and on sales of fixtures under the Contract.

The Sub-Permit and/or Use Tax shall be applicable to Contracts **in excess of five million dollars (\$5,000,000).**

GC – 3.7 Permits, Notices and Compliance with Applicable Law

- 3.7.1** Compliance with Harbor Development Permit. The Contractor shall comply with all Standard Conditions and Special Conditions of the Harbor Development Permit as described in Appendix BB.

- 3.7.2** Responsibility for Permits, Bonds and Fees. Contractor shall identify, obtain, and pay for all permits, certificates, licenses (including licenses required by Title 3 and Title 5 of the Long Beach Municipal Code), fees, approvals and inspections necessary or required for the proper execution and completion of the Work, or which are customarily secured after execution of the Contract. All documents evidencing Contractor's satisfaction of such requirements must be submitted prior to submission of the Application for Final Payment. The City will pay fees associated with construction and building permits issued by the City; however, fees for permits issued by agencies other than City shall be paid by the Contractor within the Contract Price. Where the Contract Documents require the use of waterways to prosecute the Work, Contractor shall not be required to pay dockage

charges.

3.7.3 Notices. The Contractor shall comply with and give notices required by Applicable Law and lawful orders of public authorities with jurisdiction over the Work.

3.7.4 Compliance with Applicable Law.

3.7.4.1 Contractor is responsible to be fully informed as to the Applicable Law affecting the Work and to ascertain that the Contractor's Submittals, and the Work, are in accordance with Applicable Laws. Contractor is responsible to perform all Work in accordance with the requirements of local agencies and inspectors having jurisdiction over the Work. If the Contractor observes that any portions of the Contract Documents are at variance with Applicable Law, Contractor shall promptly notify the City in writing by RFI.

3.7.4.2 If the Contractor performs any Work when the Contractor knows or should have reasonably known it would be contrary to Applicable Law, Contractor shall assume full responsibility therefor and shall bear all risks and costs (without adjustment for the Contract Price) directly or indirectly attributable to the correction of the Work. If Contractor fails to comply with Applicable Law, City may (without prejudice to any of its other rights or remedies) issue an order suspending all or any part of the Work.

3.7.4.3 If the Contractor is prevented, in any manner, from strict compliance with the Contract Documents due, directly or indirectly, to Applicable Law the Contractor shall immediately notify the Engineer.

3.7.5 Compliance with Use of Unmanned Aircraft System (UAS) Permit. Use of UAS/Drone is prohibited without a permit. The Contractor shall obtain an UAS Permit, as required by the City of Long Beach, Harbor Department, Port Tariff Rule 737, from the Director of Security Division. Additional information is available at www.polb.com/business/permits/#unmanned-aircraft-systems or by calling (562) 283-7818. The Contractor shall be responsible for any fees associated with this permit.

3.7.6 City UAS Operations. The City may perform unmanned aircraft systems (UAS) operations adjacent to or directly over the project site during the Contractor's performance of the Work. The Engineer will provide the Contractor with specific prior notice of such UAS operations when feasible, but in the absence of such specific notice this provision shall serve as standing prior notice of all such UAS operations, which the Contractor hereby acknowledges and agrees constitutes sufficient notice.

GC – 3.8 Allowances

- 3.8.1** Contractor shall include in the Contract Price and in the Schedule of Bid Items, all Allowances provided for in the Contract Documents. Items covered by Allowances shall be supplied for such amounts accepted by City. Contractor shall not incur costs for Allowance Work without City's prior written acceptance. All expenditures for Allowance Work shall be separately itemized in each Application for Payment. City shall not reimburse Contractor for Allowance costs in excess of the amounts specified by the City in the Bid and authorized by the City without City's prior written acceptance of such costs.
- 3.8.2** Allowances are deemed to include the cost of all materials, equipment, labor, transportation, delivery, installation, supervision, overhead, profit, licenses, permits, fees, bonds, insurance, all sales, use and other taxes legally chargeable and all other costs and expenses incidental to the Work. Whenever the final approved cost for Allowance Work is more or less than the amount established by the City in the Schedule of Bid Items, the Contract Price shall be adjusted by Change Order to reflect the final approved cost.

GC – 3.9 Contractor's Key Personnel and Subcontractors

- 3.9.1** Contractor's Project Representative. The Contractor 's Project Representative, as designated in writing and accepted by City prior to commencement of the Work, shall: **(i)** be present at the Project Site at all times that any Work is in progress and at any time that any Subcontractor or employee of Contractor is present at the Site; **(ii)** attend all job meetings; **(iii)** be actively involved throughout all phases of the Work; **(iv)** maintain oversight of the Project at all times; **(v)** have full authority to represent and act on behalf of the Contractor for all purposes under this Agreement unless Contractor notifies City in writing of limitations on such authority; **(vi)** supervise and direct the Work using his/her/their best skill and attention; **(vii)** be responsible for the means, methods, techniques, sequences, and procedures used for the Work; **(viii)** adequately coordinate all portions of the Work; **(ix)** act as the principal contact with City and all Subcontractors and inspectors on the Project; and **(x)** shall be able to read, speak and write English well enough to carry out written and oral instructions regarding performance of the Work and document compliance with the requirements of the Contract Documents.
- 3.9.2** Contractor's Key Personnel. In addition to its designated Project Representative, Contractor represents to City that certain additional key personnel, including, but not limited to, the Contractor's Project Scheduler and Superintendent, accepted by City and designated in writing, will perform services required by the Contract Documents.

3.9.3 Changes in Contractor's Project Representative, Key Personnel and Subcontractors. Contractor shall not make changes to its Project Representative, key personnel or listed Subcontractors, or reduce their responsibilities for this Project without the prior written consent of the City. Prior to making any changes to the Project representative, key personnel, or listed Subcontractors, the Contractor shall submit the qualifications and experience of the Contractor's proposed replacement for the City's acceptance. If City determines, in its sole discretion, that the performance of any person or entity employed by Contractor is unsatisfactory, then at the written request of City, Contractor shall remove, reassign, or replace such individual or entity without increase in the Contract Price and such individual or entity shall not be reemployed on the Project without the City's prior written consent.

3.9.4 Qualifications and Licenses. Work furnished by or on behalf of Contractor shall be performed by persons: **(i)** qualified to perform the Work assigned to them; and **(ii)** licensed to practice their respective trades or professions where required by Applicable Law in the State where Project is located. Contractor's Project Representative, key personnel and Subcontractors shall be experienced in projects of similar nature and complexity to the Project. A resume of Contractor's Project Representative, or any proposed designee, and other key personnel shall be submitted to the City at the preconstruction meeting.

GC – 3.10 Contractor's Progress Records

3.10.1 Order of the Work. Unless otherwise indicated in the Contract Documents, prior to the commencement of the Work, the Contractor shall submit the following information to the Engineer for review: **(i)** a proposed construction schedule, which shows each constituent operation, quantity, rate and period required to accomplish the Work; **(ii)** the proposed method of procedure, which enumerates the methods and equipment to be employed during each phase of the Work; and **(iii)** a plan, which indicates the storage and working areas desired to accomplish the construction and is acceptable by the Engineer and the City's Tenant, if any.

3.10.2 Daily Logs. Contractor shall maintain a daily log containing a record of weather, Contractor's own forces working on Site; Subcontractors working on the Site; number and labor classification of workers or each Subcontractor on Site; materials delivered; major equipment on Site, Work started, completed and accomplished that day; approximate count of all personnel at the Project Site; inspections tests and visitors; accidents, any Work stoppages, delays, shortages or losses; problems encountered and other similar relevant data as the City may reasonably require. The daily log shall be signed by Contractor's Superintendent, submitted by 4:30p.m. on the next Working Day to Engineer and shall be made available to others as directed by City.

- 3.10.3** Performance. The Contractor shall perform the Work in accordance with the most recent construction schedule and schedule of Submittals accepted by the City. The Contractor shall monitor the progress of the Work or conformance with the requirements of the Construction schedule and shall promptly advise the City of any delays or potential delays.
- 3.10.4** Extraordinary Measures. In the event the City determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, the City shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including without limitation, the Extraordinary Measures as provided in GC -2.6 herein.
- 3.10.5** Procurement Schedule. Unless otherwise provided in the Agreement or Technical Specifications, within **ten (10) calendar days** after the date of Notice to Proceed, Contractor shall prepare and keep current, for the City's acceptance, a schedule for procurement of materials and equipment which is coordinated with the baseline construction schedule and allows the City reasonable time to review. Contractor is solely responsible for any delay, disruption, impact, loss or efficiency, or other losses arising directly or indirectly from Contractor's failure to properly manage procurement of equipment and materials.

GC – 3.11 Record Documents On the Site

- 3.11.1** Record Documents. Contractor shall maintain at the Project Site, and shall make available to City, a copy of the Contract Documents, including Drawings, Specifications, Addenda, RFI's, bulletins, Agreement, Change Orders, accepted Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily logs, schedules, subcontracts, and purchase orders in good order (the "Record Documents"). These Record Documents shall be used by the Contractor to develop a set of "redline" Drawings and Specifications. The redline Drawings and Specifications shall be an electronic file in .pdf or AutoCAD. Contractor shall maintain the redline set in current condition and shall use colored marks to show "as-built record information" in a legible manner and defined by a color legend to show: **(i)** deviations from the Contract Documents made during construction by Change Order or Unilateral Change Order; **(ii)** details in the Work not previously shown; **(iii)** changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings; **(iv)** location of internal and/or underground utilities and appurtenances concealed in construction, referenced to visible and accessible features of structure (s); **(v)** the actual installed position of equipment, piping conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, valves, controls, balancing devices, junction boxes, drains, openings, cleanouts, stub outs and other items requiring access or maintenance; **(vi)** such other information as City may reasonably

request. Contractor shall update the Record Documents with as-built record information within twenty-four (24) hours of receipt of information.

- 3.11.2** Condition to Payment. Contractor's obligation to keep Record Documents current, including redline Drawings and Specifications, and to make them available to City is a condition precedent to City's duty to process Application for Payment. If the Record Documents, including the redline Drawings and Specifications, are not kept current, City shall withhold 10% from each progress payment due to the Contractor, in addition to retention, until Contractor complies with this requirement. Within the milestones established in the Contract Documents and as a condition precedent to Final Payment, Contractor shall provide final accepted Record Documents including, but not limited to, redline Drawings and Specifications.

GC – 3.12 Submittals

- 3.12.1** Submittals. Submittals shall include, but not be limited to, the following:

3.12.1.1 Shop Drawings. "Shop Drawings" are drawings, diagrams, schedules and other installation data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, Material Supplier, or distributor to illustrate some portion of the Work, including, but not limited to, shop fabrication details, erection plans, masonry layout diagrams, and placing and bending diagrams for reinforcing steel, for which the design, but not the installation detail, is included in the Contract Documents.

3.12.1.2 Manufacturer Fabrication Prints. "Manufacturer Fabrication Prints" are certified prints prepared by the manufacturer who designs component parts to meet the requirements of the Contract Documents.

3.12.1.3 Product Data and Samples. "Product Data" are illustrations standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. Samples are physical examples which illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.

3.12.1.4 Construction Documents. "Construction Documents" are drawings, specifications and calculations showing design details not shown on the Contract Documents and which are required to be designed by the Contractor. Construction Documents for those Design-Build structures and systems delegated to Contractor including, but not limited to cribs, cofferdams, false work, prestressed concrete construction, structural steel shop drawings, jacking operations, tunneling operations, micro-

tunneling operations, centering, sheet piling and formwork. The Construction Documents prepared by or on behalf of Contractor shall comply with the design and performance criteria for such Work set forth in the Technical Specifications. The Contractor shall cause such Construction Documents to be provided by a properly licensed design professional, who shall comply with the reasonable requirements of City regarding qualifications and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, and other documents prepared by such professional. Submittals related to the Work designed or certified by such professionals, shall bear such professional's written approval when submitted to the City. The City shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications or approvals performed by such design professionals. The City will review, accept, or take other appropriate action on submittals only for the limited purpose of checking for conformance with the Design and Performance criteria set forth in the Technical Specifications.

3.12.1.5 Schedule of Submittals. Unless otherwise provided in the Agreement or Technical Specifications, within ten (10) calendar days after the date of Notice to Proceed, Contractor shall prepare and keep current, for City's acceptance, a schedule of Submittals per GC-3.12.1, coordinated with the baseline construction schedule and allowing the City reasonable time to review. Contractor shall be solely responsible for any delay, disruption, impact, loss of efficiency or other loss, arising directly or indirectly from Contractor's failure to manage Submittals properly.

3.12.2 Purpose. The purpose of Submittals is to demonstrate for those portions of the Work for which Submittals are required by the Contract Documents the means by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review of Submittals by the City is subject to the limitations of GC-3.12.4 herein. Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned to the Contractor by the City without action.

3.12.3 Contractor's Submittal Procedures

3.12.3.1 Prompt Submittals. The Contractor shall review for compliance with the Contract Documents, confirm, and deliver to the City, Submittals within the timeframes required by the Contract Documents. Contractor's complete and timely submission of Submittals in conformity with the Submittal Schedule is a material consideration of the Contract. In all cases, Submittals shall be submitted to the Engineer for review prior to commencing installation of any such Work. In the event that the City

reasonably determines that all or any portion of any Submittal fails to comply with the requirements of the Contract Documents and/or such Submittals are not otherwise complete and accurate so as to require re-submission more than one (1) time, Contractor shall bear all costs (within the Contract Price) associated with the review and acceptance of such resubmitted Submittals. No adjustment to the Contract Time or the Contract Price shall be granted by the City to the Contractor on account of its failure to make timely submission of any Submittals.

3.12.3.2 Contractor's Confirmation of Submittals. Contractor shall submit electronically via Construction Management Software (CMS) to City in compliance with the Submittal Schedule for review and acceptance, or for other appropriate action unless otherwise specified in the Contract Documents. All Submittals shall bear a stamp or specific written indication that Contractor has satisfied Contractor's responsibilities under the Contract Documents with respect to the review of the Submittal. Contractor's cost of providing all Submittals is included in the Contract Price. All Submittals will be identified as the City may reasonably require. The data shown on the Submittals must be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data in order to enable City to review the information as required. When required, hard copies of Submittals shall be submitted for acceptance by the City of Long Beach Development Services. The Submittal drawings shall be 24 inch wide by 36 inch long.

- (1)** Before submission of each Submittal, Contractor shall have determined and verified quantities and dimensions, field measurements, specified performance criteria, installation requirements, materials, catalog numbers, and similar data with respect thereto and reviewed or coordinated each submittal with other Submittals and with the requirements of the Work and the Contract Documents.
- (2)** At the time of each submission, Contractor shall give City specific written notice of each variation that the Submittal may have from the requirements of the Contract Documents, and in addition, shall cause a specific notation to be made on each Submittal submitted to City for review and acceptance of each such variation.
- (3)** By reviewing and accepting Submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained

within such Submittals with the requirements of the Work and of the Contract Documents.

- (4) Submittals shall be prepared in accordance with current standards of engineering practice, shall be of sufficient size and scale to clearly show all details, and shall be submitted at least **thirty (30) calendar days** before they will be required for the Work. The Contractor may begin preparing Submittals upon Conditional Award of the Contract; however the City shall have no liability to pay for the cost of such submittals in the event the selected contractor fails to satisfy the conditions to award (e.g., submission of executed contract, bonds, evidence of insurance, etc.).
- (5) All Submittals shall be accompanied by transmittal letters from the Contractor submitted to the Engineer. A minimum of **fourteen (14) calendar days** shall be allowed for checking and acceptance or rejection and return of Submittal to the Contractor by the Engineer, unless otherwise specified.

3.12.3.3 Resubmission. Contractor shall direct specific attention, in writing on resubmitted Shop Drawings, Product Data, Samples, or similar Submittals, to revisions other than those requested by the City on previous submittals. In the absence of such written notice the City's acceptance of a resubmission shall not apply to such revisions.

3.12.4 Review by City. Engineer will review and respond to all Submittals electronically via CMS, unless otherwise specified. Review by the Engineer shall not relieve the Contractor of responsibility for errors in such documents. No changes shall be made in any such documents after acceptance by the Engineer. Engineer's review and acceptance will be only for conformance with the design concept of the Project and or compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences, or procedures of construction (except where a specific means, method, technique, sequence, or procedure is indicated in or required by the Contract Documents). The review and acceptance of a separate item as such will not indicate acceptance of the assembly in which the item functions. Contractor shall make corrections required by Engineer, and shall return the required number of corrected copies of Submittals and submit as required new Submittals for review and acceptance. Contractor shall direct specific attention in writing to any and all revisions other than the corrections called for by Engineer on previous Submittals.

3.12.4.1 All Shop Drawings, Product Data and Manufacturer's Fabrication Prints will be checked by the Engineer for general conformance with the design concept and the information given in the Contract Documents. The

Contractor shall be responsible for dimensions, which shall be confirmed and correlated at the jobsite, fabrication processes and techniques of construction, coordination of all trades, and the satisfactory performance of the Work. Such Submittals will be returned to the Contractor marked "No Exception Taken" or "Make Corrections Noted". If substantial changes are required or the submittal is unacceptable for any reason, the Submittal will be returned marked , "Rejected" , "Revise and Resubmit" , or "Submit Specified Item".

3.12.4.2 For all Manufacturers' Fabrication Prints, the Contractor shall be solely responsible for the design of the equipment or product submittal. Any action taken by the Engineer shall not be construed as accepting or approving the detailed design.

3.12.5 Performance. The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar Submittals until the respective Submittal has been accepted by the City.

3.12.6 Accepted Submittals. The Work shall be performed in accordance with accepted Submittals required by the Contract Documents and the Contractor shall not be relieved of responsibility for variations from requirements of the Contract Documents by the City's acceptance of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the City in writing of such deviation at the time of submittal and a Change Order or Unilateral Change Order has been issued, authorizing variations. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar Submittals by City's acceptance thereof.

GC – 3.13 Use of Site

3.13.1 Site Work Plan. Prior to mobilization on the Project Site and adjacent areas, the Contractor shall submit to the Engineer for acceptance a Site Work Plan including layout drawings to scale as required to fully describe the proposed locations of all laydown, storage and staging areas, temporary construction facilities and controls. This plan shall show the proposed activities in each portion of the Work area and identify the areas of limited use or nonuse. This plan shall also show proposed vehicle access routes and traffic control. Contractor shall confine operations at the Project to the areas designated in the Contract Documents and the accepted Site Work Plan and within the hours permitted by applicable codes, laws and permits. Contractor shall keep the Site and surroundings clean and in a safe condition in accordance with GC-3.15 herein and the Specifications. Contractor shall use only those locations designated on the accepted Site Work Plan for locating

Contractor's trailers, staging areas, lay-down areas, and other construction operations. The Contractor shall not unreasonably encumber the Site with any materials or equipment, nor permit any persons on the Site, or any activity at the Site, except as the presence of those persons, or that activity, is directly related to the Project. The Contractor shall be liable for any and all damage caused by it to the City's Site.

3.13.2 Use of Adjacent Areas. The Contractor shall so organize the Work that it will not unreasonably interfere with vehicular traffic on piers, wharves, or streets, or with pedestrian traffic on sidewalks and adjacent areas. The Contractor may be permitted to use City-controlled areas adjacent to the Project site shown on the Drawings, with the exception of public thoroughfares and Tenant-leased areas. The Contractor shall cooperate with Port operators and shall conduct Work activities so as not to unduly interfere with on-going Port operations.

3.13.3 Coordination. Contractor expressly acknowledges that City, its own forces, and City's Separate Contractors may be working simultaneously with Contractor on the Project during certain periods of time in certain portions of the Project Site. Contractor and City will take all steps necessary in connection with the construction Work not to interfere with the use and occupancy of the Project Site by City's Separate Contractors and personnel to minimize any interruption of services to such persons, including without limitation, utilities, ingress and egress, and parking. Contractor further agrees to coordinate its construction activities with all others performing work on the Project Site, including deliveries, storage, and installation. Contractor shall meet and consult with City from time to time to ensure that Contractor and City are fully advised of all other construction activities on the Project Site, and Contractor shall take such steps as are reasonably necessary at City's request to coordinate its Work with the Work of City's separate Contractors on the Project Site.

3.13.4 Security. The Contractor shall be responsible for providing security at the Site of the Work with all such costs included in the Contract Price. All security provided by Contractor shall be coordinated with City's security personnel. In addition, the Contractor shall take all necessary precautions and provide enclosures, barricades, security guards, signs, notices, shoring, bracing, passageways, lights and such other materials, equipment, and services as may be required (including, without limitation, such protections as may be required by Applicable Law) for the protection of: (i) all persons who may be on the Project Site or in other areas affected by the Contractor's operations; and (ii) the City's and any third party's personal or real property. Contractor shall execute all repairs to land, roadways, structures, utilities, sidewalks, parkways and alleys damaged by the operations under this Contract.

3.13.5 Utility Interruption. When it is necessary to interrupt any existing utility service, a **minimum of fourteen (14) calendar days** advance written request or interruption of services shall be given by the Contractor to the Engineer. Interruption of these services shall be of the shortest possible duration and shall be accepted by the Engineer in advance of such interruption. In the event that such notices and acceptances are not secured prior to interruption in utility services the Contractor shall be financially liable for any and all damages suffered by the City and third parties due to unauthorized interruption.

3.13.6 Parking. The Contractor shall coordinate and obtain all construction related parking. The cost of all parking shall be included in the Contract Price.

GC – 3.14 Cutting and Patching

3.14.1 Responsibility. Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

3.14.2 Separate Contractors. Contractor shall not damage or endanger any portion of the Work or fully or partially completed construction of the City or City's Separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by the City or a Separate Contractor except with written consent of the City.

GC – 3.15 Project Site Maintenance and Clean Up

3.15.1 Continuous Obligations. Throughout all phases of the Work, including any suspension of the Work, until Final Completion, Contractor shall keep the Site and surrounding area, including harbor waters, clean and free from accumulation of waste materials or rubbish. As construction is completed on a daily basis, paved surfaces adjoining the Site shall be swept clean and other surfaces of the Site raked clean. Materials and equipment shall be stored on the Site in a neat and orderly manner. If the Contractor defaults or neglects to maintain the Site free from accumulation of waste and rubbish as set forth above, and fails within a **twenty- four (24) hour** period after receipt of oral notice, subsequently confirmed in writing, to commence and continue correction of such default or neglect with diligence and promptness, the City may after such **twenty-four (24) hour** period, immediately without prejudice to other remedies the City may have, correct such deficiencies. In such case, an appropriate Unilateral Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the City on demand.

- (1) Care shall be taken to prevent spillage on haul routes. Any such spillage shall be removed immediately and the area cleaned.
- (2) Excess excavated material shall be removed from the site immediately. Sufficient material may remain for use as backfill, if permitted by the Specifications. Forms and form lumber shall be removed from the site as soon as practicable after stripping.
- (3) No material, other than water that meets discharge requirements shall be allowed to enter the City's drainage system.
- (4) Water removed from excavations shall be disposed of in a manner which will not interfere with the operation of others in the area. Sediment, oil or other pollutants shall not be discharged into harbor waters or drainage system.
- (5) Failure of the Contractor to comply with the Engineer's cleanup orders may result in an order to suspend the Work until the condition is corrected. No additional compensation will be allowed as a result of such suspension.

GC – 3.16 Access to Work

The Contractor shall provide the Engineer and City's Construction Managers with access to the Work in preparation and Work in progress, wherever located.

GC – 3.17 Royalties, Patents, Copyrights and Infringement

3.17.1 Contractor Must Secure Rights. The Contractor shall secure in writing from all patent holders, copyright holders, and assignees of all Project-related documents, all copyrights, assignments, and licenses related to such expression (e.g., designs, Drawings, Contract Documents, Specifications, documents in computer form, etc.) as necessary to allow the City the full, unlimited, and unencumbered use of that expression for the execution, operation, maintenance, modernization or expansion of the Project. The Contractor shall immediately convey all such copyrights, assignments, and licenses to the City without reservation. In the case of products, materials, systems, etc., protected by patent, the Contractor and its Subcontractors shall not specify or cause to be specified any infringing use of a patent. The Contractor shall pay all royalties and license fees.

3.17.2 Infringement. Should the Contractor become aware of or receive notice of potential infringement of any intellectual property right related to the Project, regardless of the source of that awareness or notice, in addition to its indemnity

obligation, the Contractor shall (i) immediately cease the copying and any other activity which is the potential source of infringement; and within **seven (7) calendar days** (ii) investigate the potential infringement; (iii) submit to the City copies of all documents relating to that awareness, the notice, or the object thereof; and (iv) issue to the City a complete written response and analysis of the potential infringement and the course of action recommended by the Contractor. The Contractor shall submit to the City a supplement of the initial report within **seven (7) calendar days** of the Contractor's receipt of, or awareness of, additional related information. Nothing in this Agreement shall be deemed to relieve the Contractor of its obligations under this Article, nor shall the City's receipt of the information indicated in this Article give rise to any duty or obligation on the part of the City.

3.17.3 Patent Indemnification. The Contractor shall indemnify and save the City free and harmless from and against any and all liabilities, claims, demands, suits, costs, expenses, or judgments now existing, or which may hereafter arise, in any connection whatsoever with any infringement or alleged infringement of any letters patent, or patent rights of any nature with respect to any equipment, article, appliance, method, formula, or process manufactured, used, or sold, or claimed to have been manufactured, used, or sold by Contractor pursuant to the contract, or resulting from the use thereof, by the City.

3.17.4 Substitution. If the City is legally prevented from the use of any equipment, article, appliance, method, formula, or process covered by, or alleged to be covered by, letters patent, the identification heretofore provided for shall include, at the option of the City, the removal of said equipment, article, or appliance, and the Contractor shall furnish the City with such equipment, article, appliance, method, formula, or process complying fully with the terms of the Contract. The substituting of any equipment, article, appliance, method, formula, or process by the Contractor shall not terminate the indemnification provisions hereof, but these provisions shall remain in effect so long as the City remains and uses the equipment, article, appliance, method, formula, or process. These indemnification provisions shall remain in full force and effect, notwithstanding the acceptance, in whole or in part, of the Project.

3.17.5 Assignment Rights. The Contractor offers and agrees to assign to the City all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 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 of the State of California], arising from purchases of goods, services or materials pursuant to the performance of the Work. This assignment will be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.

GC – 3.18 Indemnification

3.18.1 General. The Contractor shall indemnify, hold harmless, and protect City, its Boards, Commissions, and their officials, employees and agents (“Indemnified Parties”) from and against any and all demands, liability, loss suit, claim, action, cause of action, damage, cost judgment, settlement, decree, arbitration award, stop notice, penalty, loss of revenue, and expense (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, and costs of investigation, mediation, arbitration, litigation, and appeal), in law or in equity, of every kind and nature whatsoever, arising out of or in connection with, resulting from or related to, or claimed to be arising from the Contract or the Work performed by Contractor, or any of its officers, agents, employees, Subcontractors of any tier, Material Suppliers, or any person for whose acts any of them may be liable, regardless of whether such claim, suit or demand is caused, or alleged to be caused, in part, by an Indemnified Party including, but not limited to, liability arising from:

- (1) Bodily or personal injury, emotional injury, sickness or disease, or death to any persons;
- (2) Damage to property, including property under the care and custody of City;
- (3) Civil fines or penalties;
- (4) Any dangerous, hazardous, unsafe or defective condition of, in or on the Work Site, of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or occupation of the Site by Contractor, its officers, agents, employees or subcontractors;
- (5) Any operation conducted upon or any use or occupation of the Site by Contractor, its officers, agents, employees, or subcontractors under or pursuant to the provisions of the Contract or otherwise;
- (6) Any act, omission or negligence of Contractor, its officers agents, employees, or Subcontractors;
- (7) Infringement of any patent rights, licenses, copyrights or intellectual property which may be brought against the Contractor or City arising out of Contractor’s Work, for which the Contractor is responsible;

- (8) Any and all claims against City seeking compensation for labor performed or materials used or furnished to be used in the Work or alleged to have been furnished, including all incidental or consequential damages resulting to City from such claims;
- (9) Failure to comply with any Applicable Law, statute, code ordinance, regulation, permit, or orders;
- (10) Any misrepresentation, misstatement or omission with respect to any statement made in or any document furnished by the Contractor in connection therewith;
- (11) Any breach of any duty, obligation, or requirement under the Contract Documents.

All of the above are collectively hereafter referred to as "Indemnity Claims" and individually as an "Indemnity Claim".

3.18.2 Defense of Indemnity Claims, Enforcement and Restrictions

- 3.18.2.1** In addition to Contractor's duty to indemnify, Contractor shall have a separate and wholly independent duty to defend Indemnified Parties against all Indemnity Claims. If any Indemnity Claim is alleged or brought against Indemnified Parties, Contractor shall defend Indemnified Parties at Contractor's expense by legal counsel approved by City and shall continue this defense until the Indemnity Claims are resolved, whether by settlement, judgment or otherwise. No finding or judgment of negligence, fault, breach, or the like on the part of Contractor shall be required for the duty to defend to arise. City shall notify Contractor of any Indemnity Claim, shall tender the defense of the Indemnity Claim to Contractor, and shall assist Contractor, as may be reasonably requested, in the defense.
- 3.18.2.2** Contractor's obligations under GC 3.18 shall apply regardless of whether or not such Indemnity Claim was caused in part or contributed to by any actual or alleged negligent act or omissions of an Indemnified Party.
- 3.18.2.3** If a court of competent jurisdiction determines that an Indemnity Claim was caused by the active negligence, sole negligence or willful misconduct of Indemnified Parties, Contractor's cost of defense and Indemnity shall be (i) reimbursed in full if the court determines sole negligence by the Indemnified Parties, or (ii) reduced by the percentage of active negligence and/or willful misconduct attributed by the court to

the Indemnified Parties.

3.18.2.4 If the Contractor includes Work or services performed by a design professional, such as an architect, landscape architect, professional engineer or professional land surveyor, subject to California Civil Code Section 2782.8, Contractor shall defend and indemnify Indemnified Parties against design-related Indemnity Claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor or a subcontractor.

3.18.2.5 Not used.

3.18.2.6 Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. In the event of any claim, suit or demand made against any Indemnified Parties, the City may in its sole discretion reserve, retain, or apply any monies due to the Contractor under the Contract for the purpose of resolving such claims; provided, however, that the City may release such funds if the Contractor provides the City with reasonable assurances of protection of the City's interest. The City shall in its sole discretion determine whether such assurances are reasonable. Contractor's obligations under GC 3.18 extend to claims occurring after termination of the Contractor's performance of the Contract or final payment to the Contractor.

3.18.3 No Limitations. Contractor's obligations under GC 3.18 are in addition to any other rights or remedies which the Indemnified Parties may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in GC 3.18: (i) are separate and independent from the insurance provisions set forth elsewhere in the Contract Documents; and (ii) do not limit, in any way, the applicability, scope, or obligations set forth in the insurance provisions. In claims, suits, or demands against any Indemnified Party by an employee of the Contractor, a Subcontractor, anyone directly or indirectly, employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification and defense obligations shall not be limited by the limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under Worker's compensation acts, disability benefits act, or other employee benefit acts.

GC – 3.19 Use of Explosives

Unless specified otherwise in the Technical Specifications, use of explosives is prohibited in the Harbor District. If explosives are specified in the Technical Specifications as necessary for the prosecution of the Work, the Contractor shall

use the utmost care to not endanger life or property, and shall comply with Chapter 18.48 of the *Long Beach Municipal Code*, which, among other requirements, requires a permit from the Long Beach Fire Department. All explosives shall be stored in accordance with the provisions of Division XI of the *Health and Safety Code* of the State of California.

GC – 3.20 Excavation and Trenching

The Contractor shall comply with Section 6705 of the *Labor Code* of the State of California. In the event an excavation is 5 feet, or more, in depth, the Contractor shall cause a competent person to be placed at the Site of Work for the purpose of observing backfilling operations in those cases where the operator of a power unit engaging in such backfilling is unable to see into the excavation. The Contractor shall make sufficient excavation to construct all of the Work shown in the Plans, or specified herein, and shall abide by the *Construction Safety Orders* issued by the Division of Industrial Safety of the State of California. The Contractor shall submit to the Engineer an acceptable detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground, where such an excavation is 5 feet, or more, in depth. If such a plan varies from the shoring system standards established by the said *Construction Safety Orders*, the plan shall be prepared by a registered civil engineer or structural engineer in the State of California. No, shoring, sloping, or protective system less effective than that required by the *Construction Safety Orders* shall be submitted or used in such excavation. The Contractor shall not commence such excavation until said detailed plan has been reviewed by the Engineer. The Contractor shall also obtain a permit for excavation from the State of California Division of Occupational Safety and Health (Cal/OSHA), 3939 Atlantic Ave., Suite 212, Long Beach, CA 90807, and shall pay the permit fee.

GC – 3.21 Welding, Burning, or Other Hot Work

Welding, burning or other hot work, including electrical welding, cannot be performed at a waterfront facility without specific acceptance. A permit is required from both the Harbor Department and the Long Beach Fire Department. A permit is also required from the U.S. Coast Guard's Captain of the Port if there is any dangerous cargo present on the facility or vessel where the hot work will occur. This Work shall also comply with Section 18.48.200 of *Long Beach Municipal Code*. The Contractor shall obtain a no-fee Hot Work permit, as required by the City of Long Beach, Harbor Department, Tariff #4, Item 738, Section 7, from Terminal Services' office located at One World Trade Center Drive, Suite 410, Long Beach, California 90831. The Contractor shall be responsible for any fees associated with this permit by the Long Beach Fire Department and will be billed accordingly.

GC – 3.22 Removal of Existing Improvements

Existing culverts, drains, curbs, gutters, sidewalks, pavement, conduits, and other structures to be removed or replaced, shall be removed by, and at the expense of, the Contractor, unless otherwise shown on the Drawings or as provided for in the Special Conditions. Materials removed shall not be incorporated in the Work by the Contractor except with the permission of the Engineer.

GC – 3.23 Public Utilities and House Connections

In the event it should become necessary to remove the property of any owner of public utilities or franchise or any pipe, pipeline, conduit, tunnel, hole, cable, vault, crack, maintenance holes, appliance, attachment, and appurtenances for which a permit has been granted for the installation thereof by the City, the Contractor shall notify the Engineer of such fact, and the City shall remove, or cause to be removed such property.

The right is reserved to owners of public utilities, tenants and franchises to enter upon the Site for the purpose of making repairs or changes to their property that may be made necessary by the Work. The City shall also have the right to enter upon the Site for the purpose of repairing sewers, water pipes, gas pipes, or other pipes or conduits, or making house connections thereto, or repairing existing culverts or storm drains.

The Contractor shall not disturb any sewer or house connection during construction, unless he or she first obtains, from the Engineer, a written permit to do so.

The Contractor shall immediately notify the Engineer and the utility owner if Contractor disturbs, disconnects, or damages any utility located substantially as indicated on the Contract Documents and the Contractor shall bear the costs of repair or replacement.

When placing concrete around or contiguous to any utility, the Contractor shall, at their expense, furnish and install a cushion of expansion joint material, clear opening or sleeve, or by any suitable means shall prevent embedment in, or bonding with, the concrete.

GC – 3.24 Advertising

The names of the Contractor, Subcontractors, architects, or engineers, with their addresses and the designation of their particular specialties, may be displayed on removable signs. The size and location of such signs shall be subject to the

Engineer's acceptance. Commercial advertising matter shall not be attached to or painted on, the surface of buildings, fences, canopies, or barricades.

GC – 3.25 Requirements When Working Within, Adjacent to, or Above Railroad Right-of Way

Part 1 – General Requirements

The Contractor shall not perform any Work, place any piece of equipment, or enter within twenty (20) feet of the railroad track centerline without a Railroad Work Plan (RRWP) approved by the Engineer and coordinated with the Rail Operator, as defined in Part 2. An individual RRWP is required for each railroad work area/roadway crossing location. All Work and safety briefings shall be performed in accordance with the provisions of Title 49, Part 214 of the Code of Federal Regulations.

The Contractor acknowledges that trains and/or locomotives may be expected at any time and on any track. Crossing of tracks by the Contractor's vehicles and equipment other than at public or designated private at-grade road/rail crossings is prohibited.

The Contractor shall report all accidents, injuries, track defects, or any unusual track conditions, which may affect the safe and efficient operations of the railroad, to the Engineer and the Rail Operator by the first available means of communication.

The Contractor shall maintain railroad facilities free of all impediments and debris at all times. The Contractor shall take all precautions necessary to avoid fouling of the railroad tracks. Fouling of the tracks includes any obstructions with the potential to be within ten (10) feet of the railroad track centerline and includes equipment, vehicles, material, tools and all other construction materials or activities.

All equipment shall be parked a minimum distance of ten (10) feet from track centerline to avoid fouling of the railroad track.

The Contractor shall be responsible for any damage to railroad facilities, equipment, and operating trains resulting from the Contractor's activities and shall make every effort possible to prevent such damage. The Contractor shall inspect railroad facilities prior to start of Work. In the event the Contractor finds existing damage or damages to railroad facilities or equipment, the damages shall be reported immediately to the Engineer and the Rail Operator. Repairs of damages caused by Contractor's activities shall be at the expense of the Contractor and restored to the satisfaction of the Engineer and the Rail Operator.

Upon completion of any Work, the Contractor shall promptly remove all materials, tools, equipment, and leave the railroad right-of-way in a clean and safe condition as approved by the Engineer and the Rail Operator.

Part 2 – Railroad Work Plan (RRWP) Requirements

Flagman/Employee In Charge (EIC) – A designated employee of the Rail Operator to provide on-

track safety protection.

Watchperson – An employee of the Contractor who has been trained by the Port’s Intermodal Operations Manager (IOM), designated to provide warning to Contractor’s personnel of approaching trains or on-track equipment.

Rail Operator – An entity governing rail operation within the Port of Long Beach. The entity outside a terminal is Pacific Harbor Line (PHL), a Port short-line operator. The entity inside a terminal is the Marine Terminal Operator.

For any material, equipment, or work to be performed within twenty (20) feet of the railroad track centerline, the Contractor shall submit a written RRWP to the Engineer for approval no less than fourteen (14) calendar days prior to beginning of work. The RRWP template is included in Appendix J. The Contractor’s RRWP will be reviewed by the Engineer, the Port’s IOM, and the Rail Operator or their designated representatives. The RRWP shall include the location, starting and stopping times, a description of the work to be performed, the work crews involved, type of equipment, Contractor’s recommendations regarding track closures and railroad safety protection, and details of parked equipment within twenty (20) feet of a track centerline. An individual RRWP is required for each railroad work area/roadway crossing location.

Full track closures will not be permitted without Engineer’s prior approval. If a full track closure is necessary, the Contractor shall submit the RRWP for closure not less than fourteen (14) calendar days prior to scheduling the closure for approval by the Engineer and the Rail Operator to avoid schedule impacts. Authorization of full track closures will be at the discretion of the Engineer, IOM and the Rail Operator.

Part 3 – Requirements for Work Outside a Marine Terminal

The Contractor shall coordinate with the Engineer and the Rail Operator regarding the performance of any work located in the railroad right-of-way outside the marine terminal. The Rail Operator 24 hour train dispatching office number is 877-250-4745.

- a. Requirements for Work within twenty (20) feet of track centerline: The Contractor shall provide IOM-trained Watchpersons when working within 20-feet of the track centerline solely for the safety and protection of the Contractor’s personnel from railroad activity. The IOM will provide training to Contractor’s employee(s) to qualify as Watchperson(s) for the project at no cost. The Contractor shall submit a list of IOM-trained Watchperson(s) to the Engineer prior to working within twenty (20) feet of the track centerline.
- b. Additional requirements for Work within ten (10) feet of track centerline: In addition to Watchperson(s), a Flagman/EIC is required for any work, equipment, or activity within ten (10) feet of the track centerline. Working equipment with a potential to reach over, tip over, or encroach within ten (10) feet of the track centerline shall also require a Flagman/EIC. All equipment shall be parked a minimum distance of ten (10) feet from track centerline to avoid a collision and/or derailment.

Part 4 – Requirements for Work within a Marine Terminal

The Contractor shall coordinate with the Marine Terminal Operator regarding the performance of any work located within twenty (20) feet of the track centerline inside a marine terminal, including Flagman services if needed per RRWP. The Marine Terminal Operator contact number will be provided at the Pre-Construction meeting.

All equipment shall be parked away a minimum distance of ten (10) feet from track centerline to avoid a collision and/or derailment.

Part 5 – Payment of Watchpersons and Flagmen

- a. For work outside a marine terminal: The Port will provide the Watchperson training at no cost to the Contractor.

The Port will provide a Flagman/EIC at no cost to the Contractor for days that the Engineer deems necessary, per the approved Railroad Work Plan for work outside the marine terminal. The Contractor may cancel a scheduled Flagman with written notice to the Engineer and the Rail Operator at least two (2) Working Days prior to the start of the work. However, if the Contractor fails to provide such notice of cancellation within the required time, \$900 per day per scheduled Flagman will be deducted from the payment due to the Contractor.

- b. For work inside the marine terminal: The cost of Watchperson(s) shall be paid by the Contractor and included in the cost of related bid items for work requiring Watchperson(s). The Port to provide the Watchperson training at no cost to the Contractor.

The Marine Terminal Operator will take the track out of service or provide a Flagman at no cost to the Contractor for days that the Engineer deems necessary, per the approved Railroad Work Plan for work inside the marine terminal. The Contractor shall coordinate Flagman schedule with the Marine Terminal Operator.

GC – 3.26 Jobsite Vehicles

Vehicles which are utilized on jobsites exclusively and are, therefore, excluded from the provisions of applicable traffic and vehicular codes shall be equipped and operated in the following manner:

- (1) Vehicles shall have a service brake system, an emergency brake system, and a parking brake system. These systems may use common components, and shall be maintained in operable condition.
- (2) Whenever visibility conditions warrant additional light, all vehicles, or combinations of vehicles, in use shall be equipped with at least

two headlights and two taillights in operable condition.

- (3)** All vehicles, or combination of vehicles, regardless of light conditions, shall have brake lights and an audible back-up warning signal in operable condition.
- (4)** Vehicles with cabs shall have windshields and powered windshield wipers. Cracked or broken windshields shall be replaced promptly. Where fogging or frosting of windshields is prevalent, operable defogging or defrosting equipment shall be required.
- (5)** Tools and materials shall be secured to prevent movement when transported in the same compartment with employees.
- (6)** Vehicles used to transport employees shall have seats firmly secured and adequate for the number of employees to be carried.
- (7)** Vehicles on construction sites, not covered by the provisions of 1596 (g) or applicable provisions of the State of California Motor Vehicle Code shall have installed seat belts and anchorages meeting the requirements of 49 CFR Part 571 (Department of Transportation, Federal Motor Vehicle Safety Standards).
- (8)** The employer shall require the use of seat belts.
- (9)** Vehicles excluded from provisions of 1591 and the State of California Motor Vehicles Code shall be equipped with fenders or, if vehicle is not designed for fenders, mud flaps.
- (10)** Vehicles not covered under other sections shall be checked at the beginning of each shift to assure that the following parts, equipment and accessories are in safe operating condition and free of apparent damage that could cause failure while in use: service brakes, including trailer brake connections; parking system (hand brake); emergency stopping system (brakes); tires; horn; audible back-up warning signal; steering mechanism; coupling devices; seat belts; operating controls; and safety devices. All defects shall be corrected before the vehicle is placed in service. These requirements also apply to equipment such as lights, reflectors, windshield wipers, defrosters, fire extinguishers, etc., where such equipment is necessary.
- (11)** Where vehicles are operated, temporary covers for conduits, trenches and maintenance holes and their supports, when located

in roadways and vehicular aisles, shall be designed to carry at least 2 times the maximum intended vehicular live load and they shall be designed and installed as to prevent accidental displacement.

GC – 3.27 Traffic Control for Public Streets and Highways

- (1)** Where a hazard exists to employees because of traffic or haulage conditions at Work sites that encroach upon public streets or highways, a system of traffic controls in conformance with the current Manual of Uniform Traffic Control Devices (MUTCD) and current Caltrans Supplements (current at the Bid Deadline) which is herein incorporated by reference and referred to as the “Manual”, published by the State Department of Transportation, shall be required so as to abate the hazard.

Note: Additional means of traffic control, such as continuous patrol, detours, barricades, or other techniques for the safety of employees may be employed. Criteria for position, location and use of traffic control devices described in the “Manual” are not mandatory. It is furnished solely for the purpose of guidance and information.

- (2)** Specifications for the size and design of signs, lights, and devices used for traffic control shall be as described in the “Manual” published by the State Department of Transportation pursuant to the provisions of California Vehicle Code Section 21400 and, which is incorporated by this reference.

Note: The “Manual” may be obtained at any Division office of the Department of Industrial or from the State Department of Transportation.

- (3)** Employees (on foot) exposed to the hazard of vehicular traffic shall wear orange, strong yellow-green, or fluorescent versions of these colored warning garments such as vest, jackets, or shirts. During rainy weather, employees exposed to the hazard of vehicular traffic may wear orange, strong yellow-green or yellow rainwear.
- (4)** During hours of darkness, warning garments shall be retroreflective. The retroreflective material shall be visible at a minimum of 1000 feet. The retroreflective clothing, or the retroreflective material added to the clothing, shall have a minimum of one horizontal stripe around the torso. White outer garments with retroreflective

material that meets the above requirements may be worn during hours of darkness in lieu of colored vests, jackets and/or shirts.

It is the responsibility of the Contractor performing Work on or adjacent to, a highway to install and maintain such devices which are necessary to provide passage for the traveling public (including pedestrians and bicyclist) through the Work, as well as for the safeguard of workers.

Before Work begins, traffic control plans, when developed for handling traffic through a construction or maintenance project shall be accepted by the Engineer.

The following references from the **California Vehicle Code** relate to temporary traffic control and are incorporated herein by reference.

- Section 112 – Amber.
- Section 165 – Authorized Emergency Vehicle.
- Section 291 – Department of Transportation.
- Section 385 – Local Authorities.
- Section 21351.3 – Use of Metric System Designations.
- Section 21363 – Detour Signs.
- Section 21367 – Traffic Control: Highway Construction.
- Section 21466.5 – Light Impairing Driver’s Vision.
- Section 22362 – Speed Limit Where Persons at Work.

GC – 3.28 Public Convenience

- (1) The Contractor shall so conduct operations as to offer the least possible obstruction and inconvenience to the public and shall have under construction no greater length or amount of Work than can be prosecuted properly with due regard to the rights of the public.
- (2) Unless otherwise provided in the Special Conditions, all public traffic shall be permitted to pass through the Work with as little inconvenience and delay as possible. Where possible, public traffic shall be routed on new or existing paved surfaces.

- (3) Spillage resulting from hauling operations along or across any public traveled way shall be removed immediately by the Contractor at the Contractor's expense.
- (4) Existing traffic signals and highway lighting shall be kept in operation for the benefit of the traveling public during progress of the Work, and other forces will continue routine maintenance of existing systems.
- (5) Construction operations shall be conducted in such a manner as to cause as little inconvenience as possible to abutting property owners.
- (6) The Contractor may be required to cover certain signs which regulate or direct public traffic to roadways that are not open to traffic. The Engineer will determine which signs shall be covered.
- (7) In order to expedite the passage of public traffic through or around the Work and where ordered by the Engineer, the Contractor shall install signs, lights, flares, temporary railing (type K), barricades and other facilities for the sole convenience and direction of public traffic. Also where directed by the Engineer, the Contractor shall furnish competent flaggers whose sole duties shall consist of directing the movement of public traffic through or around the Work. The cost of furnishing and installing the signs, lights, flares, temporary railing (Type K), barricades, and other facilities, not to be paid for as separate contract items, will be paid for as extra Work unless these items are shown in the plans.
- (8) Except as otherwise provided in this section or in the Special Conditions, full compensation for conforming to the provisions in this Section shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.
- (9) The Contract Documents may contain staging, detour, and traffic control plans. These plans might not be complete or specific enough to assure the safe completion of the Work and minimal inconvenience to the public. They may also need to be revised to account for changed field conditions or alternate construction procedures. When this occurs the Contractor shall submit a revised plan for acceptance. The Engineer may require the plan to be signed by a licensed traffic engineer. All traffic control devices and traffic control plans shall conform to the requirements of the latest

edition of the "Manual of Uniform Traffic Control Devices" (MUTCD), published by the Federal Highway Administration and the California Supplement to the MUTCD published by Caltrans. The traffic Control Plans cited in the Manual must be accepted by the Port Traffic Engineer prior to the Contractor working on any highway. The plans shall also be consistent with the "Manual of Traffic Controls for Maintenance and Work Zones" by Caltrans, or see also California Code of Regulations section 1598 "Traffic Control for Public Streets and Highways."

GC – 3.29 Public Safety

- (1)** It is the Contractor's responsibility to provide for the safety of traffic and the public during construction.

This section includes by reference the Traffic Control Plan requirements of Caltrans "Manual of Traffic Controls for Maintenance and Construction Work Zones".

- (2)** Whenever the Contractor's operations create a condition hazardous to traffic or to the public, the Contractor shall, at the Contractor's expense and without cost to the City, furnish, erect and maintain those fences, temporary railings (Type K), barricades, lights, signs and other devices and take such other protective measures that are necessary to prevent accidents or damage or injury to the public.
- (3)** Fences, temporary railing (Type K) barricades, lights, signs, and other devices furnished, erected and maintained by the Contractor, at the Contractor's expense, are in addition to any construction area traffic control devices for which payment is provided for elsewhere in the specifications.
- (4)** The Contractor shall also furnish such flaggers as are necessary to give adequate warning to traffic or to the public of any dangerous conditions to be encountered, and payment therefor will be made as provided as extra work unless the items are shown in the plans.
- (5)** Signs, lights and other warning and safety devices and their use shall conform to the requirements set forth in the current Manual of Traffic Controls. Signs or other protective devices furnished and erected by the Contractor, at the Contractor's expense, as above provided, shall not obscure the visibility of, nor conflict in intent, meaning and function of either existing signs, lights and traffic control devices or any construction area signs and traffic control devices for

which furnishing of, or payment for, is provided elsewhere in the specifications. Signs furnished and erected by the Contractor, at the Contractor's expense, shall be accepted by the Engineer as to size, wording and location.

- (6) The installation of general roadway illumination shall not relieve the Contractor of the responsibility for furnishing and maintaining any of the protective facilities herein before specified.
- (7) Construction equipment shall enter and leave the highway via existing ramps and crossovers and shall move in the direction of public traffic. All movements of workmen and construction equipment on or across lanes open to public traffic shall be performed in a manner that will not endanger public traffic.
- (8) The Contractor's trucks or other mobile equipment which leave a freeway lane, that is open to public traffic, to enter the construction area, shall slow down gradually in advance of the location of the turnoff to give following public traffic an opportunity to slow down.
- (9) When leaving a work area and entering a roadway carrying public traffic, the Contractor's equipment, whether empty or loaded, shall in all cases yield to public traffic.
- (10) The Contractor shall notify the Engineer not less than **fifteen (15) calendar days** before the anticipated start of each falsework and girder erection operation whenever the falsework or girders will reduce clearances available to public traffic.
- (11) Pedestrian openings through falsework shall be paved or provided with full width continuous wood walks shall be kept clear. Pedestrians shall be protected from falling objects and curing water for concrete. Overhead protection for pedestrians shall extend not less 4 feet (1.2 m) beyond the edge of the bridge deck. All pedestrian openings through falsework shall be illuminated in conformance with the provisions in Caltrans Std. Specifications Section 86-6.13, "Falsework Lighting."
- (12) Where the height of vehicular openings through falsework is less than 16 feet (4.72 m), a W34B "Vertical Clearance" sign shall be provided above each opening, facing approaching traffic. The signs shall have black letters and numbers on an orange reflectorized background and shall be illuminated so that the signs are clearly visible. The minimum

height of the letters and numbers shall be 6 – inches (150 mm) and 8-inches (250 mm), respectively.

- (13) No material or equipment shall be stored where it will interfere with the free and safe passage of public traffic, and at the end of each day's Work and at other times when construction operations are suspended for any reason, the Contractor shall remove all equipment and other obstructions from that portion of the roadway open for use by public traffic.
- (14) Temporary facilities which the Contractor uses to perform the Work shall not be installed or placed where they will interfere with the free and safe passage of public traffic.
- (15) Should the Contractor appear to be neglectful or negligent in furnishing warning devices and taking protective measures as above provided, the Engineer may direct attention to the existence of a hazard and the necessary warning devices shall be furnished and installed and protective measures taken by the Contractor at the Contractor's expense. Should the Engineer point out the inadequacy of warning devices and protective measures, that action on the part of the Engineer shall not relieve the Contractor from responsibility for public safety or abrogate the obligation to furnish and pay for these devices and measures.
- (16) Except as otherwise provided in this Section or in the Special Conditions, full compensation for conforming to all of the provisions in this Section shall be considered as included in the prices paid for the various contract items of Work and no additional compensation will be allowed therefor.

GC – 3.30 Tests and Inspections

3.30.1 Required Tests Inspections and Costs

3.30.1.1 Material Samples and Tests. The Contractor shall furnish samples of all materials as are requested by the Engineer, without charge and all labor and equipment necessary for the taking and furnishing of material samples. No material shall be incorporated into the Work until it is accepted by Engineer. If the Contract Documents, City instructions, Applicable Law, or any governing agencies with jurisdiction over the Work require any Work to be specially tested or accepted, Contractor shall give notice of its readiness for observation or inspection, no less than **two (2) Working Days** in advance of the required inspection or test. In all

instances where material tests are to be made by the City, such tests shall be made by, or under the supervision of, a laboratory as designated and accepted by the Engineer. If the inspection or test is by an agency other than the City, Contractor shall inform City of the date fixed for such inspection. All tests of materials will be made in accordance with Reference Standards in effect on the date of Advertisement. Field and plant tests of materials will be made by the Engineer when deemed necessary. The City shall pay the cost of all such tests, except for testing of any material that fails to meet the requirements of the Contract Documents, which cost shall be backcharged against the Contractor.

3.30.2 Other Work. All Work is subject to inspection and acceptance by the Engineer. The Engineer will make, or have made, such inspections and tests as he/she/they deem necessary to see that the Work is in conformance with the Contract Documents.

3.30.3 Nonconformance of Work or Materials. All required certificates of inspection and quality control tests shall be secured by Contractor and submitted immediately to Engineer for review and acceptance. In the event such inspections or tests reveal noncompliance with the Contract Documents, the Contractor shall bear the cost of such corrective measures as deemed necessary by the Engineer, as well as the cost of subsequent re-inspection and re-testing. If any Work required to be tested should be covered up without acceptance or consent of City, Contractor must, if required by City, uncover the Work for examination and satisfactorily reconstruct at Contractor's expense within the Contract Price in compliance with Contract. Cost of testing and any materials found not to be in compliance with the Contract shall be paid by Contractor within the Contract Price. Other costs for tests and inspection of materials shall be paid by City. Where inspections and testing are to be conducted by an independent laboratory or agency, such materials or samples of materials to be tested shall be selected by such laboratory or agency or Engineer. Contractor shall notify City a sufficient time in advance of manufacture of materials to be supplied by it under Contract, which must, by terms of contract, be tested, in order that City may arrange for testing of same at source of supply. Prior to having satisfactorily passed such testing and inspection, or prior to receipt of notice from Engineer that such testing and inspection will not be required, the materials shall not be incorporated into the Work without prior acceptance of City and subsequent testing and inspection. Re-examination of questioned Work may be ordered by City and, if so ordered, Work must be uncovered by Contractor. If such uncovered Work is found in accordance with Contract Documents, City shall pay costs of re-examination and replacement. If such uncovered Work is found not in accordance with Contract Documents, Contractor shall pay such costs within the Contract Price.

3.30.4 Welding Inspection and Test Methods. Inspection of welding is made to control the quality of Work in welded assemblies, and is performed in accordance with the requirements of the American Welding Society (AWS). All welding shall be done by certified welders to the satisfaction of the Engineer as to appearance and conformity.

3.30.5 Additional Tests and Inspections. If City or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under GC – 3.30.1 or GC – 3.30.2, City will instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to City, and Contractor shall give timely notice to City of when and where tests and inspections are to be made so that City may be present for such procedures. Such costs shall be at City's expense, if applicable. If such procedures for testing, inspection, reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for City's testing and inspection services and expenses, shall be at Contractor's expense, within the Contract Price. Cost of retesting, reinspections, and reapprovals as described herein, including compensation for the City's testing and inspection services and expenses, shall be paid for by the City and deducted from the Contract Price by a Change Order or Unilateral Change Order.

3.30.6 Documentation. Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the City. Delivery of such documentation is a condition precedent to City's obligation to make payment to Contractor.

3.30.7 Observation of Tests. If the City is to observe tests, inspection, or approvals required by the Contract Documents, City will do so promptly and, where practicable, at the normal place of testing.

3.30.8 Time. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

GC – 3.31 Work Site Safety

3.31.1 Work Site Safety. The Contractor shall be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work, and the Contractor shall comply fully with all local, State and Federal laws, rules, regulations, and orders relating to the safety of the public and workers. When discrepancies between regulatory standards occur, the more stringent safety and health standard shall apply. In addition, the Contractor shall:

1. Furnish all transportation, labor, materials, equipment, and incidentals necessary for utilizing safety equipment and safety aids on construction equipment and assuring safe operations for the duration of the Work.
2. Designate an on-site Health and Safety Professional for the duration of the Project who shall be responsible for the implementation and execution of the Contractor's Site Specific Safety Plan (SSSP).
3. Adhere to requirements of other city Departments and/or their representatives, including attending meetings, training and inspections of the site.
4. Ensure Contractor's employees and all Subcontractors are identified with the employee's company name or logo affixed to either the employee's hardhat, identification badge, or utilize an alternative method approved by the Engineer.

The City has the right to review and provide comments on the Contractor's SSSP and the right to inspect site safety practices implemented by the Contractor and any Subcontractor for conformance with local, State or Federal regulations and the Contractor's SSSP submittal. Compliance with the requirements of this Section shall not relieve the Contractor from other obligations imposed elsewhere in the Contract Documents, by law and by regulation.

3.31.2 Health and Safety Professional

- A. The Contractor shall designate an on-site Health and Safety Professional for the project who shall be responsible for:
1. Implementation and execution of the Contractor's Site Specific Safety Plan (SSSP).
 2. Reviewing and approving all Subcontractors' safety related submittals for conformance with regulatory requirements and the specification for this project, prior to submitting the plans to the Engineer.
 3. Overseeing safety procedures for work performed.
 4. Performing a safety inspection at the beginning and end of each working day to identify and correct any unsafe conditions. The Contractor shall furnish copies of the safety inspections to the City, upon request.
 5. Accompanying the Engineer, when requested, during safety job walks and for correcting any unsafe acts or conditions observed.

- B. The Contractors Health and Safety Professional shall be assigned to the project full time, and may have other duties, but shall not be the project manager, superintendent, foreman, or supervisor of a similar capacity. The other duties shall not prevent the Health & Safety Professional from performing the duties identified above.
- C. The Contractor's Health and Safety Professional shall have a minimum of 5 years of experience overseeing contractor safety on construction projects similar to this project, and performing the duties described in this section.
- D. The Contractor's Health and Safety Professional shall carry a cell phone, shall provide the cell phone number to the Engineer, and be available to discuss safety issues at any time throughout the course of the project.
- E. The Contractor's Health and Safety Professional shall be an in-house full-time employee and under the direct supervision of the Corporate Health and Safety Director/Manager.
- F. The Contractor's Corporate Health and Safety Director/Manager shall be an in-house and full-time employee. The Contractor's SSSP shall be reviewed and certified by the Corporate Health and Safety Director/Manager.

3.31.3 Submittals

- A. Within ten (10) calendar days following Notice to Proceed, submit to the City, prior to the start of Work, the Company's written Injury and Illness Prevention Program (IIPP), Hazard Communication Program, Heat Illness Program, Code of Safe Work Practices, and other regulatory-required safety programs applicable to the project. All submitted documentation must incorporate Subcontractor responsibilities if Subcontractors are employed by the Contractor. It should be noted that any safety plan submitted by a Subcontractor which has been reviewed and accepted by the Contractor shall be treated as their own and subject to the same performance standards.
- B. Within ten (10) calendar days following Notice to Proceed, the Contractor shall submit a copy of the resume of its Corporate Health and Safety Director/Manager and the on-site Health and Safety Professional. The Engineer reserves the right to reject said nominees.
- C. Within ten (10) calendar days following Notice to Proceed, submit a contract-specific SSSP prepared in accordance with the General Conditions, Section 3.31 and Appendix M. The Contractor and Subcontractor(s) shall not be allowed to proceed with on-site activity until any City comments on the plan have been addressed in writing by the Contractor or Subcontractor, and the writing addressing the City's comments have been transmitted to the City. The SSSP shall be reviewed and approved by the Contractor's Corporate Health and Safety Director/Manager and on-site Health & Safety Professional prior to submittal, and must include, at a minimum, the following elements:
 - 1. Project Summary – Include a description of the project work to be conducted. Major elements of the project must be described in sufficient detail to understand the

hazards that will be addressed in the SSSP. The SSSP must include the Contractor's health and safety policy statement and references.

2. Key Personnel and Responsibilities – Include a list of key project personnel, identifying the roles, responsibilities, and qualifications for each. At a minimum, the key personnel shall include the Contractor's Project Manager, Construction Manager, Corporate Health and Safety Director/Manager, on-site Health & Safety Professional and any other individuals that are responsible for implementing the SSSP. Telephone numbers are to be included for each person identified, so they may be contacted 24-hours per day.
 3. Hazard Evaluation – Include job hazard assessments to identify any potential chemical and/or physical hazards. Identify the hazards and the steps that will be taken to eliminate.
 4. Personal Protective Equipment and Monitoring – Identify personal protective equipment (PPE) and protective measures for each task based on the hazard evaluation.
 5. Site Control Measures – Identify and describe procedures that shall be used to establish and maintain Work Site control.
 6. Training Requirements – Include health and safety training requirements for the project, including compliance with applicable sections of CFR 1910.120, 29 CFR 1926 and Title 8 CCR Section 5192. Document and verify training compliance for all field personnel.
 7. Emergency Procedures – Identify and describe procedures to be implemented in the event of an onsite emergency. Provide a table of emergency contacts and include a hospital route map depicting the nearest hospital.
 8. Documentation – Ensure regulatory record keeping requirements are met. Records shall be made available to the Engineer and the Port's safety representative upon request.
- D. The Contractor shall revise the SSSP at appropriate times to reflect changes on the Project (i.e. the Site, the Work, the means, methods, techniques, sequences, addition of Subcontractors and procedures) and resubmit to the City for review. All revisions submitted under this section shall be reviewed and approved by the Contractor's Corporate Health and Safety Director/Manager and on-site Health and Safety Professional prior to submitting to the City.

3.31.4 General

- A. The City's review and comments on the SSSP are not intended to certify or approve the safety measures selected by the Contractor. The Engineer's inspection of worksite

safety practices are not intended to relieve the Contractor of its sole responsibility for worksite conditions or the safety of all persons at the worksite.

- B. The Contractor shall immediately notify the City of all incidents that result in injury, illness, death, property damage, or near miss. The Contractor shall be responsible for the investigation of all incidents and provide the City a copy of its incident investigation report within 10 days from the date of an incident. The Contractor's report shall provide information including, but not limited to, name, address, and phone number of all injured workers and witnesses, location and description of the Work Site, detailed description of incident, medical attention provided, nature of injury, illness, or property damaged, and corrective actions with date of implementation. All reports shall be signed by the onsite Health and Safety Professional.
- C. Provide access to the work zones for the Engineer, providing that the Engineer has proper and up-to-date health and safety training. Provide safety briefings for the Engineer, as necessary, for safe entry the work zones.
- D. Disseminate the original SSSP and all revisions to all parties and individuals that will be on the Work Site.

GC – 3.32 Site and Equipment Safety

With respect to any premises or equipment of the City or of the Contractor made use of by the Contractor in the performance of the Contract, the Contractor shall have inspected same prior to use, accepted them as being in good and safe condition, and agrees to maintain them in a safe condition for the protection of Contractor's employees and employees of Subcontractors while using them during the performance of the Work.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

GC – 4.1 City's Project Representatives

- 4.1.1** City's On-Site Representative. City's On-Site Representative with respect to the Work to be performed under the Contract shall be designated in writing by the Director of Construction Management at the Pre-Construction Meeting or prior to commencement of the Work, whichever occurs first. City's On-Site Representative shall: serve as a single point for transmission of City's instructions and approvals; receive information required to be provided by Contractor and all correspondence; shall attend meetings; and shall be on-Site on a daily basis to monitor progress, quality of Work and Contract compliance.
- 4.1.2** City's Project Representative. City's Representative, when capitalized in the Contract Documents, means the Engineer or the Engineer's designee who interprets City's policies, renders decisions with respect to Contractor's performance of the Work, approves Contractor applications for payment, reviews

and approves Contractor schedules and submittals, reviews and recommends Change Orders for adjustment of the Contract Price and Contract Time to the Chief Executive Officer and/or Board, reviews all quantity calculations related to pay quantities, concurs in any defective Work notification, reviews and recommends Board determination of Substantial Completion of the Work, and reviews and recommends Contractor's application for final payment.

GC – 4.2 Administration of the Contract

- 4.2.1** No Estoppel. The City will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Acceptance of all or any portion of the Work shall in no way relieve the Contractor from its obligation to construct each portion of the Work in accordance with the Contract Documents and the City shall not be estopped or otherwise prevented from asserting any claim it might have against the Contractor as a result of any such acceptance.
- 4.2.2** Determination of Payment Amounts by Engineer. The Engineer will review Contractor's Application for Payment and determine the amount of payment due Contractor. In the event the Contractor fails to timely submit an Application for Payment, in order to facilitate prompt payments to SBE and VSBE firms, City reserves the right to independently measure the quantity and value of Work in place and to issue joint checks to Contractor and such SBE and VSBE firms upon submission of duly completed and executed form of Conditional Waiver and Release of Rights Upon Progress Payment, and documentation as City may require.
- 4.2.3** Rejection of Work Testing and Inspection. The Engineer has the authority to reject Work that does not conform to Contract Documents. Whenever the Engineer considers it necessary or advisable, it will require inspection or testing of the Work in accordance with GC-3.30, whether or not such Work is fabricated, installed or completed. However, neither this authority nor a decision made in good faith either to exercise or not to exercise this authority shall give rise to a duty or responsibility of the City to the Contractor, its Subcontractors, Material Suppliers, their agents or employees, or other persons or entities performing portions of the Work.
- 4.2.4** Submittal Review. The Engineer will review and accept or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents as described in GC-3.12 herein.

4.2.5 Contract Changes. If required, the Engineer will prepare Change Orders, Unilateral Change Orders and Work Directives.

4.2.6 Substantial Completion and Project Closeout. The Engineer will conduct inspections and recommend to the Board for approval, the dates of Substantial Completion, review written warranties and related closeout documents required by the Contract and assembled by the Contractor, and will recommend final payment upon Contractor's satisfaction of the requirements of the Contract Documents.

GC – 4.3 Claims

4.3.1 Authority. Pursuant to Government Code Sections 930.2 and 930.4 the City establishes the following claims procedure for Contractor Claims arising from the Work. It is the intent of City to resolve disputes with Contractor as close as possible to the events giving rise to any Claim, and to avoid stale or late Claims including the late documenting of Claims. Contractor acknowledges that should Contractor fail to comply with the notice and other requirements of GC-4.3 it would be depriving City of an opportunity to timely mitigate the issue, event, circumstance, condition and/or cause giving rise to the Claim. As such, Contractor's failure to follow the requirements of GC-4.3 is an admission by Contractor that it is not entitled to any adjustment in the Contract Price, Milestones, and/or Contract Time and Contractor thereby agrees to waive, relinquish, and release any and all disputes and/or Claims in connection therewith. Contractor's utilization of the claims resolution process available pursuant to Public Contract Code Section 9204 (and set forth in GC-4.5.2) shall not satisfy or otherwise excuse Contractor's compliance with the mandatory Claims notice and presentation procedures set forth in this GC-4.3.

4.3.2 City Notice to Contractor of Third-Party Claims. City shall provide Contractor with prompt written notice upon City's receipt of any third-party claim relating to the Contract by sending a copy of the third-party claim to Contractor at the address for notice indicated in the Agreement.

4.3.3 Contractor Claims and Time Limits. Before filing any Claim, Contractor shall first comply with the Change Order Request process set forth in GC-7.7. Contractor shall provide the City with a written notice of Claim within **ten (10) calendar days** after City's denial of the Change Order Request and a fully documented Claim within **thirty (30) calendar days** after the notice of Claim. The notice of Claim shall be in compliance with GC-4.3.4 and the Claim shall be in compliance with GC-4.3.5.

4.3.4 Content of Written Notice. Contractor shall waive all rights to assert a Claim for additional cost and/or time unless such notice is given as required in this

paragraph. The written notice shall set forth:

- (1) The date of the event or occurrence giving rise to the claim and, if applicable, the date when the event ceased;
- (2) The nature of the event or occurrence and reasons for which the Contractor believes additional cost and/or Time will or may be due;
- (3) The nature of the cost and/or time involved, the amount of the potential costs and length of potential delay and if not ascertainable, the Contractor's best estimate of cost and/or time; and
- (4) Contractor's plan for mitigating such costs and/or delay.
- (5) The following signed, written verification: "The statements and documents submitted in support of this claim are intended to induce payment by the City. Accordingly, I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct."

4.3.5 Content of Claim. The Claim shall set forth clearly and in detail each item of additional compensation or time adjustment claimed, the reasons for each item claimed, references to applicable sections in the Contract Documents, the accounting and cost data described in GC-7.4 and any other facts necessary for City to evaluate the Claim, including supporting documents. In the case of a Claim involving a request for an extension of the Contract Time, the Claim shall include a precedence diagrammatic-style (CPM) schedule analysis (fragnet), identifying delays to the Work on the Critical Path, unless a different method of schedule analysis is required or permitted in the Special Conditions or Technical Specifications. The Contractor shall certify under penalty of perjury that the information contained in the Claim is true, that the supporting documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which City is responsible. Failure to comply with these requirements shall constitute Contractor's waiver of any and all rights associated with the Claim.

4.3.6 Application for Leave to Present Claim Not Presented Within Time Limits. Pursuant to Government Code Section 930.4, if a Claim is not presented within the time limits established in GC-4.3.3 above and the Claim is otherwise presented within **one (1) year** after the accrual of the cause of action to which the Claim relates, Contractor may make an application to the Senior Director/ Chief Harbor

Engineer for leave to present a late Claim. The provisions of Government Code Sections 911.4(b), 912.2 and 946.6 are applicable to such Claims.

4.3.7 Resolution of Claims. Pursuant to Public Contract Code §9201, the City shall have full authority to compromise or otherwise settle any Claim relating to the Contract at any time. The City will issue a Change Order or a Unilateral Change Order to Contractor within a reasonable period of time after City's acceptance of any Claim, specifying the additional cost and/or time, if any, accepted by City.

4.3.8 Continuing Contract Performance. Contractor shall not delay or postpone any Work pending resolution of any disputes or disagreements, except as the City and Contractor may otherwise agree in writing. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments for undisputed Work in accordance with the Contract Documents. In the event of disputed Work, City shall have the right to unilaterally issue a Work Directive and Contractor shall continue performance pending resolution of the dispute and shall maintain the accounting and cost data described in GC-7.4 herein.

4.3.9 Additional Prerequisites for Claims for Concealed or Unknown Conditions. The Contractor shall notify the City of the following Site conditions in writing within **two (2) Working Days** upon their discovery and before the conditions are disturbed:

- (1)** Subsurface or latent physical conditions differing materially from those indicated by information about the Site made available to Bidders prior to the Bid Deadline; and
- (2)** Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract.
- (3)** The City will promptly investigate the concealed or unknown conditions. If the City finds that the conditions fall within one of the two categories set forth above and will materially affect the cost or time to complete the Work, a Change Order or Unilateral Change Order will be issued by the City adjusting the compensation for such portion of Work in accordance with the requirements of the Contract Documents. If the City determines that the conditions do not justify an adjustment in compensation or the Contract Time, the Contractor will be notified in writing and City will issue a Work Directive directing Contractor to proceed with the Work. Should the Contractor disagree with the decision, Contractor may submit a

written notice of potential Claim to the City before commencing the disputed Work. In the event of such a dispute, the Contractor shall not be excused from any scheduled completion date provided by the Contract Documents and shall proceed with all Work to be performed under the Contract Documents.

4.3.10 Remedies Related to Delays

1. For Claims relating to extensions of Contract Time, due to Excusable Compensable Delays, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Price and Contract Time provided Contractor otherwise complies with this GC-4.3.
2. For Claims relating to extensions of Contract Time due to Excusable Non -compensable Delays, as described in Article 8 herein, Contractor may be entitled to an equitable adjustment of the Contract Time, subject to the limitations set forth in Article 8 below, but shall not be entitled to adjustment of the Contract Price. Additionally, for Claims relating to extensions of the Contract Time due to inclement weather, Contractor shall not be entitled to adjustment of the Contract Time unless and until the number of unworkable days due to the effects of inclement weather exceed the number of days established in the Contract Documents. In the event the established number of Weather Delay Days is exceeded, the Contract Time shall be equitably adjusted, but Contractor shall not be entitled to adjustment of the Contract Price.

GC – 4.4 Dispute Resolution

- 4.4.1 Government Code Claims. Compliance with GC-4.3 shall not relieve the Contractor of responsibility for presenting a written Government Code Claim, which is a prerequisite to filing suit for money or damages against the City, Mediation pursuant to GC -4.4.2, and other provisions of Applicable Law relating to litigating claims against the City.
- 4.4.2 Mediation. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to mandatory non-binding mediation as a prerequisite to instituting litigation in any court. The parties will cooperate with one another in selecting a mediator and in scheduling mediation proceedings. If the parties are unable to agree on a mediator, then either has the right to file a written request for mediation with the American Arbitration Association, which shall administer the selection of a mediator and the mediation process pursuant to its Construction Industry Arbitration Rules and Mediation Procedures. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. The mediation

shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

GC – 4.5 Statutory Claims Resolution Process

4.5.1 Compliance with GC-4.3 Procedures Mandatory. Contractor's use of the claims resolution process available in Public Contract Code Section 9204 (and set forth in GC-4.4.2) shall not satisfy or otherwise excuse Contractor's compliance with the mandatory notice and claim presentation procedures set forth in GC-4.3. The claims notice and presentation procedures set forth in GC-4.3 were established pursuant to Government Code Sections 930.2 and 930.4 and are mandatory.

4.5.2 Public Contract Code Section 9204. Section 9204 is added to the Public Contract Code, to read:

- **4.5.2.1** Upon receipt of a claim pursuant to Section 9204 of the Public Contract Code, the City will conduct a reasonable review of the claim and, within a period not to exceed 45 Days, provide the Contractor a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, the Contractor and the City may, by mutual agreement, extend the aforementioned time period.
- **4.5.2.2** The Contractor shall furnish reasonable documentation to support the claim.
- **4.5.2.3** If Board approval is needed to provide the Contractor a written statement identifying the disputed portion and the undisputed portion of the claim, and the Board does not meet within the 45 Days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the City will have up to 3 Days following the next duly publicly noticed meeting of the Board after the 45-Day period, or extension, expires to provide the Contractor a written statement identifying the disputed portion and the undisputed portion.
- **4.5.2.4** Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement. If the City fails to issue a written statement, paragraph 4.5.2.10 shall apply.
- **4.5.2.5** If the Contractor disputes the City's written response, or if the City fails to respond to a claim issued pursuant to Section 9204 within the time prescribed, the Contractor may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of

a demand in writing sent by registered mail or certified mail, return receipt requested, the City will schedule a meet and confer conference within 30 Days for settlement of the dispute.

- **4.5.2.6** Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the City will provide the Contractor a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim will be processed and made within 60 Days after the City issues its written statement. Any disputed portion the claim, as identified by the Contractor in writing, shall be submitted to nonbinding mediation, with the City and the Contractor sharing the associated costs equally. The City and the Contractor shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside those established in Section 9204.
- **4.5.2.7** Mediation shall include any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in Section 9204.
- **4.5.2.8** Unless otherwise agreed to by the City and the Contractor in writing, the mediation conducted pursuant to Section 9204 shall excuse any further obligation under Section 20104.4 to mediate after litigation has been commenced.
- **4.5.2.9** Section 9204 does not preclude the City from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under Section 9204 does not resolve the parties' dispute.
- **4.5.2.10** Failure by the City to respond to a claim from the Contractor within the time periods described in Section 9204 or to otherwise meet the time requirements of Section 9204 shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the City's failure to have responded to a claim, or its failure to otherwise meet the time

requirements of Section 9204, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

- **4.5.2.11** Amounts not paid in a timely manner as required by Section 9204 will bear interest at 7 percent per annum.
- **4.5.2.12** If a Subcontractor or a lower tier Subcontractor lacks legal standing to assert a claim against the City because privity of the Contract does not exist, the Contractor may present to the City a claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on its own behalf or on behalf of a lower tier Subcontractor, that the Contractor present a claim for work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the claim be presented the City shall furnish reasonable documentation to support the claim. Within 45 Days of receipt of this written request, the Contractor shall notify the Subcontractor in writing as to whether the Contractor presented the claim to the City and, if the original Contractor did not present the claim, provide the Subcontractor with a statement of the reasons for not having done so.
- **4.5.2.13** A waiver of the rights granted by Section 9204 is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the Contractor and the City may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) the City may prescribe reasonable change order, claim and dispute resolution procedures and requirements in addition to the provisions of Section 9204, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in Section 9204.

4.5.3 Equitable Procurement Practice. The Legislature finds and declares that it is of statewide concern to require a charter city, charter county, or charter city and county to follow a prescribed claims resolution process to ensure there are uniform and equitable procurement practices.

4.5.4 Reimbursement. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

ARTICLE 5 SUBCONTRACTORS

GC – 5.1 Award of Subcontracts and Other Contracts for Portions of the Work

5.1.1 Subcontractor Listing. The Contractor shall comply with Public Contract Code Section 4100 *et seq.* (“Subcontractor Listing Law”), list required Subcontractors, and shall make no substitution except with the written consent of the **Chief Executive Officer** or designated hearing officer. To the extent not required prior to award, as soon as practicable after award of the Contract, Contractor shall provide Engineer with complete information concerning Subcontractor listed in the Bid including, but not limited to, California contractor license number, business phone and address and contact person for each Subcontractor performing Work. Contractor shall continuously update the City upon selection of each Subcontractor not required to be listed in the Bid pursuant to the Subcontractor Listing Law.

5.1.1.1 Substitution Process. Any request of the Contractor to substitute a listed Subcontractor will be considered by the City only if such request is in strict conformity with GC-5.1 and the Subcontractor Listing Law. All costs and fees incurred by the City in the review and evaluation of a request to substitute a listed Subcontractor shall be borne by the Contractor; such costs and fees may be deducted by the City from the Contract Price then thereafter due the Contractor. Where a portion of the Work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the Engineer, the Subcontractor shall be removed immediately upon written notice from the Engineer, and shall not be re-employed on the Project.

5.1.1.2 Responsibilities of Contractor Upon Substitution of Subcontractor. Neither the substitution nor the City’s consent to Contractor’s substitution of a listed Subcontractor shall relieve Contractor from its obligation to complete the Work within the Contract Time and for the Contract Price. In the event that the City determines that revised or additional Submittals are required of the newly substituted Subcontractor, the City shall promptly notify the Contractor, in writing, of such requirement and the time for Submittal. In the event that the revised or additional Submittals are not submitted by Contractor within the time specified, Contractor shall be solely responsible for delays in the Work arising from the untimely Submittal. Contractor shall reimburse the City for all fees and costs incurred or associated with the processing, review and evaluation of any revised or additional Submittals required pursuant to this paragraph; the City may deduct such fees and costs from any portion of the Contract Price then or thereafter due the Contractor. In the event that additional or revised Submittals are required pursuant to this Section, such requirement shall not result in an increase to the Contract Time or the Contract Price.

GC – 5.2 Subcontractor Relations

5.2.1 Agreements. By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by Contract Documents, assumes toward the City. Each such agreement shall preserve and protect the right of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the City. The Contractor shall require each Subcontractor to enter into similar agreements with their Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the agreement, copies of the Contract Documents to which the Subcontractor will be bound by this Paragraph. At a minimum, each subcontract shall:

- (1)** Require that the Work being performed pursuant to such agreement, as the case may be, be performed in accordance with the requirements and intent of the Contract Documents and provide no more than five percent (5%) retainage unless otherwise indicated in Contract between the City and Contractor;
- (2)** Require submission of Applications or Payment in the form required by the Contract Documents, together with invoices and billings supporting such applications and conditional and unconditional lien releases in the form required by the Contract Documents completed by it and by its Subcontractors as a condition to the disbursement of any progress payment next due and owing to it;
- (3)** Require each Subcontractor and Material Supplier to furnish to Contractor or the applicable Subcontractor, as the case may be, in a timely fashion all information necessary for transmittal of Submittals and the reports, warranties, as-built information and closeout documents required herein;
- (4)** Require that each Subcontractor and Material Supplier continue to perform under its subcontract if the Contract is terminated and if

City takes an assignment of the subcontract or supply agreement and requests the Subcontractor or Material Supplier to continue such performance;

- (5) Require each Subcontractor and Material Supplier to remove all debris created by its activities;
- (6) Provide that in the event that City accepts the conditional assignment of the subcontract, City shall only be responsible to the Subcontractor or those obligations that accrue subsequent to City's acceptance of the assignment; and
- (7) Require the Subcontractor to resolve all disputes involving City according to the Claims procedures in GC-4.3 and GC-4.4 herein.

5.2.2 Precedence. If any provision of any subcontract or supply agreement is inconsistent with any provision of the Contract Documents or the intent of the Contract Documents, then the Contract Documents shall control.

GC – 5.3 Contingent Assignment of Subcontractor and Material Supply Agreements

Each Subcontractor and Material Supplier agreement or a portion of the Work is assigned by the Contractor to the City provided that:

- (1) Assignment is effective only after termination of the Contract by the City only or those subcontract which the City accepts by notifying the Subcontractor or Material Supplier, and Contractor in writing;
- (2) Assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract; and
- (3) Upon exercise of this right of assignment, City has the right to reassign the Contract.

ARTICLE 6 CONSTRUCTION BY CITY OR BY SEPARATE CONTRACTORS

GC – 6.1 City's Right to Perform Construction and to Award Separate Contracts

6.1.1 City's Right to Perform. The City reserves the right to perform construction or operations related to the Project with the City's own employees, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site. If the Contractor claims that delay or additional cost is involved because of such action by the City, the Contractor shall make such Claim as provided in GC-4.3 herein.

6.1.2 Interpretation of Contract Documents. When separate contracts are awarded for different portions of the Project or other construction or operations on the Site the term “contractor” in the Contract Documents in each case shall mean the City’s Separate Contractor who executes each Separate Contractor agreement.

6.1.3 Coordination. The City shall provide for coordination of the activities of the City’s own employees and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other Separate Contractors and the City in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule for the Work deemed necessary after a joint review and mutual agreement with Engineer. Upon Engineer’s written acceptance, the revised construction schedule shall then constitute the schedule to be used by the Contractor, Separate Contractors, and the City until subsequently revised and accepted by City.

GC – 6.2 City’s Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the City as to the responsibility under their respective contracts for maintaining the Site and surrounding area free from waste materials and rubbish, the City may clean up and allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

GC – 7.1 General

7.1.1 City’s Right to Order Changes. The City, without invalidating the Contract, may authorize changes in the Work consisting of additions, deletions, or other revisions, with the Contract Price and Contract Time being adjusted accordingly, if necessary. All such changes in the Work shall be authorized by written Change Order or Unilateral Change Order and Contractor shall perform such changes in the Work according to the applicable requirements of the Contract Documents.

7.1.2 Extra Work. New or unforeseen Work that involves a Scope Change will be classified as “extra work” when the Engineer determines that such work is not covered by a Unit Price or Lump Sum Price in the Schedule of Bid Items. When the price for extra work cannot be agreed upon, the City will authorize the extra work by issuing a Contractor’s Proposed Change Order (CPCO) using the City’s standard form in Appendix H and is subject to the limitations of authority set under GC-7.5.1. Payment of CPCO related work will be made as described herein.

CPCO may be a Lump Sum price or a Cost Plus Markup with Not-to-Exceed amount in accordance with GC-7.4.1. Upon completion of the extra work authorized by a CPCO, the CPCO will be incorporated into a proposed Change Order within sixty

(60) calendar days of Contractor's submittal of all required backup documentation. Payment for CPCO work will be made subject to the terms and conditions of a Change Order per Article 7 of these General Conditions.

7.1.3 Basis for Agreement. A Change Order shall be based upon agreement among the City and Contractor. A Unilateral Change Order will be issued when no agreement is reached.

7.1.4 No Estoppel. Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with the change, unless otherwise provided in the Change Order or Unilateral Change Order. A change in the Contract Price or the Contract Time shall be accomplished only by Change Order or Unilateral Change Order. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work and no Claim that the Contract has been abandoned or the City has been unjustly enriched by any alteration or addition to the Work shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

GC – 7.2 Change Orders

7.2.1 Computation. Methods used in determining adjustments to the Contract Price by Change Order may include those listed in GC-7.4 below.

7.2.2 Form. The parties shall use the Change Order form in substantially the same form as the City's Standard form of Change Order included as an Appendix in the Specification, or other City-approved form.

7.2.3 Accord and Satisfaction. Unless specifically stated otherwise in the Change Order, Agreement on any Change Order shall be a full compromise and settlement of all adjustments to Contract Time and Contract Price, and compensation for any and all delay, extended or additional field and home office overhead, disruption, acceleration, inefficiencies, lost labor or equipment productivity, differing Site conditions, construction interferences and other extraordinary or consequential damages (hereinafter called "Impacts"), including any ripple or cumulative effect of said Impacts on the overall Work under the Contract arising directly or indirectly from the performance of Work described in the Change Order. Unless specifically stated otherwise in the Change Order, by execution of any Change Order, Contractor agrees that the Change Order constitutes a complete accord and satisfaction with respect to all Claims for schedule extension, Impacts, or any costs of whatsoever nature, character or kind arising out of or incidental to the Change Order. No action, conduct, omission, product failure or course of dealing by the City shall act to waive, modify, change or alter the requirement that (i) Change

Order's must be in writing, signed by the City and Contractor and; (ii) that such written Change Orders and Unilateral Change Orders are the exclusive method for effectuating any change to the Contract Price and/or Contract Time.

GC – 7.3 Unilateral Change Orders

- 7.3.1** Use. A Unilateral Change Order shall be issued by the City in the absence of total agreement with the Contractor on the terms of a Change Order.
- 7.3.2** Duty to Proceed. Upon receipt of a Unilateral Change Order, the Contractor shall promptly proceed with the Work involved and advise the City of the Contractor's agreement or disagreement with the method, if any, provided in the Unilateral Change Order for determining the proposed adjustment in the Contract Price or Contract Time.
- 7.3.3** Disagreement. If the Contractor does not indicate its disagreement with the method of pricing provided in the Unilateral Change Order within **three (3) Working Days**, Contractor shall be deemed to agree with the method of pricing the change. If the Contractor indicates its disagreement with the method of pricing or if no method of pricing is provided in the Unilateral Change Order, the increase in cost or credit to the Contract Price for the change shall be determined by cost in accordance with GC-7.4.1(3) and the provisions of GC-7.4.2, and 7.4.3 shall apply to the change.
- 7.3.4** Agreement. A Unilateral Change Order is effective immediately whether or not it is signed by the Contractor. If the Contractor signs a Unilateral Change Order such agreement shall be effective immediately and shall be deemed to be mutually agreed Change Order.

GC – 7.4 Computation of Cost or Credit for Changes

- 7.4.1** Cost or Credit. The cost or credit to the City resulting from a change in the Work shall be determined by the City using one or more of the methods included in this Article:
- (1)** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation by the Engineer. The lump sum price shall be inclusive of all mark-ups from every tier of Subcontractor performing the affected work;
 - (2)** Unit Prices or Lump Sum Prices established in the Schedule of Bid Items or subsequently agreed upon:
 - (a)** If a quantity change is ordered in an item of Work covered by a Unit Price, then an adjustment in payment will be made, based

upon the increase or decrease in the quantity per the Unit Price established in the Bid.

- (b) If a change is ordered in an item of Work covered by a Unit Price or a Lump Sum Price established in the Schedule of Bid Items, and such change involves a substantial change in the character of the Work from that shown on the Contract Documents, an adjustment in payment will be made, by mutual acceptance of an adjusted lump sum under 7.4.1 (1) or, by costs plus markup for overhead and profit as defined under 7.4.1 (3) and (4).
- (c) Should any item of Work covered by a Unit Price or Lump Sum Price in the Schedule of Bid Items be deleted in its entirety, no payment will be made for the deleted Bid Item. The credit due to the City shall consist of the full Bid Price stated in the Bid.
- (3) Cost. By cost, as defined in (a), (b), (c) and (d) below, properly itemized and supported by sufficient substantiating data to permit evaluation by the Engineer, plus markup for overhead and profit as defined in (4) below in lieu of any other overhead or profit calculation. Such costs shall be itemized by craft directly allocable to the change in the Work.

 - (a) Materials. Cost of materials, including cost of transportation and delivery. The cost of materials reported shall be at invoice or lowest current price at which such materials are locally available and delivered to the jobsite in the quantities involved, plus sales tax, freight, and delivery. The City reserves the right to accept materials and sources of supply, or to supply materials to the Contractor, if necessary, for the progress of the Work. No markup shall be applied to any material provided by the City.
 - (b) Labor. Cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement. The costs of labor will be the actual cost for wages prevailing locally for each craft or type of Worker's at the time the extra work is done, plus employer payments of payroll taxes, Worker's compensation insurance, general liability insurance, USL&H insurance, health and welfare, pension, vacation, apprenticeship funds, and other direct costs resulting from federal, state, or local laws, as well as assessments or benefits required by lawful collective bargaining agreements. The use of labor classification, which would increase the extra work cost, will not be permitted, unless the Contractor establishes the

necessity for such additional costs. Labor costs for equipment operators and helpers shall be reported only when such costs are not included in the invoice equipment rental;

- (c) Equipment. Rental value of equipment and machinery, exclusive of hand tools. No payment will be made for the use of tools, which have a replacement value of **\$750.00** or less. Rates for Contractor-owned and Subcontractor-owned equipment shall be calculated as the lesser of:
- (i) The rates published by the State of California, Department of Transportation, Division of Construction in the latest edition in effect at the time the equipment is in use for the change; or
 - (ii) The rates paid by Contractor or Subcontractor pursuant to an arm's length transaction with the equipment supplier; or
 - (iii) The internal rates the Contractor or Subcontractor charges to the Work according to its usual and customary accounting practices.

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

The reported rental time for equipment already at the jobsite shall be the duration of its use in the extra work, commencing at the time it is first put into actual operation on the extra work, plus the time required to move from its previous site and back to a closer site.

Necessary loading and transportation costs for equipment used on the extra work shall be included.

If equipment is used intermittently and, when not in use, could be returned to its rental source at less expense to the City than holding it at the Site, it shall be returned, unless the Contractor elects to keep it at the Site, at no expense to the City.

All equipment shall be acceptable to the Engineer, in good working condition, and suitable for the purpose for which it is to be used. Manufacturer's ratings and manufacturer's approved

modifications shall be used to classify equipment, and it shall be powered by a unit of at least the minimum rating recommended by the manufacturer.

- (d) Bonds. Increase in bond premium, if any, shall be substantiated by the actual additional cost to the Contractor. Contractor and its surety agree to comply with the bond rider requirements as set forth in Article GC-11.2.1.1 herein.
- (4) Markup. Markup which is deemed to include, but is not limited to, home office personnel, home office expenses, home office overhead, project management, general superintendence, estimates, trash pick-up, profit and other expenses which are not specifically included in 7.4.1(3)(a) through (d) above shall not exceed the following amounts:
 - (a) **Fifteen percent (15%)** of the cost of that portion of the extra work to be performed by the Contractor with its own employees.
 - (b) **Fifteen percent (15%)** of the cost of that portion of the extra work to be performed by a listed Subcontractor with its own employees, plus **five percent (5%)** for the Contractor. Total combined Contractor and listed Subcontractor markup shall not exceed **twenty percent (20%)**.
 - (c) **Fifteen percent (15%)** of the cost of that portion of the extra work to be performed by a lower tier Subcontractor or Material Supplier with its own employees, or any lower tier of Subcontractor, plus **five percent (5%)** for the Subcontractor, plus **five percent (5%)** for the Contractor.
 - (d) Limitations on Markup for Changes. Where multiple tiers of Subcontractors are involved in a change in the Work, the maximum total amount of adjustment to the Contract Price and for markup for all tiers of Subcontractors and for Contractor self-performed Work shall not exceed **twenty-five percent (25%)** of the direct costs incurred by Contractor and the Subcontractors and Material Suppliers actually performing the Work.
- (5) Credits. The amount of credit the City shall receive from the Contractor for a change involving credits not resulting from deletion of a Bid Item in its entirety shall be computed as follows:

For changes in Work involving only a deletion or both additions and deletions that result in a net decrease in the Contract Price, the City shall be entitled to receive a credit for the net decrease in the Contract Price **plus** a credit fee of 5% of the net decrease.

7.4.2 Contractor Maintenance of Daily Records for Changes. In the event that Contractor is directed to perform any changes to the Work, or should Contractor encounter conditions which the Contractor believes would obligate the City to adjust the Contract Price and/or the Contract Time, Contractor shall maintain detailed records of the cost of such changes on a daily basis summarized in a daily report supplemented by back-up records. Such records shall include without limitation hourly records for labor and construction equipment, itemized records of materials, including delivery tickets, and equipment used each day in connection with the performance of any change to the Work. In the event that more than one change to the Work is performed by Contractor in a calendar day, Contractor shall maintain separate records of labor, construction equipment, materials, and equipment for each such change. In the event that any Subcontractor of any tier shall provide or perform any portion of any change to the Work, Contractor shall require that each such Subcontractor maintain records in accordance with this GC-7.4. Each daily record maintained hereunder shall be signed by the Contractor; such signature shall be deemed Contractor's representation and warranty that all information contained therein is true, accurate, complete, and relates only to the change referenced therein. All records maintained by Subcontractors of any tier, relating to the costs of a change in the Work shall be signed by such Subcontractor's authorized Project Manager or Superintendent. All such records shall be forwarded to Engineer on the day the Work is performed (same day) for independent verification. The Engineer shall attempt to review and reconcile costs of changes on a daily basis. The Engineer's signature on the report shall indicate agreement with the information reflected therein, not that the Contractor is entitled to payment of the costs in the report. If the Engineer disagrees with the response, the Engineer shall note the areas of disagreement on the report. In the event that the Contractor shall fail or refuse, for any reason, to maintain or make available for inspection, review and/or reproduction such records, adjustments to the Contract Price or Contract Time, if any, on account of any change to the Work may be deemed waived for that day. Contractor's obligation to maintain back-up records hereunder is in addition to, and not in lieu of, any other Contractor obligation under the Contract Documents with respect to changes to the Work.

7.4.2.1 Labor. The daily report shall show the names, trade, labor, classifications, and hours worked, for the workers.

7.4.2.2 Material. The daily report shall describe and list quantities of materials used, attaching delivery tickets.

7.4.2.3 Equipment. The daily report shall show type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable.

7.4.2.4 Other Services and Expenditures. Other services and expenditures shall be described in such detail in the daily report as the City may require.

7.4.2.5 Cost. The report shall provide dollar values for each category of cost.

7.4.3 Payment of Undisputed Amounts. Pending final determination of the total cost of a change, amounts not in dispute for such changes in the Work shall be included in Applications for payment accompanied by an approved Change Order or Unilateral Change Order, indicating the Parties' agreement with part or all of such costs.

GC – 7.5 Authority to Approve Changes

7.5.1 Limits of Authority. The City may unilaterally change the Contract Documents, character of the Work or quantity of the Work, provided the total arithmetic dollar value of all such changes, both additive and deductive, does not exceed **twenty-five percent (25%)** of the initial Contract Price. Changes up to a cumulative amount of **\$200,000** may be approved by the **Chief Executive Officer**. Changes in excess of \$200,000 require prior acceptance by the Board of Harbor Commissioners. Changes in excess of **twenty-five percent (25%)** of the Contract Price require a written contract amendment between the Contractor and the City approved in advance by the Board of Harbor Commissioners.

7.5.2 No Oral Changes. All changes to the Contract, whether resulting in an increase, decrease or no change in the Contract Price or Contract Time, must be in writing and signed by an authorized representative of the City. Any oral direction, instruction, interpretation, or determination from the City which, in the opinion of the Contractor, causes a Scope Change in the Work or otherwise requires an adjustment to the Contract Price or Contract Time, shall be treated as a Change Order Request only if the Contractor gives the City written notice within **ten (10) calendar days** of the oral direction and prior to acting in accordance therewith. Time is of the essence in Contractor's written notice pursuant to the preceding sentence, so that the City can promptly investigate and consider alternative measures to address the oral direction giving rise to Contractor's notice. The written notice shall state the date, circumstances, extent of adjustment to the Contract Price or the Contract Time, if any, requested and the source of the oral direction. Contractor acknowledges that its failure, for any reason, to give written

notice within **ten (10) calendar days** of such oral direction shall be deemed Contractor's waiver of any right to assert or Claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of such oral direction.

- 7.5.3** Unauthorized Work. Contractor shall undertake at its risk, Unauthorized Work in any oral request, written order or Change Order issued by a person in excess of that person's authority as provided herein. Any work performed by the Contractor which is not properly authorized shall be considered unauthorized by the City and performed at the sole expense the Contractor. Unauthorized Work so performed will not be measured or paid for and no extension of Contract Time will be granted on account thereof. Any such Unauthorized Work may be ordered to be removed at the Contractor's sole cost and expense. The failure of the City to direct or order removal of such Unauthorized Work shall not constitute acceptance of such work nor relieve the Contractor from any liability on account thereof.

GC – 7.6 Changes Initiated by the Engineer

- 7.6.1** Procedures. The Engineer may issue a request, in writing, to Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to the Engineer within **ten (10) calendar days** after Engineer issues the request. The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform extra work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs (broken down by the cost categories listed in the GC-7.4 herein), and Contractor's proposed methods to minimize costs, delay, and disruption to the performance of the Work. If Contractor fails to submit a written proposal within such period of time, it shall be presumed that the change described in the City's original proposal request will not result in an increase to the Contract Price or Contract Time and the change shall be performed by Contractor without additional compensation or additional time. City's proposal request does not authorize the Contractor to commence performance of the extra work, unless otherwise specified in writing. If City desires that the proposed change be performed, the Work shall be authorized according to the Change Order or Unilateral Change Order procedures set forth herein.

GC – 7.7 Changes Requested by Contractor – Change Order Request (COR)

- 7.7.1** Non-Material Changes. Changes in the Drawings and Specifications, requested in writing by the Contractor, which do not materially affect the nature of the Work, which will not extend the Contract Time, and which are not detrimental to the Work, or to the interest of the City, may be approved in writing by the Engineer. Any such changes requested by the Contractor, if approved by the City, shall be made at a reduction in cost, or at no additional cost, to the City. Nothing herein

shall be construed as granting a right to the Contractor to demand acceptance of such changes.

7.7.2 Material Changes. If the Contractor alleges that instructions issued by the City after the effective date of the Contract may result in changes to the Contract Price or Contract Time or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, Contractor may submit a written Change Order Request ("COR") to the City in writing, in a format acceptable to City and in accordance with the notice provisions and other requirements of GC-4.3 above for Claims. The COR must specify the reasons for the proposed change, cost impacts and relevant circumstances and impacts on the construction schedule. The document shall be complete in its description of the Work, its material and labor quantities and detail and must support and justify the costs and credits claimed by the Contractor. A Critical Path Method (CPM) schedule fragnet is required to support and justify any additional Time of performance requested by the Contractor unless a different method of schedule analysis is required or permitted by the Special Conditions or Technical Specifications. The City will not review any COR which is incomplete. The Contractor may request additional compensation and/or time through a COR but not for instances that occurred more than **ten (10) calendar days** prior to the notice date. Contractor's failure to initiate a COR within this ten-day period or to provide detailed back-up documentation to substantiate the COR within **thirty (30) calendar days** of the initial written notice shall be deemed a waiver of the right to adjustment of the Contract Price or the Contract Time for the alleged change. Any COR that is approved by the City will be incorporated in a Change Order or Unilateral Change Order. If the COR is denied but the Contractor believes that it does have merit, the Contractor shall proceed with the disputed Work under protest and must submit a Claim in accordance with the procedures set forth herein. If no Claim is filed within the time established in GC-4.3 herein, then the Contractor shall be deemed to have accepted the City's determination with respect to the COR.

7.7.3 Subcontractor Requests. Contractor shall make a good faith determination of the validity of the nature and amount of changes requested by Subcontractors before passing through such requests to City.

ARTICLE 8 TIME

GC – 8.1 Progress and Completion

8.1.1 Time Is of the Essence. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement and any Change Orders Contractor agrees and confirms that the Contract Time and the time allotted to complete any Milestones, including Substantial Completion and Affidavit of Final Completion is a reasonable period for performing the Work.

8.1.2 Not Used.

8.1.3 Completion. The Contractor shall proceed expeditiously with adequate labor and supervision to achieve Substantial Completion within the Contract Time and to achieve Final Completion within the time establish by the Special Conditions.

GC – 8.2 Delays and Extensions of Time

8.2.1 Delays to Critical Path. Extensions of time, when granted, will be based upon the effect of delays to the Critical Path of the Work as a whole and will not be granted for non-controlling delays to include portions of Work unless it can be shown that such delays did, in fact, delay the progress of the Work as a whole.

8.2.2 Conditions to Time Extensions. The Contract Time or Milestones shall be extended only if, in the opinion of City, the Contractor is necessarily delayed in completing the Contract by a cause that meets all of the following conditions:

- (a) Such cause is beyond the control of the Contractor, its Subcontractors, or Material Suppliers and is not due, in whole or in part, to the breach, negligence or fault of Contractor, its Subcontractor, or Material Suppliers;
- (b) Such cause arises after the Bid Deadline and neither was nor could have been anticipated before the Bid Deadline. Tide conditions shall be conclusively deemed to have been anticipated before the Bid Deadline.
- (c) The effect of such cause could not be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures by the Contractor including re-planning, scheduling and rescheduling.
- (d) Such cause, in fact, results in a delay in the performance of the Critical Path of the Work, which is not thereon thereafter recovered.
- (e) Contractor has given notice thereof and provided the back-up documentation and analysis as required by the Contract Documents or as requested by the Engineer.
- (f) The Contractor has exercised all reasonable precautions, efforts and measures to accomplish such changes in the Work without extending the dates of Milestones per the Special Conditions.

8.2.3 Excusable Noncompensable Delay.

- (a) Definition. The Parties acknowledge that “Force Majeure” events, defined herein and noncompensable delays identified in the Special Conditions, if any, are not within the responsibility or control of City or are reasonably contemplated by the Parties to occur during the course of performance of the Work, which may impact the schedule for performance of the Work and may entitle Contractor to an extension of the Contract Time (“Excusable Noncompensable Delays”). If the Critical Path of the Work is delayed by Excusable Noncompensable Delays, provided that such delays did not result from the acts of Contractor and further provided that Contractor takes reasonable precautions to prevent further delays owing to such causes, then the Contract Time and/or Milestones shall be extended by a Unilateral Change Order. “Force Majeure” means any of the following events which materially and adversely affect Contractor’s obligations hereunder: earthquakes; acts of God, epidemic, pandemic, blockade, embargoes, rebellion, war, terrorism, national emergency, riot , act of sabotage, or civil commotion; industry-wide labor strike which has a material adverse impact on the Work; discovery of any archaeological, paleontological or cultural resources; spill of hazardous substances by a third party at or near the Site which is required to be reported to the California Environmental Protection Agency, Department of Toxic Substances Control; discovery at, near , or on the site of any species listed as “threatened” or “endangered” under the Federal or State Endangered Species Act; discovery at, near, or on site of any eggs or hatchlings of birds covered under Migratory Bird Treaty Act; unusually severe weather conditions (subject to the allowance for Weather Delay Days per Contract Documents).
- (b) Sole Remedy. An extension to the Contract Time and/or to the Substantial Completion Milestone(s) identified in the Contract Documents shall be the Contractor’s sole remedy for Excusable Noncompensable Delays. In no event shall Contractor be entitled to any compensation or recovery of any damages in connection with the Excusable Noncompensable Delays defined above.

8.2.4 Excusable Compensable Delay. “Excusable Compensable Delay” means any delay to the Critical Path of the Work occurring after commencement and prior to Substantial Completion of the Work: i) which directly impacts the date for Substantial Completion established in the Agreement; ii) for which City is responsible, is unreasonable under the circumstances involved and not within the contemplation of the Parties; iii) is not due, in whole or in part, to the breach,

negligence, or fault of Contractor, its Subcontractors, or Material Suppliers. Contractor's remedy for Excusable Compensable Delay shall be extension of the date for Substantial Completion and Milestones subject to the requirements of GC-8.2.2 and reimbursement of actual costs directly resulting from such delays and markup established according to GC-7.4 herein.

8.2.5 Inexcusable Delay. "Inexcusable Delay" means any delay in the Critical Path of activities required for Substantial Completion of the Work resulting from causes other than those deemed to be an Excusable Non-compensable Delay or an Excusable Compensable Delay by these General Conditions. An Inexcusable Delay shall not entitle Contractor to either an extension of the date for Substantial Completion or Milestones or to any additional compensation whatsoever.

8.2.6 Concurrent Delays

(a) To the extent the Contractor is entitled to an extension of time due to an Excusable Non-compensable Delay or to an Excusable Compensable Delay, but the performance of the Work is independently suspended, delayed, or interrupted by an Inexcusable Delay, the delay shall be deemed to be a "Concurrent Delay."

(b) In the case of a Concurrent Delay, Contractor shall be entitled to an extension of the Contract Time or Milestone(s) and Contractor shall not be liable for Liquidated Damages during the period of Concurrent Delay, but Contractor shall not be entitled to any additional compensation whatsoever during the period of Concurrent Delay.

8.2.7 Change Orders for Excusable Non-compensable Delay and Excusable Compensable Delay. City shall issue a Change Order or a Unilateral Change Order for any time extensions, and compensation, if any, allowed under this Article. The Change Order shall set forth the net days of extension of the Contract Time, and any reimbursement of costs and markup as applicable. At City's sole discretion, a Change Order or Unilateral Change Order under this paragraph may be issued at any time. A Unilateral Change Order for an Excusable Non-compensable Delay may be in the form of a letter issued by the Chief Executive Officer.

8.2.8 No Release of Sureties. An extension of time granted shall not release the sureties from their obligations. Work shall continue and be carried on in accordance with all the provisions of the Contract and the Contract shall be and shall remain in full force and effect during the continuance and until the completion and the Board's final acceptance of the Work covered by the Contract unless formally suspended or annulled in accordance with the terms of the

Contract Documents.

- 8.2.9** No Waiver by City. Neither the grant of an extension of time beyond the date fixed for the completion of any part of the Work nor the doing and acceptance of any part of the Work or materials specified by this Contract after the time specified for the completion of the Work, shall be deemed to be a waiver of any other rights and remedies under the Contract.
- 8.2.10** Risk of Costs for Delays. As between the Contractor and City, the Contractor assumes the risk of any and all costs, expenses and liabilities which the Contractor may incur in connection with all suspensions of, disruption of, or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, except that the Contractor may be compensated for Excusable Compensable Delays as defined herein. If the Contractor sustains loss as a consequence of Excusable Compensable Delays, which could not have been avoided by the judicious handling of forces, equipment and plant, there may be paid the Contractor actual costs directly resulting from the delay and markup established in accordance with GC-7.4. For Excusable Non-compensable Delays Contractor shall be entitled to an extension of the Contract Time but Contractor shall not be entitled to compensation or additional payment due to such delays.
- 8.2.11** Notice and Back-up Documentation. If the Contractor desires an extension of time for an Excusable Non-compensable Delay or a time extension or additional compensation for an Excusable Compensable Delay, the Contractor shall comply with the requirements of GC-4.3 herein.
- 8.2.12** City's Right to Order Extraordinary Measures to Mitigate Delay. In the event of delays to the Project, the City may order Extraordinary Measures as provided in GC-2.6 herein.
- 8.2.13** City is Exempt From Liability for Early Completion Delay Damages. While the Contractor may schedule completion of all the Work, or portions thereof, earlier than the Contract Time established in the Special Conditions, the City is exempt from liability for and the Contractor shall not be entitled to an adjustment of the Contract Price or to any additional costs, damages, or compensation whatsoever, for use of Float or for Contractor's inability to complete the Work earlier than the Contract Time established in the Special Conditions, for any reason whatsoever, including but not limited to, delay caused by City or other Excusable Compensable Delay.

GC – 8.3 Continuation of the Work

If the construction of the Work is not completed within the Contract Time, as may be extended by the **Chief Executive Officer**, the Contractor shall continue

performing the Work in accordance with the Contract Documents until the completion of and the acceptance of the Work or Contractor's performance is suspended or terminated.

ARTICLE 9 PAYMENTS AND COMPLETION

GC – 9.1 Measurement of Work for Payment

9.1.1 Period Covered. The period covered by each Application for Payment shall be one (1) calendar month.

9.1.2 Unit Prices. Methods of measurement for installed quantities of Unit Price Work shall be according to Section 7-1 of the Greenbook, which is incorporated herein by this reference.

- (a)** Upon receipt of the Contractor's Application, the Engineer will make an estimate in writing of all material permanently installed and the total amount of Work performed up to the time of such estimate, and the value thereof based upon the Unit Prices stated in the Schedule of Bid Items. This Engineer's estimate will be used to substantiate Contractor Applications for Payment submitted in compliance with the Contract Document. The Engineer may request additional documentation to substantiate the Contractor's payment request.
- (b)** Payment will not be made for materials wasted or disposed of in a manner not called for under the Contract. This includes rejected material not unloaded from vehicles, materials rejected after having been placed and material placed outside of the Drawing tolerances. Such quantities will not be included in the pay quantities. No compensation will be allowed for disposing of rejected or excess material.
- (c)** No estimate or payment shall be required to be made, when in the judgment of the Engineer, the Work has not proceeded in accordance with the provisions of the Contract. The value of any material or Work included in partial estimates, which may subsequently become lost, damaged or unsatisfactory, shall be deducted from succeeding partial estimates.

9.1.3 Lump Sum Prices/Schedule of Values. If the Schedule of Bid Items includes Lump Sum Prices for which partial payments are to be made, Contractor shall submit to Engineer a detailed Schedule of Values in such form and supported by such data to substantiate its accuracy as Engineer may require **before submission of Contractor's first Application for Payment.** If the Engineer determines that the

Schedule of Values is reasonable and properly balanced, it will be accepted and used as the basis for measuring payment due Contractor for Bid Items covered by lump sum prices. Payment will be made based upon Engineer's confirmation of the percentage of Work completed.

- 9.1.4** Other Work. The cost of all Work shown in the Contract Documents or which a specific line item is not provided in the Schedule of Bid Items shall be allocated among the Unit Prices and Lump Sum prices most closely related to such Work and included in the total Base Bid, no additional payment will be allowed therefor.

GC – 9.2 Progress Payments

- 9.2.1** Applications for Payment. On or before the first Working Day of each calendar month, the Contractor shall submit to the Engineer a certified "Application for Payment" setting forth an itemized estimate of the Work installed during the previous month, utilizing a form approved in writing by the City. Such Application for Payment shall be notarized, if required by City, and supported by such data substantiating the Contractor's right to payment as the Engineer may require.

- 9.2.1.1** Progress Payments For Changed Work. The Contractor's Applications for Payment may include requests for payment on account of changes in the Work which have been properly authorized and approved by the City. Except as provided for herein, no other payment shall be made by the City for changes in the Work.

- 9.2.1.2** No Requests for Disputed Subcontractor Work. Applications for Payment shall not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or Material Supplier because of a dispute or other reason, or as to which an appropriate conditional or unconditional waiver and release of rights upon payment has not been provided.

- 9.2.2** City's Review of Applications for Payment. In accordance with Public Contract Code §20104.50, upon receipt of an application for payment, the Engineer shall review the application. Such review shall be for the purpose of determining that the application for payment is a proper payment request. An application for payment shall be deemed "proper" only if it is submitted on the properly completed form approved by the City, and shall be deemed improper if any of the following items are not included with the payment application.

- (1)** Duly completed and executed forms of **Conditional** Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8122 from the Contractor and all listed

Subcontractors, covering the **current** progress payment requested;

- (2) Duly completed and executed forms of **Unconditional** Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code §8122 from the Contractor and all listed Subcontractors covering the progress payment received by the Contractor for the **prior** application for payment;
- (3) Duly completed Form SBE-3C (Monthly Utilization Reports-MUR), unless instructed to report SBE/VSBE via the Port's electronic platform;
- (4) Updated Construction Schedule;
- (5) Charges and/or Receipts from Subcontractors and Material Suppliers identifying the materials, labor and equipment provided for changes in the Work for the period covered by the application for payment;
- (6) Contractor's daily logs/job reports for the period covered by Contractor's application for payment;
- (7) Record Documents and redline Drawings and Specifications updated with current Project information.

9.2.2.1 In addition to the above, payment may be withheld if Contractor is not current in its submittal of documents required by the Contract Documents, including the following:

- (1) At its sole discretion, the City reserves the right to request an executed subcontract including bonds, insurance certificates, and endorsements and all other exhibits and attachments for each item of material, labor and service for which a disbursement has been requested;
- (2) Certified Payrolls of the Contractor and all Subcontractors, of any tier, for Workers performing any portion of the Work for the Period covered by the application for payment;
- (3) Log of all licenses, permits, approvals and agreements relating to the construction of the Project;
- (4) A current union statement reflecting that the Contractor and any Subcontractor of any tier, are current in the payment of any

supplemental fringe benefits required pursuant to any collective bargaining agreement to which the Contractor or any such Subcontractor is a party to or is otherwise bound by (only if requested by City); and

- (5) Such other documentation as Engineer may reasonably require to substantiate Contractor's application for payment.

9.2.3 Improper Applications. Any Contractor application for payment determined by the Engineer not to be a proper payment request, suitable for payment, shall be returned to the Contractor by the Engineer as soon as practicable. Engineer shall endeavor to return improper payment requests within **seven (7) calendar days** after receipt. An application for payment returned to the Contractor shall be accompanied by a written explanation of the reasons the application for payment is not proper and not suitable for payment. If an application for payment is deemed improper and not suitable for payment and returned to the Contractor, no payment will be due the Contractor until **thirty (30) calendar days** after the resubmission of an undisputed, proper application for payment. Alternatively, the City may correct errors on Contractor's application for payment and otherwise process undisputed amounts for payment. Any payment made by City to Contractor in the absence of any of the required documentation in no way relieves the Contractor from providing all these documents for the current and/or any future application for payment.

9.2.4 City Disbursement of Progress Payments.

9.2.4.1 Timely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, within **thirty (30) calendar days** after the Engineer's receipt of a proper application for progress payment, there shall be paid, by City, to Contractor a sum equal to ninety-five percent (95%) of the value of the Work indicated in the application for payment as verified and approved by the Engineer, subject to reduction of retainage as provided in GC-9.3.1 herein. If an application for payment is determined not to be proper due to the failure or refusal of the Contractor to submit the required documents with the application for payment, the **thirty (30) calendar day** period hereunder for the City's timely disbursement of a progress payment shall be deemed to commence on the date that City is actually in receipt of a complete and proper application for payment.

9.2.4.2 Untimely Disbursement of Progress Payments. In accordance with Public Contract Code §20104.50, in the event that the City shall fail to make any progress payment within **thirty (30) calendar days** after receipt of an undisputed and properly submitted Application for Progress Payment,

the City shall pay the Contractor interest on the undisputed amount of such application for progress payment equal to the legal rate of interest set forth in California Code of Civil Procedure §685.010(a).

9.2.5 City's Right to Disburse Progress or Final Payments by Joint Checks. The City may, in its sole discretion issue joint checks to the Contractor and its Subcontractors and Material Suppliers in satisfaction of City's obligation to make progress payments or the Final Payment due hereunder.

9.2.6 Materials or Equipment Not Incorporated Into the Work.

9.2.6.1 Materials or Equipment Delivered and Stored at the Site. The City will make payment for materials or equipment delivered to the Site and not yet incorporated into the Work if all of the following conditions are met: i) such materials are in accordance with the Contract Documents; ii) adequate arrangements, reasonably satisfactory to the City, have been made by the Contractor to store and protect such materials or equipment at the Site; and iii) the establishment of procedures reasonably satisfactory to the City by which title to such materials or equipment will be vested in the City upon the City's payment therefor.

9.2.6.2 Materials or Equipment Stored off-Site. The City may, in its sole discretion, make payment for materials and equipment stored off-site if all the following conditions are met: i) such materials are in accordance with Contract Documents; ii) such materials are securely stored off-site properly inventoried, physically separated from the materials for other projects and clearly stenciled or otherwise marked to indicate that they are property of City; iii) the bills of sale and contracts under which such materials are being provided shall be in a form and substance satisfactory to City; iv) such materials and equipment are insured against casualty, loss and theft in manner satisfactory to the City ; v) Contractor agrees to secure such materials, free and clear of all liens and encumbrances of any nature whatsoever, upon receipt of payment from City and assumes all risk of damage to or loss of material; vi) Contractor obtains consent of surety; vii) Supplier provides a conditional release for the month payment is made and an unconditional release the following month; and viii) the aggregate amount of such disbursements for such materials shall in no event at any time exceed the actual cost incurred by Contractor for such materials, as verified by City. The Contractor acknowledges that the discretion to make, or not to make, payment for materials or equipment stored off-Site shall be exercised exclusively by the City; the City's exercise of discretion not make payment for materials or equipment delivered or stored off-Site shall not be deemed the City's default hereunder. In the event that the City shall elect to make payment for

materials or equipment stored off-Site, the costs and expenses incurred to comply with the requirements of this Subparagraph shall be borne solely and exclusively by the Contractor without adjust of the Contract Price.

9.2.7 Contractor Warranty of Payment. The Contractor warrants that upon submittal of an application for payment, all Work for which a progress payment has been previously issued and the Contractor has received payment from the City therefor shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, stop notices, security interests or encumbrances in favor of the Contractor, Subcontractor, Material Suppliers or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

9.2.8 Substantial Completion Application for Payment. Following Board's declaration of Substantial Completion of Work, the Contractor shall submit an Application for Payment at Substantial Completion. In addition to submittals required for all applications for progress payments, the Contractor shall complete the following administrative actions and submittals, all of which shall precede or coincide with this application:

- (1) Obtain and submit all documentation necessary to enable the City's full and unrestricted use of the Work or portions thereof, and access to services and utilities, and to supply any change-over information necessary to the City's occupancy, use, operation, and maintenance; and
- (2) Obtain all temporary occupancy permits and similar approvals for the use of the facilities.

GC – 9.3 Retainage/Retention and Substitution of Securities

9.3.1 Amount of Retainage. From each progress payment, five percent (5%) or, on substantially complex projects, the higher percentage approved by the Board pursuant to Public Contract Code Section 7201(b)(4), will be deducted and retained by City, and the remainder, less the amount of all previous payments, will be paid to the Contractor.

9.3.1.1 Substitution of Securities in Lieu of Retention. The Contractor shall have the right to substitute securities equivalent to the amount retained or request that the City deposit the amount retained in an interest bearing account pursuant to the procedures contained in Public Contract Code Section 22300 and subject to the requirements contained herein. Contractor must submit a written request to City within **thirty (30)**

calendar days after City's award of the Contract to permit the substitution of securities or payment to an interest bearing account; failure to do so in such time period shall be deemed a waiver of Contractor's right to request substitution of securities or deposit retention on an interest bearing account. Securities eligible for deposit, either with City or with such state federally chartered bank, or savings and loan, certificates of deposit or other securities are specified in California Government Code Section 16430. City shall be named, in any such security instruments, as the legal owner thereof, in form and content acceptable to City, and Contractor shall be the beneficial owner thereof and shall receive any interest thereon. Any such substituted security or escrowed funds shall be released and/or paid over to Contractor only upon final certification by City of Contractor's satisfactory completion of its obligations under the Contract, subject to any early release retention. No such substitution shall be accepted until such securities have been approved by City as qualifying for substitution, the value of such securities has been established to City's reasonable satisfaction as described below, and all documentation necessary for assignment of the securities to the escrow agent has been delivered in form reasonably satisfactory to the City; and no such substitution shall be accepted and no such deposit shall be made until the parties have entered into an escrow agreement for Security Deposits (see **Appendix G** in the Specification "Escrow Agreement for Security Deposits in Lieu of Retention"), with a state or federally chartered bank in the State of California as escrow agent. The substitution of securities and/or the deposit of any amount retained shall be at the expense and request of the Contractor.

- 9.3.1.2** If the parties have entered into an Escrow Agreement, and City determines pursuant to such agreement that the value of the approved securities and cash then held in escrow is insufficient to cover the entire retention required as of the date of any progress payment, then notwithstanding any contrary provision of the Contract Documents, City shall have the right to withhold from that progress payment and the next progress payment(s) owing hereunder an amount sufficient to bring the retention to the required value. In such event, City shall pay the withheld amount to the escrow agent to be held in escrow subject to the terms of the Escrow Agreement.
- 9.3.1.3** Release of Retention will be made in compliance with Public Contract Code § 7107, or the corresponding statute under any future version of the law in effect at the time of the application.

GC – 9.4 Decisions to Withhold Certification or Payment

9.4.1 Basis for Decision to Withhold. The Engineer shall decline to approve and will withhold any progress or final payment in whole or in part, to the extent reasonably necessary to protect the City. If the Engineer is unable to approve payment in the amount of the Contractor's application for payment, the Engineer will notify the Contractor of the reasons for failing to approve the payment. If the Contractor and Engineer cannot agree on a revised amount, the Engineer will promptly issue payment for the amount for which the Engineer is able to make a recommendation for payment to the City. The Engineer may refuse to make payment or, because of subsequently discovered evidence, the Engineer or the City may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the Engineer's opinion to protect the City from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in GC-3.3.2 and GC-3.18.1 or because of:

- (1)** Defective work not remedied;
- (2)** Stop notice or third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the City is provided by the Contractor;
- (3)** Failure of the Contractor to make payments properly to Subcontractors or Material Suppliers for labor, materials, services or equipment;
- (4)** Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price or that amounts previously paid did not accurately reflect the value of completed Work;
- (5)** Damage to the City or another Separate Contractor;
- (6)** Reasonable evidence that the Work will not be completed within the Contract Time;
- (7)** Persistent failure to carry out the Work in accordance with the Contract Documents;
- (8)** Liquidated Damages, if any, which accrued as of the date of the Application for Payment;
- (9)** Contractor's failure to timely submit required documentation.
- (10)** Federal or state tax liens;

(11) Civil wage and penalty assessments issued by the California Labor Commissioner; and

(12) Such other sum as the City is entitled to recover from the Contractor.

9.4.2 Withhold for Disputes. In the event of a dispute between City and Contractor, the City may withhold from payments an amount not to exceed 150% of the disputed amount. When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

9.4.3 Withhold for Stop Notice Claims.

9.4.3.1 If at any time there shall be evidence of the existence, whether or not it has been asserted, of any stop notice, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the City might become liable for the discharge of or satisfaction of the stop notice or claim, then the City shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge the stop notice or satisfy the claim and to reimburse the City for all costs and expenses in connection therewith, including attorneys' fees. Further, the City, in its sole discretion, shall have the right to discharge or satisfy the stop notice or claim all costs and expenses in connection therewith if the Contractor does not have the stop notice or claim discharged or satisfied within **ten (10) calendar days** after receiving notice to remove the stop notice or claim from City or unless some other procedure for discharge or satisfaction of the claim is agreed upon between City and Contractor. If the amounts retained are insufficient for these purposes, or if stop notice or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the City all monies that may have been paid to discharge the stop notice or satisfy the claims, including the costs, expenses, and attorneys' fees in connection therewith.

9.4.3.2 The City may, in its sole discretion, release any payments withheld due to a stop notice claim if the Contractor obtains a release bond that is: (i) issued by an admitted surety insurer acceptable to City and distinct from the Payment Bond Surety; (ii) is in form and substance satisfactory to the City; and (iii) is in an amount of not less than 125% of the amount of any stop notice claim.

GC – 9.5 Payments to Subcontractors

- 9.5.1** Payment to Subcontractors. Within **ten (10) calendar days** of Contractor's receipt of payment from City for Work performed by a Subcontractor, the Contractor shall pay all Subcontractors for and on account of Work of the Contract performed by each. The Contractor shall by appropriate agreement with each Subcontractor and Material Supplier, require each Subcontractor to make payments in a similar manner. The City will, on request, furnish to a Subcontractor or Material Supplier, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the City and City on account of portions of the Work done by each.

GC – 9.6 Payment Not Acceptance of Work

The City's issuance of payment, or partial or entire use or occupancy of the Project shall not constitute acceptance of Work not in accordance with the Contract Documents.

GC – 9.7 Substantial Completion

- 9.7.1** Contractor Request for Inspection, Preparation of Punch List I and Punch List II and Declaration of Substantial Completion: When the Contractor believes that the Work is sufficiently complete in accordance with Contract Documents so that the City can occupy or utilize the Work for its intended purpose, the Contractor shall submit to the Engineer a request for inspection of the Work and preparation of Punch List I and Punch List II of items to be completed, corrected, or submitted prior to Final Payment. Contractor's participation in scheduling of the inspection of the Work and assisting the Engineer in preparation of Punch List I and Punch List II is mandatory. Failure to include an item on either Punch List does not alter the responsibility of the Contractor to complete all Work and make all submissions in accordance with the Contract Documents.

In the event the Contractor fails or refuses to make a timely Request for Inspection and Preparation of Punch List I and II, the Engineer has the right to call for Inspection and Preparation of Punch List I and II. Contractor's participation is mandatory.

- 9.7.2** City Inspection and Punch Lists. Upon receipt of the Contractor's request for Punch List I and Punch List II, the Engineer, with participation of the Contractor will make an inspection to determine the status of the Work or designated portion thereof. If the inspection discloses any item which is not sufficiently complete in accordance with the Contract Document so that the City can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall complete or correct such item upon notification by City. In such case, the Contractor shall then submit a request for another inspection by City. The Engineer shall issue the Contractor Punch List I and Punch List II itemizing the physical work

and administrative work remaining to be completed, corrected, or submitted separately.

9.7.3 Notification of Substantial Completion. When the Engineer believes the Work or designated portion thereof is Substantially Complete, the Engineer shall recommend that the Board declare Substantial Completion and will prepare a written notification of Substantial Completion for submission to and consideration by the Board including Punch List I which shall establish the date of Substantial Completion. Warranties required by the Contract Documents shall commence when the Work, including Punch List I, is complete.

9.7.4 Payment Due. After receipt of a proper Substantial Completion Application for Payment, the City shall make payment to the Contractor for the cost of undisputed Work in place. City, however, shall be entitled to withhold for any of the grounds set forth in GC-9.4 as well as 150% of the estimated cost of the following items until Final Completion:

- (1) Punch List items;
- (2) All items necessary to obtain the final certificate of occupancy or similar sign-off;
- (3) Redline Drawings and Specifications, and Record Documents;
- (4) Disputed Work;
- (5) Any claims the City may have against the Contractor including, but not limited to, Liquidated Damages.

If the Contractor has not completed items (1) through (5) above, within the time established in City's notice of Substantial Completion, the City shall have the right to demand completion or correction of the items within a **forty-eight (48) hour** period. If the Contractor does not commence the requested Work within the 48-hour period or provide City with written notice of a legitimate reason why Contractor cannot commence the Work within the **forty-eight (48) hour** period, the City shall have the unilateral right to complete the Work and deduct the cost of completion of the Work from any money held pending Final Completion.

GC – 9.8 Partial Occupancy or Use

9.8.1 City's Rights. The Board may accept and occupy or use any completed or partially completed portion of the Work at any stage prior to completion of the entire Work. Such partial occupancy or use may commence whether or not the portion is

Substantially Complete. Such partial acceptance shall apply only to the particular area accepted, and shall not constitute acceptance of any other portion of the Work.

- 9.8.2** No Acceptance. Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

GC – 9.9 Final Completion and Final Payment

- 9.9.1** Affidavit of Final Completion and Final Payment. The Contractor shall, upon completion of the Work including Punch List I and Punch List II, and final cleaning up, submit to City a sworn Affidavit of Final Completion and certification in the form attached as **Appendix H** in the Specification and obtain the Engineer's approval of Contractor's Affidavit of Final Completion, per Milestones established in the Special Conditions. Disputed Contract Claims in stated amounts may be excluded by the Contractor from the operation of the release. Within **fourteen (14) calendar days** after the receipt of the Affidavit of Final Completion, City will inspect the Work and will either **(i)** reject the requested Affidavit of Final Completion, specifying the defective and/or uncompleted portions of the Work, or **(ii)** accept the Affidavit of Final Completion.

- 9.9.2** Rejection and Revision. If the City rejects the Affidavit of Final Completion, specifying defective and/or uncompleted portions of the Work, the Contractor shall promptly remedy the defective and/or uncompleted portions of the Work. Thereafter, the Contractor shall give City a revised Affidavit of Final Completion with a new date based on when the defective and/or uncompleted portions of the Work were corrected. The foregoing procedure shall apply successively thereafter until City accepts Contractor's Affidavit of Final Completion.

- 9.9.3** Documentation. In addition to the requirements for Final Payment set forth in the other Contract Documents, the Final Payment shall not become due until **(i)** Contractor has fully performed the Contract, including all Punch List Work; and **(ii)** Contractor has submitted Final Payment Application Request to the City.

- (1)** A full, complete and proper Final Application for Payment showing the proposed total amount due the Contractor, segregated as to Contract Schedule of Values quantities, changes in the Work, and other basis for payments; deductions made or to be made for prior payments; amounts to be retained; any Claims the Contractor intends to file at that time or a statement that no Claims will be filed; and any unsettled Claims, stating amounts;

- (2) Duly completed and executed forms of **Conditional Waiver and Release of Rights Upon Final Payment** in accordance with California Civil Code §8122 from Contractor, Subcontractors of any tier, Material Suppliers and other persons eligible to file stop notices in connection with the Work, covering the **final** payment period;
- (3) Duly completed and executed forms of **Unconditional Waiver and Release of Rights Upon Progress Payment** in accordance with California Civil Code §8122 from Contractor, Subcontractor of any tier, Material Suppliers and other persons eligible to record mechanics' liens and file stop notices in connection with the Work, covering the **previous** payment period;
- (4) Completed Port Special Endorsement forms or policy endorsement forms approved by the Port that provide evidence of any and all insurance required by the Contract Documents. Such evidence to indicate that any and all insurance required by the Contract Documents after Final Payment will remain in force without lapse and will not be cancelled or allowed to expire except as provided for therein;
- (5) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; and
- (6) Consent of surety(ies) to Final Payment.

9.9.3.1 As further condition precedent to City's obligation to make final payment, City reserves the right to request documentation of the following:

- (1) Contractor's written assurance that identified corrective work not complete and accepted will be completed by a stated date agreeable to City;
- (2) The required Record Documents and redline Drawings and Specifications (in electronic format) including, but not limited to, other Submittals;
- (3) Reasonable proof that taxes, fees and similar obligations of Contractor have been paid;
- (4) Documentation that Contractor has inspected, tested, and adjusted performance of every system or facility of the Work to ensure that

overall performance is in compliance with terms of the Contract Documents;

- (5) Reasonable proof that Contractor has discontinued and removed temporary facilities and services from the Site, along with construction tools and facilities, forms , and similar items except for Contractor's field office;
- (6) Reasonable proof that Contractor has provided instruction for the City's operating personnel on systems and equipment operational requirements;
- (7) A report on performance of completed installations after adjustment that appear unable to comply with the requirements of the Contract Documents;
- (8) The operating manuals for operating and maintaining the Work.
- (9) **Four (4) copies** of all warranties from vendors and Subcontractors, operation and maintenance manuals, instructions and related agreements, equipment certifications and similar documents, and maintenance and operating instructions, which shall include:
 - (a) Piping and wiring diagrams;
 - (b) Valve charts and schedules;
 - (c) Electrical panel schedules, complete and posted in panels;
 - (d) Lubrication charts and schedules;
 - (e) Guides for troubleshooting ;
 - (f) Pertinent diagrams of equipment with main parts designated for identification;
 - (g) Manufacturer's data and capacity data on all equipment;
 - (h) Operating and maintenance instructions for all items of equipment and all control systems;
 - (i) Manufacturer's parts list; and

(j) Testing procedures for operating tests;

(10) Reasonable proof that Contractor has provided all tools, spare parts and required extra materials(i.e., attic stock), and similar items;

(11) Proof of the final change-over of locks and keys to new locks. In addition, Contractor must advise the City's personnel of the change-over in security provisions;

(12) Written start-up testing performance reports of all systems after completion of start-up testing, and complete instruction of the City's operating and maintenance personnel; and

(13) Proof of adherence to final cleaning requirements of the Contract Documents.

9.9.4 Release of Stop Notices. If a Subcontractor or Material Supplier refuses to furnish a release or waiver required by City or files a stop notice, the Contractor shall furnish a bond satisfactory to the City to release the stop notice and indemnify the City against such stop notice and City shall enforce its right under GC-9.4.3 herein.

9.9.5 Disbursement of Final Payment. Provided that the City is then in receipt of all documents and other items in GC-9.9.3 and GC-9.9.4 herein as conditions precedent to the City's obligation to disburse Final Payment, not later than **sixty (60) calendar days** following Board's final acceptance of the Work, or such lesser time after Board's acceptance as may be authorized by Engineer in writing; the City shall disburse the Final Payment to the Contractor including release of retention. Pursuant to California Public Contract Code §7107, if there is any dispute between the City and the Contractor at the time that disbursement of the Final Payment is due, the City may withhold from disbursement of the final Payment an amount not to exceed one hundred fifty percent (150%) of the amount in dispute.

9.9.6 Contractor's Acceptance of Final Payment. Acceptance of Final Payment by the Contractor, a Subcontractor, or Material Supplier shall constitute a waiver of Claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.9.7 City's Final Payment. The making of Final Payment shall not constitute a waiver of Claims by the City arising from:

(1) Unsettled stop notices;

- (2) Faulty or defective Work appearing after Substantial Completion of the Work;
- (3) Failure of the Work to comply with the requirements of the Contract Documents;
- (4) Terms of any special warranties required by the Contract Documents; or
- (5) Any other Claim unless specifically waived by the City in writing.

ARTICLE 10 PROTECTION OF PERSONS, PROPERTY AND ENVIRONMENT

GC – 10.1 Public Convenience, Security and Safety of Persons and Property

- 10.1.1** Convenience. The Contractor shall conduct operations on the Site to minimize possible obstruction and inconvenience to public and Port traffic.
- 10.1.2** Security. The Contractor shall furnish, install and maintain, both at the construction Site and at any additional sites provided for temporary storage of construction materials and equipment, such security measures, including fencing, watchmen, as necessary to protect the Work, stored equipment, materials and tool. In addition, the Contractor shall furnish and install “No Trespassing” signs on the fencing in accordance with the requirements of Appendix V. The City shall not be required to provide protection from trespass or vandalism. The City shall not be liable to the Contractor for any loss or damage resulting from theft, vandalism, oil operations, shipping operation, railway, and harbor facilities, or from either the presence or absence of fenced enclosures or armed patrolmen or guards.
- 10.1.3** Work Site Safety. The Contractor shall have at the Work Site, as applicable, copies or suitable extracts of *Construction Safety Orders*, *Tunnel Safety Orders*, and *General Industrial Safety Order* issued by the Division of Industrial Safety of the State of California, as well as the latest edition of the “California Manual on Uniform Traffic Control Devices”. Contractor shall use or require the use of signs, lights and devices during the performance of Work on roadways in accordance with the above manuals. The Contractor shall ensure compliance with provisions of these and all other applicable safety laws, ordinances, and regulations.

The right of the City to conduct construction review or inspection of the Contractor’s performance shall in no way relieve Contractor from responsibility for safety measures in, on, or near the Site. When necessary, the City will coordinate the activities of the various Separate Contractors and entities working at the Site, and will provide information regarding Site-wide safety coordination issues that

will need to be included in the Contractor's Site specific safety and accident prevention plan.

The Contractor shall designate a safety representative for the Project who shall be responsible for the implementation and execution of the Contractor's safety plan.

GC – 10.2 Safety of Persons and Property

- 10.2.1** Contractor's Responsibility for Damage or Loss to. Contractor shall take all necessary precautions for the safety of, and shall provide all necessary protection to prevent damage, injury or loss to: workers and other persons affected by the Work; the Work and materials and equipment to be incorporated in the Work, whether in storage on site or off-site; and other property at the site and adjacent to the site. Contractor shall bear the risk of all such damage or loss.
- 10.2.2** Contractor's Remedy of Damage or Loss. The Contractor shall promptly remedy all damage or loss to any person or property referred to in this Article arising, in whole or part, from the Work, except damage or loss attributable to the acts or omission of the City; provided, however, that any insurance funds received by Owner for damage or loss insured under the property insurance required by the Contract Documents shall be used to offset Contractor's liability for such damage or loss. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under GC-3.18 herein.
- 10.2.3** Notice and Compliance with Applicable Law. The Contractor shall give notices and comply with Applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss. Contractor shall comply with all laws and regulations, including the California Labor Code and with all California Occupational Safety and Health Act ("Cal/OSHA"), Environmental Protection Agency, and South Coast Air Quality Management District regulations, concerning safety requirements and protection of workers including, but not limited to, those regulations concerning scaffolding, bracing, shoring, trench excavating and removal, and handling and disposal of hazardous waste. Contractor shall fully defend, indemnify, and hold harmless the City, its members, officers, employees, and agents, including, but not limited to, the City's Construction Manager, from any and all citations and/or memoranda assessed against the City due to regulatory violations of the Contractor or Contractor's Subcontractors.
- 10.2.4** Safeguards. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgate safety regulations, and notify owners, Tenants and users of adjacent Sites and utilities. The Contractor shall also be responsible for all measures

necessary to protect any property adjacent to the Project and improvements thereon. Any damage to adjacent property or improvements shall be promptly repaired or replaced by Contractor at its sole cost and expense within the Contract Price.

10.2.5 Excavation. As required by Section 6705 of the California Labor Code and in addition thereto, whenever Work under the Contract involves the excavation of any trench or trenches five feet or more in depth, the Contractor shall submit for acceptance by the City or by a registered civil or structural engineer employed by the City, to whom authority to accept has been delegated, in advance of excavation, a detailed plan showing the design of shoring, bracing, sloping or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If such plan varies from the shoring system standards established by the construction safety orders of the Division of Industrial Safety, the plan shall be prepared by a registered civil or structural engineer employed by the Contractor and all costs therefor shall be included in the price named in the contract for completion of the Work as set forth in the Contract Documents. Nothing in this section shall be construed to impose tort liability on the City, or any of its officers, agents, Construction Managers or employees.

10.2.6 Notice of Hazards. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care, carry on such activities under the supervision of properly qualified personnel, and shall provide City and City's On-Site Construction Manager with reasonable advance notice of such activity.

10.2.7 Loading. The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety. The Contractor shall be responsible for the protection of all existing structures and improvements, both above and underground, including both the exterior and interior finishes within the adjoining working areas, and shall provide adequate temporary removal as necessary. Any existing structures or improvements damaged during construction shall be repaired or replaced with materials, workmanship, fixtures, or equipment of the same kind, quality and size as the original, prior to damage. Any materials or equipment temporarily removed and damaged shall be re-erected or installed in a manner accepted by the City.

10.2.7.1 The Contractor shall review the structural capability of the construction and Site prior to allowing installation of temporary lifting devices or staging equipment or the temporary off-loading of materials. Contractor shall not exceed design loads without making modifications to the construction or Site to support such loads.

10.2.7.2 Modifications to the construction or Site to support temporary lifting devices, staging equipment, or loading shall be submitted to City for review and acceptance.

10.2.8 Accident Reporting. The Contractor shall immediately report all accidents and injuries to City, and shall submit on a form approved by City within 24 hours of such accident or injury setting forth essential information for investigation of the accident or injury including, but not limited to, name, address, and phone number of all injured workers and witnesses, location on the Work Site, nature of injury, medical treatment, identity of ambulance company, and hospital.

10.2.9 Adjoining Property. Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences, and covered walkways required to protect the safety of passersby, as required by prudent construction practices, local building codes, ordinances, or other laws and the Contract Documents.

10.2.10 Public Safety. In conjunction with GC-10.2 and applicable sections of the California State Department of Labor Relations Administration, Division of Occupational Safety and Health (Cal/OSHA), the Contractor shall take all precautions necessary to protect all workers engaged in the performance of the Work, provide safe passage to and from adjacent areas that may be affected by the Work and protect the public from hazardous conditions. Precautionary measures include the following:

- (1) Conduct demolition operations and remove debris to ensure minimum interference with roads, streets, walks, and other adjacent occupied and used facilities.
- (2) Do not close or obstruct streets, sidewalks, public ways, access routes, or other adjacent occupied or used facilities without permission from City and authorities having jurisdiction. When routes are permitted to be closed, provide alternate routes around closed or obstructed traffic ways if required by governing regulations.
- (3) Conduct demolition operations to prevent injury to people and damage to adjacent buildings and facilities that remain. Ensure safe passage of people around selective demolition area.
- (4) Provide, erect, and maintain sidewalk barriers, barricades, canopies, covers, safety sets, lighting, signage, detours, and guard rails as required to protect general public, workers, and adjoining property.

Full compensation for the Work involved in carrying out the precautionary measures specified above shall be considered as included in the price bid for the Work and no additional allowance will be made therefor.

The Contractor shall be familiar at all times with the conditions on Site and shall provide adequate safeguards to prevent damage to existing structures and improvements that are to remain prior to actual demolition and removal Work.

GC – 10.3 Hazardous Materials

10.3.1 Notice to City. In the event the Contractor encounters on the Site materials that it reasonably believes to be “hazardous materials” as that term is defined by federal and state law, which have not been identified in the Contract Documents, the Contractor shall immediately stop Work in the area affected and report the condition to the City in writing. The Work in the affected area shall not thereafter be resumed until a suitable testing agency certifies the material as non-hazardous or the material is removed or rendered harmless as certified by a suitable testing agency.

10.3.2 Material Safety Data Sheets and Compliance with Proposition 65.

10.3.2.1 Contractor is required to ensure that material safety data sheets are available in a readily accessible place at the Site, or any material requiring a material safety data sheet per the federal “hazard communication” standard, or employees’ right-to-know law. The Contractor is also required to ensure proper labeling on any substance brought into the Site, and that any person working with the material, or within the general area of the material, is informed of the hazards of the substance and follows proper handling and protection procedures.

10.3.2.2 Contractor is required to comply with the provisions of California Health and Safety Code §25249, *et seq.*, which requires the posting and giving of notice to persons who may be exposed to any chemical known to the State of California to cause cancer. The Contractor agrees to familiarize itself with the provisions of this section, and to comply fully with its requirements.

GC – 10.4 Contractor Materials

The City shall not be responsible for materials and substances brought to the Site by the Contractor unless such materials or substances were required by the Contract Documents.

GC – 10.5 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in GC-4.3 and Article 7.

GC – 10.6 Environmental Protection

10.6.1 General Environmental Protection Requirements. Contractor shall at all times provide and maintain environmental protective measures to control pollution that develops during normal construction practice. Contractor shall comply with Federal, State, and local regulations pertaining to the environment, including but not limited to water, air, waste, hazardous materials and noise.

10.6.2 Preservation of Natural Resources. Contractor shall preserve the natural resources within the Site and vicinities unless otherwise provided in the Contract Documents.

10.6.3 Spill Prevention. Contractor shall prevent oil or other hazardous substances from entering the ground, drainage areas, drainage system or harbor. All temporary petroleum storage tanks, paint and chemical storage or transformers shall be maintained within impervious containment structures of sufficient size and strength to contain the contents of the tanks and containers in the event of leakage or spillage.

10.6.4 Storm Water Pollution Prevention Permit and Plan—see Special Conditions

10.6.5 Equipment and Motor Vehicles. Contractor shall conduct the fueling and maintenance of the equipment and motor vehicles at off-site fueling and maintenance facilities whenever possible. If on-Site fueling or maintenance of equipment and motor vehicles is required, such activities and their on-Site location must be accepted by the Engineer and addressed in the SWPPP. Contractor shall conduct fueling and lubricating of equipment and motor vehicles to prevent spills and evaporation in accordance with all applicable Federal, State and local regulations and shall dispose of lubricants and all excess oil in accordance with all applicable Federal, State and local regulation.

10.6.6 Dust Control. Contractor shall prevent the generation of airborne dust particles per South Coast Air Quality Management District Rule 403 – Fugitive Dust. Contractor shall keep dust down at all times, including during non-working periods and during work performed by third parties. Only potable water can be used. Recycled or reclaimed water shall not be used. Contractor shall sprinkle with water all demolition debris, soil at the site, haul roads, and other areas disturbed by operations. Contractor shall prevent track-out of bulk material onto public or

paved roadways and remove such material anytime track-out occurs. Contractor shall remove all visible roadway dust tracked-out upon public paved roadways at the conclusion of each work day. Refer to Appendix R for Rule 403.

- 10.6.7** Hazardous Waste. Contractor shall handle and dispose of generated hazardous waste in accordance with all applicable Federal, State and local regulations.
- 10.6.8** Control and Disposal of Solid Wastes. Contractor shall keep all Work areas clean at all times and shall pick up solid wastes, rubbish, debris and garbage and place in containers, which are regularly emptied off site. Contractor shall prevent contamination of the site or other areas when handling and disposing of wastes.
- 10.6.9** Unknown Soils Conditions and Materials. If during construction activities, unknown soil conditions or materials are discovered, the Contractor shall immediately notify the Engineer. The Contractor shall cease all activities that may result in disturbance or migration of the material and prevent employees and others from coming into contact with the material. The Contractor shall proceed per Part 3 – Execution of SECTION 31 00 00 “EARTHWORK” in the Technical Specifications. If the material encountered is believed to be hazardous, the Contractor shall follow the process described in GC-10.3.1.
- 10.6.10** Historical, Archeological and Cultural Resources. If during construction activities, items are observed that may have historic or archeological value, human remains or associated objects discovered, such observations shall be reported immediately to the Engineer so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. Contractor shall cease all activities that may result in impact to or the destruction of these resources. Contractor shall prevent its employees from removing, or otherwise disturbing such resources. Contractor shall prevent any disturbance of these resources pending further instruction from City.
- 10.6.11** Noise Control. Contractor shall comply with the City of Long Beach Municipal Code for noise reduction.
- 10.6.12** Equipment Power. Whenever feasible, the Contractor shall use electrical power instead of gas or diesel power and/or gas-powered vehicles instead of diesel-powered vehicles.
- 10.6.13** Waste Recycling Ordinance. Contractor shall comply with the City of Long Beach Municipal Code for waste recycling as outlined in Appendix Q.

ARTICLE 11 INSURANCE AND BONDS

GC – 11.1 Liability and Property Insurance

Insurance requirements and forms of evidence are described in the Special Conditions.

GC – 11.2 Performance Bond and Payment Bond

11.2.1 Bond Requirements.

11.2.1.1 Contractor shall furnish a Performance Bond and a Payment Bond, on the forms provided by City. The Performance Bond shall be furnished as a guarantee of the faithful performance of the requirements of the Contract Documents as they may be amended from time to time including, but not limited to, liability for delays, including Liquidated Damages, all warranties and guarantees and indemnity obligations and shall remain equal to one hundred percent (100%) of the Contract Price. The Payment Bond shall secure payment of all claims, demands, stop notices, mechanics liens, or charges of Material Suppliers, mechanics, or laborers employed by the Contractor or by any Subcontractor or any person, firm, or entity eligible to file a stop notice with respect to the Work and shall remain equal to 100% of the Contract Price. In the event of changes in the Work, which increase the Contract Price, the amount of each bond shall increase and at all times remain equal to the Contract Price.

If a change order results in an increase in the Contract Price of an amount greater than \$50,000, then Contractor shall provide bond riders, immediately following the issuance of the change order, evidencing that the penal sum of the bonds have been increased to equal the total adjusted Contract Price. The costs of such increase in bond coverage shall be at Contractor's expense and included in said change orders pursuant to Article GC-7.4.1(3)(d). Any failure by Contractor or its surety to provide said bond riders shall not excuse, diminish, relinquish or waive the requirement that the penal sum of the bonds be increased in accordance with the adjusted Contract Price. Further, nothing contained herein shall be deemed to impose any obligation or requirement whatsoever on City to specifically request and/or obtain said bond riders from Contractor and its surety in order to enforce any rights against the increased penal sum of the bonds.

11.2.1.2 Every bond must display the surety's bond number and incorporate the Contract or construction of the Work by reference. The terms of the bonds shall provide that the surety agrees that no change, extension of

time, alteration, or modification of the Contract Documents or the Work to be performed thereunder shall in any way affect its obligations and shall waive notice of any such change, extension of time, alteration, or modification of the Contract Documents.

11.2.1.3 All bonds shall be issued by a California admitted surety insurer with the minimum Best's Insurance Guide rating established in the Special Conditions, or better. Bonds issued by a California admitted surety listed on Treasury Circular 570 shall be deemed accepted unless specifically rejected by the City. Bonds issued by admitted surety insurers not listed in Treasury Circular 570 must be accompanied by all documents enumerated in California Code of Civil Procedure Section 995.660. All such bonds shall be accompanied by a power of attorney from the surety company authorizing the person executing the bond to sign on behalf of the company. The signature of the person executing the bond shall be acknowledged by a Notary Public as the signature of the person designated in the power of attorney.

11.2.1.4 The terms of the bonds shall further provide that the surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the City.

11.2.1.5 Should any Bond become insufficient, or should any of the sureties, in the opinion of the City, become non-responsible or acceptable, the Contractor shall replace to the satisfaction of City within ten (10) calendar days after note, of the insufficiency, that Contractor has secured new or additional sureties for the bonds, otherwise the Contractor shall be in default of the Contract.

11.2.2 Beneficiaries. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

GC – 12.1 Uncovering of Work

12.1.1 Specific Request. The Engineer will make a specific request if a portion of the Work is covered contrary to the City's request or to requirements specifically expressed in the Contract Documents. Such Work must, if required in writing by the City, be uncovered for City examination and be replaced at the Contractor's expense within the Contract Price and without change in the Contract Time.

- 12.1.2** No Specific Request. Should it be considered necessary or advisable by the Engineer, at any time before the Board's final acceptance of the Work, to make an examination of Work already completed, by removal or tearing out a part or portion of the same, the Contractor shall, on request of the Engineer, promptly furnish all equipment, labor, and material necessary to accomplish such removal. If Work uncovered is found to be defective in any material respect due to the fault of the Contractor or Subcontractors, the Contractor shall pay all expenses of such examination and of satisfactory reconstruction. If such Work is found to meet the requirements of the Contract, the actual cost of labor, materials and supplies necessarily involved in the examination and replacement, plus fifteen percent (15%), shall be allowed the Contractor, and if completion of the Work has been delayed, thereby be granted a suitable extension of time on account of uncovering and replacement of such Work.

GC – 12.2 Correction of Work

- 12.2.1** Before or After Final Completion. The Contractor shall promptly correct Work rejected by the City, as failing to conform to the requirements of the Contract Documents, whether discovered before or after Final Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, inspections, and compensation for the City's services and expenses made necessary thereby, shall be at the Contractor's expense within the Contract Price.

12.2.2 After Final Completion.

12.2.2.1 In addition to the Contractor's warranty obligations under GC-3.5, if, within **one (1) year** after the start of warranty per GC-9.7.3, or within the time period established by any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall commence correction or replacement of such Work within **forty-eight (48) hours** after receipt of written notice from the City to do so. Such corrective work shall be performed without charge or cost to City after Final Completion of the Work. The City shall give such notice promptly after discovery of the condition.

12.2.2.2 If Contractor fails to commence correction or replacement of non-conforming Work within **forty-eight (48) hours** after receipt of written notice, City will proceed to have defects repaired or replaced at the expense of Contractor and its Performance Bond surety, plus fifteen percent (15%) for City's overhead and administrative expenses. City may charge such cost against any payment due Contractor. If in the opinion of the City, defective work creates a dangerous or hazardous condition or

requires immediate correction or attention to prevent further loss to the City or to prevent interruption of operations of the City, the City may take immediate action, give notice, make such correction, or provide such attention and the cost of such correction or attention shall be charged against the Contractor. Such action by the City will not relieve the Contractor of the warranties provided in this Article or elsewhere in the Contract Documents.

12.2.3 Not Used.

12.2.4 Replacement or Removal of Defective or Unauthorized Work. The Contractor shall remove from the Site and replace those portions of the Work which are not in accordance with the requirements of the Contract Documents in a manner acceptable to and as ordered by the Engineer. No compensation shall be allowed for such removal or replacement. Engineer shall have authority to cause defective work to be remedied, removed or replaced and to deduct the costs from monies due or to be due to the Contractor.

12.2.5 Destruction or Damage. The Contractor shall bear the cost within the Contract Price of correcting destroyed or damaged construction, whether completed or partially completed, of the City or Separate Contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 No Limitation. Nothing contained in GC-12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one (1) year period for correction of Work as described in GC-12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

GC – 12.3 Acceptance of Nonconforming Work

If the City prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the City may do so instead of requiring its removal and correction. In such case, the Contract Price will be reduced by an amount equal to the cost of replacing the Work to make it as originally specified or intended. Such adjustment shall be effected whether or not Final Payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

GC – 13.1 Governing Law

The Contract shall be deemed to be entered into the City of Long Beach, California and shall be governed by and construed in accordance with the laws of the State of California without regard to choice of law principles thereof.

GC – 13.2 Successors and Assigns

The City and Contractor respectively bind themselves, their successors, assigns and legal representative to the other Party hereto and to the successors, assigns and legal representative of such other Party in respect to covenants, agreements, and obligations contained in the Contract Documents.

The Contractor shall not assign the Contract or subcontract the Work without consent of City. Contractor shall not assign any monies due or to become due to Contractor hereunder, without the express prior written consent and acceptance of City. Any attempted assignment or subcontract in violation of this provision shall be void and shall entitle City to terminate Contractor's performance of the Work.

The Parties expressly agree that City may freely assign its rights hereunder, to any successor or substituted governmental authority, without the consent of Contractor.

Any assignment of money shall be subject to all proper set-offs and withholdings in favor of the City and to all deductions provided for in the Contract Documents. All monies withheld, whether assigned or not, shall be subject to use by the City for completion of the Work should the Contractor be in default.

Contractor may sublet portions of the Work only to Subcontractors as provided in Article 5 herein.

GC – 13.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person, or by US Mail, Courier service, or package delivery service (such as UPS or FedEx, etc.) to the individuals identified for receipt of notice in the Agreement.

GC – 13.4 Rights and Remedies

13.4.1 Cumulative Rights. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a

limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

13.4.2 No Waiver. No action or failure to act by the City shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in the Contract Documents or as may be otherwise agreed in writing.

13.4.3 No Exoneration of Surety. City's exercise of rights and remedies under the Contract including, but not limited to, rights exercised pursuant to Article 2, and Article 12 herein, shall not release City's rights against the Contractor's surety(ies) and shall not exonerate, abrogate, relieve, or in any way discharge any duties or obligations of the surety(ies) to the City or any other obligees on the Performance Bond and Payment Bond provided by Contractor.

GC – 13.5 Maintenance, Inspection, and Audit of Records

All books, account, reports, files, correspondence, data and other records relating to this contract shall be maintained by the Contractor, its subcontractors and material suppliers and shall be subject to all reasonable times to review, inspection, and audit by the City of its designated Construction Managers at all times during performance of the Work and for a period of five (5) years after Final Completion of the Work. Such records shall be produced by the Contractor and/or the subcontractor or Material Supplier within a reasonable time at a place designated by the City, upon written notice to the Contractor.

13.5.1 Accounting System. Contractor shall exercise such controls as may be necessary for proper financial management of the Work. Such accounting and control systems shall comply with prevailing custom and practice for similar projects, be satisfactory to City and shall include preservation of records for a period of four (4) years after Final Completion, or for such longer period as may be required by Applicable Law.

13.5.2 Books and Records. Contractor shall keep, and shall require provisions to be included in all contracts entered into by subcontractors requiring the subcontractors to keep, full and detailed books, records, information, materials and data, of every kind and character (hard copy, as well as computer readable data if it exists), that have any bearing on or pertain to any matters, rights, duties or obligations relating to the Project, Work or Contract, including, without limitation, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, change orders, change order requests, estimates, field orders, schedules, diaries, logs, reports, shop drawings, samples, exemplars, drawings, specifications, invoices, delivery tickets, receipts, vouchers, canceled checks, memoranda; accounting records; job cost reports; job cost files (including

complete documentation of negotiated settlements); backcharges; general ledgers; documentation of cash and trade discounts earned; insurance rebates and dividends and other documents relating in any way to any claims, charges or time extensions asserted by Contractor of any of the subcontractors.

13.5.3 Inspection and Copying. Contractor shall allow, and shall require provisions to be included in all contracts entered into by subcontractors allowing, City and its authorized representative(s), auditors, attorneys and accountants, upon twenty-four (24) hour notice to Contractor, full access to inspect and copy all its aforestated books and records at a location within the Southern California area.

13.5.4 Noncompliance by Contractor. Contractor's compliance with this General Condition 13.5 shall be a condition precedent to maintenance of any judicial or extra-judicial action by Contractor against City. In addition to and without limitation upon City's other rights and remedies for breach, including any other provisions for withholding set forth in the Contract documents, City shall have the right, exercised in its sole discretion, to withhold from any payment to Contractor due under a current application for payment an additional sum of up to ten percent (10%) of the total amount set forth in such application for payment, until Contractor and the subcontractors have complied with any outstanding and unsatisfied request by City under this General Condition 13.5. Upon compliance with this General Condition 13.5, any such monies withheld shall be released to Contractor.

13.5.5 Special Enforcement by City. Contractor agrees that any failure by Contractor or any subcontractor to provide access to books and records as required by this General Condition 13.5 shall be specifically enforceable, by issuance of a preliminary and/or permanent mandatory injunction by a court of competent jurisdiction based on affidavits submitted to such court and without the necessity of oral testimony, to compel Contractor to permit access, inspection, audit and/or reproduction of such books and records or the require delivery of such books and records to City for inspection, audit and/or reproduction.

GC – 13.6 Keys and Access

If the City furnishes keys and/or access cards to the Contractor to provide access to City's property, the Contractor shall assure that such access instruments are not duplicated and shall return all such instruments in good condition upon request of the City or prior to receipt of final payment, whichever is earlier. If the Contractor fails to return all access instruments furnished to it, the Contractor shall be responsible, within the Contract Price, for all Work, materials, and costs associated with reestablishing secured access.

GC – 13.7 Survival of Terms

Any indemnity, warranty or guarantee given by Contractor to City under the Contract Documents shall survive the expiration or termination of the Contract Documents and shall be binding upon Contractor until any action thereunder is barred according to terms in the Contract Documents or by the applicable statute of limitations or statute of repose.

GC – 13.8 Nondiscrimination and Fair Employment Practices

In the performance of this contract, the Contractor shall not discriminate against any employee, or applicant for employment, because of age, sex, religion, race, color, ancestry, national origin, a disability or handicap, disabled veteran status, sexual preference, AIDS, or HIV status. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their age, sex, religion, race, color, ancestry, national origin, a disability or handicap, disabled veteran status, sexual preference, AIDS, or HIV status. Such action shall include, but not be limited to, the following: employment, promotion, 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 shall post, in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of the “Fair Employment Practices” paragraph.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

GC – 14.1 Termination by the City for Cause

14.1.1 Grounds. The City may terminate the Contractor’s performance of the Contract for cause if;

- (1)** Contractor fails promptly to commence the Work as required by the Contract Documents, or unnecessarily or unreasonably delays the Work; or
- (2)** Contractor refuses or fails to supply enough properly skilled workers or proper quantity or quality of materials; or
- (3)** Contractor fails to perform the Work in strict accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work; or
- (4)** Contractor improperly discontinues the prosecution of the Work or abandons the Work; or

- (5) Contractor fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from City to do so or (if applicable) after cessation of the event preventing performance; or
- (6) Any representation or warranty made by Contractor in the Contract Documents or any certificate, schedule, instrument, or other document delivered by Contractor pursuant to the Contract Documents shall have been false or materially misleading when made; or
- (7) Contractor fails to make payment to Subcontractors for materials or labor in accordance with the respective Contract Documents and Applicable Law; or
- (8) The Contract is assigned or the work is sublet otherwise than as specified in the Contract Document; or
- (9) Contractor disregards Applicable Law ; or
- (10) Contractor otherwise is guilty of breach of a provision of the Contract Documents; or
- (11) The occurrence of a Force Majeure event as defined in GC-8.2.3.

14.1.2 City's Rights. When any of the reasons specified in GC-14.1.1 exist, the City may, in addition to and without prejudice to any other rights or remedies of the City, notify the Contractor not to resume or to discontinue all Work, or any part thereof, by written notice of default. The City will advise the Performance Bond surety of the notice of default and that they will be given **fifteen (15) calendar days** to arrange for completion of the Work in accordance with the Contract Documents by another contractor or contractors satisfactory to the Chief Executive Officer. Should the surety fail to effect satisfactory arrangements within said **15-day** period, the City shall have the right to issue a notice of termination and to:

- (1) Exclude the Contractor from the Site;
- (2) Take possession of the Site and of all the materials, equipment, tools and construction equipment, and machinery thereon owned by Contractor;
- (3) Suspend any further payments to Contractor;

- (4) Accept assignment of subcontracts pursuant to GC-5.3; and
- (5) Finish the Work by whatever reasonable method the City may deem expedient.

14.1.3 City's Cost to Complete. The City shall charge the cost to complete the Work, including but not limited to, protection, investigation, labor, services, equipment, materials, permits, fees supervisory and administrative costs to the Contractor and its Performance Bond Surety. If City's costs to complete the Work and damages incurred by City due to Contractor's default exceed the unpaid Contract balance, the Contractor and/or its Performance Bond surety shall pay the difference to the City.

14.1.4 Erroneous Termination. If it has been adjudicated or otherwise determined that City has erroneously or negligently terminated the Contractor for cause, then said termination shall automatically convert to a termination by the City for convenience as set forth in GC-14.3.

14.1.5 Acceptance of Incomplete or Non-Conforming Work. In lieu of the provisions of this Paragraph for terminating the Contractor and completing the Work for proper cause, City may pay the Contractor for the parts already done according to the provisions of the Contract Documents and may treat the parts remaining undone as if they had never been included or contemplated by this Contract. No Claim under this provision will be allowed the Contractor for prospective profits on Work not completed by the Contractor.

14.1.6 Adequate Financial Assurances. It is recognized that if Contractor is adjudged a bankrupt or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of Contractor's insolvency, this could impair or frustrate Contractor's performance of the Work. Accordingly, it is agreed that upon the occurrence of any such event, City shall be entitled to request of Contractor, or its successors in interest, adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within **five (5) calendar days** of delivery of the request shall entitle City to terminate the Contract and to the accompanying rights set forth above. Pending receipt of adequate occurrence of performance and actual performance in accordance therewith, City shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be back charged against the Contract Price.

GC – 14.2 Suspension by the City

14.2.1 Suspension For Convenience

14.2.1.1 The City may, without cause, order the 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.

14.2.1.2 Contractor shall promptly recommence the Work upon written notice from City directing Contractor to resume the Work. The Contract Price and Contract Time shall be adjusted for any increases in the cost and time caused by suspension, delay, or interruption provided Contractor complies with the Change Order and Claims proceedings set forth the Articles 4 and 7 of these General Conditions. 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 the Contractor is responsible or would be considered an Excusable Non-compensable Delay under GC-8.2.3; or
- (2) That an equitable adjustment is made or denied under another provision of the Contract.

14.4.2 Suspensions for Cause. City has the authority by written order to suspend the Work without liability to City wholly or in part for Contractor's failure to:

- (1) Correct conditions unsafe for the Project personnel or general public; or
- (2) Carry out the Contract; or
- (3) Carry out orders of City.

14.2.3 Responsibilities of Contractor During Suspension Periods. During periods that Work is suspended Contractor shall continue to be responsible for the Work and shall prevent damage or injury to the Project, provide for drainage, and shall erect necessary temporary structures, signs or other facilities required to maintain the Project and public safety and continue to perform according the Article 10 of these General Conditions.

GC – 14.3 Termination by the City for Convenience

14.3.1 Grounds. Without limiting any rights which City may have by reason of any default by Contractor hereunder, City may terminate Contractor's performance of the Contract in whole or in part, at any time, for convenience and without cause upon written notice to Contractor. Such termination shall be effective as of the date stated in the written notice, which shall be no less than **fifteen (15) calendar days**

from the date of the notice.

14.3.2 Contractor Actions. Immediately upon receipt of such notice, Contractor shall: (i) cease performance of the Work to the extent specified in the notice; (ii) cooperate with City to secure the site and demobilize in a safe and orderly fashion; (iii) take actions necessary or that the City may direct, for the protection and preservation of the Work; (iv) settle outstanding liabilities, as directed by City; (v) transfer title and deliver to City Work in progress, specialized equipment necessary to perform the Work; (vi) transfer current Record Documents including redline Drawings and Specifications; and, (vii) except for Work directed by City to be performed, incur no further costs or expenses. At the option of the City, all or any of the subcontracts entered into by Contractor prior to the date of termination shall be terminated or shall be assigned to City.

14.3.3 Compensation. If the Parties are unable to agree on the amount of a termination settlement, the City shall pay and the Contractor shall accept as full and complete compensation the following amounts:

- (1) The actual cost of completed items of Work determined by the Engineer.
- (2) The reasonable costs of demobilization for a period of **thirty (30) days** following the date of issuance of the Termination Notice.

In no event shall Contractor be entitled to recover any costs, overhead or profit for Work not performed prior to the Termination Notice.

GC – 14.4 Termination by the City Due to Force Majeure Events

14.4.1 Grounds. The City may terminate the Contractor's performance of the Contract if a Force Majeure event, as defined in GC-8.2.3 occurs.

14.4.2 City's Rights. When any of the Force Majeure events specified in GC-8.2.3 exist, the City may, in addition to and without prejudice to any other rights or remedies of the City, notify the Contractor not to resume or to discontinue all Work, or any part thereof, by written notice. Such termination shall be effective as of the date stated in the written notice, which shall be no less than fifteen (15) calendar days from the date of the notice.

14.4.3 Contractor Actions. Immediately upon receipt of such notice, Contractor shall: (i) cease performance of the Work to the extent specified in the notice; (ii) cooperate with the City to secure the Site for use by the City and demobilize in a safe and orderly fashion; (iii) take actions necessary or that the City may direct, for the protection and preservation of the Work; (iv) settle outstanding liabilities, as

directed by the City; (v) transfer title and deliver to City any Work in progress and any materials or equipment to be incorporated into the Work; (vi) submit current Record Documents including redline Drawings and Specifications; and, (vii) except for Work directed by City to be performed, incur no further costs or expenses.

14.4.4 Compensation. For any termination due to Force Majeure events, the Contractor shall accept as full and complete compensation the following amounts:

- (1) The actual cost of completed items of Work determined by the Engineer.
- (2) The reasonable costs of demobilization for a period of thirty (30) days following the date of issuance of the termination notice.
- (3) Contractor only be entitled to recover overhead and profit for work performed prior to the termination notice, and all costs incurred by the Contractor for any specialized equipment transferred to the City to perform the Work.

Except as provided in GC-14.4.4, there shall be no other costs chargeable to the City by reason of the termination.

ARTICLE 15 LABOR COMPLIANCE AND PROJECT LABOR AGREEMENT REQUIREMENTS

GC – 15.1 Determination of Prevailing Wage Rate

City has obtained from the Director of the Department of Industrial Relations (DIR) pursuant to the Labor Code determinations of the general prevailing rates of per diem wages and the prevailing rate for holiday and overtime work in the locality in which the Work is to be performed. Copies of these determinations are available on the Internet at www.dir.ca.gov/dlsr/DPreWageDetermination.htm, and on file at the City, available upon request. The wage rate for any classification not listed, but which may be required to execute the Work, shall be commensurate and in accord with specified rates for classifications for those performing similar or comparable duties. Holidays shall be as defined in the collective bargaining agreement applicable to each particular craft, classification or type of worker employed under the Contract. Per diem wages include employer payments for health and welfare, pensions, vacation, travel time and subsistence pay, apprenticeship or other training programs authorized by California Labor Code §3093, and similar purposes when the term “per diem wages” is used herein. Holiday and overtime work, when permitted by law, shall be paid for at the rate of at least one and one-half (1 ½) times the above specified rate of per diem wages, unless otherwise specified. In accordance with Section 1773.2 of the California Labor Code, the Contractor shall post a schedule showing all applicable prevailing wage rates at appropriate and conspicuous locations on the job site where they can easily be seen by workers.

GC – 15.2 Payment of Prevailing Wage Rates

- 15.2.1 Statutory Requirements.** The Project is subject to the provisions of Labor Code §§1720 *et.seq.* and the requirements of Title 8 of the California Code of Regulations §§16000 *et.seq.*, which govern the payment of prevailing wage rates on public works projects. The Contractor and Subcontractors of any tier shall be governed by and required to comply with these statutes and regulations in connection with the Project. Pursuant to Labor Code §1771, the Contractor and all Subcontractors of any tier shall pay not less than the prevailing wage rates to all workers employed in execution of the Contract. Contractor and Subcontractors shall comply with applicable statutes and regulations, including but not limited to Labor Code §§ 1771, 1775, 1777.5, 1813 and 1815.
- 15.2.2 Weekly Payments to Employees.** Contractor and all Subcontractors of any tier shall pay each worker on the Project, unconditionally and not less often than once each week, the full amounts that are due and payable for the period covered by the particular payday in accordance with the prevailing wage scale determination, regardless of any contractual relationship which may be alleged to exist between the Contractor, Subcontractor and such laborers. Thus, an employer must establish a fixed workweek and an established payday. On each payday, each worker must receive all sums due at the end of the preceding workweek and must be provided with an itemized wage statement.
- 15.2.3 Classifications.** City shall require that any class of laborers or mechanics, including apprentices, which is not listed in the General Wage Determinations and which is to be employed under this Contract, shall be classified conformably to such wage determinations. In the event the City does not concur in the Contractor's proposed classification or reclassification of a particular class of laborers and mechanics (including apprentices to be used, the question, accompanied by the recommendation of the Engineer, shall be referred to the State Director of Industrial Relations for determination.
- 15.2.4 Fringe Benefits and Cash Equivalent.** City shall require, whenever the minimum wage rate prescribed for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent thereof must be established . In the event the interested parties cannot agree upon cash equivalent of the fringe benefit, the questions, accompanied by the recommendation of the Engineer, shall be referred to the State Director of Industrial Relations for determination.

GC – 15.3 Penalty for Prevailing Wage Rate Underpayment

Pursuant to Labor Code § 1775, the Contractor shall, as a penalty, forfeit not more than Two Hundred Dollars (\$200.00) to the City for each calendar day or portion

thereof, for each worker paid less than prevailing wage rates as determined by the Director of the Department of Industrial Relations for such work or craft in which such worker is employed for the Work by the Contractor or by any Subcontractor, of any tier, in connection with the Work. The difference between prevailing wage rates and the amount paid to each worker each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, shall be paid to each worker by the Contractor.

GC – 15.4 Withholding

On the basis of its own investigation or upon receipt of a civil wage and penalty assessment or other written request of the Department of Labor or Department of Industrial Relations, the City shall withhold from payments to Contractor amounts necessary to pay workers the full amount of prevailing wages required by the Contract, in addition to any penalty amounts approved by the Labor Commissioner. In the event of Contractor's failure to pay worker all or part of the wages required by the Contract, the City may, after written notice to the Contractor, take such action as may be necessary to suspend further payment to Contractor until such violations have ceased.

GC – 15.5 Payroll Records

Certified Payroll Records and Basic Payroll Records. The Contractor and Subcontractors of any tier shall maintain Certified Payroll Records and "Basic Payroll Records", defined as time cards, front and back copies of canceled checks, cash receipts, trust fund forms, daily logs, employee sign-in sheets, accounting ledgers, tax forms and/or any other record maintained for the purposes of reporting payroll, during the course of the Work and shall preserve them for a period of **three (3) years** after completion of the Project for all tradesworkers executing the Work of the Contract. Certified Payroll Records must be submitted at the times designated in GC-15.6 or upon request as described in GC-15.7. Basic Payroll Records may be requested by the City at any time and shall be provided within **ten (10) calendar days** following the receipt of the request.

GC – 15.6 Submittal of Certified Payroll Records

Pursuant to Labor Code § 1776, the Contractor and each Subcontractor of any tier shall maintain accurate payroll records showing the employees' full name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each person employed for the Work. In addition to the required information, certified payroll records should also include the gross/net wages paid for this Project/all projects, as well as the Contractor name and address, Project name and location, and dates of payroll. If payments are made to any third party trust, funds or plans for health and welfare, pension or vacation trust, those payments must be stated on the

Certified Payroll Record. The basic wage rate paid per hour plus the employer contributions for benefits, including training fund contributions, must at least equal the prevailing wage rate for that classification.

City reserves the right to require Contractor to submit to the City each week, no later than seven (7) calendar days after the payday for the week covered by the Certified Payroll Records of Contractor and its Subcontractors of every tier. If there is no Work performed by the Contractor or Subcontractor on a given week or on a given day, the Certified Payroll Record must indicate "No Work" for that week or day(s). The Certified Payroll Records must account for each day of the week including Saturdays, Sundays and holidays. Contractor and Subcontractor of every tier must write "final" on the last submitted Certified Payroll Record for the Project. Certified Payroll Records submitted to the City shall not be marked or obliterated in such a manner as to prevent disclosure of all the information required pursuant to Labor Code § 1776.

The Certified Payroll Records shall be verified by a written declaration made by a person with authority to represent the reporting entity, under penalty of perjury, that the information contained in the payroll record is true and correct and that the reporting entity has complied with the requirements of California Labor Code §§ 1771, 1811 and 1815 for any Work performed by its employees on the Project.

Contractor agrees that submission of Certified Payroll Records as well as all related or subsequent requests for supporting document made by City shall be a condition precedent to Contractor's receipt of a progress, final, or retention payment. The City shall withhold any portion of the progress, final, or retention payment up to and including the entire payment until the Certified Payroll Records requirement is met by the Contractor or its Subcontractors. If the Contractor or any Subcontractor is determined to have failed to pay workers in compliance with the applicable prevailing wage sections of the Labor Code, the City shall continue to withhold progress, final, retention payments until sufficient funds have been withheld for payment of wages to workers and all applicable penalties.

GC – 15.7 Making Certified Payroll Records Available Upon Request

Pursuant to Labor Code § 1776, in addition to its obligation to deliver certified payroll records to the City on a weekly basis as set forth above, the Contractor shall also make payroll records available for inspection at all reasonable hours at the principal office of the Contractor on the following basis: (i) a certified copy of an employee's payroll record shall be made available for inspection or furnished to such employee or his/her/their authorized representative on request; (ii) a certified copy of all payroll records shall be made available for inspection or furnished upon request to the City, the Division of Labor Standards Enforcement

and the Division of Apprenticeship Standards of the Department of Industrial Relations; (iii) a certified copy of 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 either the City, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been previously provided to the City, the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, the requesting party shall, prior to being provided the records, reimburse the cost of preparation by the Contractor, Subcontractors and the entity through which the request was made; the public shall not be given access to such records at the principal office of the Contractor; (iv) the Contractor shall file a certified copy of the payroll records with the entity that requested such records within **ten (10) calendar days** after receipt of written request; (v) any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the City or the Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address and social security number. The name and address of the Contractor or any Subcontractor, of any tier, performing a part of the Work shall not be marked or obliterated. Any copy of records made available for inspection by, or furnished to, a multiemployer Taft-Hartley trust fund (29 U.S.C. Sec. 186(c)(5)) that requests the records for the purposes of allocating contributions to participants shall be marked or obliterated only to prevent disclosure of an individual's full social security number, but shall provide the last four digits of the social security number. Any copy of records made available for inspection by, or furnished to, a joint labor-management committee established pursuant to the federal Labor Management Cooperation Act of 1978 (29 U.S.C. Sec. 175a) shall be marked or obliterated only to prevent disclosure of an individual's social security number. The Contractor shall inform the City of the location of payroll records, including the street address, city and county and shall, within **five (5) Working Days**, provide a notice of change of location and address.

Certified Payroll Records submitted to the City shall not be marked or obliterated in such a manner as to prevent disclosure of all the information required pursuant to Labor Code § 1776.

GC – 15.8 Forfeiture for Failure to Comply with Written Record Request Laws

Pursuant to Labor Code § 1776 (h), the Contractor or Subcontractor shall have **ten (10) calendar days** in which to comply, subsequent to receipt of written request regarding Certified Payroll Records or Basic Payroll Records. In the event Contractor or a Subcontractor fails to strictly comply after such 10-day period, the Contractor or Subcontractor shall, as a penalty to the City, forfeit One Hundred Dollars (\$100.00) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Labor

Standards Enforcement, these penalties shall be withheld from any portion of the Contract Price then or thereafter due the Contractor. A Contractor is not subject to a penalty assessment pursuant to this paragraph due to the failure of a Subcontractor to comply with this section.

GC – 15.9 Hours of Work

15.9.1 Limits on Hours of Work. Pursuant to Labor Code § 1810, eight (8) hours of labor shall constitute a legal day's work. Pursuant to Labor Code § 1811, the time of service of any worker employed at any time by the Contractor or any Subcontractor, of any tier, upon the Work or upon any part of the Work, is limited and restricted to eight (8) hours during any one calendar day and forty (40) hours during any one calendar week, except as hereafter provided. Notwithstanding the foregoing provisions, Work performed by employees of the Contractor or any Subcontractor, of any tier, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1 ½) times the basic rate of pay.

15.9.2 Penalty for Excess Hours. Pursuant to Labor Code § 1813, and 1815, the Contractor shall pay to the City a penalty of Twenty-Five Dollars (\$25.00) for each worker employed in the execution of the Contract by the Contractor or any Subcontractor, of any tier, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any calendar day and forty (40) hours in any one calendar week, in violation of the provisions of the California Labor Code, unless compensation to the worker so employed by the Contractor is not less than one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of (8) hours per day.

15.9.3 Contractor Responsibility for Cost of Excess Hours. Any Work performed by workers necessary to be performed after regular working hours or on Sundays or other holidays shall be performed without adjustment to the Contract Price or any other additional expense to the City.

GC – 15.10 Responsibility for Subcontractors' Payment of Prevailing Wages

Pursuant to Labor Code § 1775, the Contractor is responsible for ensuring that all Subcontractors of any tier comply with requirements for payment of prevailing wages. If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under Labor Code § 1775 subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements: The agreement executed between Contractor and each Subcontractor must contain a copy of the provisions of Labor Code §§ 1771, 1776, 1777.5,

1813 and 1815, at a minimum; Contractor shall monitor each Subcontractor's payment of prevailing wage rates; Upon becoming aware of the failure of any Subcontractor of any tier to pay its workers the specified prevailing wage, the Contractor shall diligently take action to halt and rectify the failure, including, without limitation, retaining sufficient funds due to the Subcontractor to cover the underpayment; Before making a final payment to any Subcontractor, the Contractor must obtain an affidavit from the Subcontractor, signed under penalty of perjury, which states that the Subcontractor has paid the specified, determined prevailing wage rate to its employees for the Project, as well as any amounts due pursuant to Labor Code § 1813. Upon request, Contractor shall provide copies of such affidavits to the City and provide Contractor's affidavit that it has paid the specified, determined prevailing wage rate to its employees for the Project, as well as any amounts due under Labor Code § 1813.

GC – 15.11 Statement of Employer Payments

Within **five (5) calendar days** of signing the Contract or Subcontract, as applicable, the Statement of Employer Payments (DSLE Form PW 26) must be completed and submitted to the City by each Contractor and Subcontractor. The form must contain, for each worker classification, the fund or trust name, address, administrator, and amount per hour contributed and frequency contributions. Training fund contributions must also be reported on this form. In February and August of each year during the Project, the Contractor and Subcontractors of any tier must verify changes in wage rates for any trade classifications used on the Project. Thereafter, Contractor and its Subcontractors must submit a new Statement of Employer Payments to the City which reflects any changes in wages and benefits.

GC – 15.12 Apprentices

15.12.1 Apprenticeship Committee Contract Award Information. Pursuant to Labor Code §1777.5 and Title 8 California Code Regulations §230, Contractor and Subcontractors of any tier who are already approved to train by an apprenticeship program shall provide contract award information (DAS Form 140) to the apprenticeship committee for each applicable apprenticeable craft or trade in the area of the site of the public works project that has approved the contractor to train apprentices. Contractors who are not already approved to train by an apprenticeship program sponsor shall provide contract award information (DAS Form 140) to all of the applicable apprenticeship committees whose geographic area of operation includes the area of the public works project. The DAS Form 140 shall be provided to the applicable apprenticeship committee within ten (10) days of the date of the execution of the prime contract or subcontract, but in no event later than the first day in which the contractor has workers employed upon the public work. Failure to provide contract award information, which is known by the awarded contractor, shall be deemed to be a continuing violation for the duration

of the contract, ending when a Notice of Completion is filed by the Port, for the purpose of determining the accrual of penalties under Labor Code Section 1777.7. Contractor and Subcontractors must also submit a copy of the DAS Form 140 with proof of submittal to the City.

- 15.12.2** Employment of Apprenticeship. Labor Code §1777.5 and Title 8 California Code of Regulations §§ 200 *et seq.* provide detailed requirements for employing apprentices on public works. The responsibility of complying with Section 1777.5 and the regulations lies exclusively with the Contractor.

Any apprentices employed to perform any of the Work shall be paid the standard wage paid to apprentices under the regulations of the craft or trade for which such apprentice is employed, and such individual shall be employed only for the work of the craft or trade to which such individual is registered.

Only apprentices, as defined in California Labor Code §3077, who are training under apprenticeship standards and written apprenticeship agreements under California Labor Code §3070 *et seq.* are eligible to be employed for the Work. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which such apprentice is training.

- 15.12.3** Apprenticeship Certificate and Dispatch of Apprentices. When the Contractor or any Subcontractor of any tier in performing any of the Work employs workers in any Apprenticeable Craft or Trade, the Contractor and such Subcontractor shall apply to the Joint Apprenticeship Committee administering the apprenticeship standards of the craft or trade in the area of the site of the Work for a certificate approving the Contractor or such Subcontractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected, provided, however, that the approval as established by the Joint Apprenticeship Committee or Committees shall be subject to the approval of the Administrator of Apprenticeship. The Joint Apprenticeship Committee or Committees, subsequent to approving the Contractor or Subcontractor, shall arrange for the dispatch of apprentices to the Contractor or Subcontractor in order to comply with California Labor Code §1777.5. There shall be an affirmative duty upon the Joint Apprenticeship Committee or Committees, administering the apprenticeship standards of the crafts or trades in the area of the site of the Work, to ensure equal employment and affirmative action and apprenticeship for women and minorities. Contractors or Subcontractors shall not be required to submit individual applications for approval to local Joint Apprenticeship Committees provided they are already covered by the local apprenticeship standards. Contractors who are not already approved to train apprentices or who do not already employ enough apprentices to meet the ratio requirements must request dispatch of an apprentice from one of the applicable Apprentices Committees by

submitting a Request for Dispatch of an Apprentice (DAS Form 142) at least seventy-two (72) hours (excluding Saturdays, Sundays and holidays) before the date on which apprentices are required. Contractors who do not receive a sufficient number of apprentices from their initial request must request dispatch of apprentices from all other apprenticeship committees if more than one exists in the area of the Project. Contractor and subcontractors must also submit a copy of the DAS Form 142 with proof of submittal to the City.

15.12.4 Ratio of Apprentices to Journeymen. The ratio of Work performed by apprentices to journeymen, who shall be employed in the Work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards, but in no case shall the ratio be less than one hour of apprentice work for each five hours of labor performed by a journeyman, except as otherwise provided in California Labor Code §1777.5. This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the Site and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The Contractor shall employ apprentices for the number of hours computed as above before the completion of the Work. The Contractor shall, however endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the Site. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification. The Contractor or any Subcontractor covered by this Paragraph and California Labor Code §1777.5, who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or if it has been previously approved in such craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the apprenticeship standards. Upon proper showing by the Contractor that it employs apprentices in such craft or trade in the State of California on all of its contracts on an annual average of not less than one apprentice to each five journeymen, the Division of Apprenticeship Standards may grant a certificate exempting the Contractor from the 1-to-5 ratio as set forth in this Paragraph and California Labor Code §1777.5. This Paragraph shall not apply to contracts of general contractors, or to contracts of specialty contractors not bidding for work through general or prime contractor, involving **less than Thirty Thousand Dollars (<\$30,000.00)**. The term "Apprenticeable Craft or Trade" as used herein shall mean a craft or trade determined as an Apprenticeable occupation in accordance with rules and regulations prescribed by the Apprenticeship Council.

15.12.5 Exemption from Ratios. The Joint Apprenticeship Committee shall have the discretion to grant a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the Contractor from the 1-to-5 ratio set forth in this Paragraph when it finds that any one of the following conditions are met; (i) unemployment for the previous three-month period in such area exceeds an average of fifteen (15%) , or; (ii) the number of apprentices in training in such area exceeds a ratio of 1-to-5 in relation to journeymen, or (iii) the apprenticeable craft or trade is replacing at least one-thirtieth(1/30) of its journeymen annually through apprenticeship training , either on a statewide basis or on a local basis, or; (iv) if assignment of an apprentice to any Work performed under the Contract Documents would create a condition which would jeopardize such apprentice's life or the life, safety or property of fellow employees or the public at large, or if the specific task to which the apprentice is to be assigned is of such nature that training cannot be provided by a journeyman. When such exemptions from the 1-to-5 ratio between apprentices and journeymen are granted to an organization which represents contractors in a specific trade on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local Joint Apprenticeship Committees, provided they are already covered by the local apprenticeship standards.

15.12.6 Training Fund Contributions. The Contractor or any Subcontractor of any tier who performs any of the Work by employment of journeymen or apprentices in any apprenticeable craft or trade shall contribute training funds in the same amount that the Director determines is the prevailing amount of apprenticeship training contributions in the area of the Project. Contractor or any Subcontractor, of any tier, may take as a credit for payments to the California Apprenticeship Council any amounts paid by the Contractor or Subcontractor to an approved apprenticeship program that can supply apprentices to the Project. Contractors who contribute to an apprenticeship program are entitled to a full credit in the amount of those contributions. The Division of Labor Standards Enforcement is authorized to enforce the payment of such contributions to such fund(s) as set forth in California Labor Code §227. Such contributions shall not result in an increase in the Contract Price.

15.12.7 Contractor's Compliance. The responsibility of compliance with this Paragraph for all apprenticeable trades or crafts is solely and exclusively that of the Contractor. All decisions of the Joint Apprenticeship Committee(s) under this Paragraph are subject to the provisions of California Labor Code §3081. In the event the Contractor willfully fails to comply with the provisions of this Paragraph and California Labor Code §1777.5, pursuant to California Labor Code §1777.7, the Contractor shall: (i) be denied the right to bid on any public works contract for a period of one (1) year from the date the determination of noncompliance is made by the Administrator of Apprenticeship; and (ii) forfeit, as a civil penalty, One Hundred Dollars (\$100.00) for each calendar day of non-compliance. The amount

of this penalty may be reduced by the Labor Commissioner if the amount of the penalty would be disproportionate to the severity of the violation. A Contractor or Subcontractor that knowingly commits a second or subsequent violation within a three-year period, if the noncompliance results in apprenticeship training not being provided as required by this chapter, shall forfeit as a civil penalty the sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance. Notwithstanding the provisions of California Labor Code §1727, upon receipt of such determination, the City shall withhold such amount from the Contract Price then due or to become due. Any such determination shall be issued after a full investigation, a fair and impartial hearing, and reasonable notice thereof in accordance with reasonable rules and procedures prescribed by the California Apprenticeship Council. Any funds withheld by the City pursuant to this Paragraph shall be deposited in the General Fund or other similar fund of the City. The interpretation and enforcement of California Labor Code §§1777.5 and 1777.7 shall be in accordance with the rules and procedures of the California Apprenticeship Council.

If a subcontractor is found to have violated Labor Code §1777.5, the prime contractor of the project is not liable for any penalties under Labor Code §1777.7 unless the prime contractor had knowledge of the subcontractor's failure to comply with the provisions of §1777.5 or unless the prime contractor fails to comply with any of the following requirements: (1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of §§ 1771, 1775, 1776, 1777.5, 1813, and 1815; (2) The contractor shall continually monitor a subcontractor's use of apprentices required to be employed on the public works project pursuant to subdivision (d) of §1777.5, including, but not limited to, periodic review of the certified payroll of the subcontractor; (3) Upon becoming aware of a failure of the subcontractor to employ the required number of apprentices, the contractor shall take corrective action, including, but not limited to, retaining funds due to the subcontractor for work performed on the public works project until the failure is corrected; (4) Prior to making the final payment to the subcontractor for work performed on the public works project, the contractor shall obtain a declaration signed under penalty of perjury from the subcontractor that the subcontractor has employed the required number of apprentices on the public works project.

15.12.8 Employment of Independent Contractors. Pursuant to California Labor Code §1021.5 Contractor shall not willingly and knowingly enter into any agreement with any person, as an independent contractor, to provide any services in connection with the Work where the services provided or to be provided requires that such a person hold a valid contractor's license issued pursuant to California Business and Professions Code §§7000 *et seq.* and such person does not meet the burden of proof of his/her/their independent contractor status pursuant to

California Labor Code §2750.5. In the event that the Contractor shall employ any person in violation of the foregoing, Contractor shall be subject to the civil penalties under California Labor Code §1021.5 and any other penalty provided by law. In addition to the penalties provided under California Labor Code §1021.5, Contractor's violation of this Paragraph or the provisions of California Labor Code §1021.5 shall be deemed an event of Contractor's default. The Contractor shall require any Subcontractor of any tier performing or providing any portion of the Work to adhere to and comply with the foregoing provisions.

GC – 15.13 DIR Registration

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. No Contractor or Subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code Section 1771.1(a)). No Contractor or Subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5.

GC – 15.14 Submission of Electronic Payroll Records to Labor Commissioner

Per the Department of Industrial Relations, Contractors and Subcontractors must furnish electronic certified payroll records to the Labor Commissioner's Office, in addition to hard copies, or if required, electronic copies, to the Port of Long Beach.

GC – 15.15 Project Labor Agreement

This Contract is subject to a Project Labor Agreement (PLA). By submitting a bid, the Contractor is representing that the Contractor and all subcontractors of any tier performing work covered by prevailing wages shall comply with the PLA requirements as defined in **Appendix AA**, including, but not limited to: sign a Letter of Assent before commencement of work and be bound by each and every provision of the PLA, pay prevailing wages, pay fringe benefit contributions to union trust funds on behalf of workers, use union hiring halls as a source for workers, and comply with the PLA's worker utilization goals.

ARTICLE 16 ESCROWED BID DOCUMENTS

GC – 16.1 Requirements and Acknowledgements

- 16.1.1** After Conditional Award of the Contract by the Board, the Contractor shall submit, within **twenty-four (24) hours** after the City's request, one copy of all documentary information generated in preparation of Bid prices for the Work and shall include all Subcontractor and Material Supplier estimates. This material is

hereinafter referred to as “Escrowed Bid Documents” and shall be submitted in sealed containers and clearly marked “Escrowed Bid Documents.” The Escrowed Bid Documents of the successful Contractor will be held in escrow for the duration of the Contract.

16.1.2 The Escrowed Bid Documents are, and shall always remain, the property of the Contractor, subject to joint review by the City and the Contractor, as provided for herein.

16.1.3 The City stipulates and expressly acknowledges that all or parts of the Escrowed Bid Documents, as defined herein, constitute trade secrets. This acknowledgement is based on the City’s express understanding that the information contained in the Escrowed Bid Documents may not be known outside Contractor’s business, may be known only to a limited extent and only by a limited number of employees of the Contractor, is safeguarded while in the Contractor’s possession, is extremely valuable to Contractors and could be extremely valuable to Contractor’s competitors by virtue of it reflecting Contractor’s techniques of construction. City further acknowledges that Contractor expended substantial sums of money in developing the information included in the Escrowed Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. City further acknowledges that the Escrowed Bid Documents and the information contained therein are being provided to City only because it is an express prerequisite to execution of the Contract. City further acknowledges that the Escrowed Bid Documents include a compilation of information used in Contractor’s business, intended to give Contractor an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation. City further agrees to safeguard the Escrowed Bid Documents against disclosure to the fullest extent permitted by law. In the event a third party requests disclosure of all or parts of the Escrowed Bid Documents, the City shall immediately notify the Contractor and cooperate with Contractor’s efforts to prohibit disclosure.

16.1.4 The Contractor agrees and acknowledges, as a condition to execute the Contract, that the Escrowed Bid Documents constitute all the information used in the preparation of the Bid and that no other bid preparation information shall be considered in resolving disputes or claims. The Contractor also agrees that nothing in the Escrowed Bid Documents shall change or modify the terms or conditions of the Contract Documents.

GC – 16.2 Purpose

The purpose of the “Escrowed Bid Documents” procedure can best be explained by defining what this program is intended to accomplish and what this program is

not intended to accomplish.

16.2.1 To Be Accomplished.

1. Create a spirit of cooperation in an atmosphere of honesty and candor between the City and the Contractor.
2. Establish a base line of the Contractor's accepted proposal.
3. Provide an objective data bank to facilitate the determination and negotiation of changes/additions/deletions.
4. Minimize City/Contractor disputes and streamline the resolution of these disputes.
5. Creates risk sharing between the City and Contractor thereby eliminating contingency costs to the City for conditions which may never occur.

16.2.2 Not To Be Accomplished.

1. Not to be used by the City to evaluate the Contractor's anticipated construction methods and procedures.
2. Not to be used to any extent to furnish information from the Contractor's bid to any organization, company or individuals other than the City's staff associated with the Project.
3. Not to be reproduced by the City except by mutual agreement.
4. Not to create additional expense to the Contractor during bid preparation.

GC – 16.3 Content

16.3.1 Contractor may submit Escrowed Bid Documents in its usual estimating format; a standard format is not required. It is not the intention of this specification to cause the Contractor extra work during the preparation of the bid but to ensure that the Escrowed Bid Documents will be adequate to, enable complete understanding and proper interpretation for their intended use.

16.3.2 It is required that the Escrowed Bid Documents clearly itemize the estimated costs of performing the Work as required to present a detailed cost estimate and allow a detailed cost review. Crews, equipment, takeoff quantities, and rates of

production shall be detailed. Estimated costs shall be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, equipment ownership and operation, expendable materials, permanent materials, and Subcontract costs as appropriate. Plant and equipment and indirect costs shall be detailed in the Proposer's usual format.

16.3.3 All costs shall be identified. For items amounting to less than \$10,000, estimated unit costs are acceptable without a detailed cost estimate, provided that labor, equipment, materials, and Subcontracts, as applicable, are included and provided that indirect costs, contingencies, and markup, as applicable, are allocated.

16.3.4 The Escrowed Bid Documents shall include all quantity takeoffs, calculations of rates of production and progress, copies of quotes from Subcontractors and Material Suppliers, and memoranda, narratives, add/deduct sheets and all other information used by the Contractor to arrive at the prices contained in the Bid.

16.3.5 The Escrowed Bid Documents shall be accompanied by the certification signed by an individual authorized by the Contractor stating that the material in the Escrowed Bid Documents constitute all the documentary information used in preparation of the bid and that the Contractor has personally examined the contents of the Escrowed Bid Document container and has found that the documents in the container are complete.

GC – 16.4 Initial Examination

16.4.1 Escrowed Bid Documents of the Contractor will be examined, organized, and inventoried immediately upon receipt by one or two representatives of the City and one or two members of the Contractor's staff, who are knowledgeable of how the Bid was prepared.

16.4.2 This examination is to ensure that the Escrowed Bid Documents are legible and complete. It will not include review of and will not constitute approval of proposed construction methods, estimating assumptions, or interpretations of Contract Documents. Examination will not alter any condition or term of the Contract.

16.4.3 Should the examination and inventory by the City's designated review representatives indicate that data is incomplete or missing, the representatives will describe such incomplete or missing data to the Contractor who shall supply it within twenty-four (24) hours.

16.4.4 If all the itemized cost breakdowns and allocations required previously mentioned herein have not been made, due to last minute bid revisions, the detailed

breakdown of estimated costs shall be reconciled and revised by agreement between the Contractor and City before executing the Contract.

GC – 16.5 Subsequent Examinations

- 16.5.1** The Escrowed Bid Documents may be examined at any time deemed necessary by both the City and the Contractor in order to determine the Contractor's bid concept and assumptions and to assist in the negotiation of price adjustments and Change Orders and the settlement of disputes and claims.

Examination of Escrowed Bid Documents is subject to the following conditions:

- (1)** The Escrowed Bid Documents are proprietary and confidential as to trade secrets contained therein.
- (2)** At the time of Escrowing Bid Documents, the City and the Contractor shall each designate in writing to the other party the representatives who are authorized to examine the Escrowed Bid Documents. The Contractor shall bring to the meeting Contractor's representatives' contact information such as names, cell phone numbers and email addresses. No other person shall have access to the Escrowed Bid Documents.
- (3)** Access to the Escrowed Bid Documents may take place only in the presence of duly designated representatives of both the City and Contractor.
- (4)** The City will assure the Contractor that the Escrowed Bid Documents at all times remain the property of the Contractor.

GC – 16.6 Conditions for Return to Contractor

- 16.6.1** Upon completion of the Contract issuance of Final Payment by the City, verification that all litigation has been completed, and verification that future litigation does not exist, the Escrowed Bid Documents will be sealed and promptly returned to the Contractor by the party in charge of the Escrowed Bid Documents. Reproducing of any portion of the Escrowed Bid Documents will not be permitted at any time without written permission from the Contractor.

END OF GENERAL CONDITIONS

SPECIAL CONDITIONS

SC

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SPECIAL CONDITIONS

These Special Conditions modify the Instructions to Bidders, Construction Contract and the General Conditions. All provisions of the Instructions to Bidders, Construction Contract and General Conditions not modified or deleted by these Special Conditions remain in effect.

I. MODIFICATIONS TO INSTRUCTIONS TO BIDDERS

SC – 1 ADDITIONAL LICENSING REQUIREMENTS AND CONTRACTOR QUALIFICATIONS

The Bidder shall hold a current and valid Class “B”, California Contractor’s License to bid and construct this project.

In addition, the Bidder, subcontractor(s) or both, shall demonstrate the following experience listed on Form CR2 (Experience Requirements) in the Bid Proposal Package:

The Bidder shall list and identify a minimum of two (2) projects in which its scope of work was satisfactorily completed in the last ten (10) calendar years (from the date of Notice Inviting Bids) with a scope of work that included a single story or more, Type IIB or better, 3,000 square feet or larger tenant improvement with a cost of at least \$250,000 per project. Per ITB-20.1, either the Bidder, Bidder’s listed subcontractor(s) or both shall demonstrate such experience.

SC – 2 NOT USED

SC – 3 NOT USED

II. MODIFICATIONS TO THE AGREEMENT/CONSTRUCTION CONTRACT

SC – 4 CONTRACT DOCUMENTS AND INTERPRETATION.

SC – 4.1 Reference Documents.

- A. The Contractor’s attention is directed to the availability of Reference Documents (as defined in GC-1.1.66) in **Appendix CC**, made available for Contractor’s use. No guarantee is made that the conditions exist exactly as shown on the Reference Documents. This information available to the City is solely shared in good faith with the Contractor, and in no event is to be considered a complete record of the existing conditions in all areas of the Site. In the event the Contractor encounters a condition believed to be a differing site condition, refer to General Conditions GC-4.3.9.

SC – 4.2 NOT USED

SC – 5 SCOPE OF WORK

SC – 5.1 The Contractor shall Perform the Following Work for this Project:

Refer to Section 01 11 00 SUMMARY OF WORK and the Drawings.

SC – 5.2 NOT USED

SC – 5.3 Cooperation With Others.

- (1) The Contractor shall at all times cooperate with, coordinate the Work with and provide access to the City, City's Separate Contractors, City Tenants or agencies operating in the vicinity of the Project Site to the extent necessary such that the Work and ongoing operations at the Port may progress in an orderly manner. The Contractor shall implement measures to minimize disruption to ongoing operations at the Port. The Contractor shall have no Claim against the City as a result of these other activities. The Tenant will specify access routes to and from the work areas. The Contractor shall inform the City and the Tenant of proposed work activity(ies) and location(s) of that work seven (7) calendar days in advance of proposed work schedule and will confirm proposed work and schedule with the City and the Tenant.
- (2) The Contractor agrees and acknowledges that the Work of the Project is to be completed within an operating marine container terminal, and that container terminal operations and construction activities by others may be in progress seven (7) days a week at the Work Site during the course of this Contract. The Contractor shall protect all cargo, equipment, and all property of others from any damage whatsoever resulting from construction operations during all Work.
- (3) The Contractor shall coordinate construction activities with the Engineer to minimize interference to all parties concerned. The City will not be liable to the Contractor for any loss, damage, cost, or expense of any kind or nature whatsoever arising out of, connected with, or attributable to the activities of others in the Project Site or immediately adjacent thereto.
- (4) The Contractor shall follow the Engineer's approved Baseline Schedule so that the items prerequisite to construction or operations by others are given priority. The Work shall be completed so as to avoid delays to Work by City's separate contractors or to the City's Tenants.
- (5) There will be weekly construction coordination meetings held at the Site. Attendance by the Contractor is mandatory.

SC – 5.4 Special Permit Requirements.

- A. Without limiting the generality of GC-3.7.2, “Responsibility for Permits, Bonds and Fees”, the Contractor agrees that it shall obtain the permits listed below and comply with the requirements of this Section.

(1) Trenching Permit

The Contractor shall obtain and pay for a permit for excavation from the State of California, Department of Industrial Relations, Division of Occupational Safety and Health at 3939 Atlantic Avenue, Suite 212, Long Beach, California, 90807, phone (562) 506-0810. The cost of the trenching permit shall be included in the Bid price.

(2) Water System Certification

The Contractor shall obtain a water system certification from the City of Long Beach Health Department or certified private company for all water piping constructed or worked upon within each Region. The City will pay all fees required by the Health Department or certified private company to make tests and provide the initial certification. If retesting is required due to deficiencies of the Contractor, the Contractor shall bear the costs of additional testing.

(3) SCAQMD Rule 1166 Permit

Prior to the start of earthwork operations, the Contractor shall obtain a Various Locations Permit per the requirements of SCAQMD Rule 1166. For more information, see <https://www.aqmd.gov/home/rules-compliance/compliance/rule-1166-site-specific-and-various-locations-soil-mitigation-plan>. The Contractor shall be responsible for any fees associated with this permit or plan.

(4) Unmanned Aircraft System (UAS) Permit

The Contractor shall obtain an UAS Permit, as required by the City of Long Beach, Harbor Department, Port Tariff Rule 737, from the Director of Security Division. Additional information is available at www.polb.com/business/permits/#unmanned-aircraft-systems or by calling (562) 283-7800. The Contractor shall be responsible for any fees associated with this permit.

SC – 5.5 Potholing Utility Crossings

- (1) The Contractor shall pothole for all utility crossings within five (5) working days of taking possession of a region.
- (2) The Contractor shall show potholing as an activity in the Baseline Schedule for regions requiring underground utility work.

SC – 5.6 Submittals.

In accordance with Paragraph GC-3.12 of the General Conditions, the Contractor shall submit the Submittals and Construction Documents to the Engineer for review as identified in the Technical Specifications.

SC – 6 CONTRACT TIME

SC – 6.1 Notice to Proceed and Completion Dates.

- (1) The date of commencement shall be fixed in a Notice to Proceed issued by City. The Contractor agrees to commence the Work as specified in the Notice to Proceed, to continue performance of the Work in a diligent workmanlike manner so as to obtain Engineer's Approval of Affidavit of Final Completion for the Project not later than **390 calendar days** after City's issuance of the Notice to Proceed, subject to adjustments of this Contract Time as provided in the Contract Documents.

The Contractor shall not commence Work described in "Milestones" prior to the Contractor's compliance with Section 01 35 23, "Owner Safety Requirements" of the Technical Specifications and GC-3.31 "Worksite Safety" and Appendix M.

SC – 6.2 Contractor Work Schedule

Time is of the essence, and the schedules, durations, and milestones in the Contract Documents were developed accordingly. The Contractor shall plan on providing sufficient resources that the Contractor believes are necessary to complete the Work within the time allocated in the Contract Documents. By submittal of the bid documents, the Contractor acknowledges that the Contractor has reviewed the work schedule requirements below, and the constraints and stipulations included in SC-6.3, "Milestones", understands their implications, and has accounted for them in preparing Contractor's Work Plan in relation to the Contract Time and meeting the Milestones.

Contractor's Allowable Days and Hours of Work:

Unless otherwise stated in the Milestone for a particular Region per SC-6.3, "Milestones", herein, the Contractor will be allowed to work between the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday, except legal City of Long Beach holidays, as follows: New Year's Day, Martin Luther King, Jr. Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Election Day (first Tuesday after November 1), Thanksgiving Day, Day after Thanksgiving, and Christmas Day.

If the Contractor requests work to be performed on Saturday, Sunday, or legal City of Long Beach holidays, all additional costs borne by the City including, but not limited to, premiums for overtime work for City personnel, shall be reimbursed to the City by the Contractor by means of a credit Change Order, unless the additional costs are waived in advance in writing by the Engineer's sole discretion to benefit the City.

SC – 6.3 Milestones.

Milestone Completion is the state in the progress of a portion of the Work that has been designated in the Special Conditions as a Milestone Activity wherein the Milestone Activity is sufficiently complete in accordance with the Contract Documents, as determined by the Engineer or by the Board on the advice of the Engineer, so that the Contractor is relieved of the Liquidated Damages corresponding to that Milestone Activity. Per General Conditions Article GC-1.1.53, the effective date of the Notice to Proceed is the first day of the Contract Time. Milestone Completion of any individual Milestone Activity shall not obligate the City to release retention; the release of retention is governed by General Conditions Article GC-9.3.1.3.

The Contractor shall comply with the following Milestones:

<u>Milestone Activity</u>	<u>Deadline</u>
1. Milestone 1 , Contractor's submittal of the Baseline Schedule .	15 calendar days from effective date of Notice to Proceed (NTP).
2. Milestone 2 , Contractor to submit Long Lead Items (i.e., crane, test bench).	15 calendar days from effective date of Notice to Proceed (NTP).
3. Milestone 3 , shall be Contractor's submittal of the Revised Baseline Schedule incorporating the Engineer's comments to the baseline schedule and the Engineer's approval of the revised baseline schedule.	45 calendar days from effective date of Notice to Proceed (NTP).
4. Milestone 4 , shall be the issuance of purchase orders for Long Lead Items as specified in Section 01 11 00, Summary of Work and Section 01 33 00, Submittal Procedures.	90 calendar days from effective date of Notice to Proceed (NTP).

- | | |
|---|--|
| 5. Milestone 5 , shall be the date of Substantial Completion recommended by the Engineer and approved by the Board for the Project. | 300 calendar days from effective date of Notice to Proceed (NTP). |
| 6. Milestone 6 , shall be Contractor's completion and Engineer's acceptance of work described in Punch List I . | 30 calendar days after completion of Milestone 4. |
| 7. Milestone 7 , shall be the Engineer's approval of Contractor's Affidavit of Final Completion including completion of the items described in Punch List II . | 60 calendar days after the completion of Punch List I in Milestone 5. |

SC – 6.4 Amount of Liquidated Damages.

City and the Contractor mutually acknowledge and agree that a tiered system of liquidated damages based upon fixed Milestone deadlines is essential to accommodate and balance the potential risk, cost and liability to City. City and the Contractor therefore agree that the following per diem amounts for liquidated damages will be assessed:

- (a) In the event that Contractor's submittal of **Milestone 1** is delayed by Inexcusable Delays beyond **15 calendar days after the Notice to Proceed**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$ 800** per day for each day **Milestone 1** is delayed.
- (b) In the event that Contractor's submittal of **Milestone 2** is delayed by Inexcusable Delays beyond **30 calendar days after the Notice to Proceed**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$800** per day for each day **Milestone 2** is exceeded
- (c) In the event that Contractor's re-submittal of **Milestone 3** is delayed by Inexcusable Delays beyond **45 calendar days after the Notice to Proceed**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$800** per day for each day **Milestone 3** is exceeded.
- (d) In the event the Contractor's submission of key submittals per **Milestone 4** is delayed by Inexcusable Delays beyond **90 calendar days after the**

Notice to Proceed, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$800** per day for each day **Milestone 4** is exceeded.

- (e) In the event the Contractor's request for issuance of **Milestone 5** is delayed by Inexcusable Delays beyond **300 calendar days after the Notice to Proceed**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$1400** per day for each day **Milestone 5** is exceeded.
- (f) In the event the Contractor's issuance and Engineer's acceptance of **Milestone 6** is delayed by Inexcusable Delays beyond **30 calendar days after completion of Milestone 4**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$1000** per day for each day **Milestone 6** is exceeded.
- (g) In the event the Contractor's issuance and Engineer's acceptance of **Milestone 7** is delayed by Inexcusable Delays beyond **60 calendar days after completion of Milestone 5**, the Contractor and its Surety shall be liable for liquidated damages and shall pay to the City **\$500** per day for each day **Milestone 7** is exceeded.

Cumulative Assessment of Liquidated Damages. If the Contractor fails to deliver the Submittals in accordance with the above submittal schedule, fails to timely achieve Substantial Completion of each of the Work segments as set forth herein, fails to timely achieve Substantial Completion within the Contract Time, fails to complete Punch List I or fails to timely achieve Final Completion of the Work, the Contractor shall be subject to assessment and withholding of Liquidated Damages in the amounts set forth above for each such portion of the Work which is not timely delivered or completed within the time allocated for each portion of the Work. Any Liquidated Damages assessed by the City are cumulative.

SC – 7 CONSTRUCTION MANAGEMENT SOFTWARE

The Contractor shall process the project documentation as specified or as directed by the City utilizing the City's Construction Management Software (CMS) system, Oracle Unifier. The CMS system is a web based construction management tool.

SC-7.1 User and Access Rights

Before any training or access is allowed, and not later than seven (7) days following Contract execution, the Contractor shall submit to the Engineer a Port of Long Beach (POLB) Unifier New User Request Form for each intended user, a sample of this form is provided in the **Appendix F**. For each user, the Engineer will create a user ID with the appropriate access rights, and provide a temporary password to each user in a secured manner.

SC-7.2 Software Training and Support

The City will provide CMS training and support services to the Contractor during the construction and closeout phases of the project. The training sessions will be held at Port Headquarter Office.

Each of the Contractor's authorized users shall attend a training session scheduled by the City. Training must be completed prior to NTP. Follow-up training may be requested after NTP on an as-needed basis.

SC-7.3 Equipment and Communication Services

The Contractor shall provide the information technology (IT) equipment and communications services required to utilize the CMS system. The IT equipment shall meet the user software and hardware requirements below, with internet access, and the ability to print up to an 11-inch by 17-inch document. Acquisition, configuration, maintenance and support of the Contractor's computer hardware and software are the Contractor's responsibility.

Following are the minimum user software and hardware workstation requirements:

Browser	Latest version of, Firefox 91+, Chrome 96.x+, Microsoft Edge 95+, Firefox Quantum, Safari 13.x+
Operating System	Windows 10 64 bit, Mac OS X 10.15 (Catalina), iOS 14.x (iPad and iPhone)
Java	JRE: 1.8.0_271 or JRE 1.8.0_281
Display	1920 x 1080
CPU	2.3 Ghz or Higher
Connection	1.5Mbs / 768 Kbs (recommended minimum download / upload)
RAM	4GB minimum (8GB or more recommended)

It is the Contractor's responsibility to maintain the IT equipment to ensure compatibility with the CMS. Failure of Contractor's IT equipment to connect to or to remain compatible with the CMS will not excuse any of the requirements for Contractor to timely submit or process any documentation required by the Contract Documents.

SC-7.4 CMS Utilization

The Contractor shall utilize the CMS system for the following documentation, including, but not limited to:

1. Submission and processing of all Change Order Requests (COR), Owner Initiated Changes (OIC), and Contractor Proposed Change Orders (CPCO).

2. Submission and tracking of Requests for Information (RFI), Submittal Register and Submittals, Schedules, correspondences, tracking and resolution of Noncompliance Notices, tracking of Action Items created as part of the weekly construction meetings, and development and management of the Punch List.
 - Dates associated with the Submittal and RFI processes specified in the Contract Documents shall be as recorded by the City's CMS. The receipt date for submittals and RFI's shall be established by the CMS' "Received Date," which records when the City has acknowledged receipt of submittals and RFI's made via the CMS.
 - When a submittal (mock-up, physical samples, large documents etc.) is not feasible to be submitted in its entirety through the CMS, hardcopies or samples of the complete submittal must be received in the Engineer's office on the same day or before the same submittal record is made via the CMS. Contractor's failure to do so will deem the submittal incomplete and will be rejected for resubmittal.
 - A complete submittal package shall be assembled into a single indexed file when uploaded onto a CMS submittal record. File name shall use an identifier for submittal, specification Section number, sequential number, and Revisions number (i.e. SUB.1300.01 R0).
 - Should the Contractor choose to upload a RFI onto the CMS as an attachment, the RFI file name shall be named sequentially in the format, "RFI-00XX". The RFI number of the file name shall correspond to the RFI number assigned automatically by the CMS.
3. Receipt and acknowledgement of Meeting Minutes and Request for Information Responses.
4. Contractor Certified Applications for Payment in the manner and form approved by the City. Each application for payment shall include:
 - A current Updated Schedule approved by the City and developed in accordance with TS 01 32 16– Network Analysis and Project Schedules.
 - Any other administrative documentation required by the Contract Documents.

SC-7.5 Reporting

Contractor shall be solely responsible to produce reports for the Contractor's own use using the City's CMS system.

SC-7.6 Measurement and Payment

The CMS training and software access and use are provided at no cost to the Contractor. Contractor is responsible for all hardware and associated costs for operation.

SC-7.7 Restrictions on Use of the CMS

Regarding use of the CMS system (Application) and related documents generated out of the CMS System (Documentation), the Contractor shall not:

1. Use any reverse compilation, de-compilation or disassembly techniques or other methods to determine any source code, design structure, concepts and construction method of the Application or replicate the functionality of the Application for any purpose or create derivative works based on the Application for any purpose
2. Remove proprietary notices, labels, or marks in or on the Application or Documentation
3. Reproduce, distribute, transfer, publicly display, resell, lease, sublicense or loan the Application or Documentation to other party
4. Use the Application or Documentation for purpose other than to support Contractor's performance of this Work
5. Make copy of the Documentation without City's express prior written consent
6. Make copy of the Application
7. Allow multiple individuals to utilize the same username and password or otherwise circumvent the intended purpose of the Named User license structure.

III. MODIFICATIONS TO THE GENERAL CONDITIONS:

SC – 8 NOT USED

SC – 9 NOT USED

SC – 10 NOT USED

SC – 11 NOT USED

SC – 12 INDEMNITY

Refer to General Conditions, GC-3.18 for Indemnification.

SC – 13 INSURANCE

SC – 13.1 Post-Award Insurance Conference

At the direction of the Engineer, the Contractor, Contractor's risk manager and Contractor's insurance broker shall participate in a mandatory conference with the Port's Finance Division – Insurance Section representative **within ten (10) calendar days** after the Conditional Award of the Project. The purpose of this mandatory conference will be to discuss the insurance requirements and forms. Failure to participate in this mandatory conference in person or by telephone may result in rescission of the Conditional Award, and the Port may award the Project to the next lowest qualified Contractor.

SC – 13.2 Insurance Requirements

The required insurance and the documents provided as evidence thereof shall be in the name of the Contractor and shall be provided as a condition precedent to the effectiveness of this Contract. If policies are written with aggregate limits, the aggregate limit shall be at least twice the occurrence limits or as specified below. Exact structure and layering of the coverage shall be left to the discretion of the Contractor. However, any excess or umbrella policies used to meet limits shall be at least as broad as the underlying coverages and shall otherwise "follow form". Package policies which contain more than a single coverage type and share primary per occurrence and/or aggregate limits are not permitted. Insurance coverage that requires the City to tender any claim or suit to its own insurer(s) or make its own insurance coverage available for any reason is not permitted. The full policy limits and scope of protection shall apply to the additional insureds as required below even if they exceed the minimum insurance requirements specified herein.

Commercial General Liability:

Commercial General Liability insurance shall be provided on Insurance Services Office (ISO) CGL Form No. CG 00 01 or the equivalent, including provisions for defense of additional insureds and defense costs in addition to limits. Policy limits shall be no less than two million dollars (\$2,000,000) per occurrence for all coverage provided and four million dollars (\$4,000,000) general aggregate. The policy shall not limit coverage for the additional insured to "ongoing operations" or in any way exclude coverage for completed operations. Coverage shall be included on behalf of the insured for claims arising out of the actions of independent contractors. The policy shall contain no provisions or endorsements limiting coverage for contractual liability or third party over action claims, and defense costs shall be excess of limits. If the Contractor is using Subcontractors the policy must include work performed "by or on behalf" of the Contractor. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. Coverage shall not be limited to the vicarious liability or supervisory role of any additional insured. Coverage shall not exclude contractual liability, restrict coverage to the sole liability of the Contractor, require the City to tender defense or indemnity to its insurer(s) or make its own insurance available, or contain any other exclusion contrary to the Contract.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Contract with the City and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Contract.

Coverage shall contain no contractors' limitation or other endorsement limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured using ISO Forms CG 20 10 and CG 20 37 or their equivalent. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled, or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Chief Executive Officer of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Business Automobile Insurance:

Automobile Liability Insurance shall be written on ISO Business Auto Coverage Form CA 00 01 or the equivalent, including symbol (1) (any Auto). Limit shall be no less than one million dollars (\$1,000,000) combined single limit per accident. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City. If Contractor does not own any vehicles, this requirement may be satisfied by a non-owned vehicle endorsement to the general and umbrella liability policies provided that a separate policy limit is provided for this coverage as required by this contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled, or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Chief Executive Officer of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Contractor's Pollution Liability Insurance:

Contractors' Pollution Liability insurance shall be provided on a Contractors Pollution Liability policy form or other policy form acceptable to City providing coverage for liability caused by pollution conditions arising out of the operations of Contractor. Coverage shall apply to bodily injury; property damage, including loss of use of damaged property or of property that has not been physically injured; cleanup costs; and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy limit shall be no less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) general aggregate. All activities contemplated in the Contract shall be specifically scheduled on the policy as "covered operations." The policy shall provide coverage for the hauling of waste from the Project site to the final disposal location, including non-owned disposal sites. Coverage shall be included on behalf of the insured for covered claims arising out of the actions of independent contractors. If the insured is using Subcontractors the policy must include work performed "by or on behalf" of the insured. Coverage shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance, primary or excess, available to City or any employee or agent of City.

If this coverage is written on a claims-made basis, the retroactive date shall precede the effective date of the Contract with the Port and continuous coverage will be maintained or an extended reporting period will be exercised for a period of at least three (3) years from termination or expiration of this Contract.

The policy of insurance required above shall be endorsed as follows:

Additional Insured: The City of Long Beach, its Board of Harbor Commissioners, employees and agents shall be added as additional insured with regard to liability and defense of suits or claims arising from the operations and activities performed by or on behalf of the Named Insured. Additional Insured endorsements shall not: 1) be limited to "on-going operations", 2) exclude "Contractual Liability", 3) restrict coverage to the sole liability of the contractor, or 4) contain any other exclusion contrary to the Contract.

Cancellation: The policy shall not be cancelled, or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Chief Executive Officer of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Workers' Compensation:

Workers' Compensation Insurance, as required by the State of California, and Employer's Liability Insurance with a limit of not less than one million dollars (\$1,000,000) per accident for bodily injury and disease, plus coverage under the U.S. Longshore and Harbor Workers Compensation Act (USL&H), for employees performing services covered by said Act.

The policy of insurance required above shall be endorsed, as follows:

Waiver of Subrogation: A waiver of subrogation stating that the insurer waives all rights of subrogation against the City, its Board of Harbor Commissioners, employees, and agents.

Cancellation: The policy shall not be cancelled, or the coverage reduced until a thirty (30) day written notice of cancellation has been served upon the Chief Executive Officer of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Builder's Risk:

Builder's Risk Insurance covering all real and personal property for "all risks" of loss or "comprehensive perils" coverage for all buildings, structures, fixtures, materials, supplies, machinery, equipment and labor to be incorporated or expended in the construction at the site, off site, or in transit, for the full replacement value of such items, in an amount equal to the contract value. The policy or policies shall name as insured the City, the general contractor, all sub-contractors, and sub-subcontractors in the work. The phrase "as their interests may appear" shall not be used in the named insured provisions or endorsements. Proceeds shall be payable to the City as loss payee.

Cancellation: The policy shall not be cancelled, or the coverage reduced by endorsement until a thirty (30) day written notice of cancellation has been served upon the Chief Executive Officer of the Harbor, except ten (10) days shall be allowed for non-payment of premium.

Deductible/Self-Insured Retention

Any deductible or self-insured retention must be approved in writing by the Chief Executive Officer and shall protect the City, its Board of Harbor Commissioners, agents and employees in the same manner and to the same extent as they would have been protected had the policy or policies not contained a deductible or self-insured retention. Any deductible or self-insured retention must be approved in writing in accordance with City insurance guidelines.

Evidence of Insurance

The Contractor, concurrently with the execution of the Contract, and as a condition precedent to the effectiveness thereof, shall deliver either endorsements on forms approved by the City of Long Beach acting by and through the Board of Harbor

Commissioners ("Evidence of Insurance") or certified copies of the required policies containing the terms and conditions required by this contract to the Chief Executive Officer for approval as to sufficiency and to the City Attorney for approval as to form. The Port reserves the right to request certified policy copies at any time.

Insurance evidence as required herein shall be maintained until the date of Final Completion, with the exception of Builder's Risk insurance which will end at Substantial Completion, unless otherwise set forth in the Special Conditions

At least fifteen (15) days prior to the expiration of any such policy, evidence of insurance showing that such insurance has been renewed or extended shall be filed with the Chief Executive Officer. If such coverage is cancelled or reduced, Contractor shall, within ten (10) days after receipt of written notice of such cancellation or reduction of coverage, file with the Chief Executive Officer evidence of insurance showing that the required insurance has been reinstated or has been provided through another insurance company or companies.

NOTE: Samples of approved City endorsement forms are included at the rear of this specification book for reference. Forms for execution will be provided with the Contract. Copies of approved endorsement forms can be obtained from the Port website in lieu of, or in addition to the forms provided herein or with the Contract at:

<https://www.polb.com/business/permits#insurance-endorsement-forms>

Failure to Maintain Coverage

Contractor agrees to maintain the insurance coverage as required by the Contract Documents at all times. The City shall deduct from any payments otherwise due the Contractor an administrative fee of \$100 per day per policy for each lapsed policy until Contractor has fully complied with the insurance provisions of this Contract. In addition, per Article 14 of the General Conditions, the City has the right to suspend or terminate all Contractor operations for failure to maintain the required coverage. In the event that the Contractor's operations are suspended for failure to maintain required insurance coverage, the Contractor shall not be entitled to an extension of time for completion of the Work or delay damages resulting from the suspension.

Acceptability of Insurers

Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A-:VII, and authorized to do business in the State of California or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing in accordance with the City insurance guidelines.

Contractual Liability

The coverage provided shall apply to the obligations assumed by the Contractor under the indemnity provisions of this Contract but this insurance provision in no way limits the indemnity provisions and the indemnity provisions in no way limit this insurance provision.

SC – 14 INSURANCE AND BOND RATINGS

All insurance policies and surety bonds which Contractor or any Subcontractor is required to provide pursuant to the Contract Documents shall be placed with the insurers authorized to do business in the State of California with an A.M. Best Company rating level A- or better, **Class VII** or better, or as otherwise approved in writing by City. If a Best's guide rating is not available, then the proposed insurer/surety must meet comparable standards of another rating service satisfactory to City.

SC – 15 NOT USED

SC – 16 NOT USED

SC – 17 NOT USED

SC – 18 ENVIRONMENTAL PROTECTION

SC – 18.1 Stormwater BMP Checklist

The Contractor shall complete the Stormwater BMP Checklist included in **Appendix O**, and implement those best management practices (BMPs) as identified in the checklist. A copy of the completed Stormwater BMP Checklist shall be submitted to the Engineer fifteen (15) calendar days prior to the start of construction activities for approval and a copy shall be maintained on site. Upon submittal of the Stormwater BMP Checklist, the Contractor shall be responsible for installing, constructing, and implementing all BMPs described in the Stormwater BMP Checklist. The Contractor shall perform visual observations to verify that all BMPs are implemented and are performing in accordance with design criteria to ensure water quality goals. If BMPs being implemented by the Contractor are inadequate to prevent water pollution effectively, as determined by the Engineer, the Engineer may require the Contractor to revise the operations and amend the Stormwater BMP Checklist. The Engineer's review and acceptance of the Contractor's Stormwater BMP Checklist shall not waive any contractual requirements and shall not relieve the Contractor from achieving and maintaining compliance with all Federal, State, and local laws, ordinances, statutes, rules and regulations. All records shall remain on site and readily accessible for review by the City and any responsible agencies through construction activities.

No debris, soil, silt, sand, sawdust, rubbish, cement or concrete washings thereof, oil or petroleum products, or other materials from construction shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the United States. All standard BMPs shall be employed to ensure that toxic materials, silt, debris, or excessive

erosion do not enter waters of the U.S. during construction. Upon completion of work, any excess material or debris shall be removed from the construction activity area and disposed of in an appropriate upland site.

SC – 18.2 Air Quality Best Management

Irrespective of Paragraph GC-10.6.6 Dust Control of the General Conditions, the following Air Quality Best Management Practices for Construction Activities shall apply:

Fuels Used in Construction Vehicles and Equipment

Any on-road or off-road diesel engine (including harbor craft) used in construction activities must use fuels that comply with the California Air Resources Board (CARB) regulation for ultra-low sulfur diesel fuel (15 parts per million or less) (Title 13, California Code of Regulations, Section 2281) and/or the CARB Low Carbon Fuel Standard Regulation (Title 17, California Code of Regulations, Section 95480-95503).

Off-Road Construction Equipment

All off-road construction equipment shall meet EPA Tier 4 Final off-road engine emission standards. Off-road construction equipment must be maintained according to the manufacturer's specifications. Equipment of 25 horsepower and greater that is not exempt from the idling limitations of California In-Use Off-Road Diesel Vehicle Regulation (Title 13, California Code of Regulations, Section 2449(d)(2)) must not idle for more than five (5) consecutive minutes when not in use. Prior to equipment use on-site, the Contractor shall submit to the Engineer documentation showing the following:

- a) Engine horsepower, make, and model, and serial number;
- b) Current EPA/CARB engine certification or manufacturer specifications showing the certified engine emission/tier level;
- c) Any emission control devices installed, including, but not limited to diesel oxidation catalysts and/or diesel particulate filters/traps.

On-Road Heavy-Duty Trucks used to Transport Construction Materials

All on-road, heavy duty trucks used to transport construction materials to and from the Project site must meet EPA 2010 on-road, heavy-duty diesel engine emission standards.

In addition, diesel-fuel commercial vehicles licensed for operation on highways with a gross vehicle weight rating greater than 10,000 pounds that access the Project site shall not idle for more than five (5) minutes at any location (Title 13, California Code of Regulations, Section 2485).

Contractors must verify that the companies, including subcontractors, from which on-road heavy-duty trucks are hired or dispatched for the Project are in compliance with the CARB Truck and Bus Regulation. Prior to arriving on-site, contractors must submit to the Engineer, documentation showing the following:

- a) Truck company name; make, model of truck, and vehicle identification number;
- b) EPA/CARB truck engine certification indicating truck meets or exceeds 2010 EPA on-road, heavy-duty diesel engine emission standards;
- c) Any emission control devices installed, including, but not limited to diesel oxidation catalysts and/or diesel particulate filters/traps; and
- d) Proof of compliance that the truck fleet of the companies, including subcontractors, from which on-road trucks are hired or dispatched for the Project are in compliance with the CARB Truck and Bus Regulation by providing one of the following documents:
 - i. Truck and Bus Regulation Reporting Certificate printed from CARB website - see <https://ww2.arb.ca.gov/applications/truck-and-bus-regulation-check-compliance-status>.
 - ii. Written statement from the truck fleet owner that verifies that they are aware of the CARB Truck and Bus regulation (Title 3, California Code of Regulations, Section 2025) and their fleet is in compliance with the engine model year schedule specified in the Truck and Bus Regulation.

Portable Engines and Equipment

Portable diesel-fueled engines with 50 horsepower or more and portable equipment units must have either a valid South Coast Air Quality Management District Permit to Operate or CARB Portable Equipment Registration Program (PERP) registration. Plasma arc-cutting or laser cutting equipment rated more than 400 watts used to cut stainless steel and batch mixers with a brimful capacity of more than 55 gallons (7.35 cubic feet) must have a South Coast Air Quality Management District Permit to Operate (SCAQMD Rule 219, Sections e(8) and k(1)). Proof of permit to operate or registration is required and must be submitted to the Engineer prior to use on site.

Verification of Project Equipment Used On-site

For the duration of the project, each month, the Contractor will provide to the Engineer a list of equipment verifying the off-road construction equipment and portable equipment inventory used onsite.

Fugitive Dust Control

Contractor shall prevent the generation of airborne dust particles in accordance with South Coast Air Quality Management District Rule 403 – Fugitive Dust.

- a) Contractor shall keep dust down at all times, including during non-working periods and during work performed by third parties.
- b) Contractor shall sprinkle with water all demolition debris, soil at the site, haul roads, and other areas disturbed by operations. Contractor shall ensure that all disturbed areas within the project are watered at least three (3) times daily during dry weather. Watering, with complete coverage of disturbed areas shall occur at least three (3) times a day, preferable in the mid-morning, afternoon, and after work is done for the day. Only potable water can be used. Recycled or reclaimed water shall not be used.
- c) Contractor shall ensure that traffic speeds on unpaved roads and Project site areas are reduced to 15 miles per hour or less.

Contractor shall prevent track-out of bulk material onto public or paved roadways and remove such material anytime track-out occurs. Contractor shall remove all visible roadway dust tracked-out upon public paved roadways at the conclusion of each work day.

SC – 19 CONTRACT DOCUMENT ORDER OF PRECEDENCE

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following order of precedence, with '1' being the highest:

- 1. Permits from the Department and other governmental agencies as may be required for the Work by Applicable Law;
- 2. Change Orders and Unilateral Change Orders;
- 3. The Agreement, including all exhibits;
- 4. Addenda;
- 5. Special Conditions;
- 6. Technical Specifications;
- 7. Instructions to Bidders;
- 8. General Conditions;
- 9. Drawings;
- 10. Appendices;

11. Standard Drawings that are specifically referenced; and
12. Standard Specifications for Public Works Construction (“Greenbook”), latest edition at time of Advertisement.

In the absence of a Contract Documents reference, Work shall comply with the applicable section of the Greenbook.

SC – 20 CONSTRUCTION AND DEMOLITION WASTE RECYCLING PROGRAM

The Contractor shall comply with the City of Long Beach, Department of Development Services, Construction and Demolition Waste Recycling Program in Appendix Q. In the case of conflict between this Program and the Technical Specifications, the more stringent requirement as determined by the Engineer will apply. Non-compliance by the Contractor with the City of Long Beach Waste Management Plan (WMP) shall be cause for the City to consider all/each/one of the following:

- (1) Assessing against the Contractor any and all monies deposited with the City that were forfeited due to the Contractor's failure to comply with the program. Such funds shall be deducted by the City from retained funds owed to the Contractor under this Contract.
- (2) Assessing against the Contractor any and all cost expended for City staff, consultants, and any and all other costs expended as a result of the Contractor's failure to comply with the program. Such funds shall be deducted by the City from retained funds owed to the Contractor under this Contract.
- (3) Finding the Contractor in breach of Contract.

Contractor shall pay fees and deposits required by the City of Long Beach for the Construction and Demolition Waste Recycling Program, as listed under “C&D Deposit” at <https://longbeach.gov/lbds/building/cd/>.

SC – 21 SURVEY REQUIREMENTS

Survey work shall be performed in accordance with General Conditions GC-2.2.3 “Surveys”. The current rate for City survey crews to remark, re-stake, or recheck any survey marks or stakes damaged or destroyed by the Contractor shall be \$5,491.45 per day for a three-person survey crew.

SC – 22 RESPONSIBILITY FOR PERMITS, BONDS AND FEES

In addition to the requirements of GC-3.7.2, “Responsibility for Permits, Bonds and Fees”, and SC-5.4, “Special Permit Requirements”, the Contractor shall keep the permits, certificates, licenses and other required items current for the entire duration of the Project, and shall obtain any extensions needed.

It is the City's understanding that the City of Long Beach Department of Development Services requires that building permits are obtained by Contractors no later than one (1) calendar year from the date of submittal of plans for plan check; and requires that inspections are called no later than one hundred eighty (180) calendar days from the date of obtaining the permits. In order to implement the project phasing and facilitate occupancy of the various phases at the completion of construction of each phase, the City has separated the permit applications into five (5) or more building permits. The Contractor shall evaluate the project phasing and obtain the required building permits in a timely manner that allows for work continuity and timely phase and project completion. Should permit time extensions be necessary or required to complete the project or any of its phases, the Contractor shall apply to obtain the permit extensions. The City will pay the fees associated with these permit extensions. There shall be no Contract Time extension allowed for such permit extensions.

The Contractor shall be responsible for the deposit as required by Long Beach Department of Development Services under the Construction and Demolition Recycling Program. The Contractor shall verify the amount of the deposit with the Long Beach Department of Development Services prior to submitting a bid. The Contractor shall be solely responsible for the deposit at no additional cost to the City. This deposit will be returned to the Contractor by the Long Beach Department of Development Services at the completion of the Contract, if the Contractor conforms to a City accepted Construction Waste Management Plan and achieves the required diversion requirements.

SC – 23 NOT USED

SC – 24 CONTRACTOR PERFORMANCE EVALUATION DURING CONSTRUCTION

The Contractor's performance during the term of this Contract will be evaluated through the Port of Long Beach's Contractor Performance Evaluation process. The evaluations will be used to provide a reasonable level of assurance that future Port of Long Beach contracts are awarded to contractors who have demonstrated trustworthiness, quality, fitness, capacity, financial strength, and experience to satisfactorily perform public work contracts.

The Contractor's performance will be evaluated on Form CR4 (Contractor Performance Evaluation), which can be found in Appendix T.

Contractor Performance Evaluations shall be performed at the intervals identified on Form CR4. The Port reserves the right to conduct evaluations at any point throughout an active project and as deemed necessary by the project team.

If Contractor receives a failing score as identified on Form CR4, Port shall provide written notice to the Contractor. The Contractor shall have five (5) Working Days from the date of the notice to request an administrative hearing. The determination of the hearing officer shall be final.

SC – 25 PROJECT LABOR AGREEMENT

Irrespective of the requirements set forth in GC-15.15, this project is not covered by a Project Labor Agreement.

SC-26 NOT USED

SC-27 ELECTRONIC CERTIFIED PAYROLL SOFTWARE

The Contractor and all subcontractors will be required to submit electronic certified payroll records, labor compliance documentation, and if applicable, Project Labor Agreement documentation, to the Port utilizing a web-based labor compliance application. Each Contractor and subcontractor will be provided a log-in identification and password to access this application at no cost to the Contractor or subcontractor. Electronic submittals will require data entry of weekly payroll information including: employee identification, labor classification, hours worked, wage and benefit rates paid, and all other such information as may be required by law or requested by the City.

END OF SPECIAL CONDITIONS