

SECTION 00 73 73

STATUTORY AND OTHER REQUIREMENTS

TABLE OF CONTENTS

ARTICLE 1 – GENERAL.....	2
ARTICLE 2 – REQUIREMENTS FOR ALL CITY-ADMINISTERED CONTRACTS	2
2.01 CONFLICT OF INTEREST	2
2.02 NONDISCRIMINATION REQUIREMENTS.....	5
2.03 REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES	5
2.04 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES.....	5
2.05 MACBRIDE PRINCIPLES - NORTHERN IRELAND	6
2.06 PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY	6
2.07 LIMITATIONS ON CONTRIBUTIONS	6
2.08 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION	6
2.09 UNFAIR BUSINESS PRACTICES CLAIMS; ASSIGNMENT TO AWARDING BODY.....	7
2.10 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN	7
2.11 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC	7
2.12 FOOD SERVICE WASTE REDUCTION REQUIREMENTS	8
2.13 LOCAL BUSINESS ENTERPRISE AND NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS.....	8
2.14 CHAPTER 12X CERTIFICATION REQUIREMENTS REGARDING STATES THAT ALLOW DISCRIMINATION	9
2.15 SUNSHINE ORDINANCE	10
2.16 SUBMITTING FALSE CLAIMS; REMEDIES.....	10
2.17 CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS.....	10
2.18 DRONES	12
2.19 CONSIDERATION OF SALARY HISTORY.....	13
ARTICLE 3 – REQUIREMENTS FOR CONSTRUCTION WORK TAKING PLACE WITHIN THE 47 SQUARE MILES OF THE CITY AND COUNTY OF SAN FRANCISCO.....	13
3.01 SUMMARY.....	13
3.02 CONSTRUCTION NOISE REQUIREMENTS	13
3.03 NIGHT AND WEEKEND NOISE REQUIREMENTS	14
3.04 REQUIREMENTS FOR USING WATER FOR CONSTRUCTION	15
3.05 AIR QUALITY REQUIREMENTS.....	15
3.06 EXCAVATION REQUIREMENTS	18
3.07 REQUIREMENTS FOR PROTECTION OF THE SEWER SYSTEM.....	21
3.08 CLEAN CONSTRUCTION REQUIREMENTS ON MAJOR CONSTRUCTION PROJECTS..	22
3.09 CONSTRUCTION BARRICADE REQUIREMENTS.....	23

END OF TABLE OF CONTENTS

ARTICLE 1 – GENERAL

- A. All requirements in this Section are incidental work, unless specified otherwise.
- B. Contractor shall be solely responsible and fully liable for any and all failures to comply with the requirements specified herein, and shall unconditionally and fully indemnify the City for any damages resulting therefrom. If Contractor fails to comply with the requirements specified herein, or fails to promptly take all required remedial actions to the City's satisfaction, the City may withhold progress payments to Contractor until satisfactory compliance has been accomplished and/or may assess statutory liquidated damages or penalties, as applicable.
- C. The full text of the City Requirements provided in Articles 2 and 3, below, are incorporated by reference in the Contract Documents, and are available at http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

ARTICLE 2– REQUIREMENTS FOR ALL CITY-ADMINISTERED CONTRACTS

2.01 CONFLICT OF INTEREST

By executing the Agreement (Section 00 52 00), the Contractor agrees to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The Contractor will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the Contractor might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the Contractor that the City has deemed the Contractor to be the lowest, responsible, and responsive Bidder. The term "entity" includes any parent, subsidiary or other related business of the Contractor.

A. Obligations

It is the obligation of the Contractor as well as its Subcontractors and Subconsultants to determine whether or not participation in that contract constitutes a conflict of interest. While city staff maintains records regarding award and execution of contracts, it does not have access to specific information concerning which entities, partners, subconsultants, subcontractors or team members perform specific work on these contracts. A conflict of interest or an

unfair advantage may exist without any knowledge of the SFPUC. The database of our records concerning work performed by various subconsultants or subcontractors is available for reference to Contractors making their own determination of potential conflicts. Contractors have sole responsibility for compliance with these requirements. A court makes the final determination of whether an actual conflict exists. The guidelines below are provided to assist Contractors; however, the City is not providing legal advice in providing the information and assumes no responsibility or liability arising from Contractor's reliance on this information. The guidelines below address conflicts under the aforementioned laws but there are other laws that affect qualifications for a contract.

B. Work

There are many phases of work pertaining to city contracts. Potential conflicts arise out of progressive participation in various phases of that work. Set forth below are general guidelines regarding when participation in a specific phase of work may create a conflict. Because an actual determination regarding whether a conflict exists depends upon the specific facts of each situation, the general guidelines set forth below should be treated only as a starting point. A Contractor should consult with its legal counsel to determine whether a potential conflict exists.

1. **RFI/RFQ/RFP/Bid Documents.** Any entity that participates in the development of any of these documents has participated in "making the contract" for the work. For these purposes "participating in making" has the same meaning as under Government Code Section 1090.
2. **General Program Management Services.** Because these advisory services necessarily assist in general definitions of the program and projects, conflicts would likely exist in participation in the design, construction management, and/or construction phase of any project.
3. **Preplanning.** Participation in preplanning work, which may include the needs assessment report since it is an initial phase, would likely be limited only by previous participation in preparation of RFI/RFQ/RFP or bid documents.
4. **Planning.** The planning phase of any project establishes the facts pertaining to the project and possible options for consideration.
 - a. **Alternative Analysis Report.** This phase proposes to decision-makers the various alternatives in project scope, cost, schedule and environmental impact necessary to make a determination of the proper project. Firms may have a conflict of interest in subsequent design work if they participated in the decision-making process of selecting an alternative.

- b. **Conceptual Engineering Report.** This document defines the project and shapes the design contract. Participation in this phase may likely be in conflict with any future design services.
5. **Environmental Review.** Similar to the planning phase, this phase of work gathers information from other sources resulting in a definition of the project for the purposes of reviewing the environmental effects of the work. Firms participating in environmental review would likely not have a conflict in participating in subsequent phases.
6. **Final Engineering Design.** Documents produced under this phase constitute the definition of the construction contract. Participation in this phase would likely be in conflict with participation in any subsequent phases, such as construction management or general construction.
7. **Construction Management.** This work consists of review, assessment and recommendation for actions based on interpretation of contract documents. No firm under one contract can review any of its own work performed under another contract. Conflicts would likely arise had any entity participated in either preparation of final engineering design or any documents enumerated in a contract for construction or documents the SFPUC requires a Contractor to rely on in the preparation of their bid. Participation in this phase also would likely be in conflict with participation in the construction phase.
8. **Construction.** It is unlikely that participation in construction contracts would result in conflicts on subsequent contracts. Restrictions on participation in construction contracts may be stipulated in other federal, state or local laws.
9. **Alternative Delivery.** To the extent that an alternative delivery method is used, e.g. design-build or construction manager/general contractor, the restrictions on design or construction management services mentioned herein would apply to those phases of the alternative delivery project.
10. **General.** Work associated with gathering, assessing, or reviewing technical data such as geotechnical investigations, site surveys, condition assessments, or cost estimating would likely have conflicts with other work only if an entity were in a position to review its own work.
11. **Administrative Services.** Any subconsultant or vendor providing general administrative services such as communications, reprographic, janitorial or security services during one phase of a project will not be precluded from providing similar services during later phases of the same project.

C. Consultation with Counsel

The SFPUC strongly advises any proposing/bidding firm to consult with its legal counsel to determine whether or not a conflict of interest exists. It is the responsibility of the proposing/bidding firm to make that determination. The SFPUC will not advise Contractors or consultants on conflict of interest matters.

2.02 NONDISCRIMINATION REQUIREMENTS

- A. **Incorporation of Administrative Code Chapters 12B and 12C.** The provisions of Chapters 12B and 12C of the Administrative Code are incorporated herein by this reference. Contractor shall comply with any and all of the provisions that apply to this Agreement under such Chapters, and be bound by the remedies provided in such Chapters. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code and shall require all subcontractors to comply with such provisions.
- B. **Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where Work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in Administrative Code §12B.2.

2.03 REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

Contractor shall pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in Administrative Code Chapter 12P ("Chapter 12P"). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

By signing the Agreement Form (Section 00 52 00), Contractor certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

2.04 REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

Contractor shall choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and shall otherwise comply with the HCAO as set forth in Administrative Code Chapter 12Q. The provisions of Chapter 12Q, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

2.05 MACBRIDE PRINCIPLES - NORTHERN IRELAND

The provisions of Administrative Code §12F are incorporated herein by this reference and made part of this Agreement as though fully set forth. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride

2.06 PROHIBITION ON USE OF PUBLIC FUNDS FOR POLITICAL ACTIVITY

In performing the Work, Contractor shall comply with Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The provisions of Chapter 12G, including but not limited to the penalties for noncompliance provided therein are incorporated by reference and made a part of this Agreement as though fully set forth herein.

2.07 LIMITATIONS ON CONTRIBUTIONS

By executing the Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. By executing the Agreement, the Contractor also certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a bid for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

2.08 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- A. If the Contract Documents require City to disclose "Private Information" to Contractor within the meaning of Administrative Code Chapter 12M, Contractor

shall use such information only in accordance with the restrictions stated in this Agreement and as necessary in performing the Services. The provisions of Chapter 12M, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

- B. In the performance of Work, CONTRACTOR may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to CONTRACTOR, such information must be held by CONTRACTOR in confidence and used only in performing the Agreement. CONTRACTOR shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

2.09 UNFAIR BUSINESS PRACTICES CLAIMS; ASSIGNMENT TO AWARDING BODY

Under Public Contract Code section 7103.5, Contractor and its Subcontractors shall conform to the following requirements:

- A. In entering into the Agreement or subcontract to supply goods, services, or materials under this Agreement, Contractor or its Subcontractors offer and agree to assign the City all rights, title, and interest in and to all causes of action they may have under section 4 of the Clayton Act (15 U.S.C. Section 15) or under the Cartwright Act (chapter 2, commencing with section 16700, of part 2 of division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the Agreement or subcontract.
- B. The assignment shall be made and become effective at the time the City tenders Final Payment to Contractor, without further acknowledgement by the Parties.
- C. Contractor shall include the provisions of this Section in its subcontracts and purchase agreements to supply goods, services, or materials pursuant to the Agreement.

2.10 TROPICAL HARDWOOD AND VIRGIN REDWOOD PRODUCTS BAN

Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. The City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood product.

2.11 PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13

of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

2.12 FOOD SERVICE WASTE REDUCTION REQUIREMENTS

Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein.

2.13 LOCAL BUSINESS ENTERPRISE AND NON-DISCRIMINATION IN CONTRACTING REQUIREMENTS

A. Pursuant to chapter 14B of the Administrative Code the following requirements are made part of the Contract:

1. Chapters 12B and 14B of the Administrative Code, their implementing Rules and Regulations, and CMD Attachment 1 – Requirements for Construction Contracts, are incorporated by reference herein as though fully set forth. These documents are available to be viewed and downloaded on the Contract Monitoring Division’s website:

<http://www.sfgov.org/cmd>

Alternatively, contact the CMD Contract Compliance Officer assigned to this contract for assistance in obtaining any of these documents.

2. The willful failure of Contractor or its subcontractors to comply with any of the requirements of chapter 14B or to comply with the level of LBE subcontractor participation specified herein shall be deemed a material breach of contract.
3. In the event that the Director of Contract Monitoring Division finds that Contractor or any of its subcontractors willfully fails to comply with any of the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, or Contract provisions pertaining to LBE participation, Contractor or its subcontractor shall be liable for liquidated damages as specified in Section 14B.7(H)(2) of the Administrative Code and CMD Attachment 1, article 1.05 "Noncompliance and Sanctions," which shall be payable to the City upon demand and may be set off against moneys due

to Contractor or its subcontractor for any contract with the City. Contractor agrees that progress payments shall be withheld, and Contractor's liability for liquidated damages assessed will be subject to the collection procedures specified in CMD Attachment 1, article 1.05 "Noncompliance and Sanctions."

4. Contractor shall maintain, and shall require its subcontractors to maintain, records including such information requested by CMD necessary for monitoring their compliance with Chapter 14B. Such records shall be maintained for 3 years after the date of Final Completion.
5. Contractor shall fulfill during the term of the Contract its LBE participation commitments submitted with its Bid.
6. Contractor shall compensate a LBE subcontractor as provided in Section 14B.7(H)(5) of the Administrative Code if Contractor does not fulfill its commitment during the term of the Contract to utilize the LBE subcontractor. Contractor shall include a contract provision in all LBE subcontracts requiring Contractor to compensate a LBE subcontractor if Contractor fails to comply with its commitment to utilize LBE subcontractors. The forgoing provisions shall be enforceable in a court of competent jurisdiction. Whenever Change Orders are made which cumulatively increase the Contract Sum by more than 10%, Contractor shall comply with all LBE subcontracting provisions of this Section with respect to the Change Order.
7. Back-contracting to Contractor or lower-tier subcontracting for any purpose inconsistent with the provisions of Chapter 14B, rules and regulations implementing Chapter 14B, or Contract provisions pertaining to LBE participation shall be prohibited.
8. Contractor shall pay its subcontractors within 3 working days after receiving payment from the City unless Contractor notifies the Director of the CMD in writing prior to receiving payment from the City that there is a bona fide dispute between Contractor and the subcontractor. The Director of the CMD may, upon making a determination that a bona fide dispute exists between Contractor and the subcontractor, waive this 3-day payment requirement.
9. Contractor shall submit CMD Contract Performance Forms (CMD Forms 7, 8, 9, and 10) as set forth in CMD Attachment 1, article 1.03.
10. Contractor shall comply with the employment and nondiscrimination provisions as set forth in CMD Attachment 1.

2.14 CHAPTER 12X CERTIFICATION REQUIREMENTS REGARDING STATES THAT ALLOW DISCRIMINATION

This Contract is subject to the requirements of Administrative Code Chapter 12X, which prohibits the City from entering into contracts with companies headquartered in states with laws that perpetuate discrimination against LGBT populations or with restrictive abortion laws or with voter suppression laws or where any or all of the work on the

contract will be performed in any of those states. Bidders are hereby advised that Bidders, which have their United States headquarters in a state on the Covered State List, as that term is defined in Administrative Code Section 12X.3, or where any or all of the work on the contract will be performed in a state on the Covered State List, may not enter into contracts with the City.

A list of states on the Covered State List can be found at: <http://sfgsa.org/chapter-12x-anti-lgbt-state-ban-list>. Bidders are advised to regularly check the City Administrator's website for updates.

2.15 SUNSHINE ORDINANCE

Contractor acknowledges that the Contract Documents and all records related to their formation, Contractor's performance of Work, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

2.16 SUBMITTING FALSE CLAIMS; REMEDIES

Pursuant to Article V of Chapter 6 of the Administrative Code, any contractor, subcontractor, supplier, consultant or subconsultant who submits a false claim may be subject to monetary penalties, investigation and prosecution and may be declared an irresponsible Bidder or an unqualified consultant and debarred as set forth in that Article. A contractor, subcontractor, supplier, consultant or sub consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor, supplier, consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

2.17 CONSIDERATION OF CRIMINAL HISTORY IN HIRING AND EMPLOYMENT DECISIONS

A. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The

text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

- B. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.
- C. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- D. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.
- E. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in Paragraph D, above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.
- F. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

- G. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.
- H. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

2.18 DRONES

- A. Contractor shall comply with the SFPUC Drone policy, which includes but not limited to applying for approval from the SFPUC Emergency Planning and Security and/or San Francisco Department of Technology's Committee on Information and Technology ("COIT") through the City Representative before operating and/or entering into a contract with a third party to operate drones. The term "drone" means an unmanned aircraft flown by a pilot via a ground control system or flown autonomously or flown semi-autonomously through use of communication links, an on-board computer, and/or other equipment. The SFPUC Drone Policy and Certification page are available at: <https://sfpuc.sharefile.com/d-scd834b4f709449e9> and <https://sfpuc.sharefile.com/d-sa122718c10b49f98>.
 - 1. The authorized use of drones is limited to SFPUC lands, rights of way, and facilities (collectively, "SFPUC Property"). There are only three authorized uses under the policy:
 - a. Construction Management: Examples include inspection of project sites for contract and environmental compliance
 - b. Environmental Monitoring and Documentation: Examples include monitoring of vegetation type and health, wildlife, and streams and reservoirs
 - c. Inspections: Examples include conducting surveys and assessments of SFPUC properties and assets
- B. Contractor's use of drones outside the SFPUC Property will require additional approval from the appropriate authority, City Department, and/or San Francisco's Committee on Information and Technology ("COIT"). Refer to the City and County of San Francisco's Citywide Employee Drone Policy: <https://sfpuc.sharefile.com/d-sa650ee1c0064806a>.

2.19 CONSIDERATION OF SALARY HISTORY

Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

ARTICLE 3– REQUIREMENTS FOR CONSTRUCTION WORK TAKING PLACE WITHIN THE 47 SQUARE MILES OF THE CITY AND COUNTY OF SAN FRANCISCO

3.01 SUMMARY

- A This Article includes special project conditions to comply with City regulations affecting construction Work at the Site.

3.02 CONSTRUCTION NOISE REQUIREMENTS

- A. Contractor shall comply with the City's Noise Control Ordinance (article 29 of the San Francisco Police Code, Ordinance No. 278-08), a portion of which is appended to this Section as **Appendix A**.
1. Contractor shall be responsible for fines or violations pertaining to these ordinances, at no cost to the City.
 2. Provide advance notice to residents and affected businesses in the area of the Site of times, dates and location of construction activities.
 3. Coordinate and schedule Contractor's construction operations to conform to all City requirements and restrictions.
 4. Contractor shall implement mitigation controls to ensure compliance with the construction noise levels allowed. The maximum noise level from any powered construction equipment shall not be greater than 80dBA at 100 feet. This translates to 86dBA at 50 feet (dual units not applicable, as these are specific field and instrument measurements).
- B. Use appropriate construction methods and equipment and furnish and install

acoustical barriers so that noise emanating from the construction will not exceed noise levels pursuant to the City's Noise Control Ordinance.

1. Muffle and shield intakes and exhausts, shroud or shield impact tools, as feasible.
 2. Use electric-powered rather than diesel-powered construction equipment.
 3. Enclose equipment such as large compressors, generators, and large dewatering pumps at a minimum in one-inch-thickness plywood sheds.
 4. Equip pavement breakers and jackhammers with acoustically attenuating shield or shrouds.
 5. Select haul routes that minimize intrusion to residential areas.
 6. Select construction processes and techniques that create the lowest noise levels.
- C. Prepare a written Noise Control Program to mitigate the construction noise impacts and to comply with the noise criteria specified herein that addresses the method of construction, the equipment to be used, and acoustical treatments as necessary. Contractor shall implement the Program, keep a copy of the Program at the Site, and submit that copy to the City Representative upon request.
- D. The City, at its own discretion, will monitor construction noise as part of the environmental monitoring process. When noise levels exceed the noise limits set forth in article 29 of the San Francisco Police Code, Contractor shall stop work and use alternate methods and equipment, or place restrictions on construction operations to further limit the noise as directed by the City.

3.03 NIGHT AND WEEKEND NOISE REQUIREMENTS

- A. Except as specifically set forth in these Specifications, Contractor shall not perform work between the hours of 8:00 p.m. and 7:00 a.m. of the following day if the noise level created thereby is in excess of the ambient noise level by 5 dBA at the nearest property line, unless a noise permit therefor has been obtained pursuant to the Police Code section 2908.
1. Contractor must apply for City noise permits through the City Representative at least 15 business days in advance of night (i.e., between 8:00 p.m. and 7:00 a.m.), weekend, and holiday work. The requirements of the Contract Documents, including safety requirements, shall apply for all night, weekend, and holiday work performed.
 2. If Contractor is directed in the Contract Documents or by special written notice from the City Representative to perform any part of the work between the hours of 8 p.m. and 7 a.m., or on weekends or holidays, the

Contractor must obtain and comply with a City noise permit prior to starting any work. The noise permit shall be obtained from and approved by Bureau of Street Use and Mapping, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, telephone (628) 271-2000.

3. Refer to Section 00 72 00 for definition of Regular Working Hours.

3.04 REQUIREMENTS FOR USING WATER FOR CONSTRUCTION

- A. Contractor shall comply with Article 21 of the San Francisco Public Works Code, which restricts the use of potable water for soil compaction and dust control activities to the extent not directly in conflict with any applicable federal, state, or local law.
- B. At this time, recycled water is not available from San Francisco Public Utilities Commission (SFPUC) Wastewater Enterprise (WWE). Contractor shall proceed with the use of potable water for soil compaction and dust control activities following the requirements set forth in Paragraph 3.04C.
- C. Potable Water:
 1. Contractors will be directed to the SFPUC, Customer Service Bureau (CSB), at 525 Golden Gate Avenue, San Francisco, to complete a potable hydrant meter application. Once the application has been completed and approved, CSB will provide Contractor with a receipt.
 2. Contractor shall pay the costs of permit fees, connection fees, meters, and all water usage furnished by the SFPUC under the established water service account. The City will not reimburse these costs.
 3. Contractor shall bring the receipt as proof of payment to the City Distribution Division (CDD) at 1990 Newcomb Street, San Francisco, to collect the hydrant meter. Contractor shall bring the meter to CDD monthly for readings and payments.

3.05 AIR QUALITY REQUIREMENTS

- A. The Contractor shall provide dust control measures during construction in accordance with the requirements of the Contract Documents. Prior to starting Work at the site, the Contractor shall prepare a Dust Control Program to minimize potential public health impacts associated with visible dust emissions and air quality pollutants. Said dust control program shall include measures to minimize impacts to sensitive receptors associated with exposure to respirable nuisance dust (PM10) and the following requirements to achieve a goal of "No Visible Emissions." The Contractor shall implement the Dust Control Program for the project duration, maintain a copy of the Program at the project site, and submit the copy to the City Representative upon request.

- B. Contractor shall comply with the following requirements in accordance with San Francisco Department of Public Works Dust Control Order (DPW Order No. 171378). Failure to comply with DPW Order No. 171378 shall subject Contractor to fines of \$1,000 per day for each day a violation is not corrected.
1. Minimize dust generation to reduce health risks to workers and the public.
 2. Mist the immediate demolition area with a water spray to prevent airborne dust particles.
 3. Perform continuous water spraying during dust generating activities. Mist or spray in such a way as to prevent puddling or generation of runoff.
 4. Use dust enclosures, curtains, and dust collectors as necessary to control dust. The City may request dust scrubbers installation during demolition to minimize dust migration in the project site's occupied areas.
 5. Minimize the amount of demolition debris stored at the Site. Remove demolition debris, with the exception of hazardous materials or suspected hazardous materials, from the Site no later than the end of each workday.
 6. If hazardous materials or suspected hazardous materials are stored on Site, store such materials in accordance with all applicable Cal/EPA regulations, including providing storage in proper containers and protection from exposure to the elements. Remove such materials from the Site as soon as possible for disposal or recycling in accordance with applicable laws and regulations.
 7. Keep the Site and adjacent areas clean and perform wet sweeping at the end of each shift.
 8. Load haul trucks, hauling debris, soils, sand, or other such materials so that the material does not extend above the walls or back of the truck bed. Wet before covering and tightly cover the surface of each load before the haul truck leaves the loading area.
 9. Clean up spillage on City streets, whether directly or indirectly caused by Contractor's operations.
 10. Stockpiles soil, sand, and other materials shall be covered and protected at the end of the shift.
- C. Contractor shall comply with the requirements of the Bay Area Air Quality Management District (BAAQMD) regulation 6 (for particulate matter and visible emissions), regulation 7 "Odorous Substances," regulation 11 "Hazardous Pollutants," and the California Health and Safety Code division 26 "Air Resource," chapter 3 "Emission Limitations," section 41700 "Prohibited

Conduct," and related regulations. Notify the BAAQMD 10 working days prior to commencing demolition or hazardous materials abatement work.

1. Such notification shall include the names and addresses of operations and persons responsible; description and location of the structure to be demolished or altered including size, age and prior use, and the approximate amount of friable asbestos; scheduled starting and completion dates of demolition or abatement; nature of planned work and methods to be employed; procedures to be employed to meet BAAQMD requirements; and the name and location of the disposal site.
 2. The BBAQMD randomly inspects removal operations and will respond to any complaints received. Contractor shall cooperate and facilitate all BAAQMD authorized inspections.
- D. Contractor shall implement specific air pollution controls to reduce exhaust emissions of particulate matter and other pollutants from construction and related equipment, to a less significant level, by:
1. Preventing the accumulation of toxic concentrations of chemicals
 2. Preventing harmful or obnoxious dispersal of pollutants into the atmosphere
 3. Limiting vehicle speed limit on unpaved roads to 15 miles per hour (mph)
 4. Prohibiting idling motors when equipment is not in use or when trucks are waiting in queues. The idling time of all construction equipment used at the site shall not exceed 5 minutes.
 5. Limiting the hours of operation of heavy-duty equipment and amount of equipment in use to what is needed
 6. Properly tuning and maintaining all equipment in accordance with the manufacturer's specifications
 7. When feasible, using alternative fuel or electrical construction equipment at the project site
 8. Loading haul trucks, excavated materials, hauling debris, soils, sand or other such materials so that the material does not extend above the walls or back of the truck bed. Wet before covering and tightly cover the surface of each load before the haul truck leaves the loading area.
 9. Cleaning up spillage on City streets promptly, whether directly or indirectly caused by Contractor's operations

10. Storing stockpiles of excavated materials, backfill, import materials, sand, gravel, road base and soil in staging areas approved by the City, and completely covering such materials with 10 mil (0.01 inch) polyethylene plastic or equivalent tarp that is braced down and secured daily at the end of the shift. The Contractor shall maintain the covers throughout their use.
11. During all excavation and dirt moving activities, at least three times per shift per day, and once at the end of the shift as directed by the City, wet sweep/vacuum the streets, sidewalks, paths and intersections where work is in progress.
12. For wet sweeping use a vacuum sweeper vehicle with sufficient suction to ensure that the vehicle does not blow dust towards neighboring businesses or residences. The City will evaluate the effectiveness of the Contractor's vacuum sweeper and, if necessary, will require the Contractor to provide a more powerful and effective vehicle.
13. Vehicles entering or exiting construction areas shall travel at a speed of no more than 15 mph to minimize dust emissions and follow the approved traffic routes.
14. Wheel washers shall be installed and used to clean truck and equipment tires leaving the construction site. If wheel washers cannot be installed, tires and spoils trucks shall be washed off before they re-enter City streets to minimize deposition of dust-causing materials.
15. Wet down areas around soil improvement operations, visibly dry disturbed soil surface areas and visibly dry disturbed unpaved driveways at least three (3) times per shift per day or more as needed as directed by the City.

3.06 EXCAVATION REQUIREMENTS

- A. Contractor shall comply with the regulations of California State Standard, CCR Title 8, Chapter 4, Section 1541, regarding coordination and safety of excavations near subsurface installations. A portion of Section 1541 is appended to this Section as **Appendix B**.
- B. Contractor shall obtain, review and comply with article 2.4, "Excavation in the Public Right of Way," of the San Francisco Public Works Code, as currently amended, and applicable regulations of the Department of Public Works for excavating and restoring streets in the public right of way. Except for excavations specifically exempted by said article or by written waiver granted by the Department of Public Works, no excavation shall be performed in the public right of way under the jurisdiction of the Department of Public Works without a valid excavation permit issued by the San Francisco Department of Public Works, Bureau of Street-use and Mapping, telephone (628) 271-2000.

1. Refer to the General Conditions (Section 00 72 00) as amended in the Supplementary Conditions (Section 00 73 00) for permit procurement responsibilities.
 2. Keep copies of the excavation permit available at the Site for inspection by the City upon request.
 3. Excavation permits are not required for excavations completed within 24 hours to install parking meters, street lights, street trees, traffic signs, traffic signals, utility poles or to repair utility boxes in sidewalks; or excavations performed for the sole purpose of repairing sidewalks.
 4. For emergency excavations, necessary for protection of life or property, immediately notify the Department of Public Works, Bureau of Street-use and Mapping, and apply for an emergency permit within 4 hours after the Department offices first open.
 5. Refer to the manual "Regulations for Excavating and Restoring Streets in San Francisco," Department of Public Works, Bureau of Street-use and Mapping, for complete information about excavation code requirements. Copies of the manual may be purchased at Bureau of Street-use and Mapping, 49 South Van Ness Avenue, Suite 300, San Francisco, CA 94103, telephone (628) 271-2000.
 6. Coordinate with the City and other contractors working at the Site to minimize impacts of the excavation work on the community and local businesses.
- C. Contractor shall provide proper public notices prior to commencing excavations in accordance with article 2.4 of the San Francisco Public Works Code. Such notices shall include the name, address, and 24-hour telephone number of Contractor's representative who will provide information to, and receive complaints from, the public concerning the excavation.
1. For excavations completed and restored in 2 to 14 days, post and maintain notices every 100 feet along the block of excavation work at least 72 hours prior to starting excavation.
 2. For excavations completed and restored in 15 days or longer, provide written notice delivered by U.S. mail to each property owner affected by the excavation at least 30 days prior to starting excavation. Additionally, post and maintain notices every 100 feet and deliver written notices to each dwelling unit along the block of excavation work at least 10 days but not more than 15 days prior to starting excavation.
 3. For emergency excavation post and maintain notices every 100 feet along the block of excavation work during the excavation work.

- D. No excavation shall be performed outside the boundaries, times, descriptions, or methods set forth on the approved permit; no excavation shall be longer than 1,200 feet in length at any time without prior written approval of the City.
1. Secure permit extension prior to expiration date in the event of delays in excavation work.
 2. Should such delays be caused by the City Contractor will be granted an extension of Contract Time or adjustment of Contract Sum as provided in Paragraph 7.02 of the General Conditions.
- E. Observe regulations concerning excavation sites including the following:
1. Cover open excavations with steel plates ramped to street grade or provide other means of protection acceptable to the Department of Public Works.
 2. Clean the Site of loose dirt and debris and remove excavated material from the Site at the end of each work day; comply with DPW Order No. 171378 (refer to Paragraph 3.05B, above).
 3. Materials and equipment to be used for excavation work within 7 calendar days may be stored at the Site, provided that fill material, sand, aggregate, and asphalt-coated material shall be stored only in covered, locked containers and provided that such storage complies with the City's traffic rules and regulations
 4. Conform to the requirements of the Specifications for handling, removal, and disposal of hazardous materials.
- F. Restore excavated street or sidewalk pavement in accordance with the requirements of the Specifications or the applicable requirements of the DPW Standard Specifications and Standard Plans (refer to Division 01 for reference standards) to the extent not in conflict with the Specifications. Comply with the following additional San Francisco Public Works Code requirements:
1. Restore trenches and pavement to a constant width equal to the widest section of the excavation, but not exceeding 13 feet.
 2. Backfill excavation within 72 hours of completing related construction.
 3. Replace pavement base within 72 hours of backfilling excavation.
 4. Complete finished pavement within 72 hours of replacing pavement base.
 5. Correct deficiencies in the restoration respecting timing or manner specified for the above items at no additional cost to the City within 24 hours of notification by the City.

6. Should Contractor fail to timely restore, correct or repair deficiencies, the City Representative will complete or cause to be completed such restoration, correction or repair deficiencies, and the completion costs will be deducted from monies due Contractor.

3.07 REQUIREMENTS FOR PROTECTION OF THE SEWER SYSTEM

- A. Contractor shall comply with Article 4.2 of the Public Works Code. Refer to Article 1 C., above, for an internet link to this text. The provisions of Article 4.2 of the Public Works Code are incorporated herein by reference and made part of this Agreement as though fully set forth herein.

1. Wastewater, i.e., any waste liquid/semi-liquid except stormwater; can include potable water
 - a. Wastewater which is transferred from the Site during this Project shall meet the pre-treatment standards of the San Francisco Municipal Code, section 123, Industrial Waste Ordinance #19-92 and DPW Order No. 158170 prior to discharge into the City's sewage system. The text of these regulations are appended to this Section as **Appendix C and Appendix D**, respectively. Contractor is to obtain a batch discharge permit as specified in Sub-subparagraph d., below.
 - b. Should wastewater become contaminated due to Contractor's operations all costs of satisfactory remediation and disposal shall be at no cost to the City. Such costs shall include, but not be limited to, all redesign, reconstruction and pre-treatment costs necessary to satisfy the requirements of the Industrial Waste Ordinance #19-92, and DPW Order No. 158170.
 - c. Should the existing wastewater be contaminated, or should it be uncontaminated but subsequently become contaminated due to conditions other than Contractor's operations, a Change Order will be issued as provided in Article 7 of Section 00 72 00 for additional costs or time extension will be granted as provided in Article 8 of Section 00 72 00 to pretreat the contaminated water prior to routing the flow into the sewer system or other approved disposal at the direction of the City.
 - d. Contractor shall be responsible for obtaining and paying for all water discharge permits and for paying all sewer service charges, penalties and other incidental fees and expenses resulting from discharging wastewater into the City's sewerage system by Contractor's operations.

San Francisco Public Utilities Commission
Wastewater Enterprise, Collection System Division
3801 3rd Street, Suite 600
San Francisco, CA 94124

Telephone (415) 695-7321.

2. Within the area of work, Contractor shall employ Best Management Practices (BMPs) to safeguard the sewer system. Refer to <https://sfpuc.org/programs/pretreatment-program/construction-site-runoff>. Contractor shall be responsible for any fines imposed (e.g., up to \$1,000/day, \$2,000/day, \$25,000/day or higher) for any violations caused by the Contractor per Paragraph 3.21 of the General Conditions (Section 00 72 00).
3. Contractor shall obtain a Construction Site Runoff Control Permit (“Permit”) and comply with all Permit requirements. Refer to web link in the immediate preceding Subparagraph and refer to the requirements of Subparagraph A., above. As of early 2014, there is no charge for issuance of this Permit but Contractor shall complete the application, including all required documents, for this Permit at its own expense and shall submit the complete application to the City Representative in accordance with Section 01 33 00. The complete application must be submitted within 30 calendar days after issuance of the Notice to Proceed. The City Representative will return the application to the Contractor after the City Representative determines the tentative status of the submittal to be “No Action Taken,” “No Exceptions Taken,” or “Make Corrections Noted.” Contractor shall then submit the application to the Permit issuer. Contractor shall be responsible for any Permit application, review, issuance, and inspection fees. For this submittal, Contractor shall allow 28 calendar days total for the City Representative’s and Permit issuer’s review. Upon Permit issuance, Contractor shall provide the City Representative a copy of the Permit and documents associated with its conditions (e.g., Erosion and Sediment Control Plan). Contractor shall be responsible for complying with the requirements of the Permit and shall be responsible for payment of all fines imposed due to any of its violations of the requirements of the Permit or violations of Article 4.2 of the Public Works Code or as specified in Paragraph 3.21 of the General Conditions.

3.08 CLEAN CONSTRUCTION REQUIREMENTS ON MAJOR CONSTRUCTION PROJECTS

- A. Contractor agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the Administrative Code and Chapter 25 of the Environment Code. The provisions of Section 6.25 and Chapter 25 are incorporated herein by reference and made a part of this Agreement as though fully set forth.
- B. Contractor may seek waivers from the Clean Construction requirements as set forth in Section 6.25(b)(3) of the Administrative Code and Section 25.7 of the Environment Code.

- C. By entering into the Agreement, Contractor and City agree that if Contractor uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25 and Chapter 25, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Contractor and the City agree that Contractor shall pay the City the amount of \$100 per day per each piece of off-road equipment and each off-road engine used to complete Work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with the Clean Construction requirements.
- D. Projects shall only utilize off-road equipment with off-road engines that meets or exceeds Tier 2 standards or that operates with the most effective Verified Diesel Emissions Control (VDEC) as certified by the California Air Resources Board (ARB) and such equipment shall be fueled by biodiesel fuel grade B20 or better.
- E. Contractor shall submit an equipment inventory every quarter to the City Representative demonstrating equipment compliance. The inventory shall include, but is not limited to: equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number. For the VDECS installed, the description may include, but is not limited to: technology type, serial number, make, model, manufacturer, and ARB verification number level. Contractor may use the Clean Construction Equipment Inventory Template to satisfy the reporting requirements available at: <https://www.sfdph.org/dph/EH/Air/CleanConstruction.asp>.

3.09 CONSTRUCTION BARRICADE REQUIREMENTS

- A. Contractor shall comply with San Francisco Department of Public Work's Guidelines For the Placement of Barricades at Construction Sites (DPW Order No. 167840), which are appended to this Section as **Appendix E**.

END OF SECTION