

CITY OF BERKELEY

DEPARTMENT OF PUBLIC WORKS  
CAPITAL PROJECTS



# PROJECT MANUAL

## Berkeley Marina Selective Timber Pile Replacement

**SPECIFICATION NO. 23-11567-C**

**January, 2023**

**ADVERTISEMENT DATE: January 20, 2023**

**PRE-BID CONFERENCE: (Non-Mandatory) 11:00a.m., February 1, 2023**

**BID OPENING DATE: 2 p.m., Thursday, February 23, 2023**

Approved by:

A handwritten signature in blue ink, appearing to read "Scott Ferris", written over a horizontal line.

**Scott Ferris**

**Director of Parks, Recreation and Waterfront**

CITY OF BERKELEY

DEPARTMENT OF PARKS,  
RECREATION, AND WATERFRONT



# PROJECT MANUAL

**Berkeley Marina Selective Timber Pile Replacement**

at

201 University Ave.  
Berkeley, CA 94710

**SPECIFICATION NO. 23-11567-C**  
**January, 2023**

Prepared By:

\_\_\_\_\_  
Nelson Lam, Supervising Civil Engineer

Reviewed By:

\_\_\_\_\_  
Nelson Lam, Supervising Civil Engineer

**CAPITAL PROJECTS DIVISION**  
**1947 CENTER STREET, 5<sup>TH</sup> FLOOR**  
**BERKELEY, CALIFORNIA 94704**

**Project Manager**  
**Taylor Lancelot, Associate Civil Engineer**  
**Email: [mtlancelot@CityofBerkeley.info](mailto:mtlancelot@CityofBerkeley.info)**

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**END OF DOCUMENT**

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**DOCUMENT 00 1113****NOTICE INVITING BIDS****ARTICLE 1 - INVITATION TO BID**

- 1.01 Notice Inviting Bids:** City of Berkeley ("City") will receive sealed Bids at City of Berkeley, Purchasing Manager's Office, located at the Martin Luther King Jr. Civic Center, 2180 Milvia Street, Third Floor, Berkeley, CA 94704, Telephone (510) 981-7320, until **2:00 pm, Thursday, February 23, 2023** for the following public work:

**SPECIFICATION NO. 23-11567-C  
CITY OF BERKELEY  
Berkeley Marina Selective Timber Pile Replacement  
201 University Ave., Berkeley, CA 94710**

- 1.02 Project Description: Replacement of select pilings at the Berkeley Marina including removal or abandonment of existing pilings, and repair or installation of new of pilings as specified in plans,** including ancillary work in accordance with the terms and conditions of the Contract Documents. Work shall be completed within 50 Working Days from the date when Contract Time commences to run.
- 1.03 Procurement of Bidding Documents:**  
Bidding Documents contain the full description of the Work. Bidders may obtain Bidding Documents by Friday, January 20, 2023 from City of Berkeley's Public Works website under Current Construction Project Bid Opportunities: <https://berkeleyca.gov/doing-business/working-city/bid-proposal-opportunities>  
For information pertaining to the Bidding Documents, please contact the Project Manager, Taylor Lancelot, 1947 Center Street, 5<sup>th</sup> Floor, Berkeley, CA 94704, by Email at [mtlancelot@CityofBerkeley.info](mailto:mtlancelot@CityofBerkeley.info).
- 1.04 Planholders List:**  
Bidders are responsible for notifying Taylor Lancelot, via email at [mtlancelot@CityofBerkeley.info](mailto:mtlancelot@CityofBerkeley.info) to be included on the Planholders List. Please include the following in the email subject header: "Planholders list for Specification No. 23-11567-C for Berkeley Marina Selective Timber Pile Replacement". In the body of the email, please state the Name of the Company Representative, Company Name, Address, Telephone Number, Fax Number, and Email Address.
- 1.05 Instructions:** Bidders shall refer to Document 00 2113 (Instructions to Bidders) for required documents and items to be submitted in a sealed envelope for deposit into the Bid Box, located at **City of Berkeley, Purchasing Manager's Office, Martin Luther King Jr. Civic Center, 2180 Milvia Street, Third Floor, Berkeley, CA 94704, Telephone (510) 981-7320** no later than the time and date set forth in Paragraph 1.01 above.
- 1.06 Non-Mandatory Pre-Bid Site Visit:** City will conduct a Non-Mandatory Pre-Bid Conference and Site Visit on Wednesday, February 1, 2023 at 11:00 am. Bidders are to meet in front of the Marina Office located at 201 University Avenue, Berkeley, CA 94710.
- 1.07 Bid Preparation Cost:** Bidders are solely responsible for the cost of preparing their Bids.
- 1.08 Reservation of Rights:** City specifically reserves the right, in its sole discretion, to reject any or all Bids, to re-bid, or to waive inconsequential defects in bidding not involving time, price or quality of the work. City may reject any and all Bids and waive any minor irregularities in the Bids.

**ARTICLE 2 - LEGAL REQUIREMENTS**

- 2.01 Required Contractor's License(s):** A California "A" contractor's license is required to bid this contract. Joint ventures must secure a joint venture license prior to award of this Contract. Specialty work may require a specialty contractor's license, held by Bidder or a listed subcontractor.
- 2.02 Bid Alternates:** Bid alternates are identified in Document 00 4113 (Bid Form). The determination of lowest bid shall be based upon: Base contract bid price only.
- 2.03 Substitution of Securities:** City will permit the successful bidder to substitute securities for any retention monies withheld to ensure performance of the contract, as set forth in Document 00 6290 Escrow Agreement For Security Deposits In Lieu Of Retention and incorporated herein in full by this reference, in accordance with Section 22300 of the California Public Contract Code.
- 2.04 Prevailing Wage Laws:** The successful Bidder must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at <http://www.dir.ca.gov/oprl/pwd/> and are deemed included in the Bidding Documents. The successful Bidder shall post the applicable prevailing wage rates at the Site.
- 2.05 Community Workforce Agreement:** This contract **WILL** be subject to the Community Workforce Agreement approved by the Berkeley City Council on June 23, 2015 (See Document 00 6580 – City of Berkeley Contracting Policies). The successful bidder and all subcontractors, at any tier, **WILL** be required to sign an Agreement to be Bound as a condition precedent to entering into any contract for this project.
- 2.06 First Source Construction Agreement:** This contract will be subject to the First Source Construction Agreement (See Document 00 6580 – City of Berkeley Contracting Policies).
- 2.07** This contract **WILL NOT** be subject to Supplementary Conditions for Federal Funding. Section 00 7201.

**END OF SECTION**

**DOCUMENT 00 2113****INSTRUCTIONS TO BIDDERS**

Bids are requested by City of Berkeley ("City"), for a general construction contract, or work described in general, as set forth in Document 00 1113 (Notice Inviting Bids), and the following additional terms.

**ARTICLE 1 - PROCEDURES FOR SUBMISSION OF BIDS****1.01 Non-Mandatory Pre-Bid Conference and Site Visit**

- A. City **WILL** conduct a Non-Mandatory Pre-Bid Conference and Site Visit at 201 University Avenue, Berkeley, CA 94710 on Wednesday, February 1, 2023 at 11:00 am. The location of work is open to the public during normal business or daylight hours. It is recommended that potential bidders visit the site independently to review site conditions prior to bid.
- B. Questions regarding the site and the Bid Documents may be sent to the City's Representative to clarify such matters as Bidders may request. The Site Visit may be the Bidders' only opportunity to investigate conditions at the Site. Other Pre-Bid Site Visits may be scheduled at City's sole discretion, depending on staff availability.
- C. City **will** issue Minutes of the Non-Mandatory Pre-Bid Conference, which shall constitute the sole and exclusive record and statement of the results of the Non-Mandatory Pre-Bid Conference. The Minutes issued by City are not Contract Documents.

**1.02 Required Pre-Bid Investigations**

- A. Prior to submission of Bid, Bidder must conduct a careful examination of Bidding Documents and understand the nature, extent, and location of Work to be performed. Refer to Document 00 7200 (General Conditions) on required pre-bid investigations.
- B. Bidders may examine any available existing conditions information (e.g., record documents, specifications, studies, drawings of previous work), as well as applicable environmental assessment information (if any) regarding the Project, which will be posted on the website location indicated in Document 00 1113 (Notice Inviting Bids), paragraph 1.03.

**1.03 Bidder Questions and Answers**

- A. Bidders must direct all questions about the meaning or intent of Bidding Documents to City's Project Manager in writing as indicated in Document 00 1113 (Notice Inviting Bids), paragraph 1.03. Interpretations or clarifications considered necessary by City in response to such questions will be issued by written Addenda posted to the City's website.
- B. Questions received less than ten (10) calendar days prior to the date for opening Bids may not be answered.
- C. Only questions answered by formal written Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect, and Bidders shall not rely on oral statements.

**1.04 Addenda**

- A. Addenda may also be issued to modify the Bidding Documents as deemed advisable by City. Addenda shall be acknowledged by number in Document 00 4113 (Bid Form) and shall be part of the Contract Documents. A complete listing of Addenda may be secured from City on the website as indicated in Document 00 1113 (Notice Inviting Bid), paragraph 1.03.
  1. It is the Contractor's responsibility to check the City's website for Addenda prior to submitting their bid.

**ARTICLE 2 - RECEIPT OF BIDS****2.01** Date and Time

- A. Sealed Bids will be received by the City until the date and time indicated in Document 00 1113 (Notice Inviting Bids). All Bid envelopes will be time-stamped to reflect their submittal time. City shall reject all Bids received after the specified time and will return such Bids to Bidders unopened. Bidders must submit Bids in accordance with this Document 00 2113.

**2.02** Two Envelope Bid Submission:

- A. City will receive Bids in opaque sealed 10 inch x 13 inch envelopes, containing the required items described herein.
- B. Bidders must submit Bids in two envelopes: "Envelope A – Bid Submittals" and "Envelope B – Statement of Qualifications."
- C. Bidders should mark their Bid envelopes using the name, address, identifying information and specification number, indicated in Document 00 1113 (Notice Inviting Bids).

**2.03** Required Contents of "Envelope A – Bid Submittals"

- A. Document 00 4113 (Bid Form). Bidders must submit Bids on Document 00 4113 (Bid Form) in accordance with the provisions of Document 00 4113. Bidders must complete all Bid items and supply all information required by Bid documents and specifications.
- B. Document 00 4313 (Bond Accompanying Bid). Bidders must submit Document 00 4313 (Bond Accompanying Bid) accompanied by a cashier's check, certified check (certified without qualification and drawn on a solvent bank of the State of California or a National Bank doing business in the State of California) or completed form of Document 00 4313 of not less than 10% of the base Bid, payable to City and completed in accordance with the provisions of Document 00 4313.
- C. Document 00 4314 (Bidder Registration and Experience Form). Bidders must submit Document 00 4314 (Bidder Registration and Experience Form), completed in accordance with the provisions of Document 00 4314.
- D. Document 00 4330 (Subcontractor List). Bidders must submit Document 00 4330 (Subcontractors List) completed in accordance with the provisions of Document 00 4330. The Subcontractors List must include the names of all subcontractors for those subcontractors who will perform any portion of work, including labor, rendering of service, or specially fabricating and installing a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in excess of one half of one percent (0.5%) of the total Bid amount. Any violation of this requirement may result in a Bid being deemed non-responsive and not being considered.
- E. Document 00 4519 (Non-Collusion Affidavit). Bidders must submit Document 00 4519 (Non-Collusion Affidavit) completed in accordance with the provisions of Document 00 4519.
- F. Document 00 4546 (Bidder Certifications). Bidders must submit Document 00 4546 (Bidder Certification) completed in accordance with the provisions of Document 00 4546.

**2.04** Required Contents of "Envelope B – Statement of Qualifications"

- A. Document 00 4513 (Statement of Qualifications for Construction Work). Bidder must submit Document 00 4513 (Statement of Qualifications for Construction Work) in accordance with the provisions of Document 00 4513.

**ARTICLE 3 - BID OPENING AND EVALUATION****3.01** Determination of Apparent Low Bidder

- A. City will open each Bidders' Envelope A at the time and place indicated in Document 00 1113 (Notice Inviting Bids), initially evaluate them for responsiveness, and determine an Apparent Low Bidder as specified herein.

- B. Apparent Low Bid will be determined solely on the total amount of all **Base Bid** items based on terms contained in Document 00 1113 (Notice Inviting Bids) and Document 00 4113 (Bid Form). All Bidders are required to submit Bids on all Bid items (including all **Additive Bid** items).
- C. For the purposes of award, the apparent low Bidder will be the conforming responsible Bidder offering the lowest total amount for the **Total Base Bid** shown in the Bid Form. Once the low bidder is determined as herein described, the City reserves the right to award **Additive Bid**, or not award **Additive Bid**, as it deems to be in the best interest of the City, regardless of whether the total bid of the particular combination selected is higher or lower than any other bidder for that same combination.
- D. For the Apparent Low Bidder only, City will open Envelope B and evaluate the Apparent Low Bidder for responsiveness to the requirements of Document 00 4513 and for Responsibility.
- E. If Apparent Low Bidder is determined to be non-responsive or non-responsible, then City may proceed to the next Apparent Low Bidder's Bid pursuant to any procedures determined in its reasonable discretion, and proceed for all purposes as if this Apparent Low Bidder were the original Apparent Low Bidder.

### 3.02 Evaluation of Bids

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

### 3.03 Reservation of Rights

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

**ARTICLE 4 - MANDATORY BID PROTEST PROCEDURES****4.01** Submission of Written Bid Protest

- A. Any Bid protest in connection with the construction contract or work described in general in Document 00 1113 (Notice Inviting Bids) must be submitted in writing to the Project Manager as indicated in Document 00 1113, paragraph 1.03 before 3:30 p.m. of the fifth Business Day following opening of the Bidders' envelopes.
- B. The initial protest document must contain a complete statement of the basis for the protest.
- C. The protest must refer to the specific portion of the document that forms the basis for the protest.
- D. The protest must include the name, address, and telephone number of the person representing the protesting party.
- E. Only Bidders who the City otherwise determines are responsive and responsible are eligible to protest a Bid; protests from any other Bidder will not be considered. In order to determine whether a protesting Bidder is responsive and responsible, City may evaluate all information contained in any protesting Bidder's Bid, and conduct the same investigation and evaluation as City is entitled to take regarding an Apparent Low Bidder.
- F. The party filing the protest must concurrently transmit a copy of the initial protest document and any attached documentation to all other parties with a direct financial interest that may be adversely affected by the outcome of the protest. Such parties shall include all other Bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.

**4.02** Exclusive Remedy

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

**ARTICLE 5 - AWARD AND EXECUTION OF CONTRACT****5.01** Notice of Intent to Award and Submittal of Executed Contract Documents

- A. If Contract is to be awarded, it will be awarded to the lowest responsible responsive Bidder. City will issue Document 00 5100 Notice of Intent to Award. Such Award, if made, will be made within sixty (60) calendar days after the opening of the Bid Proposals.
- B. Successful Bidder must execute and submit to City the "Required Contract Documents and Proof of Insurance" set forth below, by 5:00 p.m. of the 10<sup>th</sup> calendar Day following the Notice of Intent to Award.

**5.02** Required Contract Documents and Proof of Insurance

- A. Document 00 5200 (Agreement), fully executed by successful Bidder. Submit **three** originals, each bearing an original signature (in blue ink) and initials on each page.
- B. Document 00 6113.13 (Construction Performance Bond), fully executed by successful Bidder and surety, in the amount set forth in Document 00 6113.13. Submit **three** originals.
- C. Document 00 6113.16 (Construction Labor and Material Payment Bond), fully executed by successful Bidder and surety, in the amount set forth in Document 00 6113.16. Submit **three** originals.
- D. Document 00 6536 (Guaranty), fully executed by successful Bidder. Submit **four** originals.
- E. Insurance certificates and endorsements required by Document 00 7316 (Supplementary Conditions — Insurance and Indemnification): Submit **one** original set.
- F. Document 006580 (City Contracting Policies), fully executed by successful bidder. Submit one original set.

**5.03 Failure to Execute and Deliver Documents:**

- A. If Bidder to whom Contract is awarded, within the period described in this Document 00 2113, fails or neglects to execute and deliver all required Contract Documents and file all required bonds, insurance certificates, and other documents, City may, in its sole discretion, rescind the award, recover on Bidder's surety bond, or deposit Bidder's cashier's check or certified check for collection, and retain the proceeds thereof as liquidated damages for Bidder's failure to enter into the Contract Documents. Bidder agrees that calculating the damages City may suffer as a result of Bidder's failure to execute and deliver all required Contract Documents would be extremely difficult and impractical and that the amount of Bidder's required Bid security shall be the agreed and presumed amount of City's damages.
- B. Upon such failure to timely deliver all required Contract Documents as set forth herein, City may determine the next Apparent Low Bidder and proceed accordingly. Such Award, if made, will be made within sixty (60) calendar days after the opening of the Bid Proposals.

**ARTICLE 6 - GENERAL CONDITIONS AND REQUIREMENTS****6.01 Modification of Commencement of Work:**

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

**6.02 Conformed Project Manual:**

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

**6.03 Payment Bond:**

- A. If the Project described in Document 00 1113 (Notice Inviting Bids) involves an expenditure in excess of twenty-five thousand dollars (\$25,000), the successful Bidder must file a payment bond with and approved by City prior to entering upon the performance of the Work, in accordance with Civil Code § 3247.

**6.04 Wage Rates:**

- A. The successful Bidder must comply with all prevailing wage laws applicable to the Project, and related requirements contained in the Contract Documents. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at <http://www.dir.ca.gov/oprl/pwd/> and are deemed included in the Bidding Documents. The successful Bidder shall post the applicable prevailing wage rates at the Site.

**6.05 Withdrawal of Bids:**

- A. Bidders may withdraw their Bids at any time prior to the Bid opening time fixed in this Document 00 2113, only by written request for the withdrawal of Bid filed with City's Purchasing Department, at 2180 Milvia Street, 3<sup>rd</sup> Floor, Berkeley, CA 94704. Bidder or its duly authorized representative shall execute request to withdraw Bid.

**6.06 Ineligible Contractors and Subcontractors:**

- A. 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)].

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

**6.07** Substitutions:

- A. Bidders must base their Bids on products and systems specified in Contract Documents or listed by name in Addenda. City will consider substitution requests only for "or equal items." Bidders wanting to use "or equal" item(s) may submit Document 00 6325 (Substitution Request Form) no later than 35 calendar days after Notice of Award. As a limitation on Bidder's privilege to request substitution of "or equal" items, City has found that certain items are designated as City standards and certain items are designated to match existing items in use on a particular public improvement either completed or in the course of completion or are available from one source. As to such items, City will not permit substitution. Such items are described in the Bidding Documents.

**6.08** Definitions:

- A. All abbreviations and definitions of terms used in this Document 00 2113 are set forth in Document 00 7200 (General Conditions) and Section 01 4200 (References and Definitions).

**END OF SECTION**

**DOCUMENT 00 3132****GEOTECHNICAL DATA AND EXISTING CONDITIONS****ARTICLE 1 - REPORTS AND INFORMATION ON EXISTING CONDITIONS****1.01 Inspection of Reports:**

- A. City, its consultants, and prior contractors may have collected documents providing a general description of the Site and conditions of the Work. These documents may consist of geotechnical reports for and around the Site, contracts, contract specifications, tenant improvement contracts, as-built drawings, utility drawings, and information regarding Underground Facilities (collectively, "Existing Conditions Data".)
- B. Bidders may inspect Geotechnical and Existing Conditions Data. These documents are listed in Section 01 1100 (Summary) and are available for review at the address identified therein. Copies may be obtained for the cost of reproduction and handling upon Bidder's payment for the costs.
- C. Existing Conditions Data is for information only and does not describe labor, materials or equipment furnished by Contractor, but rather, information regarding conditions of the work. Such Existing Conditions Data is not a Contract Document.

**ARTICLE 2 - USE OF EXISTING CONDITIONS DATA****2.01 Above-Ground Existing Conditions:**

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

**2.02 Underground Facilities:**

- A. Information supplied regarding existing Underground Facilities at or contiguous to the Site is based on information furnished to City by others (e.g., the builders of such Underground Facilities or others).
- B. City assumes responsibility for only the general accuracy, completeness or thoroughness of information regarding Underground Facilities that are owned by City. This express assumption of responsibility applies only if Bidder has conducted the independent investigation required of it under Document 00 7200 (General Conditions) and discrepancies were not apparent. Bidder is solely responsible for any interpretation or conclusion drawn from this information.
- C. City is not responsible for information regarding Underground Facilities owned by others.

**2.03 Hazardous Materials Surveys:**

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

**2.04 Geotechnical Data:**

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

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

- B. The term "technical data" shall include actual reported depths, reported quantities, reported soil types, reported soil conditions, and reported material, equipment, or structures that were encountered during subsurface exploration. The term "technical data" does not include, and Bidder may not rely upon, any other data, interpretations, opinions or information shown or indicated in such drawings or reports that otherwise relate to subsurface conditions or described structures. The term "technical data" shall not include the location of Underground Facilities.
- C. Bidder may not rely on the completeness of reports and drawings for the purposes of bidding or construction. Bidder is solely responsible for any interpretation or conclusion drawn from any "technical data" or any other data, interpretations, opinions, or information contained in supplied geotechnical data.
- D. Except as expressly set forth in this Document 00 3132, City does not warrant, and makes no representation regarding, the accuracy or thoroughness of any geotechnical data.
- E. Bidder represents and agrees that in submitting its Bid, it is not relying on any geotechnical data supplied by City, except as specifically set forth herein.

### **ARTICLE 3 - INVESTIGATIONS**

#### **3.01 Required Investigations:**

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

#### **3.02 Access to Site for Investigations:**

- A. During the Pre-Bid Site Visit(s), City will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Bidder deems necessary for submission of a Bid. The Bidder may request alternate dates and times to access the site. Such request must be made in writing at least ten (10) calendar days prior to bid. Bidders must fill all holes and clean up and restore the Site to its former conditions upon completion of such explorations, investigations, tests, and studies. Such investigations may be performed only under the provisions of Document 00 2113 (Instructions to Bidders) and Document 00 7200 (General Conditions) including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such investigation work. Each Bidder shall supply all equipment required to perform any investigations as each Bidder deems necessary. City has the right to limit the number of pieces of machinery operating at one time due to safety concerns.

**END OF SECTION**

**DOCUMENT 00 4113**  
**BID FORM**

**TO CITY OF BERKELEY**

THIS BID IS SUBMITTED BY:

---

(Firm/Company Name)

Re:City of Berkeley Marina Selective Piling Replacement at 201 University Ave., Berkeley, CA 94710, Specification No. 23-11567-C

1. The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an agreement with City of Berkeley in the form included in the Contract Documents, Document 00 5200 (Agreement), to perform and furnish all Work as specified or indicated in the Contract Documents for the Contract Sum and within the Contract Time indicated in this Bid and in accordance with all other terms and conditions of the Contract Documents.
2. Bidder accepts all of the terms and conditions of the Contract Documents, Document 00 1113 (Notice Inviting Bids), and Document 00 2113 (Instructions to Bidders), including, without limitation, those dealing with the disposition of Bid Security. This Bid will remain subject to acceptance for 60 calendar days after the day of Bid opening, unless there is a bid protest, then 90 calendar days after the day of bid opening. Bidder will sign and submit Document 00 5200 (Agreement) and other documents required by Document 002113, paragraph 5.02 (Required Contract Documents and Proof of Insurance) within 20 calendar days after receipt of City’s Notice of Intent to Award.
3. In submitting this Bid, Bidder represents that Bidder has examined all of the Contract Documents, performed all necessary Pre-Bid investigations as set forth in Document 00 5200 (Agreement) Article 6 (Contractor’s Representation), received the Pre-Bid conference minutes (if any), and received the following Addenda:

Addendum Number	ADDENDUM DATE	Signature of Bidder

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

**SCHEDULE OF BID PRICES**

All Bid items, including lump sums and unit prices, must be filled in completely. All Bids shall include all labor, materials, services, and equipment necessary for the completion of all Work shown on the plans, specifications, and other Contract Documents, including connections to existing systems, to provide a complete and finished project. Each Bid item shall include work as described, except for work separately requested under other Bid Items. Bid items are described in Section 01 1100 (Summary of Work). Quote in figures only, unless words are specifically requested.

**Base Bid – Schedule A**

ITEM	DESCRIPTION	Quantity	Unit	Unit Cost	Total Cost
A1	Mobilization & Demobilization	1	LS		
A2	Traffic & Pedestrian Control	1	LS		
A3	Best Management Practices	1	LS		
A4	Pile Disposal	73	EA		
A5	Pile Removal	14	EA		
A6	Pile Top Cutoff	59	EA		
A7	Pile Replacement with Removal of Existing Pile	58	EA		
A8	Pile Installation with Removal of Existing Stub Near or Below Mudline	1	EA		
A9	Pile Repair	1	EA		
A10	Pile Guide Removal	59	EA		
A11	Pile Guide Installation	59	EA		
A12	Pile Cap Installation	59	EA		
	<b>Total Base Bid Price: Bid Items A1 through A12</b>				

**Total Base Bid Price** (Bid Items A1 Through A12):

---

(Words)

**Additive Bid – Schedule B**

ITEM	DESCRIPTION	Quantity	Unit	Unit Cost	Total Cost
B1	Mobilization & Demobilization	1	LS		
B2	Traffic & Pedestrian Control	1	LS		
B3	Best Management Practices	1	LS		
B4	Pile Disposal	9	EA		
B5	Pile Removal	0	EA		
B6	Pile Top Cutoff	9	EA		
B7	Pile Replacement with Removal of Existing Pile	6	EA		
B8	Pile Installation with Removal of Existing Stub Near or Below mudline	3	EA		
B9	Pile Repair	0	EA		
B10	Pile Guide Removal	9	EA		
B11	Pile Guide Installation	9	EA		
B12	Pile Cap Installation	9	EA		
	<b>Total Additive Bid Price: Bid Items B1 through B12</b>				

**Total Additive Bid Price** (Bid Items B1 Through B12):

---

(Words)

**Allowances**

ITEM	DESCRIPTION	Estimated Quantity	Unit	Unit Cost	Total Cost
AL1	Replacement of Polymer Cover Board	20	EA		
	<b>Total Allowances Bid Price: Bid Item AL1</b>				

**Total Allowance Bid Price** (Bid Items AL1):

---

(Words)

5. Subcontractors for work included in all Bid items are listed on Document 00 4330 (Subcontractors List) submitted herewith.
6. The undersigned Bidder understands that City reserves the right to reject this Bid, but that this Bid shall remain open and shall not be withdrawn for a period of sixty (60) calendar days from the date prescribed for its opening.
7. If written notice of the acceptance of this Bid, hereinafter referred to as Notice of Intent to Award, is mailed or delivered to the undersigned Bidder within the time described in Paragraph 2 of this Document 00 4113 or at any other time thereafter before it is withdrawn, the undersigned Bidder will execute and deliver the documents required by Document 00 2113 (Instructions to Bidders) within the times specified therein.
8. Notice of Award or request for additional information may be addressed to the undersigned Bidder at the address set forth below.
9. The undersigned Bidder herewith encloses cash, a cashier's check, or certified check of or on a responsible bank in the United States, or a corporate surety bond furnished by a surety authorized to do a surety business in the State of California, in form specified in Document 00 2113 (Instructions to Bidders), in the amount of ten percent (10%) of the Total Bid Price and made payable to City of Berkeley.
10. The undersigned Bidder agrees to commence Work under the Contract Documents on the date established in Document 00 7200 (General Conditions) and to complete all Work within the time specified in Document 00 5200 (Agreement).
11. The undersigned Bidder agrees that, in accordance with Document 00 7200 (General Conditions), liquidated damages for failure to complete all Work in the Contract within the time specified in Document 00 5200 (Agreement) shall be as set forth in Document 00 5200.
12. The names of all persons interested in the foregoing Bid as principals are:

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

**NAME OF BIDDER:** \_\_\_\_\_

licensed in accordance with an act for the registration of Contractors, and with license number: \_\_\_\_\_ Expiration: \_\_\_\_\_.

\_\_\_\_\_  
 (Place of Incorporation, if Applicable) (Principal)

\_\_\_\_\_  
 (Principal)

\_\_\_\_\_  
 (Principal)

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

\_\_\_\_\_

(Signature of Bidder)

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

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

Contractor's Representative(s): \_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)

Officers Authorized to Sign Contracts \_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)  
\_\_\_\_\_  
(Name/Title)

Telephone Number(s): \_\_\_\_\_  
(Area Code) (Number)  
\_\_\_\_\_  
(Area Code) (Number)

Fax Number(s): \_\_\_\_\_  
(Area Code) (Number)  
\_\_\_\_\_  
(Area Code) (Number)

Date of Bid: \_\_\_\_\_

**END OF SECTION**

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**DOCUMENT 00 4313**  
**BOND ACCOMPANYING BID**

KNOW ALL BY THESE PRESENTS:

That the undersigned

\_\_\_\_\_  
(Name of Contractor)

as Principal and the undersigned as Surety are held and firmly bound unto City of Berkeley,  
as obligee, in the penal sum of \_\_\_\_\_

(Dollar Amount in Words)

Dollars (\$ \_\_\_\_\_) lawful money of the United States of America being at least ten  
percent (10%) of the aggregate amount of said Principal

\_\_\_\_\_’s base Bid, for the payment of which,  
well and truly to be made, we bind ourselves, our successors, executors, administrators, and assigns,  
jointly and severally, firmly by these presents.

WHEREAS, the said Principal is submitting a Bid for

Specification No. 23-11567-C  
**Berkeley Marina Selective Timber Pile Replacement**  
at 201 University Ave., Berkeley, CA 94710.

THE CONDITION OF THIS OBLIGATION IS SUCH that if the Bid submitted by the said Principal  
be accepted and the Contract be awarded to said Principal and said Principal shall within the required  
periods enter into the Contract so awarded and provide the required Construction Performance Bond,  
Construction Labor and Material Payment Bond, insurance certificates, Guarantee, and all other  
endorsements, forms, and documents required under Document 00 2113 (Instructions to Bidders), then  
this obligation shall be void, otherwise to remain in full force and effect.

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

(Corporate Seal) By \_\_\_\_\_  
Principal

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

(Corporate Seal) By \_\_\_\_\_  
Attorney in Fact

**END OF SECTION**

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**DOCUMENT 00 4314**  
**BIDDER REGISTRATION FORM**  
**INSTRUCTIONS**

In order to register to undertake work for City of Berkeley, Bidder **must**:

- 1) Fill out this registration form completely; do not leave blanks.
- 2) Provide certificates of insurance or a letter evidencing coverage complying with Document 00 4513 (Statement of Qualifications).

**INDEPENDENT CONTRACTOR REGISTRATION**

Contractor's License # \_\_\_\_\_

Date: \_\_\_\_\_ Fed I.D. # \_\_\_\_\_

Full Corporate Name of Company: \_\_\_\_\_

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

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name of Principal Contact: \_\_\_\_\_

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

**INSURANCE**

**Workers' Compensation:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

**General Liability:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Automobile Liability:**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**All-risk Course of Construction (if applicable, as required by Document 00 7316 Supplementary Conditions – Insurance):**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Professional Liability (if applicable, as required by Document 00 7316 Supplementary Conditions – Insurance):**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

**Pollution Legal Liability Insurance (if applicable, as required by Document 00 7316 Supplementary Conditions – Insurance):**

Carrier: \_\_\_\_\_

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

Phone and Fax: \_\_\_\_\_

Policy Number: \_\_\_\_\_

Policy Limits: \$ \_\_\_\_\_

A.M. Best Rating: \_\_\_\_\_

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

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

**SAFETY EXPERIENCE**

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

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

[20\_\_] \_\_\_\_\_ [20\_\_] \_\_\_\_\_ [20\_\_] \_\_\_\_\_

- 2. Use Bidder's last year's Cal/OSHA 200 log to fill in the following number of injuries and illnesses:

- a. Number of lost workday cases \_\_\_\_\_

- b. Number of medical treatment cases \_\_\_\_\_

- c. Number of fatalities \_\_\_\_\_

- 3. Employee hours worked last year \_\_\_\_\_

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

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

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

**BIDDER:**

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

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

Date \_\_\_\_\_

**END OF SECTION**



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**DOCUMENT 00 4513**  
**STATEMENT OF QUALIFICATIONS FOR CONSTRUCTION PROJECTS**

**ARTICLE 1 – GENERAL INFORMATION****1.01 Minimum Bidder Qualifications.**

- A. Bidders must be duly licensed in accordance with the California Business & Professions Code and have a history of work performance sufficient to meet the requirements of a responsible bidder in the California Public Contract Code Section 1104.
- B. Bidders must have three (3) years experience as a continuously operating entity engaged in the performance of similar work.
- C. Bidders must demonstrate successful experience with type of work of this Project, to include, within the past year, completed two (2) projects of a similar nature and complexity with a contract dollar amount of (i.) at least 75% of the amount of Bidder's Bid or (ii.) 125% of such amount in the aggregate.

**1.02 Measurement.**

- A. Bidder's compliance with the minimum qualification requirements will be measured by Bidder's experience as an operating entity and also by the experience of the supervisory personnel who will have responsible charge of the various major components of the Work.
- B. If Bidder subcontracts portions of the Work, City, in its determination of whether the minimum qualification requirements have been met, may consider the qualifications of the Subcontractor's supervisory personnel.
- C. The qualifications of the Key Personnel are to be submitted with the Statement of Qualifications ("SOQ"), by providing the information described in this Document 00 4513.

**ARTICLE 2 – Required Contents of SOQ Submission****2.01 Transmittal Letter**

- A. The Transmittal Letter shall name the proposed prime contractor, its legal structure (i.e., corporation, partnership, limited partnership, joint venture). If a joint venture or partnership is proposed, Bidder shall identify partner and/or member of the joint venture and their roles and responsibilities.

**2.02 Submittals:**

- A. Completed Questionnaire. Bidder shall include a completed Statement of Qualification Questionnaire in the form attached to this Document 00 4513 as Attachment "A".
- B. License: Evidence of a valid contractor's license and required licenses of all licensees of persons who are Key Personnel necessary to perform the Work.
- C. Litigation History. Description of litigation history for the past three years, including names of involved parties, nature of dispute, and disposition.

**2.03 Additional Submittals:**

After bid opening, Contractor maybe required to supply the City with the following submittals upon request.

- A. Resumes of Proposed Key Personnel. Bidder shall provide a resume for each named Key Personnel of Bidder, to include as necessary: Years of experience; Education - degrees, schools and years obtained; Professional Registrations; Fluency in English (Yes/No); At least two client references, including contact names, addresses and telephone numbers, and description of projects of a similar nature worked on in the past five years.
- B. Audited or Reviewed Financial Statements. Include audited or reviewed financial statements for the three most recently completed fiscal years for Bidder and each member of any proposed

consorting or joint venture. Also include audited or reviewed financial statements for the three most recently completed fiscal years for any parent companies) of Bidder and each member of any proposed consortium or joint venture.

- C. Surety Letter re: Capability to Provide Required Performance and Payment Bonds. Bidder shall include a letter from a surety duly licensed to do business in the State of California, having a financial rating from A.M. Best Company of A-, VIII or better, that the surety has agreed to provide Bidder with the required performance and payment bonds in accordance with the requirements set forth in Documents 00 6113.13 (Construction Performance Bond) and 00 6113.16 (Construction Labor and material Payment bond), each in the penal sum of the Contractor's bid when submitted. Owner shall have the right to verify with the surety that the surety, based upon the Bid prices, will issue the required bonds under the conditions stated.
- D. Insurer Letter re: Capability to Provide the Required Insurance. Bidder shall provide a letter from an insurance underwriter, having a financial rating reasonably acceptable to City, confirming that the insurer will provide Bidder the required coverages and amounts specified in the Contract Documents.
- E. Description of Human and Physical Resources. Bidder shall identify, describe, and quantify for itself, the following technical information for the construction work: Description and location of manufacturing facilities, naming products and quantifying production capacity and current demand; Description of field organization(s), naming skills and equipment; Description of safety program quality control procedures, and safety experience.

#### **2.04 Format.**

- A. The SOQ shall be clear and concise to enable management-oriented personnel to make a thorough evaluation and arrive at a sound determination as to whether the SOQ meet City's requirement. To this end, the SOQ should be so specific, detailed and complete as to demonstrate clearly and fully that the Bidder has a thorough understanding of and has demonstrated knowledge of the requirements to perform the Work (or applicable portion thereof).
- B. Any explanation requested by a Bidder regarding the meaning or interpretation of this Document 00 4513 must be requested in writing and with sufficient time allowed for a reply to reach Bidder before the submission of its SOQ. Oral explanations or instructions will not be binding. Any information provided to any prospective Bidder concerning this Document 00 4513 will be furnished to all prospective Bidders as an Addendum to the Bidding Documents.

STATEMENT OF QUALIFICATION QUESTIONNAIRE FOLLOWS ON NEXT PAGE

**ATTACHMENT “A” – STATEMENT OF QUALIFICATION QUESTIONNAIRE**

Bidders shall complete the entire Statement of Qualification Questionnaire and submit it in accordance with Document 00 2113 (Instructions to Bidders) and Document 00 4513 (Statement of Qualifications). Failure to complete the questionnaire or inclusion of any false statement(s) shall be ground for immediate disqualification.

**CONTACT INFORMATION**

Company Name: \_\_\_\_\_

Owner of Company: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

**PART A: GENERAL INFORMATION**

- 1. Does Bidder possess a valid and current California Contractor’s license for the work proposed? Yes \_\_\_ No \_\_\_
- 2. Does Bidder have a minimum of **\$2,000,000** liability insurance coverage? Yes \_\_\_ No \_\_\_
- 3. Has Bidder’s License been revoked at any time in the last five years? Yes \_\_\_ No \_\_\_
- 4. Has Bidder been “default terminated” by an Owner (other than for convenience), or has a Surety completed a contract for Bidder within the last five years? Yes \_\_\_ No \_\_\_
- 5. Has Bidder been convicted more than twice for failure to pay prevailing wages in the last three years? Yes \_\_\_ No \_\_\_
- 6. Will Bidder provide copies of its reviewed or audited financial statements and accompanying notes for the last three years, if requested? Yes \_\_\_ No \_\_\_

**Bidder may be disqualified if any answer to questions 1, 2, or 6 is No.  
 Bidder may be disqualified if any answer to questions 3, 4, or 5 is Yes.**

**PART B: SAFETY, PREVAILING WAGE, DISPUTES AND BONDS**

**(SAFETY)**

- 1. Has Cal/OHSA, Federal OSHA, the EPA or any Air Quality Management Owner cited Bidder in the past five years?  
 Yes \_\_\_ No \_\_\_ If yes, attach description of each citation.
- 2. How often does Bidder require documented safety meetings be held for:
 

Field Supervisor	Weekly _____	Bi-Weekly _____	Monthly _____	Less Than Monthly _____
Employees	Weekly _____	Bi-Weekly _____	Monthly _____	Less Than Monthly _____
New Hires	Weekly _____	Bi-Weekly _____	Monthly _____	Less Than Monthly _____
Subcontractors	Weekly _____	Bi-Weekly _____	Monthly _____	Less Than Monthly _____
- 3. How often does Bidder conduct documented safety inspections?  
 Quarterly \_\_\_\_\_ Semi-annually \_\_\_\_\_ Annually \_\_\_\_\_ Other \_\_\_\_\_

4. Does Bidder have home office safety representatives who visit/audit the job site?  
Quarterly \_\_\_\_\_ Semi-annually \_\_\_\_\_ Annually \_\_\_\_\_ Other \_\_\_\_\_
5. What is Bidder's Interstate Experience Modification Rate? \_\_\_\_\_. (A rating in excess of **1** may constitute grounds for disqualification as non-responsible).

**(PREVAILING WAGE PROVISIONS)**

6. Has Bidder been fined, penalized or otherwise found to have violated any prevailing wage or labor code provision? If yes, attach description of each occurrence.  
Yes \_\_\_\_\_ No \_\_\_\_\_

**(LICENSE PROVISIONS)**

7. Has Bidder changed names or license numbers in the past 5 years? If so, please state reason for change.  
Yes \_\_\_\_\_ No \_\_\_\_\_ Reason: \_\_\_\_\_  
\_\_\_\_\_

**(DISPUTES)**

8. Has Bidder had any claims, litigation, or disputes ending in mediation or arbitration, or termination for cause associated with any project in the past 5 years? If yes, attach description of each instance including details of total claim amount, settlement amount, and Owner's name and phone number.  
Yes \_\_\_\_\_ No \_\_\_\_\_

**(BONDING)**

9. Bonding Capacity – Provide documentation from Bidder's surety identifying the following:  
Name of bonding company/surety: \_\_\_\_\_  
Name of Surety Agent: \_\_\_\_\_  
Surety Agent address: \_\_\_\_\_  
Surety Agent phone number: \_\_\_\_\_  
Is surety a California-admitted surety? Yes \_\_\_\_\_ No \_\_\_\_\_  
Is surety listed in the current edition of the California Department of the Treasury's Listing of approved sureties? Yes \_\_\_\_\_ No \_\_\_\_\_  
List surety's A.M. Best Rating: \_\_\_\_\_  
What is Bidder's total bonding capacity? \_\_\_\_\_  
What percent does Bidder pay for bonds? \_\_\_\_\_

**PART C: EXPERIENCE OF PRIME CONTRACTOR**

The nature of this Project requires prior similar experience for the firm and the Key Personnel assigned. Summarize similar project experience below and provide the detailed project information requested:

**Prime Contractor.** List three projects of similar size and scope to the Work of the Contract, completed in the past two (2) years, and indicate who were the superintendent, project manager and scheduler.

NOTE: this listing will be used to assess compliance with the stated minimum qualifications in Section 1.01.

Project Name	Construction Cost (\$)	Year Completed	Name of Project Superintendent	Name of Project Manager	Name of Project Scheduler

List Key Personnel that will be assigned to the Work of the current Project and their experience/training with the projects listed above:

Project Manager: \_\_\_\_\_

Project Superintendent: \_\_\_\_\_

Project Scheduler: \_\_\_\_\_

**Recent Projects.**

Provide information about three (3) of its most currently completed projects. Names and references must be current and verifiable. This listing will be used to assess compliance with the stated minimum qualifications in Section 1.01. If a separate sheet is used, it must contain all of the following information:

1. Project Name: \_\_\_\_\_  
Location: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Owner Contact (name and phone): \_\_\_\_\_  
Architect/Engineer: \_\_\_\_\_  
Architect/Engineer Contact (name and phone number): \_\_\_\_\_  
Const. Mgr. or Project Mgr. (name and phone number): \_\_\_\_\_  
Description of Project, Scope of Work Performed: \_\_\_\_\_  
\_\_\_\_\_  
Total Construction Cost: \_\_\_\_\_  
Total Change Order Amount: \_\_\_\_\_  
Did Change Orders exceed 10% of original contract sum? \_\_\_\_\_ If yes, please explain on separate sheet.  
Original Scheduled Date of Completion: \_\_\_\_\_  
Time Extensions Granted (number of calendar days): \_\_\_\_\_  
Actual Date of Completion: \_\_\_\_\_  
Number of Stop Notices filed by Subcontractors or Suppliers: \_\_\_\_\_
2. Project Name: \_\_\_\_\_  
Location: \_\_\_\_\_  
Owner: \_\_\_\_\_  
Owner Contact (name and phone): \_\_\_\_\_  
Architect/Engineer: \_\_\_\_\_  
Architect/Engineer Contact (name and phone number): \_\_\_\_\_  
Const. Mgr. or Project Mgr. (name and phone number): \_\_\_\_\_  
Description of Project, Scope of Work Performed: \_\_\_\_\_  
\_\_\_\_\_

Total Construction Cost: \_\_\_\_\_

Total Change Order Amount: \_\_\_\_\_

Did Change Orders exceed 10% of original contract sum? \_\_\_\_\_ If yes, please explain on separate sheet.

Original Scheduled Date of Completion: \_\_\_\_\_

Time Extensions Granted (number of calendar days): \_\_\_\_\_

Actual Date of Completion: \_\_\_\_\_

Number of Stop Notices filed by Subcontractors or Suppliers: \_\_\_\_\_

3. Project Name: \_\_\_\_\_

Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Owner Contact (name and phone): \_\_\_\_\_

Architect/Engineer: \_\_\_\_\_

Architect/Engineer Contact (name and phone number): \_\_\_\_\_

Const. Mgr. or Project Mgr. (name and phone number): \_\_\_\_\_

Description of Project, Scope of Work Performed: \_\_\_\_\_

Total Construction Cost: \_\_\_\_\_

Total Change Order Amount: \_\_\_\_\_

Did Change Orders exceed 10% of original contract sum? \_\_\_\_\_ If yes, please explain on separate sheet.

Original Scheduled Date of Completion: \_\_\_\_\_

Time Extensions Granted (number of calendar days): \_\_\_\_\_

Actual Date of Completion: \_\_\_\_\_

Number of Stop Notices filed by Subcontractors or Suppliers: \_\_\_\_\_

**PART D: FINANCIAL INFORMATION**

1. Has Bidder ever reorganized under the protection of bankruptcy laws?

Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please state when \_\_\_\_\_

2. If Bidder has had the general liability carrier identified in Document 00 4314 (Bidder Registration and Safety Experience Form) for less than 5 years, please provide additional information below for balance of the last 5 years:

Agency Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Phone Number \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating: \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating: \_\_\_\_\_

Carrier: \_\_\_\_\_ A.M. Best Rating: \_\_\_\_\_

3. Has Bidder ever had insurance terminated by a carrier? Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, explain on a separate signed sheet marked with correlating cross-reference to this paragraph of the questionnaire.

Bidder hereby declares under penalty of perjury that all the information provided in this questionnaire is true and correct.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

**END OF SECTION**

**DOCUMENT 00 4519**  
**NON-COLLUSION AFFIDAVIT**

PUBLIC CONTRACT CODE §7106

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

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_)

\_\_\_\_\_, being first duly sworn,  
(Name of Principal of Bidder)

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

of \_\_\_\_\_, the party  
(Name of Bidder)

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

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

\_\_\_\_\_  
(Name of Bidder)

\_\_\_\_\_  
(Signature of Principal)

Subscribed and sworn before me \_\_\_\_\_

This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Notary Public of the State of \_\_\_\_\_

In and for the County of \_\_\_\_\_

My Commission expires \_\_\_\_\_ (Seal)

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

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

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

**END OF SECTION**

**DOCUMENT 00 4546**

**BIDDER CERTIFICATIONS**

TO BE EXECUTED BY ALL BIDDERS AND SUBMITTED WITH BID

The undersigned Bidder certifies to City as set forth in sections 1 through 5 below.

**1. STATEMENT OF CONVICTIONS**

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

**2. CERTIFICATION OF WORKER'S COMPENSATION INSURANCE**

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

**3. CERTIFICATION OF PREVAILING WAGE RATES AND RECORDS**

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

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

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

**5. CERTIFICATION OF ADEQUACY OF CONTRACT AMOUNT**

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

**BIDDER:**

\_\_\_\_\_ (Name of Bidder)

Date: \_\_\_\_\_, [202 ] By: \_\_\_\_\_ (Signature)

Name: \_\_\_\_\_ (Print Name)

Its: \_\_\_\_\_ (Title)

**END OF SECTION**

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**DOCUMENT 00 5100****NOTICE OF INTENT TO AWARD**

Dated \_\_\_\_\_

TO: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CONTRACT NO.: \_\_\_\_\_

CONTRACT FOR: City of Berkeley  
**Berkeley Marina Selective Timber Pile Replacement at 201 University Ave.,  
Berkeley, CA 94710**

The Contract Sum of your contract is TBD (\$TBD).

1. Five copies of the proposed Contract Documents listed below accompany this Notice of Award.
2. You must comply with the following conditions precedent by **5:00 p.m.** of the **10<sup>th</sup> Day** following the date of this Notice of Award, that is, by **TBD**.
  - a. Deliver to Owner **four** fully executed counterparts of Document 00 5200 (Agreement). Each copy of Document 00 5200 (Agreement) must bear your original signature on the signature page and your initials on each page.
  - b. Deliver to Owner three originals of Document 00 6113.13 (Construction Performance Bond), executed by you and your surety.
  - c. Deliver to Owner three originals of Document 00 6113.16 (Construction Labor and Material Payment Bond), executed by you and your surety.
  - d. Deliver to Owner original set of the insurance certificates with endorsements required under Document 00 7316 (Supplementary Conditions – Insurance).
  - e. Deliver to Owner four original copies of Document 00 6536 (Guaranty), each executed by you.
  - f. Deliver to Owner three original copies of all documents found in Document 00 6580 (City of Berkeley Contracting Policies) executed by you.
3. Failure to comply with these conditions within the time specified will entitle Owner to consider your Bid abandoned, to annul this Notice of Award, and to declare your Bid security forfeited.
4. Within [21 calendar days] after you comply with the conditions in Paragraph 2 of this Document 00 5100, Owner will return to you one fully signed counterpart of Document 00 5200 (Agreement) with [number] copies of the Project Manual (including Specifications and Drawings) and [number] sets of full-size Drawings.
5. Before you may start any Work at the Site, you must attend a preconstruction conference. The preconstruction conference may be arranged through **Taylor Lancelot**, [mtlancelot@cityofberkeley.info](mailto:mtlancelot@cityofberkeley.info).

Questions regarding bonds and insurance may be directed to **Taylor Lancelot** at the same email. All other inquiries regarding the Project should be directed to **Taylor Lancelot**.

6. Upon commencement of the Work, you and each of your Subcontractors shall certify and provide Owner copies of payroll records on forms provided by the Division of Labor Standards Enforcement, in accordance with California Labor Code §1776.

**OWNER**

BY: \_\_\_\_\_  
(Title)

\_\_\_\_\_  
( Print Name)

ATTEST: \_\_\_\_\_  
Secretary

\_\_\_\_\_  
(Print Name)

AUTHORIZED BY **City of Berkeley** RESOLUTION:

NO: \_\_\_\_\_

ADOPTED: \_\_\_\_\_, [202\_\_]

**[Copy of Resolution Attached]**

**END OF DOCUMENT**

**DOCUMENT 00 5200****AGREEMENT**

THIS AGREEMENT, dated this [date] day of [Month], [202\_\_], by and between **TBD** whose place of business is located at **TBD** ("Contractor"), and **City of Berkeley** ("City"), acting under and by virtue of the authority vested in Owner by the laws of the State of California.

**SPECIFICATION NUMBER 23-11567C**

**Berkeley Marina Selective Timber Pile Replacement  
at  
201 University Ave., Berkeley, CA 94710**

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

**ARTICLE 1 – SCOPE OF WORK OF THE CONTRACT****1.01 WORK OF THE CONTRACT**

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

**1.02 PRICE FOR COMPLETION OF THE WORK**

- A. City shall pay Contractor the following Contract Sum \$TBD for completion of Work in accordance with Contract Documents as follows: [INSERT LUMP SUM, UNIT PRICES, OR CONTRACTOR'S BID IN WORDS AND NUMBERS]
- B. The Contract Sum includes all allowances (if any).

**ARTICLE 2 – COMMENCEMENT AND COMPLETION OF WORK****2.01 COMMENCEMENT OF WORK**

- A. Contractor shall commence Work on the date established in the Notice to Proceed (**Commencement Date**).
- B. City reserves the right to modify or alter the Commencement Date.

**2.02 COMPLETION OF WORK**

- A. Contractor shall achieve Substantial Completion of the entire Work within **45** working days from the Commencement Date.
- B. Contractor shall achieve Final Completion of the entire Work **50** working days from the Commencement Date.

**ARTICLE 3 – PROJECT REPRESENTATIVES****3.01 CITY'S PROJECT MANAGER**

- A. City has designated Taylor Lancelot as its Project Manager to act as City's Representative in all matters relating to the Contract Documents.
- B. Project Manager shall have final authority over all matters pertaining to the Contract Documents and shall have sole authority to modify the Contract Documents on behalf of City, to accept work, and to make decisions or actions binding on City, and shall have sole signature authority on

behalf of City.

- C. City may assign all or part of the Project Manager’s rights, responsibilities and duties to a Construction Manager, or other City Representative.

**3.02 CONTRACTOR’S PROJECT MANAGER**

- A. Contractor has designated **Taylor Lancelot** as its Project Manager to act as Contractor’s Representative in all matters relating to the Contract Documents.

**3.03 ARCHITECT/ENGINEER**

- A. **Moffatt & Nichol** furnished the Plans and Specifications and shall have the rights assigned to Architect/Engineer in the Contract Documents.
- B. Architect/Engineer has designated **Brad Porter** as its project manager, to act as its representative for receiving and making communications authorized under the Contract Documents.

**ARTICLE 4 – LIQUIDATED DAMAGES FOR DELAY IN COMPLETION OF WORK**

**4.01 LIQUIDATED DAMAGE AMOUNTS**

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

**4.02 SCOPE OF LIQUIDATED DAMAGES**

- A. Measures of liquidated damages shall apply cumulatively.
- B. Limitations and stipulations regarding liquidated damages are set forth in Document 00 7200 (General Conditions).

**ARTICLE 5 – CONTRACT DOCUMENTS**

**5.01** Contract Documents consist of the following documents, including all changes, Addenda, and Modifications thereto:

Document 00 5100	Notice of Award
Document 00 5200	Agreement
Document 00 5500	Notice to Proceed
Document 00 6113.13	Construction Performance Bond
Document 00 6113.16	Construction Labor and Material Payment Bond
Document 00 6290	Escrow Agreement for Security Deposits
Document 00 6325	Substitution Request Form
Document 00 6530	Release of Claims
Document 00 6536	Guaranty
Document 00 6580	City of Berkeley Contracting Policies
Document 00 7200	General Conditions
Document 00 7201	Supplementary Conditions
Document 00 7316	Supplementary Conditions – Insurance
Document 00 7319	Supplemental Conditions – Hazardous Materials
Document 00 7380	Apprenticeship Programs
Document 00 9113	Addenda [LIST ADDENDA ISSUED]
Specifications	Divisions 1 through 9

Maps, Drawings and Sketches listed in Document 00 0115

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

## **ARTICLE 6 – CONTRACTOR’S REPRESENTATIONS**

In order to induce City to enter into this Agreement, Contractor makes the following representations and warranties:

- 6.01** Contractor has visited the site and has examined thoroughly and understood the nature and extent of the Contract Documents, Work, Site, locality, actual conditions, as-built conditions, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- 6.02** Contractor has examined thoroughly and understood all reports of exploration and tests of subsurface conditions, as-built drawings, drawings or reports, available for Bidding purposes, of physical conditions, including Underground Facilities, identified in the Bid Documents, or which may appear in the Drawings, and accepts the determination set forth in these documents and Document 00 7200 General Conditions of the limited extent of the information contained in such reports and drawings upon which the Contractor may be entitled to rely. Contractor agrees that except for the information so identified, Contractor does not and shall not rely on any other information contained in such reports and drawings.
- 6.03** Contractor has conducted or obtained and has understood all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in Article 6.02 above) which pertain to the subsurface conditions, as-built conditions, Underground Facilities and all other physical conditions at or contiguous to the site or otherwise which may affect the cost, progress, performance or furnishing of Work, as Contractor considers necessary for the performance or furnishing of Work at the Contract Sum, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of the General Conditions; and no additional examinations, investigations, explorations, test, reports, studies or similar information or data are or will be required by Contractor for such purposes.
- 6.04** Contractor has correlated its knowledge and the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.
- 6.05** Contractor has given the Project Manager prompt written notice of all conflicts, errors, ambiguities or discrepancies that it has discovered in or among the Contract Documents and as-built and actual conditions and the written resolution thereof through Addenda issued by Project Manager is acceptable to Contractor.

## **ARTICLE 7 – MISCELLANEOUS**

- 7.01** Terms and abbreviations used in this Agreement are defined in Document 00 7200 (General Conditions) and Section 01 4200 (References and Definitions) and will have the meaning indicated therein.
- 7.02** It is understood and agreed that in no instance are the persons signing this Agreement for or on behalf of City or acting as an employee, agent, or representative of City, liable on this Agreement

or any of the Contract Documents, or upon any warranty of authority, or otherwise, and it is further understood and agreed that liability of City is limited and confined to such liability as authorized or imposed by the Contract Documents or applicable law.

- 7.03** In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, Contractor or Subcontractor offers and agrees to assign to the awarding body all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. §15) or under the Cartwright Act (Chapter 2 (commencing with §16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time City tenders final payment to Contractor, without further acknowledgment by the parties.
- 7.04** Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are deemed included in the Contract Documents and on file at Owner's Office, and shall be made available to any interested party on request. Pursuant to California Labor Code §§ 1860 and 1861, in accordance with the provisions of Section 3700 of the Labor Code, every contractor will be required to secure the payment of compensation to his employees. Contractor represents that it is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor shall comply with such provisions before commencing the performance of the Work of the Contract Documents.
- 7.05** No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) 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 works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.
- 7.06** This Agreement and the Contract Documents shall be deemed to have been entered into in the County of Alameda, State of California, and governed in all respects by California law (excluding choice of law rules). The exclusive venue for all disputes or litigation hereunder shall be in the Superior Court for the County of Alameda.

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

**CITY OF BERKELEY**

**[INSERT CONTRACTOR NAME:]**

By: \_\_\_\_\_  
City Manager

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

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

Attest:  
CITY OF BERKELEY

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
City Clerk

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

\_\_\_\_\_  
(Print Name)

Pre-approved as to form:  
CITY ATTORNEY  
8/2016

**END OF DOCUMENT**

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**DOCUMENT 00 5500**

**NOTICE TO PROCEED**

Dated: \_\_\_\_\_, 202\_\_

To: \_\_\_\_\_  
(Contractor)

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

CONTRACT FOR: **City of Berkeley Berkeley Marina Selective Timber Pile Replacement at 201 University Ave., Berkeley, CA 94710**

CONTRACT NO: [TBD]

You are notified that the Contract Time under the above Contract will commence to run on \_\_\_\_\_ [202\_\_]. On that date, you are to start performing your obligations with respect to Work at the Site under the Contract Documents. In accordance with Article 2 of Document 00 5200 (Agreement), the dates of Substantial Completion and Final Completion for the entire Work are \_\_\_\_\_, [202\_\_] and \_\_\_\_\_, [202\_\_], respectively.

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

1. Certified Safety Program and related information
2. Acknowledgement of applicable regulatory permits
3. Best Management Practices Plan
4. Spill contingency plan for Hazardous Waste Spills
5. Work Schedule and Construction Staging Area Plan
6. Submit Traffic & Pedestrian Control Plan
7. Demolition Plan
8. Pile Repair System Shop Drawings: Fiberglass Jacket, Grout, Reinforcement Material
9. Concrete Piles submittals per Section 316213 "Concrete Piles"

**OWNER**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**END OF DOCUMENT**

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**DOCUMENT 00 6113.13****CONSTRUCTION PERFORMANCE BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

**1.01** THAT WHEREAS, **City of Berkeley** ("City"), a public agency of the State of California, has awarded to **TBD** as Principal, Specification Number **23-11567C**, dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Contract"), titled City of Berkeley Marina Selective Piling Replacement in the amount of \$\$XXXXXXXX, which Contract is by this reference made a part hereof, for the work of the following Contract:

**Replacement of select pilings at the Berkeley Marina including removal or abandonment of existing piling, and repair or installation of new pilings as specified in plans.**

**1.02** AND WHEREAS, Principal is required to furnish a bond in connection with the Contract, guaranteeing the faithful performance thereof;

**1.03** NOW, THEREFORE, we, the undersigned Principal and (Name of Surety) as Surety are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE to be paid to City or its successors and assigns; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its heirs, executors, administrators, successors, or assigns approved by City, shall promptly and faithfully perform the covenants, conditions, and agreements of the Contract during the original term and any extensions thereof as may be granted by City, with or without notice to Surety, and during the period of any guarantees or warranties required under the Contract, and shall also promptly and faithfully perform all the covenants, conditions, and agreements of any alteration of the Contract made as therein provided, notice of which alterations to Surety being hereby waived, on Principal's part to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify, defend, protect, and hold harmless City as stipulated in the Contract, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and effect.

**1.05** No extension of time, change, alteration, modification, or addition to the Contract, or of the work required thereunder, or work or actions by City to mitigate the damages resulting from any breach in performance by Contractor, shall release or exonerate Surety on this bond or in any way affect the obligation of this bond; and Surety does hereby waive notice of any such extension of time, change, alteration, modification, or addition.

**1.06** Whenever Principal shall be and declared by City in default under the Contract, Surety shall promptly remedy the default, or shall promptly, and in no event later than thirty (30) calendar days from notice:

- A. Undertake through its agents or independent contractors (but having qualifications and experience reasonably acceptable to City, to complete the Contract in accordance with its terms and conditions and to pay and perform all obligations of Principal under the Contract, including without limitation, all obligations with respect to warranties, guarantees, indemnities, and the payment of liquidated damages; or
- B. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and, upon determination by City of the lowest responsible bidder, arrange for a contract between such bidder and City and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this

paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Sum, and to pay and perform all obligations of Principal under the Contract, including, without limitation, all obligations with respect to warranties, guarantees, and the payment of liquidated damages; but, in any event, Surety's total obligations hereunder shall not exceed the amount set forth in the third paragraph hereof. The term "balance of the Contract Sum," as used in this paragraph, shall mean the total amount payable by City to the Principal under the Contract and any amendments thereto, less the amount paid by City to Principal.

- 1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the performance of the Contract, and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing City's rights against the others.
- 1.08** Surety may not use Contractor to complete the Contract absent City's Consent. City shall have the right in its sole discretion to continue the work of the Contract, as necessary following a default and/or termination, as necessary to prevent risks of personal injury, property damage or delay to the Project.
- 1.09** No right of action shall accrue on this bond to or for the use of any person or corporation other than City or its successors or assigns.
- 1.10** Surety shall join in any proceedings brought under the Contract upon City's demand, and shall be bound by any judgment.
- 1.11** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: \_\_\_\_\_ (Corp. Seal)

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

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

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

\_\_\_\_\_

\_\_\_\_\_

Company: \_\_\_\_\_ (Corp. Seal)

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

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

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

\_\_\_\_\_

\_\_\_\_\_

**END OF DOCUMENT**

**DOCUMENT 00 6113.16****CONSTRUCTION LABOR AND MATERIAL PAYMENT BOND**

KNOW ALL PERSONS BY THESE PRESENTS:

**1.01** THAT WHEREAS, City of Berkeley ("City") has awarded to **TBD** as Principal, Specification No. **23-11567C** dated the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Contract"), titled City of Berkeley Marina Selective Piling Replacement in the amount of **\$TBD**, which Contract is by this reference made a part hereof, for the work of the following Contract:

**Replacement of select pilings at the Berkeley Marina including removal or abandonment of existing piling, and repair or installation of new pilings as specified in plans.**

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

**1.03** NOW, THEREFORE, we, the undersigned Principal and (Name of Surety), as Surety, are held and firmly bound unto City in the sum of 100% OF THE CONTRACT PRICE (**\$** \_\_\_\_\_), for which payment well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

**1.04** THE CONDITION OF THIS OBLIGATION IS SUCH, that if Principal, or its executors, administrators, successors, or assigns approved by City, or its subcontractors shall fail to pay any of the persons named in California Civil Code §3181, or amounts due under the State of California Unemployment Insurance Code with respect to work or labor performed under the Contract, or for any amounts required to be deducted, withheld, and paid over to the State of California Employment Development Department from the wages of employees of Principal and subcontractors pursuant to Section 13020 of the State of California Unemployment Insurance Code with respect to such work and labor, that Surety will pay for the same in an amount not exceeding the sum specified in this bond, plus reasonable attorneys' fees, otherwise the above obligation shall become and be null and void.

**1.05** This bond shall inure to the benefit of any of the persons named in California Civil Code §3181, as to give a right of action to such persons or their assigns in any suit brought upon this bond. The intent of this bond is to comply with the California Mechanic's Lien Law.

**1.06** Surety, for value received, hereby expressly agrees that no extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder, shall in any way affect the obligation of this bond; and it does hereby waive notice of any such extension of time, change, modification, alteration, or addition to the undertakings, covenants, terms, conditions, and agreements of the Contract, or to the work to be performed thereunder.

**1.07** Surety's obligations hereunder are independent of the obligations of any other surety for the payment of claims of laborers, mechanics, material suppliers, and other persons in connection with Contract; and suit may be brought against Surety and such other sureties, jointly and severally, or against any one or more of them, or against less than all of them without impairing Owner's rights against the other.

**1.08** Correspondence or claims relating to this bond shall be sent to Surety at the address set forth below.

IN WITNESS WHEREOF, we have hereunto set our hands this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

Company: (Corp. Seal)

Company: (Corp. Seal)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
City, State, Zip Code

**END OF DOCUMENT**

**DOCUMENT 00 6290****ESCROW AGREEMENT FOR SECURITY DEPOSIT IN LIEU OF RETENTION**

California Public Contract Code §22300

THIS ESCROW AGREEMENT ("Escrow Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, by and between City of Berkeley ("City"), whose address is 2180 Milvia Street, Berkeley, California 94704, **TBD** ("Contractor"), whose place of business is located at **XXXXXXX** and \_\_\_\_\_ (**Name**), as escrow agent **OR [ ]** (**Name of Bank**), a state or federally chartered bank in the State of California, whose place of business is located at \_\_\_\_\_ ("Escrow Agent").

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

1. Pursuant to California Public Contract Code §22300, Contractor has the option to deposit securities with Escrow Agent as a substitute for retention earnings required to be withheld by City pursuant to Contract Number \_\_\_\_\_ entered into between City and Contractor for Berkeley Marina Selective Timber Pile Replacement located at **201 University Ave., Berkeley, CA 94710** in the amount of **\$TBD** dated \_\_\_\_\_, 201\_\_ (the "Contract"). Alternatively, on written request of Contractor, City shall make payments of the retention earnings directly to Escrow Agent. When Contractor deposits the securities as a substitute for Contract earnings, Escrow Agent shall notify City within ten calendar days of the deposit. The market value of the securities at the time of substitution shall be at least equal to the cash amount then required to be withheld as retention under terms of Contract between Owner and Contractor. Securities shall be held in name of \_\_\_\_\_, and shall designate Contractor as the beneficial owner.
2. City shall make progress payments to Contractor for those funds which otherwise would be withheld from progress payments pursuant to Contract provisions, provided that Escrow Agent holds securities in form and amount specified in Paragraph 1 of this Document 00 6290.
3. When City makes payment(s) of retention earned directly to Escrow Agent, Escrow Agent shall hold said payment(s) for the benefit of Contractor until the time that the escrow created under this Escrow Agreement is terminated. Contractor may direct the investment of the payments into securities. All terms and conditions of this Escrow Agreement and the rights and responsibilities of the parties shall be equally applicable and binding when City pays Escrow Agent directly.
4. Contractor shall be responsible for paying all fees for the expenses incurred by Escrow Agent in administering the Escrow Account, and all expenses of City. Such expenses and payment terms shall be determined by Owner, Contractor, and Escrow Agent.
5. Interest earned on securities or money market accounts held in escrow and all interest earned on that interest shall be for sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to City.
6. Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to Escrow Agent accompanied by written authorization from City to Escrow Agent that City consents to withdrawal of amount sought to be withdrawn by Contractor.
7. City shall have the right to draw upon the securities in event of default by Contractor. Upon seven (7) calendar days written notice to Escrow Agent from City of the default, Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by City.
8. Upon receipt of written notification from City certifying that the Contract is final and complete, and that Contractor has complied with all requirements and procedures applicable to the Contract,

Escrow Agent shall release to Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.

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

**ON BEHALF OF CITY:**

**ON BEHALF OF CONTRACTOR:**

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City/State/Zip Code

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City/State/Zip Code

**ON BEHALF OF ESCROW AGENT:**

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

Address

\_\_\_\_\_

City/State/Zip Code

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

**CITY**

**CONTRACTOR**

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

\_\_\_\_\_

\_\_\_\_\_

Title

\_\_\_\_\_

Name

\_\_\_\_\_

Signature

ATTEST

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

City Clerk

**ESCROW AGENT**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature

Pre-approved as to form:  
CITY ATTORNEY  
8/2016

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

**END OF DOCUMENT**

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**DOCUMENT 00 6325**

**SUBSTITUTION REQUEST FORM**

To: **Taylor Lancelot, Project Manager, City of Berkeley**

<b>PROJECT: Berkeley Marina Selective Timber Pile Replacement</b> <b>City's Specification No. : 23-11567C</b>	<b>Contractor:</b>
--	--------------------

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

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

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

Section / Drawing	Article	Specified Item
<b>Proposed Substitution:</b>		

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

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

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

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

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

Submitted by: \_\_\_\_\_ Signature: \_\_\_\_\_

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

Address: \_\_\_\_\_ Phone/ Fax: \_\_\_\_\_

Remarks: \_\_\_\_\_

**Consultant Response:**

Accepted

Not Accepted

Accepted As Noted

Received Too Late

**City Representative Response:**

Accepted

Not Accepted

Accepted As Noted

Received Too Late

Remarks: \_\_\_\_\_

Remarks: \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

**END OF DOCUMENT**

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**DOCUMENT 00 6530**

**AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS**

**[Public Contract Code § 7100]**

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (“Agreement and Release”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between City of Berkeley (“City”), and **TBD**(“Contractor”), whose place of business is at **TBD**.

**RECITALS**

- A. City and Contractor entered into Contract Number **[TBD]**(the “Contract”) for construction of City **Berkeley Marina Selective Timber Pile Replacement** located at **201 University Ave., Berkeley, CA 94710**, California.
- B. The Work under the Contract has been completed.

**AGREEMENT**

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

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

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

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

CLAIM NO.	DATE SUBMITTED	DESCRIPTION OF CLAIM	AMOUNT OF CLAIM

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

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of City shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

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

**CITY**

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

Name: \_\_\_\_\_  
Print

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

**ATTEST:**

\_\_\_\_\_  
Title

\_\_\_\_\_  
Print

**[CONTRACTOR]**

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

Name: \_\_\_\_\_  
Print

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

Pre-approved as to form:  
CITY ATTORNEY  
8/2016

**END OF DOCUMENT**

**DOCUMENT 00 6536**

**GUARANTY**

TO: The City of Berkeley ("City"), for construction of Berkeley Marina Selective Timber Pile Replacement located at 201 University Ave., Berkeley, CA 94710, California.

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

Contractor hereby grants to City for a period of one year following the date of Final Acceptance of the Work completed, or such longer period specified in the Contract Documents, its unconditional warranty of the quality and adequacy of all of the Work including, without limitation, all labor, materials and equipment provided by Contractor and its Subcontractors of all tiers in connection with the Work.

Neither final payment nor use nor occupancy of the Work performed by the Contractor shall constitute an acceptance of Work not done in accordance with this Guaranty or relieve Contractor of liability in respect to any express warranties or responsibilities for faulty materials or workmanship. Contractor shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within one year, or longer if specified, from the date of Final Acceptance of the Work completed.

If within one year after the date of Final Acceptance of the Work completed, or such longer period of time as may be prescribed by laws or regulations, or by the terms of Contract Documents, any Work is found to be Defective, Contractor shall promptly, without cost to City and in accordance with City's written instructions, correct such Defective Work. Contractor shall remove any Defective Work rejected by City and replace it with Work that is not Defective, and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If Contractor fails to promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, City may have the Defective Work corrected or the rejected Work removed and replaced. Contractor shall pay for all claims, costs, losses and damages caused by or resulting from such removal and replacement. Where Contractor fails to correct Defective Work, or defects are discovered outside the correction period, City shall have all rights and remedies granted by law.

Inspection of the Work shall not relieve Contractor of any of its obligations under the Contract Documents. Even though equipment, materials, or Work required to be provided under the Contract Documents have been inspected, accepted, and estimated for payment, Contractor shall, at its own expense, replace or repair any such equipment, material, or Work found to be Defective or otherwise not to comply with the requirements of the Contract Documents up to the end of the guaranty period.

All abbreviations and definitions of terms used in this Agreement shall have the meanings set forth in the Contract Documents.

The foregoing Guaranty is in addition to any other warranties of Contractor contained in the Contract Documents, and not in lieu of, any and all other liability imposed on Contractor under the Contract Documents and at law with respect to Contractor's duties, obligations, and performance under the Contract Documents. In the event of any conflict or inconsistency between the terms of this Guaranty and any warranty or obligation of the Contractor under the Contract Documents or at law, such inconsistency or conflict shall be resolved in favor of the higher level of obligation of the Contractor.

Date: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Contractor's name

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

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City, State, Zip code

**END OF DOCUMENT**

**DOCUMENT 00 6580****CITY OF BERKELEY CONTRACTING POLICIES**

Contractor shall comply with the City of Berkeley's adopted employment policies applying to City construction projects as described in Document 00 7317. The following certifications/forms shall be submitted in accordance with Document 00 2113 Instructions to Bidders:

- Memorandum of Understanding
- Workforce Composition Form
- Agreement for Change in Subcontractors
- Nuclear Free Zone Disclosure Form
- Oppressive States Compliance Statement
- Hardwood Disclosure Form
- Community Workforce Agreement, Agreement to be Bound (for projects over \$500,000)
- Certification Of Compliance With Equal Benefits Ordinance
- Taxpayer Identification Report
- Right to Audit Form
- Sanctuary City Compliance Certification
- Contractor's License
- City of Berkeley Business License

**CITY OF BERKELEY  
MEMORANDUM OF UNDERSTANDING  
(MOU)**

1. The Contractor (and all Subcontractors) agree not to discriminate pursuant to City Ordinance No. 5876.
2. The Contractor agrees that he/she is also responsible for his/her Subcontractors' compliance with City of Berkeley Ordinance No. 5876.
3. For contracts over \$100,000, the Contractor agrees to comply with Ordinance No. 5876 as applied to the First Source Program (see Section 8 of Ordinance 5876).

The Contractor agrees to submit periodic employment and wage reports to the City's Contract Compliance Officer upon reasonable request.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
City of Berkeley Contracts Compliance Officer  
Or his/her designee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**CITY OF BERKELEY  
AGREEMENT FOR CHANGE IN SUB-CONTRACTORS**

I agree to use the Subcontractor(s) listed in the signed contract with the City of Berkeley. If it should become necessary to change Subcontractors, I will notify the Capital Projects Manager by completing the following information:

Current Subcontractor(s)	Alternate Subcontractors	Reason for Change	Date

Signed by:

Verified by:

\_\_\_\_\_  
Prime Contractor

\_\_\_\_\_  
Subcontractor

\_\_\_\_\_  
City of Berkeley Contracts Compliance Officer  
Or his/her designee

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

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

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

**CITY OF BERKELEY  
WORKFORCE COMPOSITION FORM FOR ALL CONSTRUCTION CONTRACTS**

This form is to be completed and submitted prior to the Contract Compliance Conference. The Contractor and all Subcontractors who will do work valued at \$3,000 or more are required to submit this form. Weekly payroll reports will be compared to this listing to monitor for compliance. A payroll printout or other listing of employees providing the same information will be accepted.

Name of Contractor/Subcontractor: \_\_\_\_\_

Project: \_\_\_\_\_

Name		Race*	Sex**	Trade/Craft	Basic Hourly Rate	Hire Date	Employees to be used on this job

\* A=Asian or Pacific Islander    \*\*M = Male  
 AI=American Indian            \*\*F = Female  
 B=Afro American  
 C=Caucasian  
 H=Hispanic (Mexican, Puerto Rican,  
 Spanish, Cuban, Chicano, Central  
 or South American)  
 8/91

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Contractor/Subcontractor

Verified By: \_\_\_\_\_ Date: \_\_\_\_\_  
 City of Berkeley Contracts Compliance Officer  
 or his/her designee

**CITY OF BERKELEY  
NUCLEAR FREE ZONE DISCLOSURE FORM**

I (we) certify that:

1. I am (we are) fully cognizant of any and all contracts held, products made or otherwise handled by this business entity, and of any such that are anticipated to be entered into, produced or handled for the duration of its contract(s) with the City of Berkeley. (To this end, this disclosure form may be signed by more than one individual, if a description of which type of contracts each individual is cognizant is attached.)

2. I (we) understand that Section 12.90.070 of the Nuclear Free Berkeley Act (Berkeley Municipal Code Ch. 12.90; Ordinance No. 5784-N.S.) prohibits the City of Berkeley from contracting with any person or business that knowingly engages in work for nuclear weapons.

3. I (we) understand the meaning of the following terms as set forth in Berkeley Municipal Code section 12.90.130:

"Work for nuclear weapons" is any work the purpose of which is the development, testing, production, maintenance or storage of nuclear weapons or the components of nuclear weapons; or any secret or classified research or evaluation of nuclear weapons; or any operation, management or administration of such work.

"Nuclear weapon" is any device, the intended explosion of which results from the energy released by reactions involving atomic nuclei, either fission or fusion or both. This definition of nuclear weapons includes the means of transporting, guiding, propelling or triggering the weapon if and only if such means is destroyed or rendered useless in the normal propelling, triggering, or detonation of the weapon.

"Component of a nuclear weapon" is any device, radioactive or non-radioactive, the primary intended function of which is to contribute to the operation of a nuclear weapon (or be a part of a nuclear weapon).

4. Neither this business entity nor its parent nor any of its subsidiaries engages in work for nuclear weapons or anticipates entering into such work for the duration of its contract(s) with the City of Berkeley.

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

Signed: \_\_\_\_\_

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

Printed Name and Title(s): \_\_\_\_\_

Company: \_\_\_\_\_

**CITY OF BERKELEY**  
**OPPRESSIVE STATES COMPLIANCE STATEMENT**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley City Council Resolution No. 59,853-N.S (hereafter "Resolution"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with those Business Entities which maintain business relationships with morally repugnant regimes. Contractor understands the meaning of the following terms used in the Resolution:

"Business Entity" means "any individual, firm, partnership, corporation, association, or any other commercial organization, including parent-entities and wholly-owned subsidiaries" (to the extent that their operations are related to the purpose of the contract with the City).

"Personal Services" means "the performance of any work or labor and shall also include acting as an independent contractor or providing any consulting advice or assistance, or otherwise acting as an agent pursuant to a contractual relationship."

"Oppressive State" means: 1) Tibet Autonomous Region and the Provinces of Adu, Kham, and U-Tsang.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract, it provides Personal Services to:

- a. The governing regime in any Oppressive State.
- b. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
- c. Any person for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.

Contractor further understands and agrees that Contractor's failure to comply with the Resolution shall constitute a default of the contract and the City Manager may terminate the contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

The undersigned is familiar with, or has made a reasonable effort to become familiar with, Contractor's business structure and the geographic extent of its operations. By executing this Statement, Contractor certifies that it complies with the requirements of the Resolution and that if any time during the term of the contract it ceases to comply, Contractor will promptly notify the City Manager in writing.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Business Entity: \_\_\_\_\_

Contract description/Specification No.: City of Berkeley Marina Selective Piling Replacement / [xx-xxx-xx]

I am unable to execute this Statement; however, Contractor is exempt under Section VII of the Resolution. I have attached a separate statement explaining the reason(s) Contractor cannot comply and the basis for any requested exemption.

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

**CITY OF BERKELEY  
HARDWOOD DISCLOSURE FORM  
For use by vendors on contracts utilizing lumber**

1. I understand that on December 12, 1995, the City Council directed staff not to purchase lumber from companies that purchase or sell wood or paper products that come from tropical rainforests. I understand that wood species with tropical origins include, but are not limited to: Apitong, Banak, Bocote, Bubinga, Cocobolo, Cordia, Ebony, Goncalo alves, Greenheart, Iroko, Jelutang, Koa, Luauan, Mahogany, Meranti, Padauk, Purpleheart, Ramin, Rosewood, Satinwood, Teak, Virola, Wenge, and Zebrawood.

2. I am knowledgeable about the wood and paper products purchased and sold by this company.

3. This company does not currently purchase or sell wood or paper products having their origins in tropical rainforests. In addition, this company will not, for the duration of its contract with the City of Berkeley, purchase or sell wood or paper products having their origins in tropical rainforests.

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

Signed: \_\_\_\_\_

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

Printed Name & Title: \_\_\_\_\_

Company: \_\_\_\_\_

I am unable to sign this disclosure form for the following reason(s):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Project's Community Workforce Agreement ("Agreement"), a copy which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;
3. Agrees to secure from any Contractor (as defined in said Agreement) which is or becomes a subcontractor (or any tier) to it, and from any successors, a duly executed Agreement to be Bound in form identical to this document.
4. Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft agreement contained in Schedule "A" of Agreement.

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

Company Name: \_\_\_\_\_

Name of Prime Contractor or Higher Level Subcontractor:

\_\_\_\_\_

Name of Project: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

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

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

Contractor's License #: \_\_\_\_\_

Motor Carrier Permit (CA) #: \_\_\_\_\_

To be completed by  
Contractor/Vendor

**Form EBO-1  
CITY OF BERKELEY**



**CERTIFICATION OF COMPLIANCE WITH EQUAL BENEFITS ORDINANCE**

If you are a **contractor**, return this form to the originating department/project manager. If you are a **vendor** (supplier of goods), return this form to the Purchasing Division of the Finance Dept.

**SECTION 1. CONTRACTOR/VENDOR INFORMATION**

Name:		Vendor No.:	
Address:	City:	State:	ZIP:
Contact Person:		Telephone:	
E-mail Address:		Fax No.:	

**SECTION 2. COMPLIANCE QUESTIONS**

- A. The EBO is inapplicable to this contract because the contractor/vendor has no employees.  
 Yes  No (If "Yes," proceed to Section 5; if "No," continue to the next question.)
- B. Does your company provide (or make available at the employees' expense) any employee benefits?  
 Yes  No  
 If "Yes," continue to Question C.  
 If "No," proceed to Section 5. (The EBO is not applicable to you.)
- C. Does your company provide (or make available at the employees' expense) any benefits to the spouse of an employee? .....  Yes  No
- D. Does your company provide (or make available at the employees' expense) any benefits to the domestic partner of an employee? .....  Yes  No  
**If you answered "No" to both** Questions C and D, proceed to Section 5. (The EBO is not applicable to this contract.)  
**If you answered "Yes" to both** Questions C and D, please continue to Question E.  
**If you answered "Yes"** to Question C and **"No"** to Question D, please continue to Section 3.
- E. Are the benefits that are available to the spouse of an employee identical to the benefits that are available to the domestic partner of the employee? .....  Yes  No  
**If you answered "Yes,"** proceed to Section 4. (You are in compliance with the EBO.)  
**If you answered "No,"** continue to Section 3.

**SECTION 3. PROVISIONAL COMPLIANCE**

- A. Contractor/vendor is not in compliance with the EBO now but will comply by the following date:
  - By the first effective date after the first open enrollment process following the contract start date, not to exceed two years, if the Contractor submits evidence of taking reasonable measures to comply with the EBO; or
  - At such time that administrative steps can be taken to incorporate nondiscrimination in benefits in the Contractor's infrastructure, not to exceed three months; or
  - Upon expiration of the contractor's current collective bargaining agreement(s).
- B. If you have taken all reasonable measures to comply with the EBO but are unable to do so, do you agree to provide employees with a cash equivalent?\* .....  Yes  No

\* The cash equivalent is the amount of money your company pays for spousal benefits that are unavailable for domestic partners.

**SECTION 4. REQUIRED DOCUMENTATION**

At time of issuance of purchase order or contract award, you may be required by the City to provide documentation (copy of employee handbook, eligibility statement from your plans, insurance provider statements, etc.) to verify that you do not discriminate in the provision of benefits.

**SECTION 5. CERTIFICATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I am authorized to bind this entity contractually. By signing this certification, I further agree to comply with all additional obligations of the Equal Benefits Ordinance that are set forth in the Berkeley Municipal Code and in the terms of the contract or purchase order with the City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

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

**FOR CITY OF BERKELEY USE ONLY**

- Non-Compliant (The City may not do business with this contractor/vendor)
  - One-Person Contractor/Vendor       Full Compliance       Reasonable Measures
  - Provisional Compliance Category, Full Compliance by Date: \_\_\_\_\_
- Staff Name(*Sign and Print*): \_\_\_\_\_ Date: \_\_\_\_\_

**TAXPAYER IDENTIFICATION REPORT**

NAME/COMPANY'S NAME: \_\_\_\_\_

\_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

\_\_\_\_\_

SOCIAL SECURITY NO.: \_\_\_\_\_

OR

EMPLOYER IDENTIFICATION NO.: \_\_\_\_\_

My Company is a Corporation [ ]

My Company is not a Corporation [ ]

I certify that the above information is true and correct:

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Title)

The Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248) requires the above reporting information be furnished to the City.

Persons who do not furnish their tax information numbers become subject to backup withholding by the City at a rate of 20% from each disbursement made to the recipient.

## **CITY OF BERKELEY RIGHT TO AUDIT FORM**

The Contractor agrees that pursuant to Section 61 of the Berkeley City Charter, the City Auditor's office may conduct an audit of Contractor's financial, performance and compliance records maintained in connection with the operations and services performed under this contract.

In the event of such audit, Contractor agrees to provide the Auditor with reasonable access to Contractor's employees and make all such financial, performance and compliance records available to the Auditor's office. City agrees to provide Contractor an opportunity to discuss and respond to any findings before a final audit report is filed.

Contractor's signature \_\_\_\_\_ Date: \_\_\_\_\_

Print Name and Title: \_\_\_\_\_

Company: \_\_\_\_\_

**CITY OF BERKELEY**  
**Sanctuary City Compliance Statement**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter "Contractor"), has had an opportunity to review the requirements of Berkeley Code Chapter 13.105 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

"Data Broker" means either of the following:

- i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- a. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services." Extreme Vetting does not include:
- i. The City's computer-network health and performance tools;
  - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity.

Contractor understands that it is not eligible to receive or retain a City contract if at the time the contract is executed, or at any time during the term of the contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor's failure to comply with the SCCO shall constitute a material default of the contract and the City Manager may terminate the contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if any time during the term of the contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and up to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_, California.

Printed Name: \_\_\_\_\_ Title:

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

Business Entity:

**END OF DOCUMENT**

**DOCUMENT 007200**

**GENERAL CONDITIONS**

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## GENERAL CONDITIONS

### ARTICLE 1 – INTERPRETATION OF CONTRACT DOCUMENTS

#### 1.01 Interpretation Of Documents

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

#### 1.02 Order Of Precedence Of Documents

- A. In the case of discrepancy or ambiguity in the Contract Documents, the following order of precedence shall prevail:
  - 1. Modifications in inverse chronological order (i.e., most recent first), and in the same order as specific portions they are modifying;
  - 2. Agreement Forms (Document 00 5200), and terms and conditions referenced therein;
  - 3. Supplementary General Conditions (Document 00 7201 et seq), if included;
  - 4. General Conditions (Document 00 7200);
  - 5. Division 1 Specifications, if included;
  - 6. Drawings and Technical Specifications (Division 2 and above);
  - 7. Written numbers over figures, unless obviously incorrect;
  - 8. Figured dimensions over scaled dimensions;
  - 9. Large-scale Drawings over small-scale Drawings.
- B. Any conflict between Drawings and Technical Specifications (Division 2 and above) will be resolved in favor of the document of the latest date (i.e., the most recent document), and if the dates are the same or not determinable, then in favor of Specifications.
- C. Any conflict between a bill or list of materials shown in the Contract Documents and the actual quantities required to complete Work required by Contract Documents, will be resolved in favor of the actual quantities.
- D. All Technical Specifications included in the Project manual shall be included within the Contract Documents unless identified otherwise.

### ARTICLE 2 – PRE-BID INVESTIGATIONS

#### 2.01 Pre-Bid Investigations Required

- A. Prior to and as a condition of submitting a Bid and executing Document 00 5200 (Agreement), Contractor shall make reasonable efforts to investigate fully the Work of the Contract. Contractor shall visit the Site, examine thoroughly and understand fully the nature and extent of the Contract Documents, Work, Site, locality, actual conditions and as-built conditions.
- B. Contractor's investigation shall include, without limitation, requesting and thoroughly examining of all reports of exploration and tests of subsurface conditions, as-built drawings, drawings, product specification(s) or reports, made available by City for contracting purposes or during Contractor's pre-bid investigations, of existing above ground and (to the extent applicable) below ground conditions (together, "Existing Conditions Data"), including, as applicable, Underground Facilities, geotechnical data, as-built data, utility surveys, record documents of all types, hazardous materials surveys, or similar materials which may appear or be referenced in the Project Manual or the in the Contract Documents, and all local conditions, and federal, state and local laws and regulations that in any manner may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Contractor and safety precautions and programs incident thereto.
- C. Contractor's investigations shall consider fully the fact that Existing Conditions Data is in many cases based on information furnished to City by others (e.g., the prior owner or builders), and that due to their age or their chain of custody since preparation, may not meet current industry standards for accuracy. Contractor shall also: (i.) provide City with prompt written notice of all

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

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

## **2.02 Limited Reliance Permitted On City's Existing Conditions Data**

- A. Regarding aboveground and as-built conditions shown on the Contract Documents or supplied by City, such information has been compiled in good faith, however, City does not expressly or impliedly warrant or represent that such information is correctly shown or indicated, or otherwise complete for construction purposes. Contractor must independently verify such information as part of its pre-bid investigations, and where conditions are not reasonably verifiable or discrepancies are identified, bring such matters to City's attention through written question issued during the bid period. In executing Document 00 5200 (Agreement), Contractor shall rely on the results of its own independent investigation and shall not rely on City-supplied information regarding aboveground conditions and as-built conditions, and Contractor shall accept full responsibility for its verification work sufficient to complete the Work as intended.
- B. Regarding subsurface conditions other than Underground Facilities shown on the Contract Documents or otherwise supplied by City, Contractor may rely only upon the general accuracy of actual reported depths, actual reported character of materials, actual reported soil types, actual reported water conditions, or actual obstructions shown or indicated in the Contract Documents. City is not responsible for the completeness of any subsurface condition information, Contractor's conclusions or opinions drawn from any subsurface condition information, or subsurface conditions that are not specifically shown. (For example, City is not responsible for soil conditions in areas contiguous to areas where a subsurface condition is shown.)

## **2.03 Pre-Bid Investigation Requirements For Excavation And Utilities Relocation Projects**

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

**ARTICLE 3 – SUBCONTRACTORS****3.01 Subcontractor Listing Law**

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

**3.02 Subcontracts**

- A. Subcontract agreements shall preserve and protect the rights of City under the Contract Documents so that subcontracting will not prejudice such rights. To the extent of the Work to be performed by a Subcontractor, Contractor shall require the Subcontractor's written agreement (1) to be bound to the terms of Contract Documents and (2) to assume vis-à-vis Contractor all the obligations and responsibilities that Contractor assumes toward City under the Contract Documents. (These agreements include for example, and not by way of limitation, all warranties, claims procedures and rules governing submittals of all types to which Contractor is subject under the Contract Documents.)
- B. Contractor shall provide for the assignment to City of all rights any Subcontractor (of any tier) may have against any manufacturer, supplier, or distributor for breach of warranties and guarantees relating to the Work performed by the Subcontractor under the Contract Documents. Subcontracts shall provide and acknowledge City as an intended third-party beneficiary of each subcontract and supply contract (of any tier).

**ARTICLE 4 – DRAWINGS AND SPECIFICATIONS****4.01 Intent Of Drawings And Specifications**

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

**4.02 Checking Of Drawings And Specifications**

- A. Before undertaking each part of Work, Contractor shall carefully study and compare Contract Documents and check and verify pertinent figures shown in the Contract Documents and all

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

#### **4.03 Interpretation Of Drawings And Specifications**

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

#### **4.04 Use Of Drawings And Specifications.**

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

### **ARTICLE 5 – COMMENCEMENT OF THE WORK**

#### **5.01 Submission Of Required Schedules**

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

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

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

#### **5.02 Commencement Date Of Contract Time**

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

### **ARTICLE 6 – CONTRACTOR'S ORGANIZATION AND EQUIPMENT**

#### **6.01 Contractor's Legal Address**

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

#### **6.02 Contractor's Superintendents Or Forepersons**

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

#### **6.03 Proficiency In English**

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

#### **6.04 Contractor's And Subcontractors' Employees**

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

#### **6.05 Contractor's Use Of The Site**

- A. Contractor shall not make any arrangements with any person to permit occupancy or use of any land, structure or building within the limits of the Work, for any purpose whatsoever, either with or without compensation, in conflict with any agreement between City and any owner, former owner

or tenant of such land, structure or buildings. Contractor may not occupy City-owned property outside the limit of the Work as indicated on the Drawings unless it obtains prior approval from City.

#### **6.06 Contractor's Site Office**

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

### **ARTICLE 7 – CITY'S ADMINISTRATION OF WORK**

#### **7.01 City's Representative(s)**

- A. City's Representative(s) will have limited authority to act on behalf of City as set forth in the Contract Documents.
- B. Except as otherwise provided in these Contract Documents or subsequently identified in writing by City, City will issue all communications to Contractor through City's Representative, and Contractor shall issue all communications to City through City's Representative in a written document delivered to City.
- C. Should any direct communications between Contractor and City's consultants, architects or engineers not identified in Article 2 of Document 00 5200 (Agreement) occur during field visits or by telephone, Contractor shall immediately confirm them in a written document copied to City.

#### **7.02 City's Observation Of The Work**

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

#### **7.03 Architect/Engineer's Observation Of Work**

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

to require special inspection or testing of Work, whether or not the Work is fabricated, installed or completed.

- D. Project Manager/Architect may conduct inspections to recommend to City the dates that Contractor has achieved Substantial Completion and Final Acceptance, and will receive and forward to City for review written warranties and related documents required by Contract Documents.

#### **7.04 Owner's And Architect/Engineer's Exercise Of Contract Responsibilities**

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

#### **7.05 City's Right Of Access To The Work**

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

#### **7.06 City's Right Of Separate Construction**

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

### **ARTICLE 8 – CONTRACTOR'S PROSECUTION AND PROGRESS OF THE WORK**

#### **8.01 Contractor To Supervise The Work**

- A. Subject to those rights specifically reserved in the Contract Documents, Contractor shall supervise, direct, have control over, and be responsible for, Contractor's means, methods, techniques, sequences or procedures of construction, safety precautions and programs incident thereto, and compliance with laws and regulations applicable to the furnishing or performance of Work.
- B. Contractor shall keep on the Site at all times during Work progress a competent resident Superintendent, who shall not be replaced without City's express written consent. The Superintendent shall be Contractor's representative at the Site and shall have complete authority to act on behalf of Contractor. All communications to and from the Superintendent shall be as binding as if given to or by Contractor.
- C. Contractor shall supervise, inspect, and direct Work competently and efficiently, devoting the

attention and applying such personal skills and expertise as may be required and necessary to perform Work in accordance with Contract Documents. Contractor shall be solely responsible for and have control and charge of construction means, methods, techniques, sequences and procedures, safety precautions and programs in connection with the Work. Contractor shall be responsible to see that the completed Work complies accurately with Contract Documents.

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

#### **8.02 Contractor To Maintain Cost Data**

- A. Contractor shall maintain full and correct information as to the number of workers employed in connection with each subdivision of Work, the classification and rate of pay of each worker in form of certified payrolls, the cost to Contractor of each class of materials, tools and appliances used by Contractor in Work, and the amount of each class of materials used in each subdivision of Work. Contractor shall provide City with monthly summaries of this information. If Contractor maintains or is capable of generating summaries or reports comparing actual Project costs with Bid estimates or budgets, Contractor shall provide City with a copy of such report upon City's request.
- B. Contractor shall maintain daily job reports recording all significant activity on the job, including the number of workers on Site, Work activities, problems encountered and delays. Contractor shall provide City with copies for each Day Contractor works on the Project, to be delivered to City either the same Day or the following morning before starting work at the Site. Contractor shall take pre-construction and monthly progress photographs of all areas of the Work. Contractor shall maintain copies of all correspondence with Subcontractors and records of meetings with Subcontractors.
- C. City shall have the right to audit and copy Contractor's books and records of any type, nature or description relating to the Project (including but not limited to financial records reflecting in any way costs claimed on the Project), and to inspect the Site, including Contractor's trailer, or other job Site office, and this requirement shall be contained in the subcontracts of Subcontractors working on Site. By way of example, City shall have the right to inspect and obtain copies of all Contract Documents, planning and design documents, Bid proposal and negotiation documents, cost records and job cost variance reports, design modification proposals, value engineering or other cost reduction proposals, revisions made to the original design, job progress reports, photographs, and as-built drawings maintained by Contractor. City and any other applicable governmental entity shall have the right to inspect all information and documents maintained hereunder at any time during the Project and for a period of five years following Final Completion, in accordance with the provisions of Section 8546.7 of the California Government Code. This right of inspection shall not relieve Contractor of its duties and obligations under the Contract Documents. This right of inspection shall be specifically enforceable in a court of law, either independently or in conjunction with enforcement of any other rights in the Contract Documents.

#### **8.03 Contractor To Supply Sufficient Workers And Materials**

- A. Unless otherwise required by City under the terms of Contract Documents, Contractor shall at all times keep on the Site materials and employ qualified workers sufficient to prosecute Work at a rate and in a sequence and manner necessary to complete Work within the Contract Time. This obligation shall remain in full force and effect notwithstanding disputes or claims of any type.
- B. At any time during progress of Work should Contractor directly or indirectly (through Subcontractors) refuse, neglect, or be unable to supply sufficient materials or employ qualified workers to prosecute the Work as required, then City may require Contractor to accelerate the Work and/or furnish additional qualified workers or materials as City may consider necessary, at no cost to City. If Contractor does not comply with the notice within three Business Days of date of service thereof, City shall have the right (but not a duty) to provide materials and qualified

workers to finish the Work or any affected portion of Work, as City may elect. City may, at its discretion, exclude Contractor from the Site, or portions of the Site or separate work elements during the time period that City exercises this right. City will deduct from moneys due or which may thereafter become due under the Contract Documents, the sums necessary to meet expenses thereby incurred and paid to persons supplying materials and doing Work. City will deduct from funds or appropriations set aside for purposes of Contract Documents the amount of such payments and charge them to Contractor as if paid to Contractor. Contractor shall remain liable for resulting delay, including liquidated damages and indemnification of City from claims of others.

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

#### **8.04 Contractor To Maintain Project Record Documents**

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

#### **8.05 Contractor To Not Disrupt City Operation**

- A. Contractor shall schedule and execute all Work in a manner that does not interfere with or disrupt City operations, including but not limited to, parking, utilities (electricity, gas, water), noise, access by employees and administration, access by vendors, physicians, patients and any other person or entity using City facilities or doing business with City. Contractor shall produce and supply coordination plans and requests to City, following City procedures, for all necessary interference of construction with City, which City will reasonably cooperate with.

#### **8.06 Contractor To Provide Temporary Facilities And Controls**

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

### **ARTICLE 9 – WARRANTY, GUARANTY, AND INSPECTION OF WORK**

#### **9.01 Warranty And Guaranty**

- A. General Representations and Warranties: Contractor represents and warrants that it is and will

be at all times fully qualified and capable of performing every Phase of the Work and to complete Work in accordance with the terms of Contract Documents. Contractor warrants that all construction services shall be performed in accordance with generally accepted professional standards of good and sound construction practices and all requirements of Contract Documents. Contractor warrants that Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, of suitable grade of its respective kind for its intended use, and free from defects in design, engineering, materials, construction and workmanship. Contractor warrants that Work shall conform in all respects with all applicable requirements of federal, state and local laws, applicable construction codes and standards, licenses, and permits, Drawings and Specifications and all descriptions set forth therein, and all other requirements of Contract Documents. Contractor shall not be responsible, however, for the negligence of others in the specification of specific equipment, materials, design parameters and means or methods of construction where that is specifically shown and expressly required by Contract Documents.

- B. **Extended Guarantees:** Any guarantee exceeding one year provided by the supplier or manufacturer of any equipment or materials used in the Project shall be extended for such term. Contractor expressly agrees to act as co-guarantor of such equipment and materials and shall supply City with all warranty and guarantee documents relative to equipment and materials incorporated in the Project and guaranteed by their suppliers or manufacturers.
- C. **Environmental and Toxics Warranty:** The covenants, warranties and representations contained in this Paragraph are effective continuously during Contractor's Work on the Project and following cessation of labor for any reason including, but not limited to, Project completion. Contractor covenants, warrants and represents to City that:
  - 1. To Contractor's knowledge after due inquiry, no lead or Asbestos-containing materials were installed or discovered in the Project at any time during Contractor's construction thereof. If any lead or Asbestos-containing materials were discovered, Contractor made immediate written disclosure to City.
  - 2. To Contractor's knowledge after due inquiry, no electrical transformers, light fixtures with ballasts or other equipment containing PCBs are or were located on the Project at any time during Contractor's construction thereof.
  - 3. To Contractor's knowledge after due inquiry, no storage tanks for gasoline or any other toxic substance are or were located on the Project at any time during Contractor's construction thereof. If any such materials were discovered, Contractor made immediate written disclosure to City.
  - 4. Contractor's operations concerning the Project are and were not in violation of any applicable environmental federal, state, or local statute, law or regulation dealing with hazardous materials substances or toxic substances and no notice from any governmental body has been served upon Contractor claiming any violation of any such law, ordinance, code or regulation, or requiring or calling attention to the need for any Work, repairs, construction, alteration, or installation on or in connection with the Project in order to comply with any such laws, ordinances, codes, or regulations, with which Contractor has not complied. If there are any such notices with which Contractor has complied, Contractor shall provide City with copies thereof.

## 9.02 Inspection Of Work

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

with Work. Contractor shall prepare Samples or test specimens at its expense and furnish them to City. Contractor shall submit all Samples in ample time to enable City to make any necessary tests, examinations, or analyses before the time it is desired to incorporate the material into the Work.

- C. Contractor shall give City timely notice of readiness of Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- D. If applicable laws or regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, and furnish City with the required certificates of inspection, or approval. City will pay the cost of initial testing and Contractor shall pay all costs in connection with any follow-up or additional testing. Contractor shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for the acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work.
- E. If Contractor covers any Work, or the work of others, prior to any required inspection, test or approval without written approval of City, Contractor shall uncover the Work at City's request. Contractor shall bear the expense of uncovering Work and replacing Work. In any case where Contractor covers Work contrary to City's request, Contractor shall uncover Work for City's observation or inspection at City's request. Contractor shall bear the cost of uncovering Work.
- F. Whenever required by City, Contractor shall furnish tools, labor and materials necessary to make examination of Work that may be completed or in progress, even to extent of uncovering or taking down portions of finished Work. Should Work be found unsatisfactory, cost of making examination and of reconstruction shall be borne by Contractor. If Work is found to be satisfactory, City, in manner herein prescribed for paying for alterations, Modifications, and extra Work, except as otherwise herein specified, will pay for examination.
- G. Inspection of the Work by or on behalf of City, or City's failure to do so, shall not under any circumstances be deemed a waiver or approval of any non-conforming aspect of the Work. Contractor shall have an absolute duty, in the absence of a written Change Order signed by City, to perform Work in conformance with the Contract Documents and to immediately correct Defective Work immediately upon Contractor's knowledge.
- H. Any inspection, evaluation, or test performed by or on behalf of City relating to the Work is solely for the benefit of City, and shall not be relied upon by Contractor. Contractor shall not be relieved of the obligation to perform Work in accordance with the Contract Documents, nor relieved of any guaranty, warranty, or other obligation, as a result of any inspections, evaluations, or tests performed by City, whether or not such inspections, evaluations, or tests are permitted or required under the Contract Documents. Contractor shall be solely responsible for testing and inspecting Work already performed to determine whether such Work is in proper condition to receive later Work.

### **9.03 Correction Of Defective Work**

- A. City may direct Contractor to correct any Defective Work or remove it from the Site and replace it with Work that is not Defective and satisfactorily correct or remove and replace any damage to other Work or the work of others resulting from the correction or removal. Contractor shall be responsible for any and all claims, costs, losses and damages caused by or resulting from such correction or removal. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City may decide the proper amount or, in its discretion may elect to leave the Contract Sum unchanged and deduct from monies due Contractor, all such claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with City's calculations, it may make a claim as provided in Article 12 of this Document 00 7200. City's rights under this Paragraph shall be in addition to any other rights it may have under the Contract Documents or by law.

- B. If Contractor fails to supply sufficient skilled workers, suitable materials or equipment, or to furnish or perform the Work in such a way that the completed Work will conform to Contract Documents, City may order Contractor to replace any such Defective Work, or stop any portion of Work to permit City (at Contractor's expense) to replace such Defective Work. These City rights are entirely discretionary on the part of City, and shall not give rise to any duty on the part of City to exercise the rights for the benefit of Contractor or any other party.

#### **9.04 Acceptance And Correction Of Defective Work By City**

- A. City may in its sole discretion elect to accept Defective Work. Contractor shall pay all claims, costs, losses and damages attributable to City's evaluation of and determination to accept such Defective Work. If City accepts any Defective Work prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City may deduct from monies due Contractor, all claims, costs, losses, damages, expenses and liabilities attributable to the Defective Work. If Contractor disagrees with City's calculations, Contractor may make a claim as provided in Article 12 of this Document 00 7200. If City accepts any Defective Work after final payment, Contractor shall pay to City, an appropriate amount as determined by City.
- B. City may correct and remedy deficiency if, after five calendar days' written notice to Contractor, Contractor fails to correct Defective Work or to remove and replace rejected Work; or provide a plan for correction of Defective Work acceptable to City; or perform Work in accordance with Contract Documents. In connection with such corrective and remedial action, City may exclude Contractor from all or part of the Site; take possession of all or part of Work and suspend Contractor's Work related thereto; take possession of all or part of Contractor's tools, appliances, construction equipment and machinery at the Site; and incorporate in Work any materials and equipment stored at the Site or for which City has paid Contractor but which are stored elsewhere. Contractor shall allow City, its representatives, agents, employees, and other contractors and Project Manager/Architect's consultants' access to the Site to enable City to exercise the rights and remedies under this Paragraph. Contractor shall be responsible for all claims, costs, losses, damages, expenses and liabilities incurred or sustained by City in exercising such rights and remedies. A Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to Work and the Contract Sum. If the parties are unable to agree to the amount of an appropriate decrease in the Contract Sum, City may deduct from moneys due Contractor, all claims, costs, losses and damages caused by or resulting from the correction or removal. If Contractor disagrees with City's calculations, Contractor may make a claim as provided in Article 12.

#### **9.05 Rights Upon Inspection, Correction Or Acceptance**

- A. Contractor shall not be allowed an extension of Contract Time because of any delay in the performance of Work attributable to the exercise by City of its rights and remedies under this Article. Where City exercises its rights under this Article, it retains and may still exercise all other rights it has by law or under the Contract Documents including, but not limited to, the right to terminate Contractor's right to proceed with the Work under the Contract Documents for cause and/or make a claim or back charge where a Change Order cannot be agreed upon.
- B. Inspection by City or its authorized agents or representatives shall not relieve Contractor of its obligation to have furnished material and workmanship in accordance with Contract Documents. Payment for Work completed through periodic progress payments, final payment or otherwise shall not operate to waive City's right to require full compliance with Contract Documents and shall in no way be deemed as acceptance of any defective Work paid therefor. Contractor's obligation to complete the Work in accordance with Contract Documents shall be absolute, unless City agrees otherwise in writing.

#### **9.06 Proof Of Compliance Of Contract Provisions**

- A. In order that City may determine whether Contractor has complied or is complying with requirements of Contract Documents not readily enforceable through inspection and tests of

Work and materials, Contractor shall at any time, when requested, submit to City properly authenticated documents or other satisfactory proofs of compliance with all applicable requirements.

- B. Before commencing any portion of Work, Contractor shall inform City in writing as to time and place at which Contractor wishes to commence Work, and nature of Work to be done, in order that proper provision for inspection of Work may occur, and to assure measurements necessary for record and payment. Information shall be given to City a reasonable time in advance of time at which Contractor proposes to begin Work, so that City may complete necessary preliminary work without inconvenience or delay to Contractor.

#### **9.07 Correction Period And Project Warranty Period:**

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

#### **9.08 No Waiver**

- A. Neither recordation of Final Acceptance nor final certificate for payment nor provision of the Contract nor partial or entire use or occupancy of premises by City shall constitute acceptance of Work not done in accordance with Contract Documents nor relieve Contractor of liability in respect to express warranties or responsibility for faulty materials or workmanship.
- B. If, after installation, operation, or use of materials or equipment to be provided under Contract proves to be unsatisfactory to City, City shall have right to operate and use materials or equipment until said materials and equipment can, without damage to City, be taken out of service for correction or replacement. Period of use of Defective materials or equipment pending correction or replacement shall in no way decrease guarantee period required for acceptable corrected or replaced items of materials or equipment.
- C. Nothing in the Contract Documents shall be construed to limit, relieve, or release Contractor's, Subcontractors', and equipment suppliers' liability to City for damages sustained as result of latent defects in materials or equipment caused by negligence of Contractor, its agents, suppliers, employees, or Subcontractors.

### **ARTICLE 10 – MODIFICATIONS OF CONTRACT DOCUMENTS**

#### **10.01 City's Right To Direct Changed Work.**

- A. City may, without notice to the sureties and without invalidating the Contract, make changes in the Work ("Changed Work"), including without limitation: alterations, deviations, additions to, or

deletions from Contract Documents; increase or decrease the quantity of any item or portion of the Work; expand, reduce or otherwise change the Contract Time; delete any item or portion of the Work; and require extra Work. Contractor shall perform such Work under applicable provisions of the Contract Documents, unless specifically provided otherwise at the time the change is ordered. In the case of any ordered extra Work, City reserves the right to furnish all or portions of associated labor, material, and equipment, which Contractor shall accept and use without payment for costs, markup, profit, or otherwise for such City-furnished labor, materials, and equipment.

- B. If Changed Work is of such a nature as to increase or decrease the time or cost of any part of Work, price fixed in Contract shall be increased or decreased by amount as the Contractor and City may agree upon as reasonable and proper allowance for increase or decrease in cost of Work using the cost guidelines set forth in this Article, and absent such agreement, then as City may direct (with Contractor retaining its rights under Article 12 herein).

#### 10.02 Required Documentation For Changed Work

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

#### 10.03 Procedures And Pricing Of Changed Work

- A. Procedures for changed work and pricing of changed work, claims and all forms of extra compensation, are set forth in Section 01 2600 (Modification Procedures).

### ARTICLE 11 – TIME ALLOWANCES

#### 11.01 Time Allowances

- A. Time is of the essence. Contract Time may only be changed by Change Order, and all time limits stated in the Contract Documents are to mean that time is of the essence.

#### 11.02 Excusable Delay And Inexcusable Delay Defined.

- A. Excusable Delay. Subject to the provisions on Notice of Delay below, Contract Time may be adjusted in an amount equal to the time lost due to:
  - 1. Changes in the Work ordered by City ("**Changes**");
  - 2. Acts or neglect by City, Architect, any City Representative, utility owners or other contractors performing other work, not permitted or provided for in the Contract Documents, provided that Contractor has performed its responsibilities under the Contract Documents (including but not limited to pre-bid investigations) ("**Acts or Neglect**"); or
  - 3. Fires, floods, epidemics, abnormal weather conditions beyond the parameters otherwise set forth in this Article, earthquakes, civil or labor disturbances, or acts of God (together, "force majeure events"), provided damages resulting therefrom are not the result of Contractor's failure to protect the Work as required by Contract Documents ("**Force Majeure**").
- B. Inexcusable Delay. Contract Time shall not be extended for any period of time where Contractor (and/or any Subcontractor) is delayed or prevented from completing any part of the Work due to a

cause that is within Contractor's risk or responsibility under the Contract Documents. Delays attributable to or within the control of a Subcontractor, or its subcontractors, or supplier, are deemed delays within the control of Contractor.

- C. Float. Float shall be treated as a Project resource. Contractor shall not be entitled to a time extension for impacts that consume float, but do not impact the critical path.

### 11.03 Notice Of Delay

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

### 11.04 Compensable Time Extensions

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

### 11.05 Non-Compensable Time Extensions

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

### 11.06 Adverse Weather

- A. Adverse weather delays may be allowed only if the number of workdays of adverse weather exceeds the parameters listed or referenced immediately below in this subparagraph and Contractor proves that adverse weather actually caused delays to work on the critical path. Contractor shall give written notice of intent to claim an adverse weather day within one Day of the adverse weather day occurring.
- B. Claims for extension of time for rain delay will not be granted unless the number of calendar days work is prevented by rain exceeds 110% of the average number of rain days expected for the period of the Contract Time, based on the records of the National Oceanic & Atmospheric Administration (NOAA) weather station closest to the Project Site, as measured and reported by NOAA. (For example, for California, Oregon and Washington, these figures are contained in the ">=0.10 inch" column at the applicable weather station's "General Climate Summary Table" for "Precipitation" at <http://www.wrcc.dri.edu/Climsum.html>), pro-rated in the individual month Contractor starts and finishes Work. Delays due to adverse weather conditions will not be allowed for weather conditions that fall within these parameters.

- C. In order to qualify as an adverse weather delay with respect to the foregoing parameters, (i.) daily rainfall must exceed .1 inch, and/or (ii.) daily snowfall must exceed 1.0 inch or more, at the NOAA station located closest to the Project site, as measured and reported by NOAA. Notwithstanding these allowances, Contractor shall at all times employ all available mitigation measures to enable Work to continue, Contractor shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site, lime treatment, and covering Work and material that could be affected adversely by weather. Failure to do so shall be cause for City to not grant a time extension due to adverse weather, where Contractor could have avoided or mitigated the potential delay by exercising reasonable care.
- D. Contractor shall include the foregoing precipitation parameters as a monthly activity in its progress schedule. As Work on the critical path is affected by precipitation, Contractor shall notify City and request that the days be moved to the affected activities. Any adverse weather days remaining shall be considered Project float available to either City or Contractor.
- E. Adverse weather delay for precipitation shall be recognized for the actual period of time Contractor proves it was delayed by precipitation exceeding the specified parameters. For example, and not by way of limitation, if precipitation exceeding the specified parameters does not in fact delay Contractor's progress on the critical path, then no time extension shall be recognized; and conversely, if Contractor proves to City's satisfaction that precipitation exceeding the specified parameters causes delay to Contractor for a period longer than the number of precipitation days incurred (e.g., if it rains or snows during grading work), then Contractor shall be entitled to a time extension equal to the actual period of such delay.
- F. During unfavorable weather, wet ground, or other unsuitable construction conditions, Contractor shall employ best practices to protect the Work, manage the construction site and rainwater during inclement weather. Persons performing the Work shall examine surfaces to receive their Work and shall report in writing to Contractor, with copy to City representative and the Architect conditions detrimental to the Work. Failure to examine and report discrepancies makes the Contractor responsible, at no increase in Contract Sum, for corrections City may require. Commencement of Work constitutes acceptance of surface.

#### **11.07 Liquidated Damages**

- A. Time is of the essence. Execution of Contract Documents by Contractor shall constitute its acknowledgement that City will actually sustain damages in the form of Contract administration expenses (such as Project management and consultant expenses) in the amount fixed in the Contract Documents for each and every Day during which completion of Work required is delayed beyond expiration of time fixed for completion plus extensions of time allowed pursuant to provisions hereof.
- B. Contractor and City agree that because of the nature of the Project, it would be impractical or extremely difficult to fix the amount of such actual damages incurred by City because of a delay in completion of all or any part of the Work. Contractor and City agree that specified measures of liquidated damages shall be presumed to be the amount of such damages actually sustained by City, and that because of the nature of the Project, it would be impracticable or extremely difficult to fix the actual damages.
- C. Liquidated damages for delay shall cover administrative, overhead, interest on bonds, and general loss of public use damages suffered by City as a result of delay. Liquidated damages shall not cover the cost of completion of the Work, damages resulting from Defective Work, lost revenues or costs of substitute facilities, or damages suffered by others who then seek to recover their damages from City (for example, delay claims of other contractors, subcontractors, tenants, or other third-parties), and defense costs thereof. City may deduct from any money due or to become due to Contractor subsequent to time for completion of entire Work and extensions of time allowed pursuant to provisions hereof, a sum representing then-accrued liquidated damages.

### **ARTICLE 12 – CLAIMS BY CONTRACTOR**

#### **12.01 Obligation to File Claims for Disputed Work**

- A. Should it appear to Contractor that the Work to be performed or any of the matters relative to the

Contract Documents are not satisfactorily detailed or explained therein, or should any questions arise as to the meaning or intent of the Contract Documents, or should any dispute arise regarding the true value of any work performed, work omitted, extra work that the Contractor may be required to perform, time extensions, payment to the Contractor during performance of this Contract, performance of the Contract, and/or compliance with Contract procedures, or should Contractor otherwise seek extra time or compensation FOR ANY REASON WHATSOEVER, then Contractor shall first follow procedures set forth in the Contract (including but not limited to other Articles of this Document 00 7200 and Section 01 2600.) If a dispute remains, then Contractor shall give written notice to City that expressly invokes this Article 12. City shall decide the issue in writing within 15 calendar days; and City's written decision shall be final and conclusive. If Contractor disagrees with City's decision, or if Contractor contends that City failed to provide a decision timely, then Contractor's SOLE AND EXCLUSIVE REMEDY is to promptly file a written claim setting forth Contractor's position as required herein.

#### **12.02 Form And Contents Of Claim**

- A. Contractor's written claim must identify itself as a "Claim" under this Article 12 and must include the following: (1) a narrative of pertinent events; (2) citation to contract provisions; (3) theory of entitlement; (4) complete pricing of all cost impacts; (5) a time impact analysis of all time delays that shows actual time impact on the critical path; (6) documentation supporting items 1 through 5; a verification under penalty of perjury of the claim's accuracy. The Claim shall be submitted to City within thirty (30) calendar days of receiving City's written decision, or the date Contractor contends such decision was due, and shall be priced like a change order according to Section 01 2600, and must be updated monthly as to cost and entitlement if a continuing claim. Routine contract materials, for example, correspondence, RFI, Change Order requests, or payment requests shall not constitute a claim. Contractor shall bear all costs incurred in the preparation and submission of a claim.

#### **12.03 Administration During/After Claim Submission**

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

#### **12.04 Compliance**

- A. The provisions of this Article 12 constitute a non-judicial claim settlement procedure that, pursuant to Section 930.2 of the California Government Code, shall constitute a condition precedent to submission of a valid Government Code Claim under the California Government Code. Contractor shall bear all costs incurred in the preparation, submission and administration of a claim. Any claims presented in accordance with the Government Code must affirmatively indicate Contractor's prior compliance with the claims procedure herein and the previous dispositions under Paragraph 12.3 above of the claims asserted. Pursuant to Government Code Section 930.2, the one-year period in Government Code section 911.2 shall be reduced to 150 calendar days from either accrual of the cause of action, substantial completion or termination of the contract, whichever occurs first; in all other respects, the Government Code shall apply unchanged.
- B. Failure to submit and administer claims as required in Article 12 shall waive Contractor's right to claim on any specific issues not included in a timely submitted claim. Claim(s) or issue(s) not raised in a timely protest and timely claim submitted under this Article 12 may not be asserted in any subsequent litigation, Government Code Claim, or legal action.
- C. City shall not be deemed to waive any provision under this Article 12, if at City's sole discretion, a

claim is administered in a manner not in accord with this Article 12. Waivers or modifications of this Article 12 may only be made a signed change order approved as to form by legal counsel for both City and Contractor; oral or implied modifications shall be ineffective.

## **ARTICLE 13 – UNDERGROUND CONDITIONS**

### **13.01 Contractor To Locate Underground Facilities.**

- A. During construction, Contractor shall comply with Government Code Sections 4216 to 4216.9, and in particular Section 4216.2 which provides, in part: “Except in an emergency, every person planning to conduct any excavation shall contact the appropriate regional notification center at least two working days, but no more than 14 calendar days, prior to commencing that excavation, if the excavation will be conducted in an area which is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the excavator, and, if practical, the excavator shall delineate with white paint or other suitable markings the area to be excavated. The regional notification center shall provide an inquiry identification number to the person who contacts the center and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation.”
- B. Contractor shall contact USA, and schedule the Work to allow ample time for the center to notify its members and, if necessary, for any member to field locate and mark its facilities. Contractor is charged with knowledge of all subsurface conditions reflected in USA records. Prior to commencing excavation or trenching work, Contractor shall provide City with copies of all USA records secured by Contractor. Contractor shall advise City of any conflict between information provided in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings and that provided by USA records. Contractor’s excavation shall be subject to and comply with the Contract Documents.
- C. Contractor shall also investigate the existence of existing service laterals, appurtenances or other types of utilities, indicated by the presence of an underground transmission main or other visible facilities, such as buildings, new asphalt, meters and junction boxes, on or adjacent to the Site, even if not shown or indicated in Document 00 3132 (Geotechnical Data and Existing Conditions), the Drawings or that provided by USA records. Contractor shall immediately secure all such available information and notify City and the utility owner, in writing, of its discovery.

### **13.02 Contractor To Protect Underground Facilities.**

- A. At all times during construction, all operating Underground Facilities shall remain in operation, unless the Contract Documents expressly indicate otherwise. Contractor shall maintain such Underground Facilities in service where appropriate; shall repair any damage to them caused by the Work; and shall incorporate them into the Work, including reasonable adjustments to the design location (including minor relocations) of the existing or new installations. Contractor shall take immediate action to restore any in service installations damaged by Contractor’s operations.
- B. Prior to performing Work at the Site, Contractor shall lay out the locations of Underground Facilities that are to remain in service and other significant known underground installations indicated by the Underground Facilities Data. Contractor shall further locate, by carefully excavating with small equipment, potholing and principally by hand, all such utilities or installations that are to remain and that are subject to damage. If additional utilities whose locations are unknown are discovered, Contractor shall immediately report to City for disposition of the same. Additional compensation or extension of time on account of utilities not shown or otherwise brought to Contractor’s attention, including reasonable action taken to protect or repair damage, shall be determined as provided in this Document 00 7200.
- C. If during construction, an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated in the materials supplied by City for bidding or in information on file at USA or otherwise reasonably available to Contractor, then Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby (and in no event later than seven calendar days), and prior to performing any Work in connection therewith (except in an emergency), identify the owner of such Underground Facility and give written notice to that owner and to City. During such time, Contractor shall be responsible for the

safety and protection of such Underground Facility.

- D. The cost of all of the following will be included in the Contract Sum and Contractor shall have full responsibility for (a) reviewing and checking all available information and data including, but not limited to, information made available for bidding and information on file at USA; (b) locating all Underground Facilities shown or indicated in the Contract Documents, available information, or indicated by visual observation including, but not limited to, and by way of example only, engaging qualified locating services and all necessary backhoeing and potholing; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.
- E. Consistent with California Government Code §4215, as between City and Contractor, City will be responsible for the timely removal, relocation, or protection of existing main or trunk line utility facilities located on the Site only if such utilities are not identified in the Contract Documents or information made available for bidding. City will compensate for the cost of locating and repairing damage not due to Contractor's failure to exercise reasonable care, removing and relocating such main or trunk line utility facilities not indicated in the Contract Documents or information made available for bidding with reasonable accuracy, and equipment on the Project necessarily idled during such Work. Contractor shall not be assessed liquidated damages for delay in completion of the Project, when such delay was caused by the failure of City or the utility to provide for removal or relocation of such utility facilities.

### **13.03 Concealed Or Unknown Conditions**

- A. If either of the following conditions is encountered at Site when digging trenches or other excavations that extend deeper than four feet below the surface, Contractor shall give a written Notice of Differing Site Conditions to City promptly before conditions are disturbed, except in an emergency as set forth in this Document 00 7200, and in no event later than seven calendar days after first observance of:
  - 1. Subsurface or Latent physical conditions which differ materially from those indicated in the Contract Documents; or
  - 2. Unknown physical conditions of an unusual nature or which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents.
- B. In response to Contractor's Notice of Differing Site Conditions under this Paragraph, City will investigate the identified conditions, and if they differ materially and cause increase or decrease in Contractor's cost of, or time required for, performance of any part of the Work, City will negotiate the appropriate change order following the procedures set forth in the Contract Documents. If City determines that physical conditions at the Site are not Latent or are not materially different from those indicated in Contract Documents or that no change in terms of the Contract Documents is justified, City will so notify Contractor in writing, stating reasons (with Contractor retaining its rights under Article 12 of this Document 00 7200.)
- C. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed Latent or materially different Site conditions (whether above or below grade) if Contractor knew or should have known of the existence of such conditions at the time Contractor submitted its Bid, failed to give proper notice, or relied upon information, conclusions, opinions or deductions of the kind that the Contract Documents preclude reliance upon.
- D. Regarding Underground Facilities, Contractor shall be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that is owned and was built by City only where the Underground Facility:
  - 1. Was not shown or indicated in the Contract Documents or in the information supplied for bidding purposes or in information on file at USA; and
  - 2. Contractor did not know of it; and
  - 3. Contractor could not reasonably have been expected to be aware of it or to have anticipated it from the information available. (For example, if surface conditions such as

pavement repairs, valve covers, or other markings, indicate the presence of an Underground Facility, then an increase in the Contract Sum or an extension of the Contract Time will not be due, even if the Underground Facility was not indicated in the Contract Documents, in the information supplied to Contractor for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor.)

- E. Contractor shall bear the risk that Underground Facilities not owned or built by City may differ in nature or locations shown in information made available by City for bidding purposes, in information on file at USA, or otherwise reasonably available to Contractor. Underground Facilities are inherent in construction involving digging of trenches or other excavations on City's Project, and Contractor is to apply its skill and industry to verify the information available.
- F. Contractor's compensation for claimed Latent or materially different Site conditions shall be limited to the actual, reasonable, incremental increase in cost of that portion of the Work, resulting from the claimed Latent or materially different Site conditions. Such calculation shall take into account the estimated value of that portion of the Work and the actual value of that portion of the Work, using for guidance Contractor's or its subcontractor's bid amount and actual amounts incurred for that portion of the Work and the reasonable expectation (if any) of differing or difficult site conditions in the Work area based on the available records and locale of the Work. For example, if Contractor excavates in an area unexpected, then such costs would be recoverable entirely; while if Contractor extends an existing excavation, then such costs would be recoverable if the resulting excavation costs in that work area exceeded the reasonable expectations therefore.

#### **13.04 Notice Of Hazardous Waste Or Materials Conditions**

- A. Contractor shall give a written Notice of Hazardous Materials Condition to City promptly, before any of the following conditions are disturbed (except in an emergency as set forth in this Document 00 7200), and in no event later than 24 hours after first observance of any:
  - 1. Material that Contractor believes may be hazardous waste or hazardous material, as defined in Section 25117 of the Health and Safety Code (including, without limitation, Asbestos, lead, PCBs, petroleum and related hydrocarbons, and radioactive material) that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law ("hazardous material"); or
  - 2. Other material that may present an imminent substantial danger to persons or property exposed thereto in connection with Work at the Site ("other materials").
- B. Except as otherwise provided in the Contract Documents or as provided by applicable law, Contractor shall not be required to give any notice for the disturbance or observation of any such hazardous materials or other materials where such matter is disturbed or observed as part of the scope of Work under the Contract Documents (such as hazardous waste or hazardous material investigation, remediation or disposal activities which are identified as the subject of Work under the Contract Documents), where Contractor complies with all requirements in the Contract Documents and applicable law respecting such materials.
- C. Contractor's Notice of Hazardous Materials Condition shall indicate whether the hazardous materials or other materials were shown or indicated in the Contract Documents to be within the scope of Work, and whether the hazardous materials or other materials were brought to the Site by Contractor, its Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- D. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time regarding claimed hazardous waste or materials if:
  - 1. Contractor knew of the existence of such hazardous materials or other materials at the time Contractor submitted its Bid; or
  - 2. Contractor should have known of the existence of such hazardous material or other materials as a result of its having the responsibility to obtain additional or supplementary examinations, investigation, explorations, tests, studies, and data concerning the conditions at or contiguous to the Site prior to submitting its Bid; or
  - 1. Contractor failed to give the written notice within the required timeframe set forth below.
- E. If City determines that conditions involve hazardous materials or other materials and that a

change in Contract Document terms is justified, City will issue either a Request for Proposal or Construction Change Directive under the procedures described in the Contract Documents. If City determines that conditions do not involve hazardous materials or other materials or that no change in Contract Document terms is justified, City will notify Contractor in writing, stating the reasons for its determination.

- F. In addition to the parties' other rights under this Document 00 7200, if Contractor does not agree to resume Work based on a reasonable belief that it is unsafe, or does not agree to resume Work under special conditions, City may order the disputed portion of Work deleted from the Work, or performed by others, or City may invoke its right to terminate Contractor's right to proceed under the Contract Documents in whole or in part, for convenience or for cause as the facts may warrant.
- G. If Contractor does not agree with any City determination of any adjustment in the Contract Sum or Contract Time under this Article, Contractor may make a claim as provided in Article 12 of this Document 00 7200.

## **ARTICLE 14 – LEGAL AND MISCELLANEOUS**

### **14.01 Laws And Regulations**

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

### **14.02 Permits And Taxes**

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

### **14.03 Communications And Information Distribution**

- A. All communications recognized under the Contract Documents shall be in writing, in the form of a serialized document, by type of communication. For example, RFI's shall be serialized beginning with RFI No. 1; payment applications shall be serialized beginning with Payment Application No. 1, submittals shall be serialized per specification section and transmitted with transmittal sheets beginning with Transmittal No. 1; and correspondence shall be serialized beginning with letter No. 1. Contractor may propose other record management and identification systems or protocols, intended to facilitate orderly transmittal of project information, storage and retrieval of such information, which City will review consistent with these stated objectives, and accept or reject in its sole discretion.
- B. Documents Requiring Signatures. All documents requiring signatures for approval prior to implementing action, as stipulated in other portions of Contract Documents, shall require a manually signed, serialized letter delivered to the other party at its address for notice otherwise specified in the Contract Documents, either personally or by mail.

- C. Electronic data transfer of such correspondence will serve to expedite preliminary concurrence of information, only. Receipt of "hard copy" signature on forms is required prior to implementing action or work as the conditions may require. For example, change orders and authorizations for extra cost, require signatures. A party may acknowledge receipt of PDF copies of required correspondence by e-mail, but in the absence of such acknowledgment, mail or personal delivery is required.
- D. All emails shall be copied to City's and Contractor's Project Representative. City reserves the right to preclude e-mail communication, in whole or in part, as Project needs may require. Communication between City and Contractor shall not be via Twitter, Facebook, or other types of instant text message systems. Any such communications shall be inadmissible for any purpose related to this Contract.

#### **14.04 Suspension Of Work**

- A. City may, without cause, order Contractor in writing to suspend, delay or interrupt Work in whole or in part for such period of time as City may determine. An adjustment shall be made for increases in cost of performance of Work of the Contract Documents caused by any such suspension, delay or interruption, calculated using the measures set forth in Section 01 2600 (Modification Procedures). No adjustment shall be made to extent that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible.

#### **14.05 Termination Of Contract For Cause**

- A. The Contractor shall be in default of the Contract Documents and City may terminate the Contractor's right to proceed under the Contract Documents, for cause, in whole or in part, should the Contractor commit a material breach of the Contract Documents and not cure such breach within ten (10) calendar days of the date of notice from City to the Contractor demanding such cure; or, if such breach is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for the Contractor to avail itself of a time period in excess of 10 calendar days, the Contractor must provide City within the ten (10) day period with a written plan acceptable to City that demonstrates actual resources, personnel and a schedule to promptly to cure said breach, and then diligently commence and continue such cure according to the written plan).
- B. In the event of termination by City for cause as provided herein, the Contractor shall deliver to City possession of the Work in its then condition, including but not limited to, all designs, engineering, Project records, cost data of all types, plans and specifications and contracts with vendors and subcontractors, all other documentation associated with the Project, and all construction supplies and aids dedicated solely to performing the Work which, in the normal course of construction, would be consumed or only have salvage value at the end of the construction period. The Contractor shall remain fully liable for the failure of any Work completed and materials and equipment provided through the date of such termination to comply with the provisions of the Contract Documents. The provisions of this Section shall not be interpreted to diminish any right which City may have to claim and recover damages for any breach of the Contract Documents or otherwise, but rather, the Contractor shall compensate City for all loss, cost, damage, expense, and/or liability suffered by City as a result of such termination and/or failure to comply with the Contract Documents.
- C. In the event a termination for cause is later determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience, and the Contractor shall have no greater rights than it would have had following a termination for convenience. Any Contractor claim arising out of a termination for cause shall be made in accord with Article 12 herein. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by the Contractor.

#### **14.06 Termination Of Contract For Convenience**

- A. City may terminate performance of the Work under the Contract Documents in accordance with this clause in whole, or from time to time in part, whenever City shall determine that termination is

in City's best interest. Termination shall be effected by City delivering to the Contractor notice of termination specifying the extent to which performance of the Work under the Contract Documents is terminated, and the effective date of the termination.

- B. Contractor shall comply strictly with City's direction regarding the effective date of the termination, the extent of the termination, and shall stop work on the date and to the extent specified.
- C. Contractor shall be entitled to a total payment on account of the Contract work so terminated measured by (i.) the actual cost to Contractor of Work actually performed, up to the date of the termination, with profit and overhead limited to twelve percent (12%) of actual cost of work performed, up to but not exceeding the actual contract value of the work completed as measured by the Schedule of Values and Progress Schedule, (ii.) offset by payments made and other contract credits. In connection with any such calculation, however, City shall retain all rights under the Contract Documents, including but not limited to claims, indemnities, or setoffs.
- D. Under no circumstances may Contractor recover legal costs of any nature, nor may Contractor recover costs incurred after the date of the termination.

#### **14.07 Contingent Assignment Of Subcontracts**

- A. Contractor hereby assigns to City each Subcontract for a portion of the Work, provided that:
  - 1. The assignment is effective only after City's termination of Contractor's right to proceed under the Contract Documents (or portion thereof relating to that Subcontract) as set forth herein.
  - 2. The assignment is effective only for the Subcontracts which City expressly accepts by notifying the Subcontractor in writing;
  - 3. The assignment is subject to the prior rights, if any, of the Surety, obligated by Document 00 6113.13 (Construction Performance Bond) provided under the Contract Documents, where the Surety exercises its rights to complete the Contract;
  - 4. After the effectiveness of an assignment, Contractor shall, at its sole cost and expense (except as otherwise provided in this Document 00 7200), sign all instruments and take all actions reasonably requested by City to evidence and confirm the effectiveness of the assignment in City; and
  - 5. Nothing in this Paragraph shall modify or limit any of Contractor's obligations to City arising from acts or omissions occurring before the effectiveness of any Subcontract assignment, including but not limited to all defense, indemnity and hold-harmless obligations arising from or related to the assigned Subcontract.

#### **14.08 Remedies And Contract Integration**

- A. Subject to Contract Documents provisions regarding Contractor claims, claim review, and claim resolution, and subject to the limitations therein, the exclusive jurisdiction and venue for resolving all claims, counter claims, disputes and other matters in question between City and Contractor arising out of or relating to Contract Documents, any breach thereof or the Project shall be the applicable court of competent jurisdiction located in the State and County where the Project is located. All City remedies provided in the Contract Documents shall be taken and construed as cumulative and not exclusive; that is, in addition to each and every other remedy herein provided; and in all instances City shall have any and all other equitable and legal rights and remedies which it would have according to law.
- B. The Contract Documents, any Contract Modifications and Change Orders, shall represent the entire and integrated agreement between City and Contractor regarding the subject matters hereof and thereof and shall constitute the exclusive statement of the terms of the parties' agreement. The Contract Documents, and any Contract Modifications and Change Orders, shall supersede any and all prior negotiations, representations or agreements, written or oral, express or implied, that relate in any way to the subject matter of the Contract Documents or written Modifications. City and Contractor represent and agree that, except as otherwise expressly provided in the Contract Documents, they are entering into the Contract Documents and any subsequent written Modification in sole reliance upon the information set forth or referenced in the Contract Documents or Contract Modifications; the parties are not and will not rely on any other

information, which shall be inadmissible in any proceeding to enforce these documents.

- C. Either party's waiver of any breach or failure to enforce any of the terms, covenants, conditions or other provisions of the Contract Documents at any time shall not in any way affect, limit, modify or waive that party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- D. Neither acceptance of the whole or any part of Work by City nor any verbal statements on behalf of City or its authorized agents or representatives shall operate as a waiver or modification of any provision of the Contract Documents, or of any power reserved to City herein nor any right to damages provided in the Contract Documents.

#### **14.09 Interpretation.**

- A. Should any part, term or provision of this Agreement or any of the Contract Documents, or any document required herein or therein to be executed or delivered, be declared invalid, void or unenforceable, all remaining parts, terms and provisions shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. If the provisions of any law causing such invalidity, illegality or unenforceability may be waived, they are hereby waived to the end that this Agreement and the Contract Documents may be deemed valid and binding agreements, enforceable in accordance with their terms to the greatest extent permitted by applicable law. In the event any provision not otherwise included in the Contract Documents is required to be included by any applicable law, that provision is deemed included herein by this reference (or, if such provision is required to be included in any particular portion of the Contract Documents, that provision is deemed included in that portion).
- B. Contract Documents shall not be construed to create a contractual relationship of any kind between (1) Project Manager or any City's representative and Contractor; (2) City and/or its Representatives and a Subcontractor, sub-Subcontractor, or supplier of any Project labor, materials, or equipment; or (3) between any persons or entities other than City and Contractor.

#### **14.10 Patents**

- A. Fees or claims for any patented invention, article or arrangement that may be used upon or in any manner connected with performance of the Work or any part thereof shall be included in the Bid price for doing the Work. Contractor shall defend, indemnify and hold harmless City and each of its officers, employees, consultants and agents, including, but not limited to, the Board and each City's Representative, from all damages, claims for damages, costs or expenses in law or equity, including attorney's fees, arising from or relating to any claim that any article supplied or to be supplied under the Contract Documents infringes on the patent rights, copyright, trade name, trademark, service mark, trade secret or other intellectual property right of any person or persons or that the person or entity supplying the article does not have a lawful right to sell the same. Such costs or expenses for which Contractor agrees to indemnify and hold harmless the above indemnities include but are not limited to any and all license fees, whether such fees are agreed by any indemnitee or ordered by a court or administrative body of any competent jurisdiction.

#### **14.11 Substitution For Patented And Specified Articles**

- A. Except as noted specifically in the instructions to Bidders or in Contract Documents, whenever in Specifications, material or process is designated by patent or proprietary name or by name of manufacturer, such designation shall be deemed to be used for purpose of facilitating description of material and process desired, and shall be deemed to be followed by the words "or Approved Equal" and Contractor may offer any substitute material or process that Contractor considers "equal" in every respect to that so designated and if material or process offered by Contractor is, in opinion of City, Equal in every respect to that so designated, its use will be approved. However, Contractor may utilize this right only by timely submitting Document 00 6325 (Substitution Request Form) as provided in Document 00 2113 (Instructions to Bidders). A substitution will be approved only if it is a true "or equal" item in every aspect of its design and quality, including but not limited to its dimensions, weights, service requirements, durability, functioning, impact on contiguous construction elements, overall schedule and design.

**14.12 Interest Of Public Officers**

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

**14.13 Limit Of Liability**

- A. CITY, AND EACH OF ITS OFFICERS, BOARD MEMBERS, EMPLOYEES, CONSULTANTS AND AGENTS INCLUDING, BUT NOT LIMITED TO, PROJECT MANAGER AND EACH OTHER CITY REPRESENTATIVE, SHALL HAVE NO LIABILITY TO CONTRACTOR FOR SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, EXCEPT TO THE LIMITED EXTENT THAT THESE CONTRACT DOCUMENTS OR APPLICABLE PUBLIC CONTRACTING STATUTES MAY SPECIFY THEIR RECOVERY.

**ARTICLE 15 – WORKING CONDITIONS AND PREVAILING WAGES****15.01 Use Of Site/Sanitary Rules**

- A. All portions of the Work shall be maintained at all times in neat, clean and sanitary condition. Contractor shall furnish toilets for use of Contractor's and Subcontractors' employees on the Site where needed, and their use shall be strictly enforced. All toilets shall be properly secluded from public observation, and shall be located, constructed and maintained subject to City's approval.
- B. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Site and land areas identified in and permitted by Contract Documents and other land and areas permitted by applicable laws and regulations, rights of way, permits and easements or as designated by City, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, any improvement located thereon, or to City or occupant thereof resulting from the performance of Work.
- C. During the progress of the Work, Contractor shall keep the Site and the Project free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, Contractor shall clean the site, remove all waste materials, rubbish and debris from and about the Site as well as all tools, appliances, construction equipment and machinery and surplus materials. Contractor shall leave the premises clean and ready for occupancy by City at Substantial Completion of Work. Contractor shall restore to original condition all property not designated for alteration by Contract Documents.
- D. Contractor shall not load nor permit any part of any structure or pavement to be loaded in any manner that will endanger the structure or pavement, nor shall Contractor subject any part of Work or adjacent property to stresses or pressures that will endanger it. Contractor shall conduct all necessary existing conditions investigation regarding structural, mechanical, electrical or any other system existing, shall perform Work consistent with such existing conditions, and shall have full responsibility for insufficiencies or damage resulting from insufficiencies of existing systems, equipment or structures to accommodate performing the Work.

**15.02 Protection Of Work, Persons, And Property**

- A. Contractor shall be responsible for initiating, maintaining and supervising all safety and site security precautions and programs in connection with Work, and shall develop and implement a site security and safety plan throughout construction. Contractor shall comply with all safety requirements specified in any safety program established by City, or required by state, federal or local laws and ordinances. Contractor shall be responsible for all theft or damage to Work, property or structures, and all injuries to persons, either on the Site or constituting the Work (e.g., materials in transit), arising from the performance of Work of the Contract Documents from a cause.

- B. Contractor shall comply with all applicable laws and regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property.
- C. Contractor shall remedy all damage, injury or loss to any property referred to above in this Article, caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, supplier, or any other person or organization directly or indirectly employed by any of them to perform or furnish any Work or anyone for whose acts any of them may be liable. Contractor's duties and responsibility for safety and for protection of Work shall continue until such time as all the Work is completed and Final Acceptance of the Work. City and its agents do not assume any responsibility for collecting any indemnity from any person or persons causing damage to Contractor's Work.
- D. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.
- E. City may, at its option, retain such moneys due under the Contract Documents as City deems necessary until any and all suits or claims against Contractor for injury to persons or property shall be settled and City receives satisfactory evidence to that effect.
- F. Work within the right-of-way lines of the city and/or City and/or State shall be done in accordance with the standards and specifications of the controlling agency. Permit for such work shall be obtained and paid for by the Contractor before executing the work within such right-of-ways.

#### **15.03 Responsibility For Safety And Health**

- A. Contractor shall ensure that its and each tier of Subcontractors' employees, agents and invitees comply with applicable health and safety laws while at the Site. These laws include the Occupational Safety and Health Act of 1970 and rules and regulations issued pursuant thereto, and City's safety regulations as amended from time to time. Contractor shall comply with all City directions regarding protective clothing and gear.
- B. Contractor shall be fully responsible for the safety of its and its Subcontractors' employees, agents and invitees on the Site. Contractor shall notify City, in writing, of the existence of hazardous conditions, property or equipment at the Site that are not under Contractor's control. Contractor shall be responsible for taking all the necessary precautions against injury to persons or damage to the property of Contractor, Subcontractors or persons from recognized hazards until the responsible party corrects the hazard.
- C. Contractor shall confine all persons acting on its or its Subcontractors' behalf to that portion of the Site where Work under the Contract Documents is to be performed, City-designated routes for ingress and egress thereto, and any other City-designated area. Except those routes for ingress and egress over which Contractor has no right of control, within such areas, Contractor shall provide safe means of access to all places at which persons may at any time have occasion to be present.

#### **15.04 Emergencies**

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

#### **15.05 Use Of Roadways And Walkways**

- A. Contractor shall not unnecessarily interfere with use of any roadway, walkway or other facility for

vehicular or pedestrian traffic. Before beginning any interference and only with City's prior concurrence, Contractor may provide detour or temporary bridge for traffic to pass around or over the interference, which Contractor shall maintain in satisfactory condition as long as interference continues. Unless otherwise provided in the Contract Documents, Contractor shall bear the cost of these temporary facilities.

#### **15.06 Nondiscrimination**

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

#### **15.07 Prevailing Wages And Working Hours**

- A. Contractor shall pay to persons performing labor in and about Work provided for in the Contract Documents an amount equal to or more than the general prevailing rate of per diem wages for (1) work of a similar character in the locality in which the Work is performed and (2) legal holiday and overtime work in said locality. The per diem wages shall be an amount equal to or more than the stipulated rates contained in a schedule that has been ascertained and determined by the Director of the State Department of Industrial Relations and City to be the general prevailing rate of per diem wages for each craft or type of workman or mechanic needed to execute this Contract. Contractor shall also cause a copy of this determination of the prevailing rate of per diem wages to be posted at each Site.
- B. Contractor shall forfeit, as a penalty to City, Fifty Dollars (\$50.00) for each laborer, workman, or mechanic employed in performing labor in and about the Work provided for in the Contract Documents for each Day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any Work done under the Contract Documents by him or her or by any Subcontractor under him or her, in violation of Articles 1 and 2 of Chapter 1 of Part 7 of Division II of the California Labor Code. The sums and amounts which shall be forfeited pursuant to this Paragraph and the terms of the California Labor Code shall be withheld and retained from payments due to Contractor under the Contract Documents, pursuant to this Document 00 7200 and the California Labor Code, but no sum shall be so withheld, retained or forfeited except from the final payment without a full investigation by either the State Department of Industrial Relations or by City. The Labor Commissioner pursuant to California Labor Code §1775 shall determine the final amount of forfeiture.
- C. Contractor shall insert in every subcontract or other arrangement which Contractor may make for performance of Work or labor on Work provided for in the Contract, provision that Subcontractor shall pay persons performing labor or rendering service under subcontract or other arrangement not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed in the California Labor Code.
- D. Contractor stipulates that it shall comply with all applicable wage and hour laws, including without limitation, California Labor Code §§ 1776 and 1810-1815. Failure to so comply shall constitute a default under this Contract.
- E. Contractor and its Subcontractors shall be responsible for compliance with Labor Code §§ 1810-1815.
  - 1. Eight hours of labor performed in execution of the Contract constitutes a legal day's work. The time of service of any workman employed on the Project is limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week.
  - 2. Contractor and its Subcontractors shall keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by him or her in connection with the Project. The record shall be kept open at all reasonable hours to the inspection City and to the Division of Labor Standards Enforcement.

3. Contractor or its Subcontractors shall, as a penalty to City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the Contract Documents by the respective Contractor or Subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code §§ 1810-1815.
  4. Work performed on the Project by employees of Contractor or its Subcontractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1 1/2 times the basic rate of pay.
- F. Contractor and its Subcontractors shall be responsible for compliance with Labor Code Section 1776.
1. Contractor and Subcontractors must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in connection with the Work of the Contract Documents. Each payroll record shall contain or be verified by a written declaration as required by Labor Code Section 1776.
  2. The payroll records enumerated above must be certified and shall be available for inspection at all reasonable hours at the principal office of the Contractor as required by Labor Code Section 1776.
    - a. Contractor shall inform City of the location of records enumerated above, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.
    - b. Contractor or Subcontractor has 10 calendar days in which to comply subsequent to receipt of a written notice requesting the records enumerated above. In the event that the Contractor or Subcontractor fails to comply with the ten-day period, he or she shall, as a penalty to City on whose behalf the contract is made or awarded, forfeit \$25.00 for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due. Contractor is not subject to a penalty assessment pursuant to this Paragraph due to the failure of a Subcontractor to comply with this Paragraph.
  3. Contractor shall also deliver certified payrolls to City with each Application for Payment as set forth above in this Document 00 7200 (General Conditions).

#### **15.08 Environmental Controls**

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

#### **15.09 Shoring Safety Plan**

- A. Any conflict between this Paragraph and Division 2 of the Specifications shall be resolved in favor of the most stringent requirement.
- B. At least five calendar days in advance of any excavation five feet or more in depth, Contractor shall submit to City a detailed plan showing the shoring, bracing and sloping design (including calculations) and other provisions to be made for worker protection from the hazard of caving ground during the excavation, as required by California Labor Code §6705. A civil or structural engineer registered in California shall prepare and sign any plan that varies from the shoring system standards established by the State Construction Safety Orders.

- C. During the course of Work, Contractor shall be responsible for determining where sloping, shoring, and/or bracing is necessary and the adequacy of the design, installation, and maintenance of all shoring and bracing for all excavation, including any excavation less than five feet in depth. Contractor will be solely responsible for any damage or injuries that may result from excavating or trenching. City's acceptance of any drawings showing the shoring or bracing design or Work schedule shall not relieve Contractor of its responsibilities under this Paragraph.
- D. Appoint a qualified supervisory employee who shall be responsible to determine the sloping or shoring system to be used depending on local soil type, water table, stratification, depth, etc.

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## DOCUMENT 00 7316

## SUPPLEMENTARY CONDITIONS – INSURANCE AND INDEMNIFICATION

## ARTICLE 1 – INSURANCE

- 1.01 At or before the date specified in Document 00 2113 (Instructions to Bidders), Contractor shall furnish to City of Berkeley (“City”) satisfactory proof that Contractor has taken out for the entire period covered by the Contract the following classes of insurance in the form and with limits and deductibles specified below, unless otherwise specified in Contract Documents:**
- A. Comprehensive General Liability Insurance covering claims for personal injury, bodily injury and property damage arising out of the Work and in a form providing coverage not less than that of a Standard Commercial General Liability Insurance policy (“Occurrence Form”). Such insurance shall provide for all operations and include independent contractors, products liability, completed operations for one year after Final Completion and acceptance of the final payment for the Work, contractual liability, and coverage for explosion, collapse, and underground hazards. The limits of such insurance shall not be coverage of less than **\$2,000,000** each occurrence, **\$2,000,000** general aggregate limit, and **\$2,000,000** aggregate for products and completed operations, with defense costs payable in addition to policy limits. The policies shall be endorsed to provide Broad Form Property Damage Coverage.
  - B. Comprehensive Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. Such insurance shall provide coverage not less than the standard Comprehensive Automobile Liability policy with limits not less than **\$2,000,000** each occurrence Bodily Injury, and **\$2,000,000** each occurrence Property Damage.
  - C. All-Risk Course of Construction Insurance including damage to property owned by City, Contractor or third parties caused by fire. Insurance shall be in the amount of 100 percent of the completed value of the Work to be performed under this Contract. Deductible shall not exceed **\$10,000**. Each loss shall be borne by Contractor.
  - D. Workers’ Compensation Insurance for all persons whom the Contractor may employ in carrying out Work contemplated under Contract Documents, in accordance with the Act of Legislature of State of California, known as “Workers’ Compensation Insurance and Safety Act,” approved May 26, 1913, and all acts amendatory or supplemental thereto, in the statutory amount. Workers’ Compensation Insurance is **\$1,000,000** each accident, with defense cost payable in addition to policy limits.
  - E. Environmental Impairment Liability Insurance covering bodily injury and property damage utilizing an occurrence policy form, in an amount no less than **\$1,000,000** combined single limit for each occurrence, subject to a **\$1,000,000** aggregate applicable to each job, with defense costs payable in addition to policy limits. The minimum deductible or self-insured retention permissible is **\$25,000** each occurrence.
- 1.02 All policies of insurance shall be placed with insurers acceptable to City. The insurance underwriter(s) for all insurance policies except Workers’ Compensation shall have an A. M. Best Company rating of A-, VIII or better, unless otherwise specified in Contract Documents. Required minimum amounts of insurance may be increased should conditions of Work, in opinion of City, warrant such increase. Contractor shall increase required insurance amounts upon direction by City.**
- 1.03 Required Endorsements: The policies required under Document 00 7200 (General Conditions) and this Document 00 7316 shall be endorsed as follows:**
- A. City of Berkeley, its officers, agents, volunteers, consultants, and employees shall be named as additional insureds, but only with respect to liability arising out of the activities of the named insured, and there shall be a waiver of subrogation as to each named and additional insured.

- B. Each such policy shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limit of the insurance company's liability required hereunder. Should any of the policies identified herein contain a "cross-suits" exclusion, such exclusion must not apply to any additional insureds.
  - C. Written notice of cancellation or of any limits reduction change in said policy shall be mailed to the City thirty (30) calendar days in advance of the effective date thereof, and ten (10) calendar days written notice to the same in advance of payment of any insurance claims under such policies to any person, firm or entity.
  - D. Insurance shall be primary insurance and no other insurance or self-insured retention carried or held by any named or additional insureds shall be called upon to contribute to a loss covered by insurance for the named insured.
- 1.04** Written notice of cancellation, non-renewal, or reduction in coverage of any policy shall be mailed to City (Attention: Project Manager and the Construction Manager) at the address listed in Document 00 5200 (Agreement), 30 calendar days in advance of the effective date of the cancellation, non-renewal, or reduction in coverage. Written notice of cancellation for non-payment shall be mailed within 10 calendar days of cancellation.
- 1.05** Certificates of insurance and endorsements shall have clearly typed thereon City Specification Number, and Title of Project of Contract Documents. Contractor shall maintain insurance in full force and effect during entire period of performance of Contract Documents.
- 1.06** Contractor shall keep insurance in force during warranty and guarantee periods, except that Contractor may discontinue All-Risk Course of Construction Insurance after Final Payment. At time of making application for extension of time, and during all periods exceeding the Contract Time resulting from any cause, Contractor shall submit evidence that insurance policies will be in effect during requested additional period of time. Upon City's request, Contractor shall submit to City, within 30 calendar days, copies of the actual insurance policies or renewals or replacements.
- 1.07** Contractor shall pay all insurance premiums, including any charges for required waivers of subrogation or the endorsement of additional insureds. If Contractor fails to maintain insurance, City may take out comparable insurance, and deduct and retain amount of premium from any sums due Contractor under Contract Documents.
- 1.08** If injury occurs to any employee of Contractor, Subcontractor or sub-subcontractor for which the employee, or the employee's dependents in the event of employee's death, is entitled to compensation from City under provisions of the Workers' Compensation Insurance and Safety Act, as amended, or for which compensation is claimed from City, City may retain out of sums due Contractor under Contract Documents, amount sufficient to cover such compensation, as fixed by the Act, as amended, until such compensation is paid, or until it is determined that no compensation is due. If City is compelled to pay compensation, City may, in its discretion, either deduct and retain from the Contract Sum the amount so paid, or require Contractor to reimburse City.
- 1.09** Nothing herein shall be construed as limiting in any way the extent to which Contractor or any Subcontractor may be held responsible for payment of damages resulting from their operations.
- 1.10** All Subcontractors shall maintain the same insurance required to be maintained by Contractor with respect to their portions of the Work unless otherwise indicated in Contract Documents, and Contractor shall cause the Subcontractors to furnish proof thereof to City within ten calendar days of City's request.
- 1.11** The following provisions apply to any licensed professional engaged by Contractor to perform portions of the Work ("Professional").
- A. Each Professional shall maintain the following insurance, unless otherwise specified in Contract Documents:
  - B. Professional Liability Insurance, insuring against professional errors and omissions arising from Professional's Work on the Project, in an amount not less than **\$2,000,000** combined single limit

for each occurrence. If Professional cannot provide an occurrence policy, Professional shall provide insurance covering claims made as a result of performance of Work on this Project and shall maintain such insurance in effect for not less than two years following Final Completion of the Project.

- C. Professional shall satisfy all other provisions of this Document 00 7316 relating to that insurance, including without limitation providing required insurance certificates (containing the required endorsements) before commencing its Work on the Project.

## **ARTICLE 2 – RESPONSIBILITY OF CONTRACTOR AND INDEMNIFICATION**

- 2.01** City and each of its officers, employees, consultants and agents including, but not limited to, the Board, Project Manager and Construction Manager and each City's Representative, shall not be liable or accountable in any manner for loss or damage that may happen to any part of the Work; loss or damage to materials or other things used or employed in performing the Work; injury, sickness, disease, or death of any person; or damage to property resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence, attributable to performance or character of the Work, and Contractor releases all of the foregoing persons and entities from any and all such claims.
- 2.02** To the furthest extent permitted by law (including without limitation California Civil Code §2782), Contractor shall assume defense of, and indemnify and hold harmless, City and each of its officers, employees, consultants and agents, including but not limited to the Board, Project Manager and Construction Manager and each City's Representative, from claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to claims and fines of regulatory agencies and attorney's fees and consultant's fees, directly or indirectly arising out of, connected with or resulting from performance of the Work, failure to perform the Work, or condition of the Work which is caused in whole or part by any act or omission of Contractor, Subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, resulting from any cause whatsoever except their sole negligence, willful misconduct or active negligence.
- 2.03** With respect to third-party claims against Contractor, Contractor waives any and all rights to any type of express or implied indemnity against City and each of its officers, employees, consultants and agents including, but not limited to City, the Board, Project Manager and Construction Manager and each City's Representative. City shall provide timely notice to Contractor of any third-party claim relating to the Contract Documents, in accordance with Section 9201 of the California Public Contract Code.
- 2.04** Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor, its Subcontractors of any tier, or the officers or agents of any of them.
- 2.05** To the furthest extent permitted by law (including, without limitation, Civil Code §2782), the indemnities, releases of liability and limitations of liability, claims procedures, and limitations of remedy expressed throughout Contract Documents shall apply even in the event of breach of Contract, negligence (active or passive), fault or strict liability of the party(ies) indemnified, released, or limited in liability, and shall survive the termination, rescission, breach, abandonment, or completion of the Work or the terms of the Contract Documents. If Contractor fails to perform any of these defense or indemnity obligations, City may in its discretion back charge Contractor for City's costs and damages resulting therefrom and withhold such sums from progress payments or other Contract moneys which may become due.
- 2.06** The indemnities in the Contract Documents shall not apply to any indemnified party to the extent of its sole negligence or willful misconduct; nor shall they apply to City or other indemnified party to the extent of its active negligence.

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**DOCUMENT 00 7317****SUPPLEMENTARY CONDITIONS – CITY OF BERKELEY CONTRACTING POLICIES****ARTICLE 1 – GENERAL****1.01 DESCRIPTION**

- A. This document includes requirements which supplement the sections of the General Conditions.

**1.02 PROHIBITED DISCRIMINATION.** The following paragraphs shall be added to the General Conditions as a new Article 16.A, and, with the additions set forth in paragraphs 1.03 through 1.08, below, shall constitute a new Section 16 of Document 00 7200, General Conditions, entitled “16: City of Berkeley Contracting Policies”.

“16. A PROHIBITED DISCRIMINATION: During prosecution of the Work to be done under the Contract, Contractor shall comply with the provisions of Berkeley Municipal Code (“B.M.C.”) Chapter 13.26, including, but not limited to, the following:

1. Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age (over 40), sex, pregnancy, marital status, disability, sexual orientation or AIDS.
2. Contractor shall permit the City access to records of employment, employment advertisements, application forms, EEO-1 forms, affirmative action plans and any other documents which, in the opinion of the City, are necessary to monitor compliance with this non-discrimination provision. In addition, Contractor shall submit forms supplied by the City to monitor this non-discrimination provision.”

**1.03 CONFLICTS OF INTEREST PROHIBITED.** The following paragraphs shall be added to Document 00 7200, General Conditions, as a new Section:

“16. B CONFLICTS OF INTEREST PROHIBITED:

1. In accordance with Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64, neither Contractor nor any employee, officer, director, partner or member of Contractor or immediate family member of any of the preceding, shall have served as an elected officer, an employee, or a City board, committee or commission member, who has directly or indirectly influenced the making of the Agreement.
2. In accordance with Government Code section 1090 and the Political Reform Act, Government Code section 87100 *et seq.*, no person who is a director, officer, partner, trustee, employee or consultant of the Contractor, or immediate family member of any of the preceding, shall make or participate in a decision made by the City or a City board, commission or committee, if it is reasonably foreseeable that the decision will have a material effect on any source of income, investment or interest in real property of that person or Contractor.
  - a. Interpretation of this section shall be governed by the definitions and provisions used in the Political Reform Act, Government Code section 87100 *et seq.*, its implementing regulations, manuals and codes, Government Code section 1090, Berkeley City Charter section 36 and B.M.C. Chapter 3.64.”

- 1.04** NUCLEAR FREE BERKELEY ORDINANCE. The following paragraphs shall be added to Document 00 7200, General Conditions, as a new Section:

“16. C NUCLEAR FREE BERKELEY ORDINANCE:

1. Contractor agrees to comply with B.M.C. Chapter 12.90, the Nuclear Free Berkeley Act, as amended from time to time.”

- 1.05** CONTRACTUAL RELATIONS WITH PROHIBITED ENTITIES. The following paragraphs shall be added to Document 00 7200, General Conditions, as a new Section:

“16. D CONTRACTUAL RELATIONS WITH PROHIBITED ENTITIES

1. OPPRESSIVE STATES

- a. In accordance with Resolution No. 59,853-N.S. (Appendix 00812-A), Contractor certifies that it has no contractual relations with, and agrees during the term of this agreement to forego contractual relations to provide personal services to, the following entities:
  1. The governing regime in any Oppressive State.
  2. Any business or corporation organized under the authority of the governing regime of any Oppressive State.
  3. Any individual, firm, partnership, corporation, association, or any other commercial organization, and including parent-entities and wholly-owned subsidiaries (to the extent that their operations are related to the purpose of its contract with the City), for the express purpose of assisting in business operations or trading with any public or private entity located in any Oppressive State.
- b. Appendix A to Resolution No. 59,853-N.S. designates the following as Oppressive States for the purposes of this Contract:
  1. Tibet Autonomous Region and the provinces of Amdo, Kham, and U-Tsang.
- c. Contractor’s failure to comply with this section shall constitute a default of this Contract and City may terminate the Contractor’s right to proceed with the Work pursuant to Document 00 7200, General Conditions, Article 14.05.
  1. In the event that the City terminates Contractor due to a default under this provision, City may deem Contractor a non-responsible bidder for five (5) years from the date this Contract is terminated.”

- 1.06** REQUIRED AND PROHIBITED WORK MATERIALS. The following paragraphs are added to Document 00 7200, General Conditions, as a new Section:

“16. E REQUIRED AND PROHIBITED WORK MATERIALS

1. RECYCLED PAPER

- a. If Contractor is required by this Agreement to prepare a written report or study, Contractor shall use recycled paper for said report or study when such paper is available at a cost of not more than ten percent more than the cost of virgin

paper, and when such paper is available at the time it is needed. For the purposes of this Agreement, recycled paper is paper that contains at least 50% recycled product. If recycled paper is not available, Contractor shall use white paper. Written reports or studies prepared under this Agreement shall be printed on both sides of the page whenever practical.

#### TROPICAL HARDWOODS

- a. Contractor shall comply with the terms of Resolution No. 58,291-N.S. (Appendix 00812-B) prohibiting the use of any tropical hardwood or wood product, including, but not limited to, those enumerated in Resolution No. 58,291-N.S. Contractor must submit, with its bid, a statement Tropical Hardwood Disclosure form.
- b. Except as expressly permitted by the application of Sections 3.B and 4.B. of Resolution No. 58,291-N.S., Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods or tropical wood products.
- c. Contractor's failure to comply with this section shall constitute a default of this Agreement and Contractor agrees that City may take any of the following actions:
  1. terminate the Contractor's right to proceed with the Work pursuant to Document 00 7200, General Conditions, Article 14.05;
  2. withhold funds due the Contractor under any contract with the City;
  3. order revision of the Contract Documents based upon a material breach of Contract Documents provisions or pertaining to representations made in bidding, execution or performance of the Contract Documents;
  4. disqualify the Contractor from eligibility for providing commodities or services to the City for a period not to exceed five (5) years, with a right to review and reconsideration by the City after two (2) years upon a showing of corrective action, indicating violations are not likely to recur.
- d. Notwithstanding Article 4 of the Agreement, Contractor acknowledges and agrees that its failure to comply with this requirement justifies the imposition of liquidated damages in an amount equal to Contractor's net profit, or five percent (5%) of the total contract amount, whichever is greater.
  1. Liquidated damages under this provision shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any contract with the City.

#### 3. VIRGIN REDWOOD

- a. Contractor agrees to comply with the City Council's October 29, 1996, directive not to purchase virgin redwood for the prosecution of the work to be done under this Contract and in its place purchase and use:
  1. Redwood that has been previously used or;
  2. Certified, sustainable-harvested redwood as the preferred alternative to virgin and non-certified redwood, and not pressure-treated lumber of other species as an alternative to redwood."

#### 4. TREATED WOOD

- a. Contractor shall comply with the terms of Resolution No. 61,724-N.S. (Appendix 00812-E) prohibiting the use of Pentachlorophenol, arsenic and creosote treated wood. No such wood shall be used by the contractor in this or any other City project without the express written consent of the City Council.

**1.07** COMMUNITY WORKFORCE AGREEMENT. The following paragraph shall be added to Document 00700 (General Conditions) as a new Section if the contract exceeds \$500,000.

“16.F COMMUNITY WORKFORCE AGREEMENT

1. Contractor and any subcontractor at any tier shall comply with the City’s Community Workforce Agreement set forth in the Appendix 00812 C.
  - a. Under the Community Workforce Agreement, Contractor must sign and comply with the Agreement to be Bound prior to execution of the Contract.
  - b. Subcontractors at any tier must also sign and comply with an Agreement to be Bound prior to execution of their respective subcontracts.
  - c. The signing of an Agreement to be Bound is a condition precedent to entering into any contract for this project.”

**1.08** EQUAL BENEFITS ORDINANCE. The following paragraph shall be added to Document 00700 (General Conditions) as a new Section:

“16.G EQUAL BENEFITS ORDINANCE:

1. Contractor hereby agrees to comply with the provisions of the Berkeley Equal Benefits Ordinance, B.M.C. Chapter 13.29 (Appendix 00812-D). If Contractor is currently subject to the Berkeley Equal Benefits Ordinance, as indicated by the Equal Benefits Certification form, as contained in Document 00680, Contractor will be required to provide all eligible employees with City mandated equal benefits, as defined in B.M.C. Chapter 13.29, during the term of this contract, as well as comply with the terms enumerated herein.
2. If Contractor is currently or becomes subject to the Berkeley Equal Benefits Ordinance, Contractor agrees to provide the City with all records the City deems necessary to determine compliance with this provision. These records are expressly subject to the auditing terms described in Document 00 7200, General Conditions, Article 8.02.
3. If Contractor fails to comply with the requirements of this Article, City shall have the rights and remedies described in this Section, in addition to any rights and remedies provided by law or equity.
  3. Contractor’s failure to comply with this Article shall constitute a material breach of the Contract, upon which City may terminate the Contractor’s right to proceed with the Work pursuant to Document 00 7200, General Conditions, Article 14.05. In the event the City terminates the Contractor’s right to proceed with the Work due to a default by Contractor under this Article, the City may deem Contractor a non-responsible bidder for not more than five (5) years from the date this Contract is terminated. In addition, at City’s sole discretion, Contractor may be responsible for liquidated damages in the amount of \$50.00 per employee per day for each and every instance of

violation of this Section. It is mutually understood and agreed that Contractor's failure to provide its employees with equal benefits will result in damages being sustained by City; that the nature and amount of these damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein is the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damage amount is not intended as a penalty or forfeiture for Contractor's breach. City may deduct any assessed liquidated damages from any payments otherwise due Contractor.

**1.09 SANCTUARY CITY CONTRACTING:** The following paragraph shall be added to Document 00700 (General Conditions) as a new Section:

**"16. H SANCTUARY CITY ORDINANCE:**

1. Contractor hereby agrees to comply with the provisions of the Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105. In accordance with this Chapter, Contractor agrees not to provide the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security with any Data Broker or Extreme Vetting Services as defined herein:
  - a. "Data Broker" means either of the following:
    - ii. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
    - iii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
  - b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services. Extreme Vetting does not include:
    - i. The City's computer-network health and performance tools;
    - ii. Cybersecurity capabilities, technologies and systems used by the City of Berkeley Department of Information Technology to predict, monitor for, prevent, and protect technology infrastructure and systems owned and operated by the City of Berkeley from potential cybersecurity events and cyber-forensic based investigations and prosecutions of illegal computer based activity."

SCHEDULE OF APPENDENCES  
TO  
MODIFICATIONS TO GENERAL CONDITIONS

Schedule of Exhibits: (the following Exhibits are on file at the Berkeley City Clerk's office and will be made available on request to any interested party)

- A. City Council Resolution No. 59,853-N.S. (Re: Oppressive States).
- B. City Council Resolution No. 58,291-N.S. (Re: Tropical Hardwoods).
- C. City Council Resolution No. 61,724-N.S. (Re: Treated Wood).
- D. Berkeley Municipal Code, Chapter 13.29, Equal Benefits Ordinance
- E. Community Workforce Agreement and Agreement to be Bound for contract exceeding \$500,000.
- F. Sanctuary City Contracting Ordinance, B.M.C. Chapter 13.105.

**END OF DOCUMENT**

**DOCUMENT 00 7319****SUPPLEMENTARY CONDITIONS – HEALTH AND SAFETY REQUIREMENTS;  
HAZARDOUS MATERIALS****ARTICLE 1 – GENERAL****1.01 Summary**

- A. This document includes requirements as they apply to location, removal, remediation and disposal of hazardous materials and hazardous waste.

**1.02 HAZARDOUS MATERIALS SURVEY**

- A. Reference Section 01 1100, Part 1.15 for a list of available documents, including any Hazardous Materials Surveys, if available.
- B. Data regarding the locations of hazardous materials was obtained only for use of City and its consultants, contractors, and tenants for planning and design and are not part of Contract Documents.
- C. Bidders may rely on this data and information for general accuracy regarding the locations of potentially hazardous materials subject of the Work. City does not warrant and makes no representation regarding the completeness or thoroughness of any data or information regarding existing conditions or hazardous materials, including, but not limited to, quantities, characteristics, volumes, or associated structural features. Bidder represents and agrees that in submitting a Bid it is not relying on any such data, information or deductions.
- D. Before submitting a Bid, each Bidder shall be responsible to obtain such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site or otherwise, which may affect cost, progress, performance or furnishing of Work or which relate to any aspect of the means, methods, techniques, sequences or procedures of construction to be employed by Bidder and safety precautions and programs incident thereto or which Bidder deems necessary to determine its Bid for performing and furnishing the Work in accordance with the time, price and other terms and conditions of Contract Documents.
- E. Bidders shall advise City in writing during the Bid period of any questions, suppositions, inferences or deductions Bidders may have for City's review and response. City has provided time in the period prior to bidding for Bidder to perform these investigations.
- F. During the Pre-Bid Site Visit(s), City will provide each Bidder access to the Site to conduct such examinations, investigations, explorations, tests, and studies, as each Bidder deems necessary for submission of a Bid. Bidders must fill all holes and clean up and restore the Site to its former conditions upon completion of such explorations, investigations, tests, and studies. Such investigations may be performed only under the provisions of Document 00 2113 (Instructions to Bidders) and Document 00 7200 (General Conditions) including, but not limited to, proof of insurance and obligation to indemnify against claims arising from such investigation work. Each Bidder shall supply all equipment required to perform any investigations as each Bidder deems necessary. City has the right to limit the number of pieces of machinery operating at one time due to safety concerns.

**1.03 Precedence of Documents**

- A. Should any provision or requirement of any Contract Document conflict with another provision or requirement in the Contract Documents on subject matters of hazardous waste abatement, clean up, disposal, or required safety standards or methods, then the most stringent provision or requirement shall control.

**1.04 Means and Methods of Construction**

- A. Nothing contained in these Contract Documents or inferable therefrom shall be deemed or

construed (1) to make Contractor the agent, servant or employee of City, or (2) to create any partnership, joint venture or other association between City and Contractor.

#### **1.05 Control of the Work**

- A. City shall exercise administration of the Contract. The City may employ a consultant to assist. City reserves the right to assign or delegate to this consultant, or any other consultant ("Consultant") any or all of the responsibilities of the Architect/Engineer under the Contract Documents, or alternatively, to act as City's representative.
- B. Contractor shall cooperate with Consultant as directed by City. Consultant's duties may include observing the Contractor's health and safety program and practices, observing the abatement construction activities, observing the contractor's abatement work practices for compliance with the Contract Documents, observing the extent of material removed from each job site, reviewing payment requests, reviewing reports required by governmental or quasi-governmental agencies or the Contract Documents, and providing clearance tests after abatement is completed. No action, omission to act, approval, or failure to advise Contractor as to any matter by Consultant shall in any way relieve the Contractor from its responsibility for the performance of the Work in strict accordance with the Contract Documents and applicable Law.

#### **1.06 Warranty, Guarantee and Inspection of Work.**

- A. Contractor represents and warrants that it, its employees and its subcontractors and their employees, shall at all times have the required levels of familiarity with the Site and the Work, training and ability to comply fully with all applicable Law and contract requirements for safe and expeditious performance of the Work, including whatever training is or may be required regarding the activities to be performed (including, but not limited to, all training required to adequately address the actual or potential dangers of contract performance).
- B. Contractor represents and warrants that it, its employees and its subcontractors and their employees, shall at all times have and maintain in good standing any and all certifications and licenses required by applicable federal, state and other governmental and quasi-governmental requirements applicable to the Work.
- C. Contractor represents and warrants that it has studied carefully all requirements of the specifications regarding procedures for demolition, hazardous waste abatement, or safety practices, specified in this contract, and prior submitting its bid, has either (a) verified to its satisfaction that the specified procedures are adequate and sufficient to achieve the results intended by the Contract Documents, or (b) by way of approved "or equal" request or request for clarification and written Addenda, secured changes to the specified procedures sufficient to achieve the results intended by the Contract Documents. Contractor accepts the risk that any specified procedure will result in a completed project in full compliance with the contract requirements.
- D. City reserves the right, in its sole discretion, to conduct air monitoring, earth monitoring, work monitoring, and any other tests (in addition to testing required under the agreement or applicable law), to monitor contract requirements of safe and statutory compliant work methods and (where applicable) safe re-entry level air standards under State and Federal law upon completion of the job, and compliance of the work with periodic and final inspection of public and quasi-public entities having jurisdiction.
- E. Contractor acknowledges that City also has the right to perform, or cause to be performed, various activities and tests including, but not limited to, pre-abatement, during abatement and post-abatement air monitoring, provided that City shall have no obligation to perform said activities and tests, and that a portion of said activities and tests may take place prior to the completion of the Work by Contractor. In the event City elects to perform these activities and tests, Contractor shall afford City ample access to the Site and all areas of the Work as may be necessary for the performance of these activities and tests. Contractor will include the potential impact of these activities for tests by City in the Contract Sum and the Scheduled Completion Date. Contractor shall not be entitled to increases in the contract sum or any damages for delay in the event City elects to perform these activities and tests, provided any delays resulting therefrom are reasonable under the circumstances involved. Notwithstanding City's rights

granted by this paragraph, Contractor shall retain its own industrial hygiene consultant and shall have primary responsibility for collecting samples and perform all applicable, relevant or appropriate activities and tests including, but not limited to, pre-abatement, during abatement and post-abatement air monitoring, required or suggested by the Contract Documents, the Law, or both, and City reserves the right to request documentation of all such activities and tests performed by Contractor relating to the Work.

### **1.07 RECORDS**

- A. Contractor shall obtain and maintain and shall furnish to City on completion of the Work, or at any other time requested by City, all necessary permits, licenses, approvals, authorizations, notifications, training certificates, respirator certificates, reports, correspondence, test results, air monitoring certificates, forms, medical records, medical certificates, notes and photographs of work conditions, approved shipping and disposal facility receipts, manifests, and all other documentation required by the Contract Documents or applicable Law, or both.
- B. Contractor shall provide City with copies of each such document as it is generated and shall, as a condition to final payment, provide City with a complete set of such documents (bound, organized and indexed) at the conclusion of the Work. Contractor shall keep and maintain in retrievable files true and correct copies of all such documents for a period of not less than thirty (30) years after final completion of the Work. City shall have the right to inspect or photocopy these records and, if Contractor should cease business operations, then it shall furnish these records to City.

### **1.08 Compliance with laws**

- A. Contractor represents that it is familiar with shall comply with all laws applicable to the Work or completed Work including, but not limited to, all federal, state and local laws, statutes standards, rules, regulations and ordinances applicable to the Work (collectively, the "Law") relating to:
  - 1. the protection of the public health, welfare and environment;
  - 2. storage, handling or use of asbestos, PCB, lead, petroleum based products or other hazardous materials;
  - 3. the generation, processing, treatment, storage, transport, disposal, destruction or other management of asbestos, PCB, lead, petroleum or hazardous waste materials or other waste materials of any kind; or,
  - 4. the protection of environmentally sensitive areas such as wetlands.
- B. Contractor has the sole responsibility for determining current waste storage, handling, transportation and disposal regulations for the jobsite and for each waste disposal facility. Contractor must comply fully at its sole cost and expense with these regulations and any applicable Law. City, may, but is not obligated to, require submittals with this information for it to review consistent with the Contract Documents.
- C. Contractor shall develop and implement a system acceptable to City to track hazardous waste from the site to disposals, including appropriate "Hazardous Waste Manifests" on the EPA form, so that City may track the volume of waste it put in each landfill and receive from each landfill a certificate of receipt.
- D. Contractor shall provide City with the name and address of each waste disposal facility prior to any disposal, and City shall have the express right to reject any proposed disposal facility. Contractor shall not use any disposal facility to which City has objected. Contractor shall document actual disposal or destruction of waste at a designated facility by completing a disposal certificate or certificate of destruction forwarding the original to the general contractor.

### **1.09 Permits**

- A. Before performing any of the Work, and at such other times as may be required by applicable Law, Contractor shall deliver all requisite notices and obtain the approval of all governmental and quasi-governmental authorities having jurisdiction over the Work. Contractor shall submit evidence satisfactory to City that it and any disposal facility (1) have obtained all required permits, approvals and the like in a timely manner both prior to commencement of the Work and thereafter as and when required by applicable Law, and (2) are in compliance with all such permits,

approvals and the like. For example, before commencing any work in connection with the Work involving asbestos-containing materials or PCB subject to regulation, Contractor agrees to provide the required notice of intent to renovate or demolish to the appropriate state or federal agency having jurisdiction, by certified mail, return receipt requested, or by some other method of transmittal for which a return receipt is obtained, and to send a copy of that notice to City. Contractor shall not conduct any Work involving asbestos-containing materials or PCB unless Contractor has first confirmed that the appropriate agency having jurisdiction is in receipt of the required notification. All permits, licenses, bonds required by governmental or quasi-governmental authorities, fees, deposits, tap fees, offsite easements and asbestos and PCB disposal facilities necessary for the prosecution of the Work shall be procured and paid for by Contractor. Contractor shall give all notices and comply with the Law bearing on the conduct of the Work as drawn and specified. If Contractor observes or reasonably should have observed that Plans and Specifications and other Contract Documents are at variance therewith, it shall be responsible for promptly notifying City in writing of such fact. If Contractor performs any Work contrary to the Law without such notice to City, it shall bear all costs arising therefrom.

- B. In the case of any permits or notices held in City's name or of necessity to be made in City's name, City shall cooperate with Contractor in securing the permit or giving the notice, but the Contractor shall prepare for City's review and execution upon approval, all necessary applications, notices and other materials.

#### **1.10 Indemnification and Termination**

- A. To the extent permitted by law, the indemnities and limitations of liability expressed throughout the Contract Documents apply with equal force and effect to any claims or liabilities imposed or existing by virtue of the removal, abatement and disposal of hazardous waste. This includes liabilities connected to the selection and use of a waste disposal facility, personal injury, property damage, loss of use of property, damage to the environment or natural resources, or "disposal" and "release" of materials associated with the Work (as defined in 42 U.S.C. 9601 *et seq*).
- B. Notwithstanding anything in Document 00 7200 to the contrary, City shall have an absolute right to terminate the Contractor's right to proceed with the Work for cause immediately, without ten calendar days notice and without an opportunity to cure, should Contractor knowingly or recklessly commit a material breach of the terms of the Contract Documents or the Law, on any matter involving the exposure of persons or property to hazardous waste. However, if the breach of contract exposing persons or property to hazardous waste is due solely to an ordinary, unintentional and non-reckless failure to exercise reasonable care, then the procedures in Document 00 7200, Article 14.05, shall apply without modification.

#### **1.11 Protection of Work, Persons and Property**

- A. Contractor shall perform safe, expeditious and orderly work in accordance with the best practices and the highest standards in the hazardous waste abatement, removal and disposal industry, the Law (as herein defined), and the Contract Documents, including, but not limited to, all responsibilities relating to the preparation and return of waste shipment records, all requirements of the Law, delivering of all requisite notices, and obtaining all necessary governmental and quasi-governmental approvals.

**END OF DOCUMENT**

**DOCUMENT 00 7380****APPRENTICESHIP PROGRAM****ARTICLE 1 – COMPLIANCE REQUIRED**

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

**ARTICLE 2 – CERTIFICATION OF APPROVAL**

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

**ARTICLE 3 – FUND CONTRIBUTIONS**

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

**ARTICLE 4 – APPRENTICESHIP STANDARDS**

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

**END OF DOCUMENT**

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**DOCUMENT 00 9113**

**ADDENDA**

**SPECIFICATION NO. 23-11567-C**

**CITY OF BERKELEY**

BERKELEY MARINA SELECTIVE TIMBER PILE REPLACEMENT

201 UNIVERSITY AVE., BERKELEY, CA 94710

[DOCUMENT TO BE COMPLETED AS ADDENDA DURING BID PERIOD]

**[If a conformed copy is created, delete bracketed line above and replace with the following:]**

The following Addenda were issued, modifying the Project Manual:

Addendum No. 1, issued on **[date]**

Addendum No. 2, issued on **[date]**

[continue as appropriate]

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

**END OF DOCUMENT**

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## DIVISION 1 GENERAL REQUIREMENTS

## SECTION 01 1100

## SUMMARY OF WORK

## PART 1 - GENERAL

## 1.01 SUMMARY

A. Section includes Summary of Work and Work Restrictions including:

1. Work Covered By Contract Documents
2. Bid Item, Allowances and Alternates
3. Contract Document Organization
4. Maintenance
5. Work Under Other Contracts
6. Future Work
7. Work Sequence
8. Work Days and Hours
9. Shutdown for Discovery of Cultural Resources
10. Cooperation of Contractor and Coordination with Other Work
11. Partial Occupancy/Utilization Requirements
12. Contractor Use of Site
13. Air Quality Standards
14. Construction Staking, Monument Protection and Replacement
15. Geotechnical Data and Existing Conditions
16. Protection of Existing Structures and Underground Facilities
17. Permits
18. Actual Damages for Permit Violations
19. Reference Standards
20. Products Ordered in Advance
21. City-Furnished Products

## 1.02 WORK COVERED BY CONTRACT DOCUMENTS

- A. Work comprises of the construction of City's **Berkeley Marina Selective Timber Pile Replacement** located at **201 University Ave., Berkeley, CA 94710**. The Work includes, without limitation, **replacement of select pilings at the Berkeley Marina including removal or abandonment of existing piling, and repair or installation of new pilings as specified in plans**. Contract Documents fully describe the Work.
- B. The Work of this Contract comprises construction of all the Work indicated, described in the Specifications, or otherwise required by the Contract Documents. Unless provided otherwise in the Contract Documents, all risk of loss to Work covered by Contract Documents shall rest with Contractor until Final Acceptance of the Work. Cost of maintenance of systems and equipment prior to Final Acceptance will be considered as included in prices Bid and no direct or additional payment will be made therefore.
- C. For all Bid items, furnish and install all Work, including connections to existing systems, indicated and described in Specifications and all other Contract Documents. Work and requirements applicable to each individual Bid item, or unit of Work, shall be deemed incorporated into the description of each Bid item (whether Lump Sum or Unit Price). Any Bid item may be deleted from the Work and Contract Sum, in total or in part, prior to or after award of Contract without compensation in any form or adjustment of other Bid items or prices therefore.
- D. Allowance Work shall be done as Change Orders and as specified in Section 01 2600

(Modification Procedures). Identify Allowance Items (See Document 00 4113 [Bid Form]) work on the Progress Schedules and on Applications for Payment. The Amount given on Document 00 4113 (Bid Form) under each Allowance Item is the sum of money set aside for each Allowance Item. These amounts shall be included in the Contract Sum on the Bid Form. If the cost of Work done under any Allowance Item is less than the amount given on the Bid Form under that Allowance Item, the Contract Sum shall be reduced by the difference between the amount given in the Bid Form and the cost of Work actually done.

### 1.03 BID ITEMS, ALLOWANCES AND ALTERNATES

#### A. Descriptions of Lump Sum Items (listed by Bid item numbers):

All bid items below (1 to 3) shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals for doing all work involved as described.

1. Mobilization and Demobilization - Staging the workzone, final site cleaning, demobilization, and other contract requirements including all regulatory requirements in Appendix B. Mobilization and demobilization not to exceed 10% of total bid price.
2. Traffic & Pedestrian Control – Provide marker buoys and warning signs in the water to keep vessels out of the barge and work area where piles are being driven, and provide barricades, signs, and an active spotter on the docks to prevent pedestrian access during pile driving. Work also includes implementing Section 015200 “Temporary Facilities”, Section 01 5526 “Traffic Control” of the General Requirements, and other contract requirements including all regulatory requirements in Appendix B.
3. Best Management Practices – Implementing Section 01 5700 “Temporary Controls”, Section 01 7329 “Cutting and Patching”, Section 01 7413 “Project Cleaning” of the General Requirements, and other contract requirements including all regulatory requirements in Appendix B.

#### B. Descriptions of Unit Price Items and Basis of Measurement for Payment (listed by Bid item numbers):

All bid items below (4 to 12) shall include full compensation for furnishing all labor, materials, tools, equipment and incidentals for doing all work involved as described.

4. Pile Disposal – Off-hauling and disposing (including paying all associated disposal fees) of removed treated timber piles to a landfill licensed to receive treated wood waste for disposal, as the result of Bid Item #5 “Pile Removal”, bid item #7” Pile Replacement with Removal of Existing Pile” and Bid Item #8 “Pile Installation with Removal of Existing Stub Near or Below Mudline” at Contractor’s designated site, as specified in Section 024000 “Demolition” and other contract requirements including all regulatory requirements in Appendix B.
5. Pile Removal – Demolishing and removing existing treated timber piles as specified in Section 024000 “Demolition” and other contract requirements including all regulatory requirements in Appendix B.
6. Pile Top Cutoff – Removing sections of new piles which protrude above the pile top elevation per Plans and as specified in Section 316213 “Concrete Piles”, and other contract requirements including all regulatory requirements in Appendix B.
7. Pile Replacement with Removal of Existing Pile – Removing existing treated timber pile, furnishing and installing precast concrete piles as specified in Section 024000 “Demolition”, Section 310162 Section 316213 “Concrete Piles”, and other contract requirements including all regulatory requirements in Appendix B.
8. Pile Installation with Removal of Existing Stub Near or Below Mudline – Removing remnants of existing treated timber pile and/or its stub from broken off piles, furnishing and installing precast concrete piles as specified in Section 024000 “Demolition”, Section 310162, Section 316213 “Concrete Piles”, and other contract requirements including all

regulatory requirements in Appendix B.

9. Pile Repair – Furnishing and installing fiberglass jacket system including grout and reinforcement complete in place for the repair of existing treated timber pile as specified in Section 024000 “Demolition”, Section 310162 “Pile Repair”, and other contract requirements including all regulatory requirements in Appendix B.
  10. Pile Guide Removal – Removing and offsite disposal of existing pile guides (both internally and externally mounted) as the result of Bid Item #5 “Pile Removal”, Bid Item #7 “Pile Replacement with Removal of Existing Pile” and Bid Item #8 “Pile Installation with Removal of Existing Stub Near or Below Mudline” at Contractor’s designated site, as specified in Section 024000 “Demolition” and other contract requirements including all regulatory requirements in Appendix B.
  11. Pile Guide Installation – Furnishing and installing pile guides (both internally and externally mounted) as specified in Section 316213 “Concrete Piles”, and other contract requirements including all regulatory requirements in Appendix B.
  12. Pile Cap Installation - Furnishing and installing fiberglass pile caps on top of installed piles, as specified in Section 316213 “Concrete Piles”, and other contract requirements including all regulatory requirements in Appendix B.
- C. Allowances:
- AL1. Replacement of Polymer Cover Board – Where applicable, removing and offsite disposal of existing damaged or misaligned polymer cover board, furnishing and installing new marine grade polymer cover board to match existing, as specified in Sheet C-006, Detail 2, Note 7, and other contract requirements including all regulatory requirements in Appendix B. Includes modification of dock where internal piles are removed.
- D. Bid Alternates: **Additive Bid – Schedule B – See 1.03A & 1.03B.**

#### 1.04 CONTRACT DOCUMENT ORGANIZATION

- A. The Drawings illustrate locations, arrangements, dimensions, and details to determine the general character of the Work. Parts not detailed shall be subject to the Architect’s approval. Where reasonably inferable that a Drawing illustrates only part of a given work on a number of items, the remainder shall be deemed repetitious and so construed. Drawings of greater scale take precedence over Drawings of lesser scale. Do not scale documents.
- B. Drawings indicate general arrangement and location of such items as piping, conduit, apparatus, and equipment. Drawings and Specifications are for guidance of the Contractor and exact locations, distances, and levels will be governed by building site and actual building conditions. The Contractor shall make minor changes, as directed, to arrangements or locations shown in order to meet Structural or Architectural conditions.
- C. Specifications describe performances and qualities required of materials and of methods. Items listed under each Section of the Specifications are not necessarily all inclusive. The Contractor shall be responsible for the complete work.
- D. For convenience, Specifications are separated into topical divisions of work, each of which is further related to topical divisions under which it occurs. Such separation shall not be construed as an attempt by the Architect to establish limits of any agreements between the Contractor and his/her subcontractors.
- E. Portions of these Specifications are of abbreviated, simplified type and may include incomplete sentences.
  1. Omissions of words or phrases such as “the Contractor shall”, “in conformity with”, “shall be”, “as noted on the Drawings”, “in accordance with the details”, “a”, “the”, “all”, “any”, and “each” are intentional. Omitted words or phrases shall be supplied by inference.

2. Terms such as “approved”, “or approved equal”, “as directed”, “as required”, “as provided”, “acceptable”, and “satisfactory” mean by or to the Architect or the City.
3. Furnish: The term furnish means supply and deliver to the Project Site, ready for unloading, unpacking, assembly, installation, and similar operations.
4. Install: The term install describes operations at the Project Site, including the actual unloading, unpacking, assembly, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar ions.
5. Provide: The term provide means to furnish and install, complete and ready for the intended use.

F. Reference Standards

1. For products specified by association or trade standards, comply with requirements of the standard except where more rigid requirements are specified or are required by applicable codes.
2. The date of the standard is that in effect as of bid date except where specific date is specified

**1.05 MAINTENANCE**

- A. Cost of maintenance of systems and equipment prior to Final Acceptance will be considered as included in prices bid and no direct or additional payment will be made therefor.

**1.06 WORK UNDER OTHER CONTRACTS**

- A. None expected

**1.07 FUTURE WORK**

- A. None expected

**1.08 WORK SEQUENCE**

- A. Construct Work in stages and at times to accommodate City operation requirements during the construction period; coordinate construction schedule and operations with City.
- B. **Special operational constraints include the following:**
1. Contractor shall submit weekly lookahead schedule indicating the affected docks 5 business days prior to the start of work at the affected docks.

**1.09 WORK DAYS AND HOURS**

- A. Work Days and hours: Monday-Friday inclusive, **7:00 a.m.- 5:00 p.m.** local time.
- B. Work at the Site on weekends or holidays is not permitted, unless Contractor requests otherwise from City in writing at least 48 hours in advance and City approves in its sole discretion.

**1.10 SHUTDOWN FOR DISCOVERY OF CULTURAL RESOURCES**

- A. If discovery is made of items of historical archaeological or paleontological interest, immediately cease all Work in the area of discovery. Archaeological indicators may include, but are not limited to, dwelling sites, locally darkened soils, stone implements or other artifacts, fragments of glass or ceramics, animal bones, human bones, and fossils. After cessation of excavation, immediately contact City. Do not resume Work until authorization is received from City. When resumed, excavation or other activities shall be as directed by City.

**1.11 COOPERATION OF CONTRACTOR AND COORDINATION WITH OTHER WORK**

- A. Coordinate with City and any City forces, or other contractors and forces, as required by Document 00 7200 (General Conditions).

**1.12 PARTIAL OCCUPANCY/UTILIZATION REQUIREMENTS**

- A. Allow City to take possession of and use any completed or partially completed portion of the Work during the progress of the Work as soon as is possible without interference to the Work.
- B. Possession, use of Work, and placement and installation of equipment by City shall not in any way evidence the completion of the Work or any part of it.
- C. Contractor shall not be held responsible for damage to the occupied part of the Work resulting from City occupancy.
- D. Make available, in areas occupied, on a 24 hour per day and 7 day per week basis if required, any utility services, heating, and cooling in condition to be put in operation at the time of occupancy.
  - 1. Responsibility for operation and maintenance of said equipment shall remain with Contractor.
  - 2. Make, and City shall certify, an itemized list of each piece of equipment so operated with the date operation commences.
  - 3. Itemized list noted above shall be basis for commencement of warranty period for equipment.
  - 4. City shall pay for utility cost arising out of occupancy by City during construction.
- E. Use and occupancy by City prior to acceptance of Work does not relieve Contractor of its responsibility to maintain insurance and bonds required under the Contract until entire Work is completed and accepted by City.
- F. Prior to date of Final Acceptance of the Work by City, all necessary repairs or renewals in Work or part thereof so used, not due to ordinary wear and tear, but due to Defective materials or workmanship or to operations of Contractor, shall be made at expense of Contractor, as required in Document 00 7200 (General Conditions).
- G. Use by City of Work or part thereof as contemplated by this Section 01 1100 shall in no case be construed as constituting acceptance of Work or any part thereof. Such use shall neither relieve Contractor of any responsibilities under Contract, nor act as waiver by City of any of the conditions thereof.
- H. City may specify in the Contract Documents that portions of the Work, including electrical and mechanical systems or separate structures, shall be substantially completed on dates described in this Section 01 1100, if any, prior to Substantial Completion of all of the Work. Notify City in writing when Contractor considers any such part of the Work ready for its intended use and Substantially Complete and request City to issue a Certificate of Substantial Completion for that part of the Work.

### **1.13 CONTRACTOR USE OF SITE**

- A. Access is available to the Site from Launch Ramp Parking Lot on Spinnaker Way, and Marina harbor entrance via barge. The Launch Ramp Parking Lot entrance to the is protected with a gate. Contractor shall obtain parking lot key fob from the City and ensure that the entrance is closed to control unauthorized entry.
- B. Contractor shall contact City at least 10 Business Days prior to entering the Marina Harbor and performing Work to allow City to arrange access into the affected docks. Access Request forms shall be submitted 72 hours in advance of anticipated on-site Work to gain permission to enter Site and to allow notification to occupants.
- C. Confine operations at Site to areas permitted by Contract Documents, permits, ordinances, and laws. Do not unreasonably encumber Site with materials or equipment.
- D. Assume full responsibility for protection and safekeeping of products stored on premises. Move any stored products that interfere with operations of City or other contractor.
- E. Coordinate parking, storage, staging, and Work areas with City. City will review and approve the proposed storage area for Contractor's equipment and materials. Do not store construction

materials in the dripline of any tree.

- F. Prior to commencement of Work or excavation, Contractor and City shall jointly survey the area adjacent to the Project area making permanent note and record of such existing damage such as cracks, sags or other similar damage. This record shall serve as a basis for determination of subsequent damage to structures, conditions or other existing improvements due to Contractor's operations. All parties making the survey shall sign the official record of existing damage. Cracks, sags or damage of any nature to the adjacent Project area, not noted in the original survey but subsequently noted, shall be reported immediately to City.
- G. The Contractor shall follow all city ordinances in force during the duration of this Contract.
- H. It is essential that the Contractor perform the Work with as little interference and disturbance as possible to the surrounding neighborhood.
- I. When suspect materials, outside the scope of Work, are encountered during the Work or restoration process, the Contractor shall immediately contact the Project Manager for evaluation and approval of the methods for dealing with the material.

#### **1.14 AIR QUALITY STANDARDS**

- A. Ensure that idling time for all heavy equipment is minimized to reduce on-Site emissions.
- B. Maintain equipment in good mechanical condition.
- C. Cover trucks hauling dirt.
- D. Limit dust emissions during periods of high winds (greater than 15 miles per hour).
- E. Replace ground cover in disturbed areas as soon as possible.
- F. Enclose, cover, water, or apply soil binders to exposed stockpiles.
- G. Remove earth tracked onto neighboring paved roads at least once daily.
- H. Limit equipment speed to 10 miles per hour in unpaved areas.

#### **1.15 CONSTRUCTION STAKING, MONUMENT PROTECTION AND REPLACEMENT**

- A. Notify City at least three (3) Business Days prior to the need for initial staking. City will provide engineering surveys, City benchmarks, corner records, reference points, and/or monument cards that in City's judgment are necessary to establish site elevations for the Contractor to establish construction stakes in order to enable Contractor to proceed with the Work.
- B. If Contractor finds any additional information is necessary, notify City in writing 2 Business Days in advance. City shall have no liability for any inadequacy unless Contractor notifies City and City fails to cure within 3 Business Days of such notice.
- C. Contractor shall be responsible for laying out the Work and provide all construction staking. Contractor shall replace or repair construction stakes at own expense.
- D. Contractor shall perform brush clearing and traffic control, as necessary, in City's sole judgment.
- E. The Contractor shall protect and preserve all existing survey monuments, benchmarks, reference points, property monuments and stakes.
- F. Whenever Contractor knows or reasonably should know that any Work activity is likely to damage or destroy any survey monuments, benchmarks, reference points, property monuments, or construction stakes, or require relocation because of necessary changes in grades or locations, provide at least 3 Business Days advance notice to City. Survey monuments, benchmarks, reference points and property monuments shall not be disturbed until authorized by the City.
- G. Whenever the Contractor disturbs or removes any survey monuments, benchmarks, reference points, or property monuments, the Contractor shall replace the monument in accordance with City Standard Plan 8090 or City Standard Plan 8091, as applicable. Standard Plans are available upon request. Monument casings (boxes and lids) shall be provided by the Contractor, and dome

brass markers shall be supplied by the City.

- H. In the event that any non-referenced monuments become in danger of being disturbed due to construction, the Contractor shall cease the threatening activity and notify the City immediately. Response to endangered monuments is a priority call, and each monument shall be referenced in accordance with the City of Berkeley Monument Reference Guidelines, available upon request. In no case may an unreferenced monument be damaged during construction.
- I. Should any monument not designated for replacement sustain damage during construction, the Contractor shall bear the expense for rebuilding it as well as for the survey work the City survey crew or its survey consultant must perform in the process. In any instance where the City deems a damaged monument to be irreplaceable, the contractor shall be fined \$20,000 per monument.
- J. Monument replacement must be done in a neat, workman-like manner. Pavement cuts shall be accurate, with vertical cuts to exact dimensions as shown on the Standard Plans. Monument boxes and lids shall be placed at the proper finished grade and as detailed by Standard Plan 8090 or Standard Plan 8091. Existing monument lids shall be salvaged by the Contractor and delivered to the City.
- K. Each replacement monument shall be constructed such that the center of the dome brass marker is set within 0.04 foot of the referenced position. The new dome brass marker shall not receive final punching prior to seven (7) calendar days after completion of the monument construction.
- L. In any event, notify City whenever any survey monuments, benchmarks, reference points, or property monuments are lost or destroyed or require relocation because of necessary changes in grades or locations.
- M. If the City has elected to reference known monuments around or within the project site, a copy of the corner records for the referenced monuments shall be provided to the Contractor prior to the start of construction. For each monument that has been disturbed or removed, the replacement monument location(s) will be established by the City's survey crew or its survey consultant after final pavement is completed and upon request by the Contractor.
- N. All City of Berkeley Monuments located within the project area must be referenced, prior to work commencing, by a licensed land surveyor as required by Section 8771 of the Business and Professions Code. Corner Records of this work must be submitted for filing to both the County Surveyor of Alameda County, and the City of Berkeley, Public Works Department, Engineering Division, Survey Section.
- O. Illegible survey requests or requests without proper notification (at least 3 Business Days in advance), may result in delayed response. No extension of Contract Time will be allowed due to such delays.

#### **1.16 GEOTECHNICAL DATA AND EXISTING CONDITIONS**

- A. Available Documentation: In accordance with, and subject to, the provisions of Document 00 3132 (Geotechnical Data and Existing Conditions), the following documentation is available for review. This information is not part of the Contract Documents. **None**

#### **1.17 PROTECTION OF EXISTING STRUCTURES AND UNDERGROUND FACILITIES**

- A. The Drawings may indicate existing above- and below-grade structures, drainage lines, storm drains, sewers, water lines, gas lines, electrical lines, hot water lines, and other similar items and Underground Facilities that are known to City. At least (2) two Business Days, or as otherwise noted, prior to commencement of excavation, notify the owners of the following Underground Facilities:
  - 1. **Water lines:** EBMUD
  - 2. **Sewer lines:** Berkeley Public Works Department
  - 3. **Telephone Conduit:** AT&T or others
  - 4. **Electrical Lines:** PG&E

- B. Where overhead service to a structure, known to receive service, does not exist, then underground service shall be assumed to exist.
- C. Attention is also directed to the existence of overhead power and telephone lines.
- D. Perform pot-holing by hand within 24 inches (in any direction) of the Underground Facilities. This may be done on an area-by-area basis, but shall be accomplished at least 7 calendar days in advance of the date of construction within such area.
- E. Telemetry antennas: Ensure that the telemetry and voice communication antennas located on the [Identify the Building] roof remain operational. City's telemetry system is critical to the function and operation of Owner's water supply and distribution system. Coordinate relocation of equipment related to the telemetry and voice communication systems with Owner. Notify Owner 3 calendar days prior to conducting any Work in the vicinity of the telemetry antenna.
- F. No attempt has been made to locate utilities on private property such as sprinkler irrigation systems or electrical conduits on the project site or adjacent property. Contractor is responsible for contacting all property owners as necessary, and locating and marking utilities in the vicinity of the work prior to construction.
- G. In addition to reporting, if a utility is damaged, Contractor must take appropriate action as provided in Document 00 7200 (General Conditions).
- H. Additional compensation or extension of time on account of utilities not indicated or otherwise brought to Contractor's attention including reasonable action taken to protect or repair damage shall be determined as provided in Document 00 7200 (General Conditions).

#### 1.18 PERMITS

- A. Permits, agreements, or written authorizations that are known by City to apply to this Project are listed below:
  - 1. Storm Water Pollution Prevention
  - 2. Cal/OSHA Permit. Obtain, as applicable, permit(s) as required by Cal/OSHA for the following:
    - a. Construction of trenches or excavations that are five feet or more in depth and into which a person is required to descend.
    - b. Construction or demolition of any building, structure, or scaffolding for falsework more than three stories high, or the equivalent height (36 feet).
    - c. Erection or dismantling of vertical shoring systems more than three stories high, or the equivalent height (36 feet).

The local Cal/OSHA district office is located at:

CAL/OSHA Headquarters  
1515 Clay Street, Suite 1901  
Oakland, CA 94612  
(510) 286-7037

  - 3. National Marine Fisheries Service (NMFS) Letter of Concurrence (LOC) – See Appendix B
  - 4. U.S Army Corps of Engineers (USACE) Nationwide Permit (NWP) – See Appendix B
  - 5. Regional Water Quality Control Board (RWQCB) 401 Water Quality Certification (WQC) – See Appendix B
  - 6. Bay Conservation and Development Commission (BCDC) permit – Under Review
- B. All other permits that may be required, such as electrical, mechanical, fire prevention, irrigation, grading, slope protection, tree cutting, etc., have not been applied for and shall be obtained by

Contractor. Applicable permit fees will be reimbursed to the extent specified in Document 00 7200 (General Conditions).

### **1.19 ACTUAL DAMAGES FOR PERMIT VIOLATIONS**

- A. In addition to damages which are impracticable or extremely difficult to determine, for which liquidated damages will be assessed as described in Document 00 5200 (Agreement) and Document 00 7200 (General Conditions), City may incur actual damages, including fines imposed by any regulatory agency, resulting violation of legal or regulatory requirements where the violations result from Contractor's activities. Violations or threatened violations may subject City to fines or occurrence and/or other costs or civil liabilities.
- B. Contractor shall be liable for and shall pay City the amount of any actual losses in addition to liquidated damages or other remedies provided by the Contract Documents.
- C. The amount of liquidated damages provided in Document 00 5200 (Agreement) and Document 00 7200 (General Conditions) is not intended to include, nor does the amount include, any damages incurred by City for reasons other than those listed in that paragraph. Any money due or to become due to Contractor may be retained by City to cover both the liquidated and the actual damages described above and, should such money not be sufficient to cover such damages, City shall have the right to recover the balance from Contractor or its sureties.

## **PART 2 - PRODUCTS**

### **2.01 REFERENCE STANDARDS**

- A. For products specified by association or trade standards, comply with requirements of standard, except where more rigid requirements are specified or are required by applicable codes.

### **2.02 PRODUCTS ORDERED IN ADVANCE**

- A. As provided in Document 00 7200 (General Conditions) and Section 01 2000 (Measurement and Payment), and subject to all other provisions of the Contract Documents, City will pay for the following materials and equipment prior to incorporation into the Work:

- 1. **None**

### **2.03 CITY-FURNISHED PRODUCTS**

- A. City-Furnished Products:

- 1. **None**

- B. City's Responsibilities:

- 1. Arrange for and deliver City-reviewed Shop Drawings, Product Data, and Samples, to Contractor.
  - 2. Arrange and pay for delivery to Site.
  - 3. On delivery, inspect products jointly with Contractor.
  - 4. Submit claims for transportation damage and replace damaged, Defective, or deficient items.
  - 5. Arrange for manufacturers' warranties, inspections, and service.

- C. Contractor's Responsibilities:

- 1. Review City-reviewed Shop Drawings, Product Data, and Samples.
  - 2. Receive and unload products at Site; inspect for completeness or damage jointly with City.
  - 3. Handle, store, install, and finish products.

4. Repair or replace items damaged after receipt.
5. Install into Project per Contract Documents.

**PART 3 - EXECUTION – NOT USED**

**Permit copies follow this page numbered consecutively as 01 1100**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

## SECTION 01 2000

## MEASUREMENT AND PAYMENT

## PART 1 - GENERAL

## 1.01 SUMMARY

- A. Section includes description of requirements and procedures for determining amount of Work performed and for obtaining payment for Work performed.

## 1.02 REFERENCES

- A. California Public Contract Code
- B. Code of Civil Procedures
- C. Government Code

## 1.03 COMPOSITION AND SCOPE OF CONTRACT SUM

## A. Scope of Contract Sum

1. The Contract Sum for performance of the Work under Contract Documents, or under any Bid item, allowance, or Alternate, shall include full compensation for all Work required under the Contract Documents, including without limitation, all labor, materials, taxes, transport, handling, storage, supervision, administration, and all other items necessary for the satisfactory completion of the Work, whether or not expressly specified or indicated, incidental work and unexpected expenses, and all terms, conditions, requirements and limitations set forth in the Contract Documents.
2. Contract Sum may be expressed as lump sum, unit price, GMP, allowance, or combination thereof.

## B. Unit Price items

1. Quantity of Work to be paid for under any item for which a unit price is fixed in Contract Documents shall be determined by City based on, so far as practicable, actual number of units satisfactorily completed, as determined by City and certified by Contractor, within prescribed or ordered limits, and no payment will be made for Work unsatisfactorily performed or done outside of limits.
2. Unit Prices shall apply to Work covered by unit prices so long as actual quantities performed on the Project are not less than 75 percent or greater than 125 percent of the estimated quantities bid or otherwise stated in the Contract Documents. If actual quantities exceed these parameters, then the unit price shall be adjusted by an amount to reflect the Contractor's incremental cost differential resulting from increased or decreased economies of scale.

## C. Lump Sum Items

1. When estimated quantity for specific portion of Work is not indicated and/or Work is designated as lump sum, payment will be on a lump sum basis for Work satisfactorily completed in accordance with Contract Documents.
2. Payment for lump sum Work, or items of Work subject to a lump sum (e.g. without limitation, change order work), shall be made on the basis of satisfactory completion of such Work or work item, earned in progressive stages in accordance with the Contract Documents, up to but not exceeding the Contractor's percentage completion of the Work or item.

3. Lump sum items shall be paid based upon the approved Schedule of Values, which shall be used to measure progressive payments based upon satisfactory progress towards completion of the item.

**D. Allowance Items**

1. Allowances: Allowance Work will be authorized by City in writing, following change order procedures to determine cost, supporting documentation and authorization to proceed. Unused allowance amounts at Contract completion shall reduce the Contract price accordingly.

**1.04 PAYMENT PROCEDURES**

**A. Schedule of Values:**

1. Within ten calendar days from issuance of Notice of Award and prior to the Contractor's first Application for Payment, Contractor shall submit a detailed breakdown of its Bid by scheduled Work items and/or activities, including coordination responsibilities and Project Record Documents responsibilities. Where more than one Subcontractor comprises the work of a Work item or activity, the Schedule of Values shall show a separate line item for each subcontract. Contractor shall furnish such breakdown of the total Contract Sum by assigning dollar values (cost estimates) to each applicable Progress Schedule network activity, which cumulative sum equals the total Contract Sum. This breakdown shall be referred to as the Schedule of Values.
2. Contractor's overhead, profit, insurance, cost of bonds (except to the extent expressly identified in a Bid item) and/or other financing, as well as "general conditions costs," (e.g., Site cleanup and maintenance, temporary roads and access, off-Site access roads, temporary power and lighting, security, and the like), shall be prorated through all activities so that the sum of all the Schedule of Values line items equals Contractor's total Contract Sum, less any allowances designated by City. Scheduling, record documents and quality assurance control shall be separate line items.
3. City will review the breakdown in conjunction with the Progress Schedule to ensure that the dollar amounts of this Schedule of Values are, in fact, reasonable cost allocations for the Work items listed. Upon favorable review by City, City will accept this Schedule of Values for use. City shall be the sole judge of fair market cost allocations.
4. City will reject any attempt to increase the cost of early activities, i.e., "front loading," resulting in a complete reallocation of moneys until such "front loading" is corrected. Repeated attempts at "front loading" may result in suspension or termination of the Work for default, or refusal to process progress payments until such time as the Schedule of Values is acceptable to City.

**B. Contractor's Requests for Progress Payments**

1. If requested by Contractor, progress payments will be made monthly, under the following conditions:
2. On or before the 25th Day of each month, Contractor shall submit to City five copies of an Application for Payment for the cost of the Work put in place during the period from the last Day of the previous month to the end of the current month, along with one copy of an updated Progress Schedule. Such Applications for Payment shall be for the expected total value of activities completed or partially completed, based upon Schedule of Values prices (or Bid item prices if unit price) of all labor and materials incorporated in the Work up until midnight of the last Day of that one month period, less the aggregate of previous payments. Accumulated retainage shall be shown as separate item in payment summary. City and Contractor will reconcile any differences in the field, based on the reconciled monthly report sheets. If Contractor is late submitting its Application for Payment, that Application may be processed at any time during the succeeding one-month period, resulting in processing of Contractor's Application for Payment being delayed for more

than a Day for Day basis.

3. Except as otherwise provided in a labor compliance program applicable to the Work (if any) or as otherwise required by City, concurrently with each Application for Payment, Contractor shall submit to the City the Contractor's and its Subcontractors' certified payroll records required to be maintained pursuant to Labor Code Section 1776 for all labor performed during pay periods ending during the period covered by the Application for Payment.
4. No progress payment will be processed prior to City receiving all requested, acceptable schedule update information and certified payrolls, and in City's sole and absolute discretion, City may deny the entire Application for Payment for noncompliance.
5. Each Application for Payment shall list each Change Order and Construction Change Directive ("CCD") executed prior to date of submission, including the Change Order/CCD Number, and a description of the Work activities, consistent with the descriptions of original Work activities. Contractor shall submit a monthly Change Order/CCD status log to City.
6. If City requires substantiating data, Contractor shall submit information requested by City, with cover letter identifying Project, Application for Payment number and date, and detailed list of enclosures. Contractor shall submit one copy of substantiating data and cover letter for each copy of Application for Payment submitted.
7. If Contractor fails or refuses to participate in monthly Work reconciliations or other construction progress evaluation with City, Contractor shall not receive current payment until Contractor has participated fully in providing construction progress information and schedule update information to City.

C. City's Review of Progress Payment Applications

1. City will review Contractor's Application for Payment following receipt and during the Progress Schedule and Billing Meeting. If adjustments need to be made to percent of completion of each activity, City will make appropriate notations and return to Contractor. Contractor shall revise and resubmit. All parties shall update percentage of completion values in the same manner, i.e., express value of an accumulated percentage of completion to date.
2. If City determines that portions of the Application for Payment are not proper or not due under the Contract Documents, then City may approve the other portions of the Application for Payment, and in the case of disputed items or Defective Work not remedied, may withhold up to 150 percent of the disputed amount from the progress payment.
3. Pursuant to California Public Contract Code §20104.50, if City fails to make any progress payment within 30 calendar days after receipt of an undisputed and properly submitted Application for Payment from Contractor, City shall pay interest to the Contractor equivalent to the legal rates set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. The 30-Day period shall be reduced by the number of calendar days by which City exceeds the seven-Day return requirement set forth herein.
4. As soon as practicable after approval of each Application for Payment for progress payments, City will pay to Contractor in manner provided by law, an amount equal to 95 percent of the amounts otherwise due as provided in the Contract Documents, or a lesser amount if so provided in Contract Documents and by law, provided that payments may at any time be withheld if, in judgment of City, Work is not proceeding in accordance with Contract, or Contractor is not complying with requirements of Contract, or to comply with stop notices or to offset liquidated damages accruing or expected. In City's sole discretion, if Contractor has failed to comply with either its Progress Schedule update or project record documents requirements, City may retain an additional 5% of any earned amounts until such requirements are satisfied.

5. Before any progress payment or final payment is due or made, Contractor shall submit satisfactory evidence that Contractor is not delinquent in payments to employees, Subcontractors, suppliers, or creditors for labor and materials incorporated into Work. This specifically includes, without limitation, conditional lien release forms for the current progress payment and unconditional release forms for past progress payments. This also includes copies of certified payroll from contractor and subcontractors for the current payment period.

D. Payment for Material and Equipment Not Yet Incorporated Into the Work

1. No payment shall be made for materials or equipment not yet incorporated into the Work, except as specified elsewhere in the Contract Documents or as may be agreed to by City in its sole discretion. Where Contractor requests payment on the basis of materials and equipment not incorporated in the Work, Contractor must satisfy the following conditions:
2. The materials and/or equipment shall be delivered and suitably stored at the Site or at another local location agreed to in writing, for example, a mutually acceptable bonded and insured warehouse.
3. Full title to the materials and/or equipment shall vest in City at the time of delivery to the Site, warehouse or other storage location. Obtain a negotiable warehouse receipt, endorsed over to City for materials and/or equipment stored in an off-site warehouse. No payment will be made until such endorsed receipts are delivered to City.
4. Stockpiled materials and/or equipment shall be available for City inspection, but City shall have no obligation to inspect them and its inspection or failure to inspect shall not relieve Contractor of any obligations under the Contract Documents. Materials and/or equipment shall be segregated and labeled or tagged to identify these specific Contract Documents.
5. After delivery of materials and/or equipment, if any inherent or acquired defects are discovered, defective materials and/or equipment shall be removed and replaced with suitable materials and/or equipment at Contractor's expense.
6. At Contractor's expense, insure the materials and/or equipment against theft, fire, flood, vandalism, and malicious mischief, as well as any other coverages required under the Contract Documents.
7. Contractor's Application for Payment shall be accompanied by a bill of sale, invoice or other documentation warranting that City has received the materials and equipment free and clear of all liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect City interest therein, all of which must be satisfactory to City. This documentation shall include, but not be limited to, conditional releases of mechanics' liens and stop notices from all those providing materials and equipment as to which the Application for Payment relates, as well as unconditional releases of the same from the same as to the previous Application for Payment for which they have not already been provided. Amounts previously paid for materials and equipment prior to incorporation into the Work shall be deducted from amounts otherwise due Contractor as they are incorporated.

## 1.05 FINAL PAYMENT

A. Final Payment

1. As soon as practicable after all required Work is completed in accordance with Contract Documents, including punchlist, testing, record documents and Contractor maintenance after Final Acceptance, Contractor shall submit its Application for Final Payment.
2. Provided Contractor has met all conditions required for Final payment, City will pay to Contractor, in manner provided by law, unpaid balance of Contract Sum of Work (including, without limitation, retentions), or whole Contract Sum of Work if no progress payment has been made, determined in accordance with terms of Contract Documents, less sums as may be lawfully retained under any provisions of Contract Documents or by

law.

**B. Final Accounting**

1. Prior progress payments and change orders shall be subject to audit and correction in the final payment.
2. Contractor and each assignee under an assignment in effect at time of final payment shall execute and deliver at time of final payment, and as a condition precedent to final payment, Document 00 6530 (Agreement and Release of Claims).

**1.06 SUBSTITUTION OF SECURITIES**

**A. Public Contract Code Section 22300.** In accordance with the provisions of Public Contract Code Section 22300, substitution of securities for any moneys withheld under Contract Documents to ensure performance is permitted under following conditions:

1. At request and expense of Contractor, securities listed in Section 16430 of the Government Code, bank or savings and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and City which are equivalent to the amount withheld under retention provisions of Contract shall be deposited with Controller or with a state or federally chartered bank in California, as the escrow agent, who shall then pay such moneys to Contractor. Upon satisfactory completion of Contract, securities shall be returned to Contractor.
2. Alternatively, Contractor may request and City shall make payment of retentions earned directly to the escrow agent at the expense of Contractor. At the expense of Contractor, Contractor may direct the investment of the payments into securities and receive the interest earned on the investments upon the same terms provided for securities deposited by Contractor. Upon satisfactory completion of the work of the Contract Documents, Contractor shall receive from escrow agent all securities, interest, and payments received by the escrow agent from City. Contractor shall then pay to each Subcontractor, not later than 10 calendar days after receipt of the payment, the respective amount of interest earned, net of costs attributed to retention withheld from each Subcontractor, on the amount of retention withheld to insure the performance of Contractor.
3. Contractor shall be beneficial owner of securities substituted for moneys withheld and shall receive any interest thereon.
4. Contractor may enter into an escrow agreement, form included in Contract Documents, as authorized under Public Contract Code Section 22300, specifying amount of securities to be deposited, terms and conditions of conversion to cash in case of default of Contractor, and termination of escrow upon completion of Contract Documents.
5. Public Contract Code Section 22300, in effect on Bid Day, is hereby incorporated in full by this reference and shall supersede anything inconsistent therewith.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

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## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 2600****MODIFICATION PROCEDURES****PART 1 - GENERAL****1.01 SUMMARY**

- A. Section includes requirements that supplement the paragraphs of Document 00 7200 (General Conditions).
- B. Description of procedures for modifying the Contract Documents and determining costs for changes in contract amounts.

**1.02 PROCEDURES FOR CONTRACTOR INITIATED CHANGE ORDER**

- A. Contractor-Initiated Change Proposal Request (CPR) and Procedures:
  - 1. Contractor may initiate changes by submitting a Change Proposal Request ("CPR").
  - 2. Whenever Contractor elects or is entitled to submit a CPR, Contractor shall prepare and submit to City for consideration a CPR using the form included in this Project Manual. All CPRs must contain a complete breakdown of costs of credits, deducts and extras; itemizing materials, labor, taxes, Markup and any requested changes to Contract Time. All Subcontractor Work shall be so indicated. Individual entries on the CPR form shall include applicable Schedule of Values code, with all amounts determined as provided herein. After receipt of a CPR with a detailed breakdown, City will act promptly thereon.
  - 3. If City accepts a CPR, City will prepare a Change Order for City and Contractor signatures.
  - 4. If CPR is not acceptable to City because it does not agree with Contractor's proposed cost and/or time, City will provide comments thereto. Contractor will then, within seven (7) calendar days (except as otherwise provided herein), submit a revised CPR.
  - 5. When necessity to proceed with a change does not allow City sufficient time to conduct a proper check of a CPR (or revised CPR), City may issue a Change Directive (CD) as provided below.
- B. Contractor-Initiated Request for Information (RFI) Procedures, Requirements and Limitations:
  - 1. Contractor may submit RFI's for clarifications in City-prepared Contract Documents, which may result in the Contractor submitting a CPR.
  - 2. Whenever Contractor requires information regarding the Project or City-prepared Contract Documents, or receives a request for such information from a Subcontractor, Contractor may prepare and deliver an RFI to City. Contractor shall use RFI format provided on approval by City. Contractor shall not issue an RFI to City solely to clarify Contractor-prepared Construction Documents. Contractor must submit time critical RFIs at least 30 calendar days before scheduled start date of the affected Work activity. Contractor shall reference each RFI to an activity of Progress Schedule and shall note time criticality of the RFI, indicating time within which a response is required. Contractor's failure to reference RFI to an activity on the Progress Schedule and note time criticality on the RFI shall constitute Contractor's waiver of any claim for time delay or interruption to the Work resulting from any delay in responding to the RFI.
  - 3. Contractor shall be responsible for its costs to implement and administer RFIs throughout

the Contract duration. Regardless of the number of RFIs submitted, Contractor shall not be entitled to additional compensation for the effort required to submit the RFIs. Contractor shall be responsible for City's administrative costs for answering RFIs where the answer could reasonably be found by reviewing the Contract Documents, as determined by City; at City discretion, such costs may be deducted from progress payments or final payment.

4. City will respond within ten (10) calendar days from receipt of RFI with a written response to Contractor. Contractor shall distribute response to all appropriate Subcontractors.
5. If Contractor is satisfied with the response and does not request a change in Contract Sum or Contract Time, then the response shall be executed without a change.
6. If Contractor believes the response is incomplete, Contractor shall issue another RFI (with the same RFI number with the letter "A" indicating it is a follow-up RFI) to City clarifying original RFI. Additionally, City may return RFI requesting additional information should original RFI be inadequate in describing condition.

#### C. Time Requirements:

1. If Contractor believes that a City response to an RFI, submittal or other City direction, results in change in Contract Sum or Contract Time, Contractor shall notify City with the issuance of a preliminary CPR within ten calendar days after receiving City's response or direction, and in no event after starting the disputed work or later than the time allowed under Article 12 of Document 00 7200 (General Conditions). If Contractor also requests a time extension, or has issued a notice of delay or otherwise requests a time extension with a CPR, then Contractor shall submit a Time Impact Evaluation (TIE) required herein concurrently with the CPR and in no event later than ten calendar days after providing the notice of delay.
2. If Contractor requires more time to accurately identify the required changes to the Contract Sum or Contract Time, Contractor may submit an updated and final CPR and TIE within 14 calendar days of submitting the preliminary CPR.
3. If City agrees with Contractor's CPR and/or TIE, then City will prepare a Change Order for City and Contractor signatures. If City disagrees with Contractor, then Contractor may give notice of potential claim as provided in Article 12 of Document 00 7200 (General Conditions), and proceed thereunder.
4. Contractor must submit CPRs, notices of potential claim or Claims within the required time periods. Any failure to do so waives Contractor's right to submit a CPR or file a Claim.

#### D. Cost Estimate Information:

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

### 1.03 PROCEDURES FOR CITY INITIATED CHANGE ORDERS

#### A. City Initiated Change Directives (CD):

1. City may, by Change Directive ("CD") or initially by Instruction Bulletin or by following the procedures for disputed work herein, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with or without adjustment to Contract Sum or Contract Time.
2. If at any time City believes in good faith that a timely Change Order will not be agreed upon using the foregoing procedures, or at any other time, City may issue a CD with its recommended cost and/or time adjustment (if any). Upon receipt of CD, Contractor shall promptly proceed with the change of Work involved and respond to City within ten (10) calendar days.

3. Contractor's response must be any one of following:
    - a. Return CD signed, thereby accepting City response, including adjustment to time and cost (if any).
    - b. Submit a (revised if applicable) Cost Proposal with supporting documentation (if applicable, reference original Cost Proposal number followed by letter A, B, etc. for each revision), if City so requests.
    - c. Give notice of intent to submit a claim as described in Article 12 of Document 00 7200 (General Conditions), and submit its claim as provided therein.
  4. If CPR or the CD provides for an adjustment to any Contract Sum, the adjustment shall be based on one of the following methods:
    - a. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation.
    - b. Contractor to proceed on cost reimbursable (force account) basis while negotiating towards a firm price.
    - c. Cost to be determined in a manner agreed.
  5. Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum or the method for determining them. Such agreement shall be effective immediately and shall be finalized as a Change Order. Where City authorizes CD work on a time and materials basis up to a maximum amount, then Contractor shall promptly advise City upon reaching 75% of such maximum amount, otherwise Contractor shall accept fully the risk of completing the CD work without exceeding such maximum amount.
  6. If Contractor does not respond promptly or disagrees with the method for adjustment (or non-adjustment) in the Contract Sum, the method and the adjustment shall be determined by City on the basis of the Contract Documents and the reasonable expenditures and savings of those performing the Work attributable to the change. If the parties still do not agree on the proper adjustment due to a Change Directive, Contractor may file a Claim per Article 12 of Document 00 7200 (General Conditions) and/or City may direct the changed work through a unilateral change order. Contractor shall keep and present an itemized accounting in a manner consistent with the SOV, together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this paragraph shall be limited to those provided herein.
  7. Pending final determination of cost to City, Contractor may include amounts not in dispute in its Applications for Payment. The amount of credit to be allowed by Contractor to City for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by City. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Markup shall be figured on the basis of net increase, if any, with respect to that change.
- B. City Initiated Change Order (CO) or Request for Proposal (RFP):
1. City may initiate changes in the Work or Contract Time by issuing a Request for Proposal ("RFP") or Change Order ("CO") to Contractor.
  2. City may issue an RFP to Contractor. Any RFP will detail all proposed changes in the Work and request a quotation of changes in Contract Sum and Contract Time from Contractor.
  3. In response to an RFP, Contractor shall furnish a Change Proposal Request (CPR) within twenty-one (21) Business Days of City's RFP. Upon approval of CPR, City may issue a Change Directive directing Contractor to proceed with extra Work.
  4. If the parties agree on price and time for the work, the City will issue a Contact Change Order. If the parties do not agree on the price or time for a CPR, City may either issue a CD or decide the issue per Article 12 of Document 00 7200 (General Conditions).

Contractor shall perform the changed Work notwithstanding any claims or disagreements of any nature.

#### **1.04 PROCEDURES THAT APPLY TO CONTRACTOR- AND CITY-INITIATED CHANGE ORDERS**

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

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

##### **B. Required Documentation for Adjustments to Contract Amounts:**

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

##### **C. Responses and Disputes:**

1. For all responses for which the Contract Documents do not provide a specific time period, recipients shall respond within a reasonable time.
2. For all disputes arising from the procedures herein, Contractor shall follow Article 12 of Document 00 7200 (General Conditions).

#### **1.05 COST DETERMINATION FOR CHANGES IN CONTRACT AMOUNTS**

##### **A. Calculation of Total Cost of Extra Work:**

1. Total cost of changed Work, extra Work or of Work omitted shall be the sum of three components defined immediately below as: Component 1 (Direct Cost(s)); Component 2 (Markup); and, Component 3 (bonds, insurance, taxes)
2. Component 1: Direct Cost(s) of labor, equipment and materials, is calculated based upon actually incurred (or omitted) labor costs, material costs and equipment rental costs, as defined herein;

3. Component 2: Markup on such actually incurred Direct Costs, is applied in the percentages identified below; and
4. Component 3: Actual additional costs for any additionally required insurance, bonds, and/or taxes, defined herein, is calculated without Markup.

#### **1.06 MEASUREMENT OF DIRECT COST OF CONSTRUCTION (COST COMPONENT NO. 1)**

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

1. Component 1 has four subcomponents, also referred to as "LEMS":
  - a. Labor (Component 1A)
  - b. Equipment (Component 1B)
  - c. Materials (Component 1C)
  - d. Subcontractors (Component 1D)

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

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

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

1. Measurement of Component 1B (Cost of Equipment). Cost of Equipment shall be calculated as: Cost of Equipment used in actual and direct performance of the subject work, whether by Contractor, Subcontractor or other forces. Cost of Equipment shall be calculated as herein described.
2. For rented equipment, cost will be based on actual rental invoices, appropriate for the use and duration of the work. Equipment used on extra Work shall be of proper size and type. If, however, equipment of unwarranted size or type and cost is used, cost of use of equipment shall be calculated at rental rate for equipment of proper size and type, as determined by City.
3. Equipment rental cost for Contractor or Subcontractor-owned equipment, shall be determined by reference to, and not in excess of, the generally accepted standards in the State for equipment rental rates in effect on date upon which extra Work is accomplished. If there is no applicable rate for an item of equipment, then payment shall be made for Contractor- or Subcontractor-owned equipment at rental rate listed in the most recent edition of the CalTrans Standard Schedules and Specifications, and absent a rental rate therein, then the Association of Equipment Distributors (AED) book.
4. In all cases, rental rates paid shall be deemed to cover cost of fuel, oil, lubrication, supplies, small tools, necessary attachments, repairs and maintenance of any kind,

depreciation, storage, insurance, and all incidentals.

5. Unless otherwise specified, manufacturer's ratings, and manufacturer-approved modifications, shall be used to classify equipment for determination of applicable rental rates. Individual pieces of equipment or tools not listed in said publication and having a replacement value of \$100 or less, whether or not consumed by use, shall be considered to be small tools and no payment will be made therefore as payment is included in payment for labor. Rental time will not be allowed while equipment is inoperative due to breakdowns.
6. For equipment on Site, rental time to be paid for equipment shall be time equipment is in operation on extra Work being performed or on standby as approved by City. The following shall be used in computing rental time of equipment:
  - a. When hourly rates are listed, less than 30 minutes of operation shall be considered to be ½ hour of operation.
  - b. When daily rates are listed, less than four hours of operation shall be considered to be ½ Day of operation.
  - c. Rates shall correspond to actual rates paid by Contractor, i.e., if Contractor pays lower weekly or monthly rates, then same shall be charged to City.
7. For equipment that must be brought to Site to be used exclusively on extra Work, cost of transporting equipment to Site and its return to its original location shall be determined as follows:
  - a. City will pay for costs of loading and unloading equipment.
  - b. Cost of transporting equipment in low bed trailers shall not exceed hourly rates charged by established haulers.
  - c. Cost of transporting equipment shall not exceed applicable minimum established rates of California Public Utilities Commission or appropriate State Dept. of Transportation.
  - d. City will not make any payment for transporting and loading and unloading equipment if equipment is used on Work in any other way than upon extra Work.
  - e. Rental period may begin at time equipment is unloaded at Site of extra Work and terminate at end of the performance of the extra Work or Day on which City directs Contractor to discontinue use of equipment, whichever first occurs. Excluding Saturdays, Sundays, and City legal holidays, unless equipment is used to perform extra Work on such Days, rental time to be paid per Day shall be four hours for zero hours of operation, six hours for four hours of operation and eight hours for eight hours of operation, time being prorated between these parameters. Hours to be paid for equipment that is operated less than eight hours due to breakdowns, shall not exceed eight less number of hours equipment is inoperative due to breakdowns.
8. Employee vehicles are not part of Component 1A, rather, are included within Component 2 (Markup).
9. Equipment costs shall include no other costs, fees or charges.

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

1. Cost of Material shall be calculated as herein described. Cost of such materials will be cost to purchaser (Contractor, Subcontractor or other forces) from supplier thereof, except as the following are applicable:
2. If cash or trade discount by actual supplier is offered or available to purchaser, it shall be credited to City notwithstanding fact that such discount may not have been taken.
3. For materials salvaged upon completion of Work, salvage value of materials shall be deducted from cost, less discounts, of materials.
4. If cost of a material is, in opinion of City, excessive, then cost of material shall be deemed to be lowest current wholesale price at which material is available in quantities concerned

delivered to Site, less any discounts as provided in this Paragraph.

5. Material costs shall include no other costs, fees or charges.

E. Measurement of Cost of Subcontractors (Component 1D):

1. Where reimbursed or calculated per the terms of the Contract Documents, change order or Change Directive, cost of Subcontractors shall be calculated as amounts earned by Subcontractors procured in compliance with the Contract Documents and approved by the City, provided such subcontractor earned amounts meet the following requirements:
  - a. Such amounts are earned under the terms of the Subcontracts and the Work complies with the terms of the Contract Documents;
  - b. Such amounts are properly requested, documented and permitted under the terms of the subcontract(s) and the Contract Documents.
  - c. Total cost to City of Direct Costs of Construction (labor, equipment, materials), Markup, and costs of bonds, insurance and taxes, conform to contract limitations (i.e., totals paid by City do not exceed the 20% Markup limitation.).

**1.07 MEASUREMENT AND PAYMENT OF MARK UP (COST COMPONENT 2)**

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

1. Markup on Direct Cost of labor and materials for extra Work shall be 15%. Markup on Direct Cost of equipment for extra Work shall be 15%.
2. When extra Work is performed by Subcontractors, regardless of the number of tiers, total Markup on "Component 1" Direct Costs shall not exceed 20%. Contractor and its Subcontractors shall divide the 20% as they may agree.
3. Under no circumstances shall the total Markup on any extra Work exceed twenty (20) percent, stated as a percent of the Direct Cost of labor, equipment and materials. This limitation shall apply regardless of the actual number of subcontract tiers.
4. On proposals covering both increases and decreases in Contract Sum, Markup shall be allowed on the net increase only as determined above. When the net difference is a deletion, no percentage for Markup shall be allowed, but rather an appropriate percentage deduction shall be issued in the amount of the net difference.

B. Measurement and Payment of Mark Up (Component 2):

1. Mark Up (Component 2) provides complete compensation to Contractor for:
  - a. All Contractor profit;
  - b. All Contractor home-office overhead;
  - c. All Contractor assumption of risk assigned to Contractor under the Contract Documents;
  - d. Subject to the qualifications below regarding self-performed work, all General Conditions and General Requirements.
2. Profit. Compensation for profit included within Component 2 (Mark Up), includes without limitation: Fees of all types, nature and description; and Profit and margins of all types, nature and description.
3. Home Office Expenses. Compensation for home office expenses included within Component 2 (Mark Up), includes without limitation: Salaries and other compensation of any type of Contractor's personnel (management, administrative and clerical), and all direct and indirect operating, travel, payroll, safety, storage, quality control, maintenance and overhead costs of any nature whatsoever, incurred by Contractor at any location other than the Project specific site office, including without limitation, Contractor's principal or branch offices; insurance premiums other than those for Project specific insurance directed by the City in a change order; all hardware, software, supplies and support personnel necessary or convenient for Contractor's capture, documentation and

maintenance of its costs and cost accounting data and cost accounting and control systems and work progress reporting.

4. Assumption of Risk. Compensation for Contractor's assumption of risk under the Contract Documents, included within Component 2 (Mark Up), includes without limitation loss, cost, damage, expense or liability resulting directly or indirectly from any of the following causes ("unallowable costs"), for Contractor and subcontractors of any tier: noncompliance with the Contract Documents, fault or negligence, defective or non-conforming Work, by Contractor or any Subcontractor or Vendor of any tier or anyone directly or indirectly employed by any of them, or for whose acts or omissions any of them are responsible or liable at law or under the Contract Documents; cost overruns of any type; costs in excess of any lump sum, not to exceed amount or GMP; costs resulting from bid or "buy out" errors, unallocated scope, or incomplete transfer of scope or contract terms to subcontractors; any costs incurred by Contractor relating to a Change in the Work without a Change Order or Change Directive in accordance with the Contract Documents; costs for work or materials for which no price is fixed in the Contract Documents, unless it is expressly specified that such work or material is to be paid for as extra work.
5. General Conditions and Division 1 General Requirements. Compensation for Contractor's General Conditions and General Requirements Costs included within Component 2 (Mark Up), includes compensation to Contractor for: Contractor's direct costs, without overhead or profit, for salaries and related forms of compensation and employer's costs for labor and personnel costs, of Contractor's employees and subconsultant's employees (if any), while and only to the extent they are performing Work at the Project Site. Personnel and Work compensated by this Component include without limitation: All required Project management responsibilities; all on-site services; monthly reporting and scheduling; routine field inspection of Work; general superintendence; general administration and preparation of cost proposals, schedule analysis, change orders and other supporting documentation as necessary; salaries of project superintendent, project engineers, project managers, safety manager, other manager, timekeeper, and secretaries; all cost estimates and updates thereto; development, validation and updates to the project schedule; surveying; estimating. Compensation for Contractor's General Requirements Costs included within Component 2 (Mark Up), compensates Contractor for its "General Requirements" Costs, including without limitation: all scheduling hardware, software, licenses, equipment, materials and supplies; purchase, lease or rental, build out, procurement, supporting equipment and maintenance of temporary on-Site facilities, Project field and office trailers and other temporary facilities, office equipment and supporting utilities; platforms, fencing, cleanup and jobsite security; temporary roads, parking areas, temporary security or safety fencing and barricades, etc.; all Contractor's motor vehicles used by any Contractor's personnel, and all costs thereof; all health and safety requirements, required by law or City procedures; all surveying; all protection of Work; handling and disposal fees; final cleanup; repair or maintenance; other incidental Work; all items, activities and function similar to any of those described above; all travel, entertainment, lodging, board and the like.
6. Personnel compensated by the Markup Component do not include workers of foreman level or below in the case of self-performed work; rather, such personnel shall be treated as a Direct Cost of Construction. Costs compensated by the Markup component do not include temporary measures specifically required by the changed work, not otherwise required or ongoing in the prosecution of the Work, that commence specifically to support the changed work and conclude with the completion of the changed work. Such costs shall be treated as Direct Costs of Construction. Examples of General Requirements costs that this component may not cover are the following: temporary barricades or fencing of specific areas required specifically for the changed work; cranes required specifically for the changed work; extra security required specifically for the changed work.

**1.08 MEASUREMENT AND PAYMENT OF BONDS INSURANCE TAXES (COMPONENT 3)****A. Measurement of Bonds, Insurance, Taxes (Component 3):**

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

**1.09 EFFECT OF PAYMENT****A. Change Order Compensation is All Inclusive.**

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

**B. Exception for Changes Extending the Contract Time.**

1. Where a change in the Work extends the Contract Time, Contractor may request and recover additional, actual direct costs, provided Contractor can demonstrate such additional costs are (i.) actually incurred performing the Work, (ii.) not compensated by the Markup allowed, and (iii) directly result from the extended Contract Time. Contractor shall make such request and provide such documentation following all required procedures, documentation and time requirements in the Contract Documents, and subject to all contract limitations of liability. Contractor may not seek or recover such costs using formulas (e.g., Eichleay).

**C. Limits of Liability / Accord and Satisfaction.**

1. The foregoing limits of compensation apply in all cases of claims for changed Work, whether calculating Change Proposal Requests, Change Orders or CDs, or calculating claims and/or damages of all types, and applies even in the event of fault, negligence, strict liability, or tort claims of all kinds, including strict liability or negligence. Contractor may recover no other costs arising out of or connected with the performance of extra Work, of any nature.
2. Under no circumstances may Contractor claim or recover special, incidental or consequential damages against City, its representatives or agents, whether arising from breach of contract, negligence, strict liability or other tort or legal theory, unless specifically and expressly authorized in the Contract Documents.
3. No change in Work shall be considered a waiver of any other condition of Contract Documents. No claim shall be made for anticipated profit, for loss of profit, for damages, or for extra payment whatever, except as expressly provided for in Contract Documents.
4. Accord and Satisfaction: Every Change Order and accepted CD shall constitute a full accord and satisfaction, and release, of all Contractor (and if applicable, Subcontractor)

claims for additional time, money or other relief arising from or relating to the subject matter of the change including, without limitation, impacts of all types, cumulative impacts, inefficiency, overtime, delay and any other type of claim. Contractor may elect to reserve its rights to disputed claims arising from or relating to the changed Work at the time it signs a Change Order or approves a CD, but must do so expressly in a writing delivered concurrently with the executed Change Order or approved CD, and must also submit a Claim for the reserved disputed items pursuant to Article 12 of Document 00 7200 (General Conditions) no later than thirty (30) calendar days after Contractor's first written notice of its intent to reserve rights. Execution of any Change Order or CD shall constitute Contractor's representation of its agreement with this provision.

#### **1.10 MISCELLANEOUS REQUIREMENTS**

##### **A. City-Furnished Materials.**

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

##### **B. Records And Certification.**

1. All charges shall be recorded daily and summarized in Change Proposal Request form attached hereto. Contractor or authorized representative shall complete and sign form each day. Contractor shall also provide with the form: the names and classifications of workers and hours worked by each; an itemization of all materials used; and a list by size type and identification number of equipment and hours operated.
2. City shall have the right to audit all records in possession of Contractor relating to activities covered by Contractor's claims for modification of Contract, including CD Work. This right shall be specifically enforceable, and any failure of Contractor to voluntarily comply shall be deemed an irrevocable waiver and release of all claims then pending that were or could have been subject to Article 12 of Document 00 7200 (General Conditions).

#### **PART 2 - PRODUCTS – NOT USED**

#### **PART 3 - EXECUTION – NOT USED**

### **END OF SECTION**

[COST PROPOSAL FORM FOLLOWS ON NEXT PAGE]

**COST PROPOSAL (CP)**

Owner **Berkeley Marina Selective Timber Pile Replacement**  
 Contract Number \_\_\_\_\_

CP Number: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 In Response To \_\_\_\_\_  
 RFP #, etc.

**To: City of Berkeley**  
 Attention: **Taylor Lancelot**  
**1947 Center Street, 5<sup>th</sup> Floor**  
**Berkeley, CA 94704**  
 Phone: (510) 981-6400  
 Fax: (510) 981-6390

**From: [Insert Contractor's Name/Address]**  
 \_\_\_\_\_  
 \_\_\_\_\_

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

ITEM DESCRIPTION	PRIME CONTRACTOR	SUB 1	SUB 2	SUB 3	SUB 4	TOTAL
<b>MATERIAL</b>						
<b>LABOR</b>						
<b>EQUIPMENT</b>						
Other (Specify) Extended Overhead						
<b>TOTAL COST</b>						
Subcontractor's Overhead & Profit 15 percent						
Contractor's Overhead & Profit 15 percent						
Overhead & Profit to Contractor for Subcontractor's Work 5 percent						
(percent of Total Cost above not including any Overhead & Profit – may not exceed 20%)						
<b>GRAND TOTAL</b>						
<b>REQUESTED CHANGE IN CONTRACT TIME (CALENDAR DAYS)</b>						
(Time Impact Evaluation Enclosed)						

By Contractor: \_\_\_\_\_

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

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

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## DIVISION 1 GENERAL REQUIREMENTS

## SECTION 01 3119

## PROJECT MEETINGS

## PART 1 - GENERAL

## 1.01 HEADING 3

## A. Summary

1. Section includes description of required project meetings.

## 1.02 PRECONSTRUCTION CONFERENCE

- A. Preconstruction Conference. City will call for and administer Preconstruction Conference at time and place to be announced (usually the week prior to start of Work at the Site). Contractor, all major Subcontractors, and major suppliers shall attend Preconstruction Conference. Agenda may include, but not be limited to, the following items:

1. Schedules
2. Personnel and vehicle permit procedures
3. Use of premises
4. Location of the Contractor's on-Site facilities & Temporary Utilities
5. Security
6. Housekeeping
7. Submittal and RFI procedures
8. Inspection and testing procedures, on-Site and off-Site
9. Utility shutdown procedures
10. Control and reference point survey procedures
11. Injury and Illness Prevention Program
12. Contractor's Initial Progress Schedule
13. Contractor's Schedule of Values
14. Contractor's Schedule of Submittals
15. Jurisdictional agency requirements
16. Project Communication Procedures
17. Modification Procedures
18. Site Access by City and Consultants
19. As-Built/Record Documents
20. Permits & Fees
21. Coordination: (Work Performed for City under separate contract). (As Appropriate)
22. City will distribute copies of minutes to attendees. Attendees shall have 7 calendar days to submit comments or additions to minutes. Minutes will constitute final memorialization of results of Preconstruction Conference.

## 1.03 WEEKLY PROJECT MEETINGS

- A. City will schedule and administer weekly progress meetings throughout duration of Work. Progress meetings will be held weekly unless otherwise directed by City. Meetings shall be held at City's Offices unless otherwise specified in Contract Documents.
1. City's Representative will prepare agenda and distribute it 4 calendar days in advance of meeting to Contractor.
  2. Participants with agenda items shall present them.
  3. The Architect/Engineer and other responsible entities shall attend meetings unless

otherwise specified in Contract Documents or provided by City.

4. City shall record and distribute the meeting minutes. Minutes shall be distributed by the City to the Contractor within 3 business days after the meeting. Contractor shall distribute the minutes to those affected by decisions made at meeting. Attendees shall have five business days to submit comments or additions to the minutes. Minutes shall constitute final memorialization of results of meeting.
5. Progress meetings shall be attended by Contractor's job superintendent, major Subcontractors and suppliers, City, and others as appropriate to agenda topics for each meeting.
6. Agenda may contain the following items, as appropriate:
  - a. Review, revise as necessary, and approve previous meeting minutes
  - b. Review of Work progress since last meeting
  - c. Status of Construction Work Schedule, delivery schedules, adjustments
  - d. Submittal, RFI, and Change Order status
  - e. Review of the Contractor's safety program activities and results, including report on all serious injury and/or damage accidents
  - f. Other items affecting progress of Work

#### **1.04 PROGRESS SCHEDULE AND BILLING MEETINGS**

- A. A meeting will be held on approximately the 20th of each month to review the schedule update submittal and progress payment application.
- B. At this meeting, at a minimum, the following items will be reviewed:
  1. Percent complete of each activity;
  2. Time impact evaluations for Change Orders and Time Extension Request;
  3. Actual and anticipated activity sequence changes;
  4. Actual and anticipated duration changes; and
  5. Actual and anticipated Contractor delays.
  6. Waste Management Tracking/Tags
  7. As-Built/Record Documents
- C. These meetings are considered a critical component of overall monthly schedule update submittal and Contractor shall have appropriate personnel attend. At a minimum, Contractor's General Superintendent and Scheduler shall attend these meetings.

#### **PART 2 - PRODUCTS – NOT USED**

#### **PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

**DIVISION 1 GENERAL REQUIREMENTS****SECTION 01 3230****PROGRESS SCHEDULES AND SUBMITTALS****PART 1 - GENERAL****1.01 SUMMARY**

- A. Section includes description of requirements and procedures for submitting progress schedules and submittals.

**1.02 CONTRACTOR TO SUBMIT PROGRESS SCHEDULES**

- A. Contractor shall submit original (baseline) progress schedule two weeks prior to the first Application for Payment.
- B. Baseline Progress Schedule shall show Contractor's construction and procurement activities, including but not limited to, equipment procurement and delivery (Contractor and City supplied), activities with Subcontractors and suppliers, major submittal reviews, commissioning of systems, use of major equipment on site, and necessary interface with City and third parties required to complete the Work in a timely manner and in accordance with Contract Time.

**1.03 SCHEDULE REQUIREMENTS.**

- A. Unless City agrees in writing otherwise, progress schedule shall be on Microsoft Project, Primavera P6, Suretrack, or equivalent software, as City may specify, which Contractor shall prepare and supply to City, with all datapoint entries completed for start dates, necessary work activities, durations (not longer than 21 calendar days) and logic ties.
- B. Contractor's progress schedule may be in the form of a CPM (arrow) diagram or, if City agrees in writing, a bar chart or a Gantt chart. The hard copies of the schedule supplied to City shall indicate the critical path of the Work (in red) and shall show a logical progression of the Work through completion within Contract Time.
- C. Unless City agrees in writing otherwise, progress schedule shall also show early and late start and finish dates and total available float (float to the successor activity's late start date) for each activity. City has no obligation to accept an early completion schedule.

**1.04 MONTHLY UPDATES**

- A. Contractor's progress schedule shall be updated monthly to reflect actual progress. The schedule shall be subject to City's review and acceptance for use in monitoring Contractor's Work and evaluating Applications for Payment.
- B. Contractor shall supply City with an electronic copy of the updated progress schedule with each monthly payment application. Contractor shall provide City with three-week look ahead schedules weekly, showing in detail and activities and resources scheduled for the immediate two week period.

**1.05 RECOVERY SCHEDULE**

- A. City may request a recovery schedule should Contractor fall 21 or more calendar days behind any schedule Milestone, which schedule shall show Contractor's plan and resources committed to retain Contract completion dates.
- B. The recovery schedule shall show the intended critical path. If City requests, Contractor shall also:
  - 1. Secure and demonstrate appropriate Subcontractor and supplier consent to the recovery

Schedule.

2. Submit a narrative explaining trade flow and construction flow changes and man-hour loading assumptions for major Work activities and/or Subcontractors.

**1.06 TIME IMPACT EVALUATION (“TIE”) FOR CHANGE ORDERS, TIME EXTENSIONS AND DELAYS:**

- A. When Contractor requests a time extension for any reason, Contractor shall submit a TIE that includes both a written narrative and a schedule diagram depicting how the changed Work or other impact affects other schedule activities. The schedule diagram shall show how Contractor proposes to incorporate the changed Work or other impact in the schedule and how it impacts the current Schedule update critical path or otherwise. Contractor is also responsible for requesting time extensions based on the TIE’s impact on the critical path. The diagram shall be tied to the main sequence of scheduled activities to enable City to evaluate the impact of changed Work to the scheduled critical path.
  
- B. Contractor is responsible for all costs associated with the preparation of TIE’s, and the process of incorporating TIE’s into the current schedule update. Provide City with four copies of each TIE.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

**DIVISION 1 GENERAL REQUIREMENTS****SECTION 01 3300****SUBMITTALS****PART 1 - GENERAL****1.01 SUMMARY**

- A. Section includes description of requirements and procedures for submittals.

**1.02 SCHEDULE OF SUBMITTALS**

- A. Contractor shall prepare for City's review and acceptance prior to commencement of work on the Site, for purposes of contract administration, a schedule of submittals (also referred to as a submittal register) required to complete the Work, prepared by Contractor and accepted by City for contract administration. Schedule of submittals shall include, for each submittal: the specification or drawing reference requiring the submittal, if applicable; the material, item, or process for which the submittal is required; the submittal number and identifying title of the submittal; the Contractor's anticipated submission date and the approval need date.
- B. Contractor shall update monthly the schedule of submittals to reflect actual submission and acceptance dates for submittals. Review by City of schedule of submittals does not excuse Contractor of obligation to supply, schedule and coordinate all submittals required by the Contract Documents.

**1.03 CONTRACTOR TO SUBMIT SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.**

- A. Contractor shall review for compliance with Contract Documents, approve and submit to City Shop Drawings, Product Data, Samples and similar submittals required by Contract Documents.
- B. Contractor shall schedule and submit concurrently submittals covering component items forming a system or items that are interrelated. Contractor shall include certifications to be submitted with the pertinent drawings at the same time.
- C. Contractor shall coordinate scheduling, sequencing, preparing and processing of all submittals with performance of work so that work will not be delayed by submittal processing.
- D. Submittals shall specifically identify any Work depicted that does not conform to the Contract Documents.

**1.04 CITY REVIEW OF SHOP DRAWINGS, PRODUCT DATA AND SUBMITTALS.**

- A. After review by City of each Submittal, material will be returned to Contractor with actions defined as follows:
1. NO EXCEPTIONS TAKEN - Accepted subject to its compatibility with general design concept of the Work, future Submittals and additional partial Submittals for any portions of the Work not covered in this Submittal. Does not constitute acceptance or deletion of specified or required items not shown on the Submittal.
  2. MAKE CORRECTIONS NOTED (NO RESUBMISSIONS REQUIRED) - Same as item 1 above, except that minor corrections as noted shall be made by Contractor.
  3. REVISE AS NOTED AND RESUBMIT - Rejected because of major inconsistencies or errors that shall be resolved or corrected by Contractor prior to subsequent review by City.
  4. REJECTED - RESUBMIT - Submitted material does not conform to Drawings and/or Specifications in major respect, i.e.: wrong size, model, capacity, or material.

- B. Favorable review will not constitute acceptance by City of any responsibility for the accuracy, coordination, or completeness of the Submittals. Accuracy, coordination, and completeness of Submittals shall be sole responsibility of Contractor, including responsibility to back-check comments, corrections, and modifications from City's review before fabrication. Contractor, Subcontractors, or suppliers may prepare Submittals, but Contractor shall ascertain that Submittals meet requirements of Contract Documents, while conforming to structural space and access conditions at point of installation. City's review will be only to assess if the items covered by the Submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as indicated by the Contract Documents. Favorable review of Submittal, method of Work, or information regarding materials and equipment Contractor proposes to furnish shall not relieve Contractor of responsibility for errors therein and shall not be regarded as assumption of risks or liability by City, or any officer or employee thereof, and Contractor shall have no claim under Contract Documents on account of failure or partial failure or inefficiency or insufficiency of any plan or method of Work or material and equipment so accepted. Favorable review shall be considered to mean merely that City has no objection to Contractor using, upon Contractor's own full responsibility, plan or method of Work proposed, or furnishing materials and equipment proposed.
- C. Unless otherwise specified, City's review will not extend to the means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.
- D. 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 favorably reviewed by the City; otherwise, any such Work is at Contractor's sole risk.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

## SECTION 01 4100

## REGULATORY REQUIREMENTS

## PART 1 - GENERAL

## 1.01 SUMMARY

## A. Section includes:

1. Regulatory requirements applicable to Contract Documents
2. Required provisions under Local Agency Disputes Act
3. Required references under federal law

## 1.02 GENERAL

## A. Compliance with Laws

1. Conform to all applicable codes, laws, ordinances, rules and regulations, which shall have full force and effect as though printed in full in these Specifications. Codes, laws, ordinances, rules, regulations and ordinances (**Regulatory Requirements**) are not furnished to Contractor, because Contractor is assumed to be familiar with these requirements.
2. Any listing of Regulatory Requirements for hazardous waste abatement Work in the Contract Documents is supplied to Contractor as a courtesy and shall not limit Contractor's responsibility for complying with all applicable Regulatory Requirements having application to the Work. Where conflict among the Regulatory Requirements or with these Specifications occurs, the most stringent requirements shall be used.
3. Specific reference in the Specifications to codes and regulations or requirements of regulatory agencies shall mean the latest printed edition of each adopted by the regulatory agency in effect at the time of the opening of Bids, except as may be otherwise specifically stated in the Contract Documents.

## B. Precedence

1. Where specified requirements differ from Regulatory Requirements, the more stringent requirements shall take precedence. Where Drawings or Specifications require or describe products or execution of better quality, higher standard or greater size than required by Regulatory Requirements, then Drawings and Specifications shall take precedence so long as such increase is legal. Where no requirements are identified on Drawings or in Specifications, comply with all Regulatory Requirements of governing authorities having jurisdiction.
2. Should any conditions develop not covered by the Contract Documents wherein the finished Work will not comply with current codes, a Change Order detailing and specifying the required Work shall be submitted to and approved by City before proceeding with the Work.

## 1.03 REGULATORY REQUIREMENTS

## A. Applicable Codes

1. Codes that apply to Contract Documents include all Codes applicable to construction, including, but not limited to, the following:

- a. California Building Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- b. California Electrical Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- c. California Plumbing Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for plumbing, sewage disposal and health requirements.
- d. California Mechanical Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- e. California Energy Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- f. California Green Building Standard Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- g. International Fire Code (2016 Edition or latest applicable code) as amended by applicable local ordinances for all construction work.
- h. California Administrative Code Titles 15, 19 and 24 (with California amendments), and Americans with Disabilities Act (ADA) accessibility guidelines, whichever is more stringent.
- i. All State laws and City and County Ordinances, rules of the State or City or County Health Departments, rules of the National Board of Fire Underwriters and National Fire Protection Associations, and local power company regulations for mechanical and electrical work.

#### B. Applicable Laws, Statutes, Ordinances, Rules, And Regulations

1. During prosecution of Work to be done under Contract Documents, Contractor shall comply with applicable laws, ordinances, rules and regulations, including, but not limited to, the following:
  - a. Federal:
    - 1) Americans With Disabilities Act of 1990
    - 2) 29 CFR, Section 1910.1001, Asbestos
    - 3) 40 CFR, Subpart M, National Emission Standards for Asbestos
    - 4) Executive Order 11246
    - 5) Federal Endangered Species Act
    - 6) Clean Water Act
  - b. State of California:
    - 1) California Code of Regulations, Titles 5, 8, 17, 19, 21, 22, 24 and 25
    - 2) California Public Contract Code
    - 3) California Health and Safety Code
    - 4) California Government Code
    - 5) California Labor Code
    - 6) California Civil Code
    - 7) California Code of Civil Procedure
    - 8) CPUC General Order 95, Rules for Overhead Electric Line Construction
    - 9) CPUC General Order 128, Rules for Construction of Underground Electric Supply and Communications Systems
    - 10) Cal/OSHA
    - 11) OSHA: Hazard Communications Standards
    - 12) California Endangered Species Act
    - 13) Water Code
    - 14) Fish and Game Code
  - c. State of California Agencies:
    - 1) State and Consumer Services Agency
    - 2) Office of the State Fire Marshall
    - 3) Office of Statewide Health Planning and Development
    - 4) Department of Fish and Game
    - 5) All Air Quality Management Districts with jurisdiction

- 6) All Regional Water Quality Control Boards with jurisdiction
- 7) Division of the State Architect (if having jurisdiction)
- d. All Local Agencies with jurisdiction (cities, counties, fire departments)

C. Change Orders and Claims:

1. The California Public Contract Code, including but not limited to Section 7105(d)(2), and the California Government Code Section 930.2 et seq., apply to all contract procedures for changes, time extensions, change orders (time or compensation) and claims. Federal law (U.S. v. Holpuch 326 U.S. 234) shall supplement California law on the enforceability of these requirements.
2. Any change, waiver, or omission to implement contract change order and claim procedures shall have no legal effect unless expressly permitted in a fully executed change order approved by Contractor and City and approved as to form by their respective legal counsel.

D. Required Provisions On Contract Claim Resolution

1. The California Public Contract Code specifies required provisions on resolving contract claims less than \$375,000, which are set forth below, and constitute a part of this Contract.
2. For the purposes of this section, "Claim" means a separate demand by Contractor of \$375,000 or less for (1) a time extension, (2) payment or money or damages arising from Work done by or on behalf of Contractor arising under the Contract Documents and payment of which is not otherwise expressly provided for or the Claimant is not otherwise entitled to, or (3) an amount the payment of which is disputed by City. In order to qualify as a Claim, the written demand must state that it is a Claim submitted under paragraph 12 of Document 00 7200 (General Conditions) and be submitted in compliance with all requirements of Document 00 7200 (General Conditions), paragraph 12. Separate Claims which total more than \$375,000 do not qualify as a "separate demand of \$375,000 or less," as referenced above, and are not subject to this section.
3. A voucher, invoice, payment application, or other routine or authorized form of request for payment is not a Claim for purposes of this section. If such request is disputed as to liability or amount, then the disputed portion of the submission may be converted to a Claim under this section by submitting a separate claim in compliance with Contract Documents claim submission requirements.
4. Caution. This section does not apply to tort claims and nothing in this section is intended nor shall be construed to change the time periods for filing tort claims or actions specified by Chapter 1 and Chapter 2 of Part 3 of Division 3.6 of Title 1 of the California Government Code.
5. Procedure:
  - a. The Claim must be in writing, submitted in compliance with all requirements of Document 00 7200 (General Conditions), paragraph 12, including, but not limited to, the time prescribed by and including the documents necessary to substantiate the Claim, pursuant to Document 00 7200 (General Conditions), paragraph 12.3. Claims must be filed on or before the day of final payment. Nothing in this section is intended to extend the time limit or supersede notice requirements for the filing of claims as set forth in Document 00 7200 (General Conditions), paragraph 12 or elsewhere in the Contract Documents.
  - b. For Claims of fifty thousand dollars (\$50,000) or less, City shall respond in writing within forty-five (45) calendar days of receipt of the Claim, or City may request in writing within thirty (30) calendar days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims City may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section upon mutual agreement of

City and Claimant. City's written response to the Claim, as further documented, shall be submitted to Claimant within fifteen (15) calendar days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.

- c. For Claims over Fifty Thousand Dollars (\$50,000) and less than or equal to \$375,000: City shall respond in writing within sixty (60) calendar days of receipt of the Claim, or City may request in writing within thirty (30) calendar days of receipt of the Claim, any additional documentation supporting the Claim or relating to any defenses or claims City may have against Claimant. If additional information is thereafter required, it shall be requested and provided in accordance with this section, upon mutual agreement of City and Claimant; City's written response to the Claim, as further documented, shall be submitted to Claimant within thirty (30) calendar days after receipt of further documentation or within a period of time no greater than taken by Claimant in producing the additional information, whichever is greater.
- d. Meet and Confer: If Claimant disputes City's written response, or City fails to respond within the time prescribed above, Claimant shall notify City, in writing, either within fifteen (15) calendar days of receipt of City's response or within fifteen (15) calendar days of City's failure to timely respond, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon demand City will schedule a meet and confer conference within thirty (30) calendar days for settlement of the dispute.
- e. Following the meet and confer conference, if the Claim or any portion remains in dispute, Claimant may file a claim as provided in Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1 of the California Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time Claimant submits its written claim as set forth herein, until the time that Claim is denied as a result of the meet and confer process, including any period of time utilized by the meet and confer process.

#### E. Compliance With Americans With Disabilities Act

1. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Contractor, must be accessible to the disabled public. Contractor shall provide the services specified in the Contract Documents in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under the Contract Documents and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns shall constitute a material breach of the Contract Documents.

#### F. Compliance With IRCA

1. Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. In addition, Contractor agrees to indemnify, defend and hold harmless City, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Contractor's employees, or employees of any subcontractor hired by Contractor, are not authorized to work in the United States for Contractor or its subcontractor and/or any other claims based upon alleged IRCA violations committed by Contractor or Contractor's subcontractors.

## **PART 2 - PRODUCTS – NOT USED**

## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 4200****REFERENCES AND DEFINITIONS****PART 1 - GENERAL****1.01 SUMMARY**

## A. Section Includes:

1. Reference standards, abbreviations, symbols, and definitions used in Contract Documents.
2. Full titles are given in this Section for standards cited in other Sections of Specifications.

**1.02 REFERENCE TO STANDARDS AND SPECIFICATIONS OF TECHNICAL SOCIETIES;  
REPORTING AND RESOLVING DISCREPANCIES**

## A. References

1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code, or laws or regulations in effect at the time of opening of Bids, except as may be otherwise specifically stated in the Contract Documents.
2. If during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such law or regulation applicable to the performance of the Work or of any such standard, specification, manual, or code or of any instruction of any supplier, Contractor shall report it in writing at once to City's Representative and Architect/Engineer, and Contractor shall not proceed with the Work affected thereby until consent to do so is given by City.

## B. Precedence

1. Except as otherwise specifically stated in the Contract Documents or as may be provided by Change Order, CCD, or Supplemental Instruction, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
  - a. The provisions of any such standard, specification, manual, code, or instruction (whether or not specifically incorporated by reference in the Contract Documents); or
  - b. The provisions of any such laws or regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such law or regulation).
2. No provision of any such standard, specification, manual, code, or instruction shall be effective to change the duties and responsibilities of City, City's Representative, Architect/Engineer or Contractor, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents, nor shall it be effective to assign to City, Architect/Engineer, or any of their consultants, agents, representatives or employees any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

C. Referenced Grades, Classes, and Types:

1. Where an alternative or optional grade, class, or type of product or execution is included in a reference but is not identified in Drawings or in Specifications, provide the highest, best, and greatest of the alternatives or options for the intended use and prevailing conditions.

D. Edition Date of References:

1. When an edition or effective date of a reference is not given, it shall be understood to be the current edition or latest revision published as of the date of opening Bids.
2. All amendments, changes, errata and supplements as of the effective date shall be included.

E. **ASTM and ANSI References:** Specifications and Standards of the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) are identified in the Drawings and Specifications by abbreviation and number only and may not be further identified by title, date, revision, or amendment. It is presumed that Contractor is familiar with and has access to these nationally- and industry-recognized specifications and standards.

### 1.03 DEFINITIONS

A. Meaning of Words and Phrases

Wherever any of the words or phrases defined below, or a pronoun used in place thereof, is used in any part of the Contract Documents, it shall have the meaning here set forth. Where abbreviations and symbols are used, such abbreviations and symbols shall be given their common meaning in the construction industry. In the Contract Documents, the neuter gender includes the feminine and masculine, and the singular number includes the plural.

While City has made an effort to identify all defined terms with initial caps, the following definitions shall apply regardless of case unless the context otherwise requires:

1. Addenda: Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the bidding requirements or the Contract Documents. Addenda shall not include the minutes of the Pre-Bid Conference and/or Site Visit.
2. Agreement (Document 00 5200): Agreement is the basic Contract Document that binds the parties to construction Work. Agreement defines relationships and obligations between City and Contractor and by reference incorporates Conditions of Contract, Drawings, and Specifications and contains Addenda and all Modifications subsequent to execution of Contract Documents.
3. Alternate: Work added to or deducted from the base Bid, if accepted by City.
4. Application for Payment: Written application for monthly or periodic progress or final payment made by Contractor complying with the Contract Documents.
5. Approved Equal: Approved in writing by City as being of equivalent quality, utility and appearance.
6. Architect/Engineer: If used elsewhere in the Contract Documents, "Architect/Engineer" shall mean a person (or that person's firm) holding a valid California State Architect's or Engineer's license representing the City in the administration of the Contract Documents. Architect/Engineer may be an employee of or an independent consultant to City. When Architect/Engineer is referred to within the Contract Documents and not an employee of City, Architect/Engineer shall be construed to include employees of Architect/Engineer and/or employees that Architect/Engineer supervises. When the designated Architect/Engineer is an employee of City, his or her authorized representatives on the Project will be included under the term Architect/Engineer. If Architect/Engineer is an employee of City, Architect/Engineer is the beneficiary of all Contractor obligations to City,

including without limitation, all releases and indemnities. Architect/Engineer may also be referred to as Architect or Engineer.

7. Asbestos: Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by OSHA or Cal/OSHA.
8. Bid: The offer or proposal of the Bidder submitted on the prescribed form(s) setting forth the prices for the Work to be performed.
9. Bidder: One who submits a Bid.
10. Bidding Documents: All documents comprising the Project Manual (including all documents and Specification Sections listed in Document 00 0110 [Table of Contents]), including documents supplied for bidding purposes only and Contract Documents.
11. Board: The governing body of the City.
12. Business Day: Any Day other than Saturday, Sunday, and the following days that have been designated as holidays by City. If a holiday falls on a Saturday, the preceding Friday will be the holiday. If a holiday falls on a Sunday, the following Monday will be the holiday.
  - a. New Year's Day, January 1;
  - b. Martin Luther King Jr.'s Birthday, third Monday in January;
  - c. Lincoln's Birthday, February 12;
  - d. Presidents' Day, third Monday in February;
  - e. Memorial Day, last Monday in May;
  - f. Independence Day, July 4;
  - g. Labor Day, first Monday in September;
  - h. Veterans' Day, November 11;
  - i. Thanksgiving Day, as designated by the President;
  - j. The Day following Thanksgiving Day;
  - k. Christmas Day, December 25; and
  - l. Each day appointed by the Governor of California and formally recognized by the Governing Board as a day of mourning, thanksgiving, or special observance.
13. By City: Work that will be performed by City or its agents at the City's expense.
14. By Others: Work that is outside scope of Work to be performed by Contractor under this Contract, which will be performed by City, other contractors, or other means.
15. Change Order: A written instrument prepared by City and signed by City and Contractor, stating their agreement upon all of the following:
  - a. a change in the Work;
  - b. the amount of the adjustment in the Contract Sum, if any; and
  - c. the amount of the adjustment in the Contract Time, if any.
16. Change Proposal Request (CPR): A document prepared by Contractor requesting or initiating a request for modifying the Contract Documents and determining costs for changes in contract amount and any requested changes to Contract Time.
17. City: City is defined in Document 00 5200 (Agreement).
18. City-Furnished, Contractor Installed: Items furnished by City at its cost for installation by Contractor at its cost under Contract Documents.
19. City's Representative(s): See Document 00 5200 (Agreement).
20. Code Inspector: A local or state agency responsible for the enforcement of applicable codes and regulations.
21. Concealed: Work not exposed to view in the finished Work, including within or behind various construction elements.

22. Construction Change Directive (“CCD”): A written order prepared and signed by City, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.
23. Contract Amount: a change order price, line item price, Contract Sum, or other price assigned to a scope of work.
24. Contract Conditions or Conditions of the Contract: Consists of two parts: General Conditions and Supplementary Conditions.
  - a. General Conditions are general clauses that are common to the City Contracts, including Document 00 7200 (General Conditions).
  - b. Supplementary Conditions modify or supplement General Conditions to meet specific requirements for Contract Documents, including Document 00 7201 (Supplementary Conditions).
25. Contract Documents and Contract: Contract Documents and Contract shall consist of the documents identified as the Contract Documents in Document 00 5200 (Agreement), plus all changes, Addenda, and modifications thereto.
26. Contract Modification: Either:
  - a. a written amendment to Contract signed by Contractor and City; or
  - b. a Change Order; or
  - c. a Construction Change Directive; or
  - d. a written directive for a minor change in the Work issued by City.
27. Contract Sum: The sum stated in the Agreement and, including authorized adjustments, the total amount payable by City to Contractor for performance of the Work and the Contract Documents. The Contract Sum is also sometimes referred to as the Contract Price or the Contract Amount.
28. Contract Time: The number or numbers of calendar days or the dates stated in the Agreement to achieve Substantial Completion of the Work or designated Milestones; and/or to achieve Final Completion of the Work so that it is ready for final payment and is accepted.
29. Contractor: The person or entity identified as such in the Agreement and referred to throughout the Contract Documents as if singular in number and neutral in gender. The term “Contractor” means the Contractor or its authorized representative.
30. Contractor’s Employees: Persons engaged in execution of Work under Contract as direct employees of Contractor, as Subcontractors, or as employees of Subcontractors.
31. Day: One calendar day of 24 hours measured from midnight to the next midnight, unless the word “day” is specifically modified to the contrary.
32. Defective: An adjective which, when modifying the word “Work,” refers to Work that is unsatisfactory or unsuited for the use intended, faulty, or deficient, that does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents (including but not limited to approval of Samples and “or equal” items), or has been damaged prior to final payment (unless responsibility for the protection thereof has been assumed by City). Unapproved substitutions are defective. City is the judge of whether Work is Defective.
33. Division of State Architect: A division of the State of California providing, design and construction oversight for K–12 schools and community colleges, and developing and maintaining accessibility standards and codes utilized in public and private buildings throughout the State of California.
34. Drawings: The graphic and pictorial portions of Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

35. Equal: Equal in opinion of City. Burden of proof of equality is responsibility of Contractor.
36. Final Acceptance or Final Completion: City's acceptance of the Work as satisfactorily completed in accordance with Contract Documents. Requirements for Final Acceptance/Final Completion include, but are not limited to:
  - a. Final cleaning is completed.
  - b. All systems having been tested and accepted as having met requirements of Contract Documents.
  - c. All required instructions and training sessions having been given by Contractor.
  - d. All Project Record Documents having been submitted by Contractor, reviewed by City, and accepted by City.
  - e. All punch list Work, as directed by City, having been completed by Contractor.
  - f. Generally all Work, except Contractor maintenance after Final Acceptance/Final Completion, having been completed to satisfaction of City.
37. Force Account: Work directed to be performed without prior agreement as to lump sum or unit price cost thereof, and which is to be billed at cost for labor, materials, equipment, taxes, and other costs, plus a specified percentage for overhead and profit.
38. Exposed: Work exposed to view in the finished Work, including behind louvers, grilles, registers and various other construction elements.
39. Furnish: Supply Indicated: Shown or noted on the Drawings.
40. Indicated: Shown or noted on the Drawings.
41. Install: Install or apply only, do not furnish.
42. Latent: Not apparent by reasonable inspection, including but not limited to, the inspections and research required as a condition to bidding under Document 00 7200 (General Conditions).
43. Law: Unless otherwise limited, all applicable laws including without limitation all federal, state, and local laws, statutes, standards, rules, regulations, ordinances, and judicial and administrative decisions.
44. Material: This word shall be construed to embrace machinery, manufactured articles, materials of construction (fabricated or otherwise), and any other classes of material to be furnished in connection with Contract, except where a more limited meaning is indicated by context.
45. Milestone: A principal event specified in Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all Work.
46. Modification: Same as Contract Modification.
47. Not in Contract or "NIC": Work that is outside the scope of Work to be performed by Contractor under Contract Documents.
48. Notice of Completion: Shall have the meaning provided in California Civil Code §3093, and any successor statute.
49. Off Site: Outside geographical location of the Project.
50. Owner: Owner is the City of Berkeley, see Document 00 5200 (Agreement).
51. Partial Utilization: Use by City of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all of the Work.
52. PCBs: Polychlorinated byphenyls.
53. Phase: A specified portion of the Work (if any) specifically identified as a Phase in Document 00 5200 (Agreement) or Document 01 1100 (Summary).

54. Product Data: That information (brochures, catalog sheets, manufacturer's cut sheets, etc.) supplied by vendors having technical and commercial characteristics of the supplied equipment or materials and accompanying commercial terms such as warranties, instructions, and manuals.
55. Progress Report: A periodic report submitted by Contractor to City with progress payment invoices accompanying progress schedule. See Document 00 7200 (General Conditions).
56. Project: Total construction of which Work performed under Contract Documents may be whole or part.
57. Project Manager: If used elsewhere in the Contract Documents, "Project Manager" shall mean a person representing the City in the administration of the Contract Documents. Project Manager may be an employee of or an independent consultant to City. When Project Manager is referred to within the Contract Documents and no Project Manager has in fact been designated, then the matter shall be referred to City. The term Project Manager shall be construed to include employees of Project Manager and/or employees that Project Manager supervises. When the designated Project Manager is an employee of City, his or her authorized representatives on the Project will be included under the term Project Manager. If Project Manager is an employee of City Project Manager is the beneficiary of all Contractor obligations to City, including without limitation, all releases and indemnities.
58. Project Manual: Project Manual consists of Bidding Requirements, Agreement, Bonds, Certificates, Contract Conditions, Drawings, and Specifications.
59. Project Record Documents: All Project deliverables required under the Contract Documents, including without limitation, as built drawings; Installation, Operation, and Maintenance Manuals; and Machine Inventory Sheets.
60. Provide: Furnish and install.
61. Request for Information ("RFI"): A document prepared by Contractor requesting information regarding the Project or Contract Documents. The RFI system is also a means for City to submit Contract Document clarifications or supplements to Contractor.
62. Request for Proposals ("RFP"): A document issued by City to Contractor whereby City may initiate changes in the Work or Contract Time as provided in Contract Documents.
63. Request for Substitution ("RFS"): A document prepared by Contractor requesting substitution of materials as permitted and to the extent permitted in Contract Documents.
64. RFI-Reply: A document consisting of supplementary details, instructions, or information issued by City that clarifies or supplements Contract Documents, and with which Contractor shall comply. RFI-Replies do not constitute changes in Contract Sum or Contract Time except as otherwise agreed in writing by City. RFI-Replies will be issued through the RFI administrative system.
65. Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
66. Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
67. Shown: As indicated on Drawings.
68. Site: The particular geographical location of Work performed pursuant to the Contract Documents.
69. Specifications: The written portion of the Contract Documents consisting of requirements for materials, equipment, construction systems, standards, and workmanship for the

Work; performance of related services.

70. Specified: As written in Specifications.
71. Subcontractor: A person or entity that has a direct contract with Contractor to perform a portion of the Work at the Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and neutral in gender and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.
72. Substantial Completion: The Work (or a specified part thereof) has progressed to the point where, in the opinion of City as evidenced by a notice or certificate of Substantial Completion, the Work is sufficiently complete, in accordance with Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended, and unperformed or incomplete work elements are minor in nature; or if no such certificate is issued, when the Work (or specified part) is complete and ready for final payment as evidenced by written recommendation of City for final payment. The terms "Substantially Complete" and "Substantially Completed" as applied to all or part of the Work refer to Substantial Completion thereof.
73. Supplemental Instruction: A written directive from City to Contractor ordering alterations or Modifications that do not result in change in Contract Sum or Contract Time, and do not substantially change Drawings or Specifications.
74. Testing and Special Inspection Agency: An independent entity engaged to inspect and/or test the workmanship, materials, or manner of construction of buildings or portions of buildings, to determine if such construction complies with the Contract Documents and applicable codes.
75. Time Impact Evaluation (TIE): A written narrative and a schedule diagram depicting how the changed Work or other impact affects other scheduled activities, prepared by Contractor in conjunction with a Change Proposal Request (CPR) for Change Orders, Time Extensions, and Delays. See Document 01 3230 (Progress Schedules and Submittals), and Document 01 2600 (Modification Procedures).
76. Underground Facilities: All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities that have been installed underground to furnish any of the following services or materials: Electricity, gases, chemicals, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
77. Unit Price Work: Shall be the portions of the Work for which a unit price is provided in Document 00 5200 (Agreement) or Section 01 1100 (Summary).
78. Work: The entire completed construction, or the various separately identifiable parts thereof, required to be furnished under the Contract Documents within the Contract Time. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents including everything shown in the Drawings and set forth in the Specifications. Wherever the word "work" is used, rather than the word "Work," it shall be understood to have its ordinary and customary meaning.

B. Other Defined Terms

The following terms are not necessarily identified with initial caps; however they shall have the meaning set forth below:

1. Wherever words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood that direction, requirements, or permission of City is intended.

Words “sufficient,” “necessary,” “proper,” and the like shall mean sufficient, necessary, or proper in judgment of City. Words “approved,” “acceptable,” “satisfactory,” “favorably reviewed,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to, or favorably reviewed by City.

2. Wherever the word “may” or “ought” is used, the action to which it refers is discretionary. Wherever the word “shall” or “will” is used, the action to which it refers is mandatory.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 4500****TESTING AND INSPECTION****PART 1 - GENERAL****1.01 SUMMARY**

## A. Section Includes:

1. Regulatory requirements for testing and inspection.
2. Contractor's quality control.
3. Quality of the Work.
4. Inspections and tests by governing authorities.
5. Inspections and tests by serving utilities.
6. Inspections and tests by manufacturer's representatives.
7. Inspections by Independent Testing and Inspection Agency.

**1.02 RELATED SECTIONS**

- A. Document 00 7200 General Conditions
- B. Section 01 4100 Regulatory Requirements

**1.03 CONTRACTOR'S QUALITY CONTROL**

- A. Contractor's Quality Control: Contractor shall ensure that products, services, workmanship and site conditions comply with requirements of the Drawings and Specifications by coordinating, supervising, testing and inspecting the work and by utilizing only suitably qualified personnel.
- B. Quality Requirements: Work shall be accomplished in accordance with quality requirements of the Drawings and Specifications, including, by reference, all Codes, laws, rules, regulations and standards. When no quality basis is prescribed, the quality shall be in accordance with the best accepted practices of the construction industry for the locale of the Project, for projects of this type.
- C. Quality Control Personnel: Contractor shall employ and assign knowledgeable and skilled personnel as necessary to perform quality control functions to ensure that the Work is provided as required.

**1.04 QUALITY OF THE WORK**

- A. Quality of Products: Unless otherwise indicated or specified, all products shall be new, free of defects and fit for the intended use.
- B. Quality of Installation: All Work shall be produced plumb, level, square and true, or true to indicated angle, and with proper alignment and relationship between the various elements.
- C. Protection of Completed Work: Take all measures necessary to preserve completed Work free from damage, deterioration, soiling and staining, until Acceptance by the City.
- D. Standards and Code Compliance and Manufacturer's Instructions and Recommendations: Unless more stringent requirements are indicated or specified, comply with manufacturer's instructions and recommendations, reference standards and building code research report requirements in

preparing, fabricating erecting, installing, applying, connecting and finishing Work.

- E. Deviations from Standards and Code Compliance and Manufacturer's Instructions and Recommendations: Document and explain all deviations from reference standards and building code research report requirements and manufacturer's product installation instructions and recommendations, including acknowledgement by the manufacturer that such deviations are acceptable and appropriate for the Project.
- F. Verification of Quality: Work shall be subject to verification of quality by City or Architect/Engineer in accordance with provisions of the General Conditions of the Contract.
  - 1. Contractor shall cooperate by making Work available for inspection by City, Architect/Engineer or their designated representatives.
  - 2. Such verification may include mill, plant, shop, or field inspection as required.
  - 3. Provide access to all parts of the Work, including plants where materials or equipment are manufactured or fabricated.
  - 4. Provide all information and assistance as required, including that by and from subcontractors, fabricators, materials suppliers and manufacturers, for verification of quality by City or Architect/Engineer.
  - 5. Contract modifications, if any, resulting from such verification activities shall be governed by applicable provisions in the General Conditions of the Contract.
- G. Observations by Architect/Engineer: Periodic and occasional observations of Work in progress will be made by Architect/Engineer as deemed necessary to review progress of Work and general conformance with design intent.
- H. Limitations on Inspection, Test and Observation: Neither employment of independent testing and inspection agency nor observations by Architect/Engineer shall in way relieve Contractor of obligation to perform Work in full conformance to all requirements of Contract Documents.
- I. Rejection of Work: City reserves the right to reject all Work not in conformance to the requirements of the Drawings and Specifications.
- J. Correction of Non-Conforming Work: Non-conforming Work shall be modified, replaced, repaired or redone by the Contractor at no change in Contract Sum or Contract Time.
- K. Acceptance of Non-Conforming Work: Acceptance of nonconforming Work, without specific written acknowledgement and approval of the City, shall not relieve the Contractor of the obligation to correct such Work.
- L. Contract Adjustment for Non-Conforming Work: Should City determine that it is not feasible or in City's interest to require non-conforming Work to be repaired or replaced, an equitable reduction in Contract Sum shall be made by agreement between City and Contractor. If equitable amount cannot be agreed upon, a Construction Change Directive will be issued and the amount in dispute resolved in accordance with applicable provisions of the General Conditions.

#### **1.05 INSPECTIONS AND TESTS BY GOVERNING AUTHORITIES**

- A. Regulatory Requirements for testing and Inspection: Comply with Uniform Building Code (UBC) requirements and all other requirements of governing authorities having jurisdiction.
- B. Inspections and Tests by Governing Authorities: Contractor shall cause all tests and inspections required by governing authorities having jurisdiction to be made for Work under this Contract.
  - 1. Such authorities include the Division of Occupational Safety and Health (Cal/OSHA), City of Berkeley Public Works Department, Fire Department, and similar agencies.
  - 2. Except as specifically noted, scheduling, conducting and paying for such inspections shall be solely the Contractor's responsibility.

**1.06 INSPECTIONS AND TESTS BY SERVING UTILITIES**

- A. Inspections and Tests by Serving Utilities: Contractor shall cause all tests and inspections required by serving utilities to be made for Work under this Contract. Scheduling conducting and paying for such inspections shall be solely the Contractor's responsibility.

**1.07 INSPECTIONS AND TESTS BY MANUFACTURER'S REPRESENTATIVES**

- A. Inspections and Tests by Manufacturer's Representatives: Contractor shall cause all tests and inspections specified to be conducted by materials or systems manufacturers to be made. Additionally, all tests and inspections required by materials or systems manufacturers as conditions of warranty or certification of Work shall be made, the cost of which shall be included in the Contract Sum.

**1.08 INSPECTIONS BY INDEPENDENT TESTING AND INSPECTION AGENCY**

- A. City will select an independent testing and inspection agency or agencies to conduct tests and inspections as indicated on Drawings, in Specifications and as required by governing authorities having jurisdiction.
- B. Responsibility for payment for tests and inspections shall be as indicated in schedule below. All time and costs for Contractor's service related to such tests and inspections shall be included in Contract Time and Contract Sum.
- C. Contractor shall notify City and, if directed by City, testing and inspection agency, when Work is ready for specified tests and inspections.
- D. Contractor shall pay for all additional charges by testing and inspection agencies and governing authorities having jurisdiction due to the following:
1. Contractor's failure to properly schedule or notify testing and inspection agency or authorities having jurisdiction.
  2. Changes in sources, lots or suppliers of products after original tests or inspections.
  3. Changes in means methods, techniques, sequences and procedures of construction which necessitate additional testing, inspection and related services.
  4. Changes in mix designs for concrete and mortar after review and acceptance of submitted mix design.
- E. Tests and inspections shall include the following: None
- F. Test and Inspection Reports: After each inspection and test, one copy of report shall be promptly submitted each to Architect/Engineer, City, City's field representative, Contractor and to agency having jurisdiction (if required by Code).
1. Reports shall clearly identify the following:
    - a. Date issued.
    - b. Project name and number.
    - c. Identification of product and Specifications Section in which Work is specified.
    - d. Name of inspector.
    - e. Date and time of sampling or inspection.
    - f. Location in Project where sampling or inspection was conducted.
    - g. Type of inspection or test.
    - h. Date of test.
    - i. Results of tests.
    - j. Comments concerning conformance with Contract Documents and other requirements.
  2. Test reports shall indicate specified or required values and shall include statement whether test results indicate satisfactory performance of products.

3. Samples taken but not tested shall be reported.
4. Test reports shall confirm that methods used for sampling and testing conform to specified test procedures.
5. When requested, testing and inspection agency shall provide interpretations of test results.
6. Verification reports shall be prepared and submitted, stating that tests and inspections specified or otherwise required for the project, have been completed and that material and workmanship comply with the Contract Drawings and Specifications. Verification reports shall be submitted at intervals not exceeding 6 months, at Substantial Completion of the Project, and at all times when Work of Project is suspended.

**G. Contractor Responsibilities in Inspections and Tests:**

1. Notify testing and inspection agencies 24 hours in advance of expected time for operations requiring inspection and testing services.
2. Deliver to laboratory or designated location, adequate samples of materials proposed to be used which require advance testing, together with proposed mix designs.
3. Cooperate with testing and inspection agency personnel, City's field representative, Architect/Engineer. Provide access to Work areas and off-site fabrication and assembly locations, including during weekends and after normal work hours.
4. Provide incidental labor and facilities to provide safe access to Work to be tested and inspected, to obtain and handle samples at the Project site or at source of products to be tested, and to store and cure test samples.
5. Provide, at least 15 calendar days in advance of first test or inspection of each type, a schedule of tests or inspections indicating types of tests or inspections and their scheduled dates.
6. Provide 24 hours advance notice to the Project Manager, Architect/Engineer of each test and inspection, as directed.
  - a. When tests or inspections cannot be performed after such notice, reimburse City for Testing Laboratory personnel and travel expenses incurred due to Contractor's negligence.

**1.09 ADDITIONAL TESTING AND INSPECTION**

- A. If initial tests or inspections made by the Testing Laboratory reveal that materials do not comply with Contract Documents, or if City has reasonable doubt that materials do not comply with Contract Documents, additional tests and inspections shall be made as directed.
1. If additional tests and inspections establish that materials comply with Contract Documents, all costs for such tests and inspections shall be paid by City.
  2. If additional tests and inspections establish that materials do not comply with Contract Documents, all costs of such tests and inspections shall be deducted for Contract Sum.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

## SECTION 01 5200

## TEMPORARY FACILITIES

**PART 1 - GENERAL****1.01 RELATED DOCUMENTS**

- A. General Conditions Document 00 7200
- B. Supplemental General Conditions Document 00 7201

**1.02 SUMMARY**

- A. This section describes the temporary facilities required for the Project site. The Project site shall be maintained by Contractor as set forth in this section unless otherwise added to or superseded by the requirements of Document 00 7200 (General Conditions).

**1.03 TEMPORARY FACILITIES**

- A. Contractor shall obtain permits for, install and maintain in safe condition, whatever scaffolds, hoisting equipment, barricades, walkways, or other temporary structures which may be required to accomplish the work on the Project. Such structures shall be adequate for the intended use and capable of safely accepting all loads that may be imposed upon them. They shall be installed and maintained in accordance with all applicable State and local codes and regulations.
- B. Contractor shall provide and maintain temporary heat from an approved source whenever in the course of the Work it may become necessary for curing and drying of materials, or to warm spaces as may be required for the installation of materials or finishes.
- C. Contractor shall provide and maintain any and all facilities that may be required for dewatering in order that work may proceed on the Project. If it is necessary for dewatering to occur continually, Contractor shall have on hand whatever spare parts or equipment that may be required to prevent interruption of dewatering.
- D. Contractor shall provide and maintain all utility services necessary to perform the work under this Contract.
- E. Materials, tools, accessories, etc., shall be stored only where directed by City. Storage area shall be kept neat and clean. Security of stored items shall be Contractor's responsibility.
- F. Flammable materials stored on site, shall be stored in a safe and secure manner per the manufacture's direction. Extra precautions, including clear identification, shall be the responsibility of Contractor.
- G. Contractor shall maintain an office at the Project site that will be his headquarters for the Project. Any communications delivered to this office shall be considered as delivered to Contractor. Location and size of office shall be such that it will adequately serve the needs of Contractor's superintendent and assistants in the performance of their duties.
- H. Contractor shall promptly remove all such temporary facilities when they are no longer needed for the work or for completion of the Project, mutually agreed upon by Contractor and City.

**1.04 SIGNS**

- A. No signs may be displayed on or about the City's property (except those required by law) without the City's specific approval; the size, content, and location to be as specified by the

City.

**1.05 USE OF ROADWAYS AND WALKWAYS**

- A. Contractor shall never block or interfere with use of any existing roadway, walkway or other facility for vehicular or pedestrian traffic, from any party entitled to use it. Wherever and whenever such interference becomes necessary for the proper and convenient performance of the Work, and no satisfactory detour route exists, Contractor shall, before beginning the interference, notify City and post signs at least 72 hours in advance of such interference, and provide a satisfactory detour, including temporary bridge if necessary, or other proper facility for traffic to pass around or over the interference. Contractor shall maintain the detour in a safe and satisfactory condition as long as the interference continues, all without extra payment unless otherwise expressly stipulated in the Specifications.
- B. Contractor shall at all times comply with any and all requirements applying to the work under the transportation, circulation and parking mitigation measures, truck and construction access plan.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 5526****TRAFFIC CONTROL**

Contractor shall provide traffic control throughout the project as needed for the various traffic situations and street configurations in full conformance with the latest "California Manual on Uniform Traffic Control Devices and the Federal Highway Administration (FHWA) Manual of Uniform Traffic Control Devices (MUTCD) latest edition, as amended for use in California" herein after referred to as Traffic Control Manual. The Traffic Control Manual may be obtained online at <http://www.dot.ca.gov/trafficops/camutcd/camutcd2014rev2.html>.

As required, the Contractor shall submit a Traffic Control Plan to the City of Berkeley's Transportation Division or the California Department of Transportation (Caltrans).

Construction area signs and temporary traffic control devices shall be furnished, installed, maintained and removed by the Contractor. Traffic signage, e.g., warning signs and detour signs, may be required for this project. Contractor shall be responsible for placing all barricades for perimeter street closures as required. Per Section 501.10 – Traffic Control of the General Provisions, at main entry and exit points of each work location, the Contractor shall provide a 30" x 30" sign advising the public of the anticipated period of time that traffic delays may be anticipated. This sign will also include name and telephone number of the Contractor along with starting and completion dates of the contract. Sign will be erected 7 calendar days in advance of any work.

Construction work requiring traffic control on San Pablo Avenue (State Route 123) or Ashby Avenue (State Route 13) will require an encroachment permit from Caltrans. Contractor is solely responsible for obtaining and abiding by any necessary encroachment permits. The permit fees and other associated costs to obtain the required permits from the State of California shall be included in the cost bid for this item. Contractor shall be responsible for providing traffic control plan for encroachment permit to and obtaining approval of said traffic control plan from State of California. Contractor shall be responsible for all notification of work to, application for and obtaining work authorization number from Caltrans. Any damages arising from work related to encroachment permit shall be the responsibility of the Contractor.

The Contractor shall be responsible for posting "No Parking" signs a minimum of four calendar days in advance of concrete work, paving operations, failed area, and planning work so as to comply with the City's construction notification requirement of 4 days. Cones shall not be used as barricades. "No Parking" signs may be obtained from the City at no cost to the Contractor. The "No Parking" signs shall be updated as necessary. The Contractor shall check and maintain (e.g., re-install missing signs, reposition displaced barricades, etc.) postings on a regular basis prior to start of work.

If traffic is to be detoured over a centerline or detoured in advance of the work, detour plans must be part of the submitted Traffic Control plans and approved by the City prior to starting work. Police, Fire and Public Works Department shall be notified by the contractor at least four calendar days in advance of any work which will interfere with the normal flow of vehicular or pedestrian traffic. Intersection closure may only occur if the two adjacent intersections remain open, unless otherwise approved by the City. The Contractor shall coordinate his traffic control/diversion plan with the City, a minimum of 3 weeks prior to starting work, to assure that traffic is diverted in a safe and convenient manner.

**Truck routes shall be approved by the City prior to start of work.**

Truck traffic is not allowed on Marin Avenue within the City of Albany. Personal vehicles of the Contractor's employees shall not be parked within the area of work.

A minimum of one (paved) traffic lane, not less than 12 ft. wide, shall remain open for use by public traffic during construction operations. When construction operations are not actively in progress, not less than two such lanes shall be open to public traffic. The Contractor may be allowed to close residential streets if approved in writing in advance by the City. No work that interferes with public traffic shall be performed between 6:00 p.m. and 7:00 a.m.

Start of work shall be no earlier than 7:00 a.m. No work process, including starting, warm up, and delivery of equipment, shall be done outside of work hours. The use of vehicle horns to alert residents to move their vehicles out of the construction zone is not permitted. The Contractor should attempt to locate vehicle owners by knocking on doors.

The full width of the traveled way shall be open for use by public traffic on Saturdays, Sundays and designated legal holidays, and when construction operations are not actively in progress, unless specified otherwise.

Minor deviations from the requirements of this section concerning hours of work may be permitted upon the written request of the Contractor, if in the opinion of the City, public traffic will be better served and the work expedited. Such deviations shall not be adopted until the City provides written approval.

The traffic control system shall consist of closing traffic lanes in accordance with the Traffic Control Manual. Signs and other devices for the traffic control system shall conform to the Traffic Control Manual.

If any component in the traffic control system is damaged, displaced or ceases to operate or function as specified, from any cause during the progress of the work, the Contractor shall immediately repair said component to its original condition or replace said component and shall restore the component to its original location.

Lane closures may be made for work periods only. At the end of each work period, all components of the traffic control system shall be removed from the traveled way, shoulder and auxiliary lanes. If the Contractor so elects, said components may be stored at selected central locations approved by the City within the limits of the public right-of-way.

Sufficient barricades and flashing lights shall also be placed to supplement all traffic signs used to divert and control traffic. Signs and barricades shall be checked periodically every day and replaced or repaired as necessary. Any hazardous conditions shall be immediately eliminated.

The Contractor, at the end of each day, shall provide ADA compliant pedestrian and vehicle crossings at all street intersections. If the project is left open overnight, it shall be graded in such a way that pedestrians and vehicles can safely pass through the project. Temporary concrete, asphalt, or wood ramps shall be installed and maintained at all locations where existing ramps have been temporarily removed.

Cleanliness is extremely important. Dust producing conditions shall be eliminated as soon as they are created.

If Contractor violates any of these provisions, a fine of \$1,000 will be assessed for the first violation, \$5,000 for the second and \$10,000 for the third and further subsequent violations.

### ACCESS AND EGRESS

The Contractor shall endeavor to cooperate with all business owners and residents occupying properties fronting on the streets in the matter of access and egress. **Contractor shall maintain a clear and accessible pedestrian corridor.**

Where a business property has more than two vehicular paths of access, one path, 10 feet in width, shall remain open during all business hours, unless accepted by the City.

## LANE CLOSURES

No lane closures shall be permitted on the following streets Monday through Friday between 7:00 A.M. – 9:00 A.M. and 4:00 P.M. – 6:00 P.M., and Saturdays between 10:00 A.M. – 2:00 P.M., unless approved in advance by the City, if it can be explained why such closure cannot reasonably be avoided. On Saturdays when UC football games are scheduled all construction-related lane closures along these corridors must be reopened at least 4 hours before the start of the game and remain open for 2 hours after the conclusion of the game.

### Major Streets:

- University Avenue
- San Pablo Avenue
- Shattuck Avenue
- Telegraph Avenue
- Sacramento Street
- Martin Luther King Jr. Way
- Ashby Avenue
- College Avenue
- Gilman Avenue
- Adeline Street

Notwithstanding the above, the City reserves the right to review and comment on each individual traffic control plan based on its own merits.

Note: Routine maintenance, inconvenience to construction method or schedule, or adverse impacts on cost of work will generally not be accepted as grounds for exceptions.

**END OF SECTION**

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## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 5700****TEMPORARY CONTROLS****PART 1 - GENERAL****1.01 RELATED DOCUMENTS**

- A. General Conditions Document 00 7200
- B. Supplemental General Conditions Document 00 7201

**1.02 SUMMARY**

- A. This section describes the temporary controls required for the Project site. The Project site shall be maintained by Contractor as set forth in this section unless otherwise added to or superseded by the requirements of Document 00 7200 (General Conditions).

**1.03 TEMPORARY CONTROLS**

- A. Contractor shall obtain permits for, install and maintain in safe condition, whatever scaffolds, equipment, shoring, barricades, walkways, or other temporary structures which may be required to accomplish the Work. Such items shall be adequate for the intended use and shall be installed and maintained in accordance with all applicable State and local codes and regulations.
- B. The Contractor shall perform a pre-construction audio/video tape survey and provide supplemental photographic documentation to adequately document the condition of existing improvements. It is the responsibility of the Contractor to adequately document the condition of existing improvements and the Contractor may be held liable for any damage or condition whose pre-existence he/she is unable to document. No additional compensation for such tape survey and still photographs will be allowed.
- C. Upon notification of the City, the Contractor shall correct any deficiencies of the temporary controls within 72 hours. The City may request City crews or contract with another contractor to perform the necessary work and repairs if the deficiencies have not been corrected after the 72-hour notification. The Contractor shall pay the cost of the work performed by the City crews or other contractor plus an additional seventy percent (70%) surcharge by deduction from payment due on the contract.
- D. The Contractor shall begin cleanup operation at least one hour before the end of each day's work, clean all paved portions of the project and paved streets leading from the project that have dust-producing materials or debris deposited upon them. The work areas shall be swept clean at the end of each day's work and at other times when directed by the City.

**1.04 DUST AND DEBRIS CONTROLS**

- A. The Contractor shall be responsible for controlling dust in the air and rocks, debris, mud or dirt which are scattered as a result of his operations on the job. The Contractor shall be responsible for cleaning all mud, rock, dust, dirt, and debris-producing materials that originate in the project area and are deposited on other public or private property by truck tires, spillages, or by other means. The Contractor shall have suitable and adequate street cleaning equipment on the project site at all times.
- B. The Contractor shall endeavor, whenever possible, to restrict the use of water to control dust for his convenience in order to conserve water during drought situations or

mandated rationing required by the Water Utility Company. Whenever flushing of streets or any other work is necessary, the Contractor shall provide filter materials at the catch basin to retain any debris and dirt flowing into the City's drainage system.

- C. The cost of the above work, including the providing of barricades, water and other materials, labor, and equipment shall be at the sole cost and expense of the Contractor.
- D. The City may determine that an emergency exists when dust, rocks, debris, mud, or dirt are scattered in the public right of way or in the private properties as a result of Contractor's activities and/or deterioration of such conditions due to rain. The emergency conditions may also be declared when traffic or the Contractor's equipment travelling through a job causes dust to fly or rocks, debris, mud, or dirt to be scattered. Similar emergency conditions may be determined by the City's Representative if the storage of materials, tools, or any other equipment related to the project, in the public rights of way, is causing any obstruction or blocks access to the neighboring properties and/or dangerously placed without proper barricades and lights and/or backfill stockpiles or debris washing away into the street gutter and catch basins.

#### **1.05 NOISE CONTROL**

- A. Equipment which operates with noise levels in excess of 85 decibels measured on the A-weighted scale defined in ANSI S-1.4 at a distance of 100 feet from the equipment is prohibited.
- B. All equipment and impact tools shall have mufflers to comply with specified noise control.
- C. Use of unusually noisy equipment, such as jackhammers and roto-hammers is prohibited.
- D. Exterior construction work is limited to the hours of 8 AM to 5 PM.
- E. Cooperate with City if an ongoing construction activity becomes objectionable by its longevity, or by overlapping into an activity started later by the City. It is understood and agreed that both parties shall cooperate so that neither will be unduly inconvenienced by this requirement.
- F. Comply by requirements specified in the various sections.

#### **1.06 CLEAN UP**

- A. The Contractor shall not allow the site of the work to become littered with trash, rubbish, and waste material but shall maintain the same in a neat and orderly condition throughout the construction period. Cleanup, debris and dust control shall be a daily maintenance requirement. The City shall have the right to determine what is or is not trash, rubbish or waste material and the place and manner of disposal.
- B. The Contractor shall maintain a neat appearance to the work. Contractor shall promptly remove splattered concrete, asphalt, oil, paint, corrosive liquids and cleaning solutions from surfaces to prevent marring or other damage.
- C. Broken concrete debris, and unsuitable excavated native soil during construction shall be disposed of concurrently with its removal. If stockpiling is necessary all debris shall be placed in trash bins daily and shall be removed or disposed of weekly. Any waste shall not be buried on the site or disposed of into storm drains, sanitary sewers, streams, or waterways.
- D. Forms or falsework that are to be re-used shall be stacked neatly concurrently with their removal. Forms and falsework that are not to be re-used shall be disposed of concurrently with their removal.
- E. Full compensation for conforming to the provisions in this section, not otherwise provided for, shall be considered as included in prices paid for the various contract items of work involved and no additional compensation will be allowed therefore.
- F. Sidewalks, street area, parking strips, and driveway approaches must be kept reasonably

clean at all times during construction and be completely and carefully cleaned after the work has progressed beyond the immediate vicinity to the satisfaction of the City's Representative. Reasonable cleanup is defined as no dust, rock, or mud on any portion of the public right-of-way or the private properties as a result of the Contractor's work.

#### **1.07 EMERGENCY CLEAN UP WORK**

- A. In any case in which the Contractor fails to satisfactorily complete the cleanup work described in this section, the City may determine that an emergency exists. In the event an emergency is determined by the City, the Contractor will be notified by the City to correct the violation immediately. The Contractor shall immediately make available manual labor or mechanical equipment capable of handling the cleaning process. During such an emergency, City forces may be called upon to complete the cleanup work, or the City may contract for the cleanup work. All construction work shall be shut down during this cleanup work by the City/contract forces. The City may shut down further construction work until the violations are corrected to the satisfaction of the City. The cost of the work performed by City/Contract forces plus an additional 70% surcharge shall be paid by the Contractor by deduction from payment due him on the contract. No compensation shall be given to the Contractor for stoppage of work.
- B. Such action by the City, however, shall not relieve the Contractor of his responsibility for any damages which may occur before, during or after such action has been taken by the City, and shall place no liability upon the City.

#### **1.08 FINAL CLEAN UP**

- A. Upon completion of the work, and before acceptance and final payment, the Contractor shall clean the project areas and remove all surplus and discarded materials, falsework, rubbish and temporary structures and restore in an acceptable manner all property, both public and private, which has been damaged during the prosecution of the work, and shall leave the improvement in a neat and presentable condition throughout the entire length of the improvement under contract to the satisfaction of the City. If the Conditions as noted above are not corrected immediately, the City may declare an emergency and take necessary action in accordance with the Emergency Cleanup Work section of this specification.

#### **1.09 CLEAN UP AND SAFETY**

- A. If the Contractor stockpiles granular material in the gutter, he must provide a minimum 4" pipe below the stockpile in the gutter to accommodate typical gutter flow. Any lumber or stockpiles on the site, not ready for immediate use, shall be free of nails or torn edges that may cause injury. Any materials stockpiled in the street and any open excavation shall have barricades equipped with operative automatic flashers placed at each end. The Contractor shall maintain a neat appearance at all times. All material removed shall be disposed of off-site in a legal manner.
- B. The Contractor must take special precautions to protect the public and City employees from bodily and property damage resulting from the work. Contractor must exercise all necessary precautions to ensure a safe execution of the work.

#### **1.10 CREEK PROTECTION**

- A. The Contractor shall be responsible for and conduct all aspects of the work within the requirements of BMC Chapter 17.08 – PRESERVATION AND RESTORATION OF NATURAL WATERCOURSES (Creek Ordinance), and any other creek protection requirements by other agencies.
- B. Portions of Work involving a creek channel may not be permitted between October 15 through April 15 or other dates as may be stipulated in applicable permits.

- C. Any work between creek banks shall be conducted to not create conditions, which will allow erosion, and shall be fully restored to at least the same erosion resistant condition as before the Work.
- D. Complying with the requirements of creek protection shall include but not be limited to scheduling the Work around any time periods prohibiting work within creek limits, installing erosion control measures and employing appropriate BMPs for controlling erosion, monitoring, updating and modifying BMPs to meet the requirements for changing site conditions to comply with erosion control and creek protection, replanting creek banks to reestablish erosion resistance and bank stability.

#### 1.11 PROJECT SITE MAINTENANCE

- A. Water Pollution Control. The intent of these requirements is to enforce federal, state, and other local agencies' regulations that prohibit storm water pollution at construction sites. Storm drains discharge directly to creeks and the Bay without treatment, and discharge of pollutants (i.e., any substance, material, or waste other than uncontaminated storm water) into the storm drain system is strictly prohibited.
- B. The term "storm drain system" shall include storm water conduits, storm drain inlets and other storm drain structures, street gutters, channels, watercourses, creeks, lakes, and the San Francisco Bay.
- C. For the purpose of eliminating storm water pollution, the Contractor shall implement effective control measures at construction sites. There are several publications that provide guidance on selecting and implementing effective control measures known as Best Management Practices (BMPs). BMPs include schedules of activities, prohibition of specific practices, general good housekeeping practices, operational practices, pollution prevention practices, maintenance procedures and other management procedures to prevent the discharge of pollutants directly or indirectly to the storm drain system. BMPs also include the construction of some facilities that may be required to prevent, control, and abate storm water pollution. The reference publications are as follows:
  - 1. California Storm Water Best Management Practice Handbook - Industrial/Commercial
  - 2. California Storm Water Best Management Practice Handbook - Construction ActivityThese handbooks may be purchased from Blue Print Service (BPS), 1700 Jefferson St, Oakland, CA 94612.
  - 3. Manual of Standards for Erosion and Sediment Control Measures by the Association of Bay Area Governments (ABAG).
  - 4. Heavy Equipment Operation, Fresh Concrete & Mortar Application, Painting & Application of Solvents & Adhesives, Roadwork & Paving Activities, General Construction & Site Supervision, Parking Lots and Finish the Pour Right

These brochures are available at the Engineering Division, 1947 Center Street, 4th Floor, Berkeley, CA 94704.

#### 1.12 STORMWATER POLLUTION CONTROL

- A. Stormwater Pollution Control. The intent of these requirements is to comply with federal, state, and other local agencies' regulations that prohibit non-stormwater discharges to storm drain sewer systems, creeks and San Francisco Bay. Storm drain sewers discharge directly to creeks and the Bay without treatment, and discharge of pollutants (any substance, material, or waste other than rainfall derived stormwater) into the storm drain sewer system is strictly prohibited. Further, the Contractor is informed that Federally Endangered species have been identified in creeks within the City Limits. The storm drain sewer system, pollutants, and other relevant information are further defined in Berkeley Municipal Code (BMC) Chapter 17.20 DISCHARGE OF NON-STORMWATER

INTO CITY'S STORM DRAIN SYSTEM – REDUCTION OF STORMWATER POLLUTION, and the City's stormwater NPDES (National Pollutant Discharge Elimination System) Permit No. CAS612008. These documents are available upon request.

- B. Best Management Practices (BMP) and Source Control. The contractor shall use appropriate BMPs and source control techniques on the site(s) at all times, regardless of time of year or rainfall conditions, in order to prohibit the discharge of non-stormwater discharges into the storm drain sewer system, creeks, and Bay. BMPs shall be in conformance with the California Stormwater Quality Association's "Stormwater Best Management Practice Handbook", current edition.
- C. Water Pollution Control Plan (WPCP) and Coordinator. The Contractor shall prepare, submit for favorable review by the City, and implement a WPCP which shall contain at a minimum the items included in this section.
1. The Contractor shall designate an individual (to be approved by the City) available at all times of sufficient authority to halt work and implement BMPs and source control measures for the Contractor and all sub-contractors, suppliers, and other personnel that may be at the construction site(s), to prevent non-stormwater discharges from the construction site(s). This individual shall be the contact person for all matters of the project regarding non-stormwater discharges.
  2. The WPCP shall show the locations of all storm drains, storm drain pipes, creeks, creek culverts, points of entry (catch basins, inlets, outlets), and other features through which stormwater flows.
  3. The WPCP shall identify each point of entry and show how each entry point will be protected. The WPCP shall include a protocol for allowing drainage to flow properly during rainfall events WHILE STILL PREVENTING non-stormwater discharges from entering the storm drains, creeks, and Bay.
  4. The WPCP shall include descriptions and sketches of all BMPs, show locations and describe protocols for implementing and maintaining the following BMPs for but not limited to material storage, dewatering operations, bypass pumping, saw-cutting operations, pavement operations, concrete operations, grading and excavation operations, spill prevention and control, vehicle and equipment cleaning, vehicle and equipment operation and maintenance, litter control, dust control, pavement cleaning, and construction waste management.
  5. All employees, subcontractors, suppliers, and any others involved with the construction site(s) shall be trained in implementing, the importance of, and purpose of the WPCP.
  6. The WPCP shall be updated to meet changing stages of the construction site(s). Work shall not begin without the City completing its review and finding no exceptions taken on the WPCP and finding at City's sole discretion that the WPCP meets the intent and goals of the project.
  7. In addition, the Contractor shall observe the following guidelines:
    - a. Paving during wet weather:
      - i. No paving while it is raining.
      - ii. No paving of the top lift of asphalt concrete (AC) on any day that experiences  $\frac{1}{4}$ " of rain in a twenty-four period.
      - iii. No paving of bottom lift if previous seventy-two (72) hour period experienced more than  $\frac{1}{2}$ " of rain, unless directed by the City Engineer or his designee.
    - b. Store materials as required by BMPs.
    - c. Cover inlets and manholes when applying asphalt, seal coat, tack coat, slurry seal, fog seal, etc., and while sawcutting, grooving, and grinding, etc.
    - d. Place drip pans or absorbent materials under equipment when not in use.

- e. During wet weather, store paving equipment indoors or cover with tarp or other waterproof covering.
- f. Sweep site daily to prevent sand, gravel or excess asphalt from entering or being transported by rain into the storm drain system.
- g. Keep ample supplies of drip pans or absorbent materials on-site.
- h. If paving involves Portland cement concrete:
  - i. Do not wash out concrete trucks into storm drains, open ditches, streets, streams, etc. The Contractor shall prevent the discharge of pollutants from concrete operations by using measures to prevent run-on and run-off pollution, properly disposing of wastes, and by implementing the following BMP's:
    - a. Store all materials in waterproof containers or under cover away from drain inlets or drainage areas.
    - b. Avoid mixing excess amounts of Portland cement materials. Dispose of any excess materials properly.
    - c. Whenever possible, perform washout of concrete trucks off-site where discharge is controlled and not permitted to discharge to the storm drain system.
  - ii. For on-site washout:
    - a. Locate washout area at least fifty (50) feet from storm drains, open ditches or other water bodies, preferably in a dirt area.
    - b. Confine run-off from this area by constructing a temporary pit or bermed area large enough for the liquid and solid waste.
  - iii. Wash out concrete wastes into the temporary pit where the concrete can set, be broken up and then disposed of properly. If the volume of water is greater than what will allow concrete to set, allow the wash water to infiltrate and/or evaporate, if possible. Remove or vacuum the remaining silt and debris from the ponding or bermed area and dispose of it properly.
  - iv. Dispose of waste water from washing of exposed aggregate to dirt area. The dirt area shall be adequate to contain all the waste water and once the waste water has infiltrated, any remaining residue must be removed.
  - v. Collect and return sweepings from exposed aggregate concrete to a stockpile or dispose of the waste in trash container.
- D. Training. Contractor is responsible for ensuring all personnel, laborers, sub-contractors, suppliers, and any other personnel that are involved with the Work are trained in the importance of preventing non-stormwater discharges. Each worker shall be trained or certified as being trained before being allowed to work. Before any work begins, the Contractor shall submit and certify under penalty of perjury a list of all workers who have been trained on the importance of pollution prevention, BMP and source control operation and maintenance, and recognize the authority of the City to stop the work in the event of a non-stormwater discharge. The training shall include as a minimum, review of the BMP and WPCP, and all BMPs (including BMP operation and maintenance) that are planned for the Work.
- E. Enforcement. The City has the authority through this contract and appropriate sections of the BMC to enforce any portions of this section. City enforcement may include but is not limited to: citations, orders to abate, bills for City cleanup costs and administration, civil suits, and criminal charges and enforcement. Enforcement action by the City does not void or suspend any enforcement actions by other agencies, and actions by the City and other agencies shall be cumulative.
- F. Submittals and Contract Time. Contractor is cautioned and advised to have appropriately trained staff with any applicable certifications prepare all submittals for Storm Water Pollution Controls including the WPCP, and have appropriately trained staff available to meet with City staff to review the submittals. It is considered reasonable that the Contractor shall make a complete and acceptable submittal at least by the second

submission. The City reserves the right to deduct monies from payments due Contractor to cover additional costs of City's and Architect/Engineer's review beyond the second submission. Illegible submittals will be rejected and returned to the Contractor.

- G. Payment. There shall be no separate pay item for complying with the provisions of this section, unless a separate pay item is provided in the bid schedule.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

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## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7329****CUTTING AND PATCHING****PART 1 - GENERAL****1.01 SUMMARY**

- A. Contractor shall be responsible for all cutting, fitting, and patching required to complete the work and to:
  - 1. Make its several parts fit together properly,
  - 2. Uncover portions of the work to provide for installation of ill-timed work,
  - 3. Remove and replace defective work,
  - 4. Remove and replace work not conforming to requirements of Contract Documents,
  - 5. Provide routine penetrations of nonstructural surfaces for installation of electrical conduit, plumbing, and ductwork,
  - 6. Remove Samples of installed work as specified for testing.

**1.02 SUBMITTALS**

- A. Submit a written request to the Architect/Engineer two weeks in advance of executing any cutting or alteration that affects the following and is not specifically indicated on the Drawings as part of the Scope of Work:
  - 1. Work of the City or any separate contractor,
  - 2. The structural value or integrity of any element of the completed building,
  - 3. The integrity or effectiveness of weather-exposed or moisture-resistant elements or systems,
  - 4. The efficiency, operational life, maintenance, and safety of operational elements,
  - 5. The visual qualities of sight-exposed elements.
- B. The request shall include:
  - 1. The necessity for cutting or alteration,
  - 2. The effect on the work of the City or any separate contractor or on the structural or weatherproof integrity of the building,
  - 3. Description of the Proposed Work:
    - a. The scope of cutting, patching, alteration, or excavation,
    - b. The trades who will execute the work,
    - c. The products proposed to be used,
    - d. The extent of refinishing to be done.
  - 4. Alternatives to cutting and patching,
  - 5. Cost proposal, when applicable,
  - 6. Written permission of any separate contractor whose work will be affected.
- C. Should conditions of the work or the schedule indicate a change of products from the original installation, submit a request for substitution per Section 00 6325 Substitution Request Form.

**PART 2 - PRODUCTS****2.01 MATERIALS**

- A. Comply with specifications and standards for each specific product involved.

**PART 3 - EXECUTION****3.01 EXAMINATION**

- A. Examine existing conditions of the Project, including elements subject to damage or to movement during cutting and patching.
- B. After uncovering work, examine the conditions affecting the installation of products or performance of the Work.
- C. Report unsatisfactory or questionable conditions to the Project Manager in writing. Do not proceed with the work until the Project Manager has provided further instructions.

**3.02 PREPARATION**

- A. Provide adequate temporary support as necessary to assure the structural value or integrity of the affected portion of the work.
- B. Provide devices and methods to protect other portions of the Project from damage.
- C. Provide protection from the elements for that portion of the Project that may be exposed by cutting and patching work.

**3.03 PERFORMANCE**

- A. Execute cutting and demolition by methods that will prevent damage to other work and will provide proper surfaces to receive installation of repairs.
- B. Execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances, and finishes.
- C. All plumbing, mechanical, and electrical system elements shall be concealed, unless indicated otherwise.
- D. Restore work which has been cut or removed; install new products to provide completed work in accordance with requirements of Contract Documents.
- E. Fit work airtight to pipes, sleeves, ducts, conduit, and other penetrations through surfaces.
- F. Refinish entire surfaces as necessary to provide an even finish to match adjacent finishes.
  - 1. For continuous surfaces, refinish to nearest intersection.
  - 2. For an assembly, refinish the entire unit.

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7413****PROJECT CLEANING****PART 1 - GENERAL****1.01 SUMMARY**

- A. Maintain Project Site, surrounding areas and public properties free from accumulations of waste, debris, and rubbish, caused by operations.
- B. At completion of Work, remove waste materials, rubbish, tools, equipment, machinery and surplus materials, and clean all sight-exposed surfaces; leave Project Site clean and ready for occupancy.

**1.02 GENERAL**

- A. Conduct cleaning and disposal operation in accord with legal requirements.
  - 1. Do not burn or bury rubbish and waste materials on Project Site.
  - 2. Do not dispose of volatile wastes in storm or sanitary drains.
- B. Hazards control:
  - 1. Store volatile wastes in covered metal containers, and remove from premises daily.
  - 2. Prevent accumulation of wastes which create hazardous conditions.
  - 3. Provide adequate ventilation during use of volatile or noxious substances.

Note: Care shall be taken that discharge of volatile or noxious exhaust shall be shielded from air intakes of hospital mechanical systems.

**1.03 MATERIALS**

- A. Use only cleaning materials recommended by manufacturer of surface to be cleaned.
- B. Use cleaning materials only on surfaces recommended by cleaning material manufacturer.

**1.04 DUST CONTROL**

- A. Clean interior spaces prior to start of finish painting, and continue cleaning as required until painting is completed.

**1.05 DURING CONSTRUCTION**

- A. Execute cleaning daily to ensure Project Site, City's premises, adjacent and public properties are maintained free from accumulations of waste materials and rubbish.
- B. Wet down dry materials and rubbish to control dust.
- C. At reasonable intervals during progress of Work, clean Project Site and public properties, and dispose of waste materials, debris and rubbish.
- D. Provide on Project Site dump containers for collection of waste materials, debris and rubbish. Hospital waste containers shall not be used for construction waste.
- E. Remove waste materials, debris and rubbish from City's premises and legally dispose of off City's property.
- F. Vacuum clean interior areas when ready to receive finish painting, and continue vacuum cleaning on an as-needed basis until building is ready for substantial completion or

occupancy.

- G. Handle materials in a controlled manner with as few handlings as possible. Do not drop or throw materials.
- H. Schedule cleaning operations so that dust and other contaminants resulting from cleaning process will not fall on wet, newly painted surfaces.

#### **1.06 FINAL CLEANING**

- A. Employ experienced workers, or professional cleaners for final cleaning.
- B. In preparation for Substantial Completion or occupancy, conduct final inspection of sight-exposed interior and exterior surfaces, and of accessible concealed spaces.
- C. Remove grease, dust, dirt, stains, labels, fingerprints, and other foreign materials from sight-exposed finished surfaces; polish surfaces so designated to shine finish.
- D. Repair, patch and touch up marred surfaces to specified finish, and to match adjacent surfaces.
- E. Broom clean paved surfaces.
- F. Keep Project clean until it is occupied by the City.
- G. Clean equipment and fixtures to a sanitary condition.
- H. Clean or replace, if required, filters of operating equipment.
- I. Clean Debris from roofs, gutters, downspouts and drainage systems.

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7419****CONSTRUCTION WASTE MANAGEMENT AND DISPOSAL****PART 1 - GENERAL****1.01 RELATED DOCUMENTS**

- A. Drawings and general provisions of the Contract, including General and Supplementary Conditions and Division 01 Specification Sections, apply to this Section.

**1.02 SUMMARY**

- A. This Section includes administrative and procedural requirements for the following:
  - 1. Salvaging and recycling nonhazardous demolition and construction waste.
  - 2. Disposing of nonhazardous demolition and construction waste.
- B. Related Sections include the following:
  - 1. Division 01 Section "Temporary Facilities and Controls" for environmental-protection measures during construction.

**1.03 DEFINITIONS**

- A. Construction Waste: Building and site improvement materials and other solid waste resulting from construction, remodeling, renovation, or repair operations. Construction waste includes packaging.
- B. Demolition Waste: Building and site improvement materials resulting from demolition or selective demolition operations.
- C. Disposal: Removal off-site of demolition and construction waste and subsequent sale, recycling, reuse, or deposit in landfill or incinerator acceptable to authorities having jurisdiction.
- D. Recycle: Recovery of demolition or construction waste for subsequent processing in preparation for reuse.
- E. Salvage: Recovery of demolition or construction waste and subsequent sale or reuse in another facility.
- F. Salvage and Reuse: Recovery of demolition or construction waste and subsequent incorporation into the Work.

**1.04 PERFORMANCE REQUIREMENTS**

- A. General: Develop waste management plan that results in end-of-Project rates for a minimum salvage/recycling percent by weight of total waste generated by the Work, as required by the Berkeley Municipal Code 19.37 Berkeley Green Code..
- B. Salvage/Recycle Goals: Owner's goal is to salvage and recycle as much nonhazardous demolition and construction waste as possible.
  - 1. Demolition Waste:
    - a. Asphaltic concrete paving.
    - b. Concrete.
    - c. Concrete reinforcing steel.
    - d. Brick.
    - e. Concrete masonry units.

- f. Wood studs.
  - g. Wood joists.
  - h. Plywood and oriented strand board.
  - i. Wood paneling.
  - j. Wood trim.
  - k. Structural and miscellaneous steel.
  - l. Rough hardware.
  - m. Roofing.
  - n. Insulation.
  - o. Doors and frames.
  - p. Door hardware.
  - q. Windows.
  - r. Glazing.
  - s. Metal studs.
  - t. Gypsum board.
  - u. Acoustical tile and panels.
  - v. Carpet.
  - w. Carpet pad.
  - x. Demountable partitions.
  - y. Equipment.
  - z. Cabinets.
  - aa. Plumbing fixtures.
  - bb. Piping.
  - cc. Supports and hangers.
  - dd. Valves.
  - ee. Sprinklers.
  - ff. Mechanical equipment.
  - gg. Refrigerants.
  - hh. Electrical conduit.
  - ii. Copper wiring.
  - jj. Lighting fixtures.
  - kk. Lamps.
  - ll. Ballasts.
  - mm. Electrical devices.
  - nn. Switchgear and panelboards.
  - oo. Transformers.
2. Construction Waste:
- a. Site-clearing waste.
  - b. Masonry and CMU.
  - c. Lumber.
  - d. Wood sheet materials.
  - e. Wood trim.
  - f. Metals.
  - g. Roofing.
  - h. Insulation.
  - i. Carpet and pad.
  - j. Gypsum board.
  - k. Piping.
  - l. Electrical conduit.
  - m. Packaging: Regardless of salvage/recycle goal indicated above, salvage or recycle 100 percent of the following uncontaminated packaging materials:
    - 1. Paper.
    - 2. Cardboard.
    - 3. Boxes.
    - 4. Plastic sheet and film.

5. Polystyrene packaging.
6. Wood crates.
7. Plastic pails.

#### **1.05 SUBMITTALS**

- A. Waste Management Plan: Submit **3** copies of plan within **7** days of date established for the Notice to Proceed.
- B. See Evaluations for example of Waste Reduction Progress Reports in paragraph below.
- C. Waste Reduction Progress Reports: Concurrent with each Application for Payment, submit 3 copies of report. Include the following information:
  1. Material category.
  2. Generation point of waste.
  3. Total quantity of waste in tons
  4. Quantity of waste salvaged, both estimated and actual in tons
  5. Quantity of waste recycled, both estimated and actual in tons
  6. Total quantity of waste recovered (salvaged plus recycled) in tons
  7. Total quantity of waste recovered (salvaged plus recycled) as a percentage of total waste.
- D. Waste Reduction Calculations: Before request for Substantial Completion, submit **3** copies of calculated end-of-Project rates for salvage, recycling, and disposal as a percentage of total waste generated by the Work.
- E. Records of Donations: Indicate receipt and acceptance of salvageable waste donated to individuals and organizations. Indicate whether organization is tax exempt.
- F. Records of Sales: Indicate receipt and acceptance of salvageable waste sold to individuals and organizations. Indicate whether organization is tax exempt.
- G. Recycling and Processing Facility Records: Indicate receipt and acceptance of recyclable waste by recycling and processing facilities licensed to accept them. Include manifests, weight tickets, receipts, and invoices.
- H. Landfill and Incinerator Disposal Records: Indicate receipt and acceptance of waste by landfills and incinerator facilities licensed to accept them. Include manifests, weight tickets, receipts, and invoices.

#### **1.06 QUALITY ASSURANCE**

- A. Waste Management Coordinator Qualifications: Green Building Professional. Waste management coordinator may also serve as Green Building coordinator.
- B. Regulatory Requirements: Comply with hauling and disposal regulations of authorities having jurisdiction.

#### **1.07 WASTE MANAGEMENT PLAN**

- A. General: Develop plan consisting of waste identification, waste reduction work plan, and cost/revenue analysis. Indicate quantities by weight or volume, but use same units of measure throughout waste management plan.
- B. Waste Identification: Indicate anticipated types and quantities of demolition, site-clearing, and construction waste generated by the Work. Include estimated quantities and assumptions for estimates.
- C. Waste Reduction Work Plan: List each type of waste and whether it will be salvaged, recycled, or disposed of in landfill or incinerator. Include points of waste generation, total

quantity of each type of waste, quantity for each means of recovery, and handling and transportation procedures.

1. Salvaged Materials for Reuse: For materials that will be salvaged and reused in this Project, describe methods for preparing salvaged materials before incorporation into the Work.
2. Salvaged Materials for Sale: For materials that will be sold to individuals and organizations, include list of their names, addresses, and telephone numbers.
3. Salvaged Materials for Donation: For materials that will be donated to individuals and organizations, include list of their names, addresses, and telephone numbers.
4. Recycled Materials: Include list of local receivers and processors and type of recycled materials each will accept. Include names, addresses, and telephone numbers.
5. Disposed Materials: Indicate how and where materials will be disposed of. Include name, address, and telephone number of each landfill and incinerator facility.
6. Handling and Transportation Procedures: Include method that will be used for separating recyclable waste including sizes of containers, container labeling, and designated location on Project site where materials separation will be located.

D.

## **PART 2 - PRODUCTS – NOT USED**

## **PART 3 - EXECUTION**

### **3.01 PLAN IMPLEMENTATION**

- A. General: Implement waste management plan as approved by Construction Manager. Provide handling, containers, storage, signage, transportation, and other items as required to implement waste management plan during the entire duration of the Contract.
  1. Comply with Division 01 Section "Temporary Facilities and Controls" for operation, termination, and removal requirements.
- B. Waste Management Coordinator: Engage a waste management coordinator to be responsible for implementing, monitoring, and reporting status of waste management work plan.
- C. Training: Train workers, subcontractors, and suppliers on proper waste management procedures, as appropriate for the Work occurring at Project site.
  1. Distribute waste management plan to all relevant sub-contractor within 3 days of submittal return.
  2. Distribute waste management plan to entities when they first begin work on-site. Review plan procedures and locations established for salvage, recycling, and disposal.
- D. Site Access and Temporary Controls: Conduct waste management operations to ensure minimum interference with roads, streets, walks, walkways, and other adjacent occupied and used facilities.
  1. Designate and label specific areas on Project site necessary for separating materials that are to be salvaged, recycled, reused, donated, and sold.
  2. Comply with Division 01 Section "Temporary Facilities and Temporary Controls" for controlling dust and dirt, environmental protection, and noise control.

### **3.02 SALVAGING DEMOLITION WASTE**

- A. Salvaged Items for Reuse in the Work:

1. Clean salvaged items.
  2. Pack or crate items after cleaning. Identify contents of containers.
  3. Store items in a secure area until installation.
  4. Protect items from damage during transport and storage.
  5. Install salvaged items to comply with installation requirements for new materials and equipment. Provide connections, supports, and miscellaneous materials necessary to make items functional for use indicated.
- B. Salvaged Items for Owner's Use:
1. Clean salvaged items.
  2. Pack or crate items after cleaning. Identify contents of containers.
  3. Store items in a secure area until delivery to Owner.
  4. Transport items to Owner's storage area.
  5. Protect items from damage during transport and storage.
- C. Doors and Hardware: Brace open end of door frames. Except for removing door closers, leave door hardware attached to doors.

### **3.03 RECYCLING DEMOLITION AND CONSTRUCTION WASTE, GENERAL**

- A. General: Recycle paper and beverage containers used by on-site workers.
- B. Recycling Receivers and Processors: List below is provided for information only; available recycling receivers and processors include, but are not limited to, the following

The City of Berkeley Transfer Station  
1201 Second Streets, Berkeley, CA

- C. Procedures: Separate recyclable waste from other waste materials, trash, and debris. Separate recyclable waste by type at Project site to the maximum extent practical.
1. Provide appropriately marked containers or bins for controlling recyclable waste until they are removed from Project site. Include list of acceptable and unacceptable materials at each container and bin.
    - a. Inspect containers and bins for contamination and remove contaminated materials if found.
  2. Stockpile processed materials on-site without intermixing with other materials. Place, grade, and shape stockpiles to drain surface water. Cover to prevent windblown dust.
  3. Stockpile materials away from construction area. Do not store within drip line of remaining trees.
  4. Store components off the ground and protect from the weather.
  5. Remove recyclable waste off Owner's property and transport to recycling receiver or processor.

### **3.04 RECYCLING DEMOLITION WASTE**

- A. Asphaltic Concrete Paving: Break up and transport paving to asphalt-recycling facility.
- B. Concrete: Remove reinforcement and other metals from concrete and sort with other metals.
- C. Masonry: Remove metal reinforcement, anchors, and ties from masonry and sort with

other metals.

1. Clean and stack undamaged, whole masonry units on wood pallets.
- D. Wood Materials: Sort and stack members according to size, type, and length. Separate lumber, engineered wood products, panel products, and treated wood materials.
- E. Metals: Separate metals by type.
1. Structural Steel: Stack members according to size, type of member, and length.
  2. Remove and dispose of bolts, nuts, washers, and other rough hardware.
- F. Gypsum Board: Stack large clean pieces on wood pallets and store in a dry location. Remove edge trim and sort with other metals. Remove and dispose of fasteners.
- G. Equipment: Drain tanks, piping, and fixtures. Seal openings with caps or plugs. Protect equipment from exposure to weather.
- H. Plumbing Fixtures: Separate by type and size.
- I. Piping: Reduce piping to straight lengths and store by type and size. Separate supports, hangers, valves, sprinklers, and other components by type and size.
- J. Lighting Fixtures: Separate lamps by type and protect from breakage.
- K. Electrical Devices: Separate switches, receptacles, switchgear, transformers, meters, panelboards, circuit breakers, and other devices by type.
- L. Conduit: Reduce conduit to straight lengths and store by type and size.

### **3.05 RECYCLING CONSTRUCTION WASTE**

- A. Packaging:
1. Cardboard and Boxes: Break down packaging into flat sheets. Bundle and store in a dry location.
  2. Polystyrene Packaging: Separate and bag materials.
  3. Pallets: As much as possible, require deliveries using pallets to remove pallets from Project site. For pallets that remain on-site, break down pallets into component wood pieces and comply with requirements for recycling wood.
  4. Crates: Break down crates into component wood pieces and comply with requirements for recycling wood.
- B. Site-Clearing Wastes: Chip brush, branches, and trees.
- C. Wood Materials:
1. Clean Cut-Offs of Lumber: Grind or chip into small pieces.
  2. Clean Sawdust: Bag sawdust that does not contain painted or treated wood.
- D. Gypsum Board: Stack large clean pieces on wood pallets and store in a dry location.
1. Clean Gypsum Board: Grind scraps of clean gypsum board using small mobile chipper or hammer mill. Screen out paper after grinding.

### **3.06 DISPOSAL OF WASTE**

- A. General: Except for items or materials to be salvaged, recycled, or otherwise reused, remove waste materials from Project site and legally dispose of them in a landfill or incinerator acceptable to authorities having jurisdiction.
1. Except as otherwise specified, do not allow waste materials that are to be disposed

of accumulate on-site.

2. Remove and transport debris in a manner that will prevent spillage on adjacent surfaces and areas.
- B. Burning: Do not burn waste materials.
- C. Disposal: Transport waste materials off Owner's property and legally dispose of them.

**END OF SECTION**

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## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7700****CONTRACT CLOSEOUT****PART 1 - GENERAL****1.01 SUMMARY**

A. Section describes requirements and procedures for:

1. Project cleaning.
2. Testing of equipment and systems
3. Substantial Completion
4. Final Completion
5. Close Out
6. Warranties

**1.02 SUBSTANTIAL COMPLETION**

A. Removal of Temporary Construction Facilities and Project Cleaning.

1. Prior to Substantial Completion inspection: remove temporary materials, equipment, services, and construction; clean all areas affected by the Work; clean and repair damage caused by installation or use of temporary facilities; restore permanent facilities used during construction to specified condition.

B. Equipment and Systems.

1. Prior to Substantial Completion, Contractor shall start up, run for periods prescribed by City, operate, adjust and balance all manufactured equipment and Project systems, including but not limited to, mechanical, electrical, safety, fire, and controls.
2. Demonstrate that such equipment and systems conform to contract standards and manufacturer's guarantees. Where applicable, use testing protocols specified, and if the contract is silent, then consistent with manufacturer's recommendations and industry standards.

C. Procedure for Substantial Completion

1. When Contractor considers Work or designated portion of the Work as Substantially Complete, submit written notice to City, with list of items remaining to be completed or corrected and explanation of why such items do not prevent City's beneficial use and occupancy of the Work for its intended purposes. Within reasonable time, City will inspect to determine status of completion.
2. Should City determine that Work is not Substantially Complete, City will promptly notify Contractor in writing, listing all defects and omissions. Contractor shall remedy deficiencies and send a second written notice of Substantial Completion. City will reinspect the Work. If deficiencies previously noted are not corrected on reinspection, then pay the cost of the reinspection.
3. When City concurs that Work is Substantially Complete, City will issue a written notice or certificate of Substantial Completion, accompanied by Contractor's list of items to be completed or corrected as verified by City.
4. Manufactured units, equipment and systems that require startup must have been

started up and before a notice or certificate of Substantial Completion will be issued.

5. A punch list examination will be performed upon Substantial Completion. One follow-up review of punch list items for each discipline will be provided. If further Site visits are required to review punch list items due to incompleteness of the Work by Contractor, Contractor will reimburse City for costs associated with these visits.

### **1.03 FINAL COMPLETION**

#### **A. Requirements**

1. Final Completion occurs when Work meets requirements for City's Final Acceptance.

#### **B. Procedure**

1. When Contractor considers Work is Finally Complete, submit written certification that:
  - a. Contractor has inspected Work for compliance with Contract Documents, and all requirements for Final Acceptance have been met.
  - b. Except for Contractor maintenance after Final Acceptance, Work has been completed in accordance with Contract Documents and deficiencies listed with Certificate of Substantial Completion have been corrected. Equipment and systems have been tested in the presence of City, and are operative.
  - c. Project Record Documents are completed and turned over to City, and Work is complete and ready for final inspection.
2. In addition to submittals required by Contract Documents, provide submittals required by governing authorities and submit final statement of accounting giving total adjusted Contract Sum, previous payments, and sum remaining due.
3. Should City determine that Work is incomplete or Defective, City promptly will so notify Contractor, in writing, listing the incomplete or Defective items. Contractor shall promptly remedy the deficiencies and notify the City when it is ready for reinspection.

#### **C. Final Adjustments of Accounts:**

1. Submit a final statement of accounting to City, showing all adjustments to the Contract Sum and complete and execute Document 00 6530 (Agreement and Release of Claims).
2. If so required, City shall prepare a final Change Order for submittal to Contractor, showing adjustments to the Contract Sum that were not previously made into a Contract Modification.

#### **D. Warranties**

1. Execute Contractor's Submittals and assemble warranty documents, and Installation, Operation, and Maintenance Manuals, executed or supplied by Subcontractors, suppliers, and manufacturers. Provide table of contents and assemble in 8½ inches by 11 inches three-ring binder with durable plastic cover, appropriately separated and organized. Assemble in Specification Section order.
2. Submit material prior to final Application for Payment. For equipment put into use with City's permission during construction, submit within 14 calendar days after first operation. For items of Work delayed materially beyond Date of Substantial Completion, provide updated Submittal within 14 calendar days after acceptance, listing date of acceptance as start of warranty period.
3. Warranty Forms: Submit drafts to Owner for approval prior to execution. Forms shall not detract from or confuse requirements or interpretations of Contract Documents. Warranty shall be countersigned by manufacturers. Where specified, warranty shall be countersigned by Subcontractors and installers.

4. Rejection of Warranties: Owner reserves right to reject unsolicited and coincidental product warranties that detract from or confuse requirements or interpretations of Contract Documents.
  5. Term of Warranties: For materials, equipment, systems, and workmanship, warranty period shall be one year minimum from date of Final Completion of entire Work except where:
    - a. Detailed Specifications for certain materials, equipment or systems require longer warranty periods.
    - b. Materials, equipment or systems are put into beneficial use of City prior to Final Completion as agreed to in writing by City.
- E. Warranty of Title:
1. No material, supplies, or equipment for Work under Contract shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which an interest therein or any part thereof is retained by seller or supplier. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon completion of all Work to deliver premises, together with improvements and appurtenances constructed or placed thereon by Contractor, to City free from any claim, liens, security interest, or charges, and further agrees that neither Contractor nor any person, firm, or corporation furnishing any materials or labor for any Work covered by Contract shall have right to lien upon premises or improvement or appurtenances thereon. Nothing contained in this paragraph, however, shall defeat or impair right of persons furnishing materials or labor under bond given by Contractor for their protection or any rights under law permitting persons to look to funds due Contractor in hands of City.
- F. Turn-In. Contract Documents will not be closed out and final payment will not be made until all keys issued to Contractor during prosecution of Work and letters from property owners, pursuant to Contract Documents, are turned in to City.
- G. Release of Claims. Contract Documents will not be closed out and final payment will not be due or made until Document 00 6530 (Agreement and Release of Claims) is completed and executed by Contractor and City.
- H. Fire Inspection Coordination. Coordinate fire inspection and secure sufficient notice to City to permit convenient scheduling (if applicable).
- I. Building Inspection Coordination. Coordinate with City a final inspection for the purpose of obtaining an occupancy certificate (if applicable).

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION – NOT USED**

**END OF SECTION**

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## DIVISION 1 GENERAL REQUIREMENTS

**SECTION 01 7800****CLOSEOUT SUBMITTALS****PART 1 - GENERAL****1.01 SUMMARY**

- A. This section specifies administrative and procedural requirements for Project Record Documents.
- B. Project Record Documents required include:
  - 1. Marked-up copies of Contract Drawings
  - 2. Marked-up copies of Shop Drawings
  - 3. Newly prepared Drawings
  - 4. Marked-up copies of Specifications, Addenda and Change Orders
  - 5. Marked-up Project Data submittals
  - 6. Record Samples
  - 7. Field records for variable and concealed conditions
  - 8. Record information on Work that is recorded only schematically
- C. Specific Project Record Documents requirements that expand requirements of this Section are included in the individual Sections of Divisions 1 through 33.
- D. General Project closeout requirements are included in Section 01 7700, "Contract Closeout."
- E. Maintenance of Documents and Samples:
  - 1. Store Project Record Documents and samples in the field office apart from Contract Documents used for construction.
  - 2. Do not permit Project Record Documents to be used for construction purposes.
  - 3. Maintain Project Record Documents in good order, and in a clean, dry, legible condition.
  - 4. Make documents and samples available at all times for inspection by Architect and Project Manager.
- F. City will provide one set of sepias and one blueline set of the construction drawings and one project manual for the Contractor's use and copying during construction.

**1.02 PROJECT RECORD DRAWINGS**

- A. Mark-up Procedure: During the construction period, maintain a set of blueline or blackline prints of Contract Drawings and Shop Drawings for Project Record Document purposes. Label each document (on first sheet or page) "PROJECT RECORD" in 2 in. high printed letters. Keep record documents current. Note: A reference by number to a Change Order, RFI, RFQ, Field Order or other such document is not acceptable as sufficient record information on any record document. Do not permanently conceal any Work until required information has been recorded.
  - 1. Mark these Drawings to indicate the actual installation where the installation varies appreciably from the installation shown originally. Give particular attention to

information on concealed elements which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- a. Dimensional changes to the Drawings
  - b. Revisions to details shown on the Drawings
  - c. Depths of various elements of foundation in relation to main floor level or survey datum.
  - d. Horizontal and vertical location of underground utilities and appurtenances referenced to permanent surface improvements.
  - e. Location of internal utilities and appurtenances concealed in construction referenced to visible and accessible features of structure.
  - f. Establish locations of underground work, points of connection with existing utilities, changes in direction, valves, manholes, catch basins, capped stubouts, invert elevations, and similar items.
  - g. Provide actual numbering of each electrical circuit.
  - h. Field changes of dimension and detail.
  - i. Revisions to routing of piping and conduits
  - j. Revisions to electrical circuitry
  - k. Actual equipment locations
  - l. Duct size and routing
  - m. Changes made by Change Order
  - n. Details not on original Contract Drawings
2. Mark completely and accurately Project Record Drawing prints of Contract Drawings or Shop Drawings, whichever is the most capable of showing actual physical conditions. Where Shop Drawings are marked, show cross-reference on Contract Drawings location.
  3. Mark Project Record Drawing sets with red erasable colored pencil; use other colors to distinguish between changes for different categories of the Work at the same location.
  4. Mark important additional information which was either shown schematically or omitted from original Drawings.
  5. Note construction change directive numbers; alternate numbers; Change Order numbers and similar identification.
  6. Responsibility for Mark-up: Where feasible, the individual or entity who obtained Project Record Drawing data, whether the individual or entity is the installer, subcontractor, or similar entity, is required to prepare the mark-up on Project Record Drawings.
    - a. Accurately record information in an understandable and legible drawing technique.
    - b. Record data as soon as possible after it has been obtained. In the case of concealed installations, record and check the mark-up prior to concealment.
- B. Preparation of Transparencies: Immediately prior to inspection for Certification of Substantial Completion, review completed marked-up Project Record Drawings with the Project Manager]. When authorized, prepare a full set of correct transparencies of Contract Drawings and Shop Drawings.
1. Incorporate changes and additional information previously marked on print sets. Erase, redraw, and add details and notations where applicable. Identify and date each Drawing; include the printed designation "PROJECT RECORD DRAWINGS" in a prominent location on each Drawing.
  2. Refer instances of uncertainty to the Project Manager for resolution.
  3. Review of Transparencies: Before copying and distributing, submit corrected

transparencies and the original marked-up prints to the Project Manager and Architect/Engineer for review.

- a. Transparencies and the original marked-up prints will be returned to the Contractor for organizing into sets, printing, binding, and final submittal.
4. Copies and Distribution: After completing the preparation of transparency Project Record Drawings, print three blue-line or black-line prints of each Drawing, whether or not changes and additional information were recorded. Organize the copies into manageable sets. Bind each set with durable paper cover sheets, with appropriate identification, including titles, dates and other information on cover sheets.
- a. Organize and bind original marked-up set of prints that were maintained during the construction period in the same manner.
  - b. Organize Project Record Drawings transparencies into sets matching the print sets. Place these sets in durable tube-type drawing containers with end caps. Mark the end cap of each container with suitable identification.
- C. Distribution of Marked up Drawings and Transparencies
1. Submit the marked-up Project Record Drawings set, pdfs, transparencies, and five copy sets to the Project Manager for City's records.
- D. Shop Drawings and Samples: Maintain as record documents; legibly annotate Shop Drawings and Samples to record changes made after review.
- E. Delete Architect/Engineer title block and seal from documents.
- F. As-Built Documents are subject to review and acceptance by the City and Architect/Engineer.
- G. Submit documents to Project Manager with final Application for payment.

### **1.03 PROJECT RECORD SPECIFICATIONS**

- A. During the construction period, maintain one copy of the Project Specifications, including addenda and modifications issued, for Project Record Document purposes.
1. Mark the Project Record Specifications to indicate the actual installation where the installation varies substantially from that indicated in Specifications and Modifications issued. Note related Project Record Drawing information, where applicable. Give particular attention to substitutions, selection of product options, change order work, and information on concealed installation that would be difficult to identify or measure and record later.
    - a. In each Specification Section where products, materials or units of equipment are specified or scheduled, mark the copy with the proprietary name and model number of the product furnished.
    - b. Record the name of the manufacturer, catalog number, supplier and installer, and other information necessary to provide a record of selections made and to document coordination with Project Record Product Data submittals and maintenance manuals.
    - c. Note related Project Record Product Data, where applicable, for each principal product specified, indicate whether Project Record Product Data has been submitted in maintenance manual instead of submitted as Project Record Product Data.
  2. Upon completion of mark-up, submit Project Record Specifications to the Project Manager for City's records.

### **1.04 PROJECT RECORD PRODUCT DATA**

- A. During the construction period, maintain one copy of each Project Record Product Data submittal for Project Record Document purposes.

1. Mark Project Record Product Data to indicate the actual product installation where the installation varies substantially from that indicated in Project Record Product Data submitted. Include significant changes in the product delivered to the site, and changes in manufacturer's instructions and recommendations for installation.
  2. Give particular attention to information on concealed products and installations that cannot be readily identified and recorded later.
  3. Note related Change Orders and mark-up of Project Record Drawings, where applicable.
  4. Upon completion of mark-up, submit a complete set of Project Record Product Data to the Project Manager for City's records.
  5. Where Project Record Product Data is required as part of maintenance manuals, submit marked-up Project Record Product Data as an insert in the manual, instead of submittal as Project Record Product Data.
  6. Each prime Contractor is responsible for mark-up and submittal of record Project Record Product Data for its own Work.
- B. Material, Equipment and Finish Data
1. Provide data for primary materials, equipment and finishes as required under each specification section.
  2. Submit two sets prior to final inspection, bound in 8-1/2 inches by 11 inches three-ring binders with durable plastic covers; provide typewritten table of contents for each volume.
  3. Arrange by Specification division and give names, addresses, and telephone numbers of subcontractors and suppliers. List:
    - a. Trade names.
    - b. Model or type numbers.
    - c. Assembly diagrams.
    - d. Operating instructions.
    - e. Cleaning instructions.
    - f. Maintenance instructions.
    - g. Recommended spare parts.
    - h. Product data.

#### **1.05 MISCELLANEOUS PROJECT RECORD SUBMITTALS**

- A. Refer to other Specification Sections for miscellaneous record keeping requirements and submittals in connection with various construction activities. Immediately prior to Substantial Completion, complete miscellaneous records and place in good order, properly identified and bound or filed, ready for use and reference. Submit to the Project Manager for City's records. Categories of requirements resulting in miscellaneous records include, but are not limited to the following:
1. Field records on excavations and foundations
  2. Field records on underground construction and similar work
  3. Survey showing locations and elevations of underground lines
  4. Invert elevations of drainage piping
  5. Surveys establishing building lines and levels
  6. Authorized measurements utilizing unit prices or allowances
  7. Records of plant treatment

8. Ambient and substrate condition tests
9. Certifications received in lieu of labels on bulk products
10. Batch mixing and bulk delivery records
11. Testing and qualification of tradespersons
12. Documented qualification of installation firms
13. Load and performance testing
14. Inspections and certifications by governing authorities
15. Leakage and water-penetration tests
16. Fire resistance and flame spread test results
17. Final inspection and correction procedures

**PART 2 - PRODUCTS – NOT USED**

**PART 3 - EXECUTION**

**3.01 RECORDING**

- A. Post changes and modifications to the Documents as they occur. Do not wait until the end of the Project. City may review Project Record Documents prior to each progress payment to see that the required information is being properly and faithfully recorded to assure compliance with this requirement. If Contractor has not complied with this requirement, the progress payment will be withheld until the Record Documents have been brought up to date.

**3.02 SUBMITTAL**

- A. At completion of Project, deliver Record Documents to Project Manager.
- B. Accompany submittal with transmittal letter containing:
  1. Date
  2. Project title and number
  3. Contractor's name and address
  4. Number and title of each record documents
  5. Certification that each document as submitted is complete and accurate, and signature of Contractor, or his authorized representative.

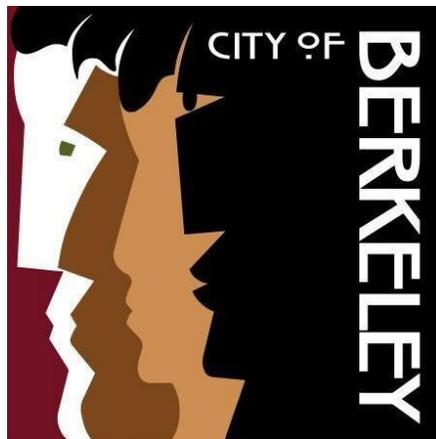
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# BERKELEY MARINA PILES

## TECHNICAL SPECIFICATIONS

**Prepared for:**  
CITY OF BERKELEY  
DEPARTMENT OF PARKS,  
RECREATION, AND WATERFRONT  
BERKELEY, CALIFORNIA



**Prepared BY:**  
MOFFATT & NICHOL  
WALNUT CREEK, CALIFORNIA



moffatt & nichol

January 2023  
M&N FILE #: 11016/01



**SECTION 024000**  
**DEMOLITION**

**PART 1 GENERAL**

1.1 SCOPE OF WORK

- A. The work in this section covers all demolition, removal, and disposal of existing timber piles and pile guides, where indicated on the Drawings.
- B. Disposal of demolished materials shall be the Contractor's responsibility. Demolished materials shall be disposed of off-site in accordance with the approved Demolition Plan.
- C. Protect existing features and facilities to remain.

1.2 SUBMITTALS

- A. Demolition Plan: Submit proposed demolition methods, operations, schedule, and disposal site information for review 15 days prior to the start of work.

1.3 JOB CONDITIONS

- A. Protection: Conduct operations to prevent damage or injury to existing docks, vessels, other facilities, and persons.
- B. Perform all operations to avoid breakage, marring, bending, or other damage to existing structures or utilities which are to remain.
- C. Refer to General Notes on Drawings for related paragraphs concerning safety precautions and operations for construction.
- D. Explosives: The use of explosives is prohibited.
- E. Promptly repair damage to any adjacent facilities caused by demolition operations at no additional cost to the City.

**PART 2 PRODUCTS – NOT USED**

**PART 3 EXECUTION**

3.1 PREPARATION

- A. Installation shall be in accordance with fiberglass jacket manufacturers' recommendations.
- B. Existing timber pile shall be thoroughly cleaned to remove all marine growth and deteriorated wood.
- C. Placement of jackets and grouting shall be done during low tide to minimize impact to water. No grout shall be allowed to leak from jackets during placement.
- D. The grout placement and pump system shall be completely sealed to prevent grout from being deposited into the water and outside the fiberglass jacket.
- E. The City will notify tenants to move their vessels out of the area affected by demolition. The Contractor shall inform the City at least fourteen (14) calendar days prior to start of demolition. Demolition shall minimize disruption and displacement of dock tenants. The Contractor shall inform the City immediately after completion of construction work.

### 3.2 DEMOLITION

- A. Remove/demolish and dispose of the following at the locations indicated on the Drawings:
  - 1. Timber piles
  - 2. Pile guides
  - 3. Pile caps
- B. Disposal: Prevent spillage along haul routes. All costs for cleanup and damage resulting from Contractor's spillage shall be borne by the Contractor.
- C. Bring to the City's attention obstructions which are not noted or shown on the plans or described herein. Protect such facilities until further direction is received from the City. Additional work required due to unforeseen conditions shall be performed as directed by the City and will be paid for as extra work in accordance with the General Conditions.
- D. Cleaning:
  - 1. Promptly remove from the property and legally dispose of all demolished materials. Remove all equipment, debris, and rubbish from the property.
  - 2. During progress of the Work, maintain the site in a presentable condition. Clean up spillage and debris at the site and on haul routes and public roads.
  - 3. Promptly repair any items damaged during the progress of the work, including any damage to pavement, sidewalks, haul routes, public roads, or adjacent ground caused by transporting materials or equipment.
  - 4. All demolished material and debris resulting from Work shall become property of the Contractor.

### 3.3 SITE RESTORATION

- A. Completely fill below-grade areas and voids resulting from structure demolition operations with onsite soil materials.
- B. Site Grading: Uniformly rough grade area of demolished construction to a smooth surface, free from irregular surface changes. Provide a smooth transition between adjacent grades and new grades.

### 3.4 CLEANING AND DISPOSAL OF DEMOLISHED MATERIALS

- A. Remove debris, rubbish, and all other deleterious material resulting from demolition operations and legally dispose of at an approved disposal site.
- B. Regulations: Comply with Federal, State, and local hauling and disposal regulations.

**END OF SECTION**

## SECTION 310162

### PILE REPAIR

#### PART 1 GENERAL

##### 1.1 SCOPE OF WORK

- A. The work in this section covers repair of existing timber piles using a jacket system that encapsulates a reinforced grout and provide a structural repair to restore strength capacity for timber piles. All components required for the complete repair are referred herein as the pile repair system.

##### 1.2 GENERAL REQUIREMENTS

- A. The pile repair system shall be a system with a demonstrated performance compatible in the marine environment for load bearing timber piles.
- B. The Contractor shall verify at site all existing conditions and dimensions relating to the Work. Notify the City in writing of any unsuitable conditions. Commencement of work without such notification shall be construed as acceptance of all conditions.

##### 1.3 SUBMITTALS

- A. Prior to installation of the pile repair system, submit to the City for approval, product information on the components of the system including, but not limited to, the following:
  - 1. Fiberglass jacket
  - 2. Grout
  - 3. Reinforcement material
- B. Submit evidence that the pile repair system manufacturer has a track record producing pile repair systems to restore structural capacity and provide protection of timber piles against marine borer infestation for at least 5 years. All products incorporated by the Contractor into the pile repair system shall be furnished by a single manufacturer.

##### 1.4 DELIVERY, HANDLING, AND STORAGE

- A. Prior to installation of the pile repair system, submit to the City for approval, product information on the components of the system including, but not limited to, the following:
- B. Deliver the materials to the job site and store, all in a safe area, out of the way of traffic, and shored up to the ground surface.
- C. In the event of damage, immediately make all repairs and replacements necessary to the approval of the City and at no additional cost.

#### PART 2 PRODUCTS

## 2.1 FIBERGLASS JACKET

- A. The fiberglass jacket shall be a minimum of 1/8 inch thick, constructed of layers of roving and mat.
- B. Jacket shall be either dark brown or black.
- C. Jacket shall allow visual inspection during the injection of grout.
- D. Jacket shall have injection ports or a means to fill all void space with grout within the damaged pile and jacket.
- E. The jackets shall have standoffs inserted through the jacket to maintain an even annular spacing between the pile and jacket.
- F. The fiberglass shall have the following properties:
  - 1. Ultimate Tensile Strength: 14,000 psi ASTM D 638
  - 2. UV Stability: 400 Hour Pass ASTM G 23
- G. The jacket shall be manufactured to allow joining in the field. All joints shall be sealed such that no grout will leak from the annular space during installation.

## 2.2 UNDERWATER GROUT

- A. Underwater grout shall be a non-shrink “wash-out” resistant cementitious grout.
- B. Grout shall be in a thixotropic consistency for placement underwater, displacing water and resisting cement wash-out. Grout shall have a flowable consistency to allow filling all voids in the annular space between the fiberglass jacket and pile.
- C. Grout shall attain a minimum compressive strength of 5,000 psi at 28 days and flexural strength of 1200 psi per ASTM C-109.
- D. Grout shall have a minimum bond strength of 1300 psi per ASTM C-882.

## 2.3 MARINE EPOXY GROUT

- A. Shall be 100% solids multi component epoxy, suitable for application in the marine environment and underwater use suitable for use in the fiberglass jacket system.
- B. Grout shall meet have a consistency suitable for trowel application.
- C. Grout shall develop bond to dry or damp surface.

## 2.4 REINFORCEMENT

- A. Reinforcement shall conform to ASTM A615.
- B. Reinforcement shall be as shown on the drawings.

# PART 3 EXECUTION

## 3.1 INSTALLATION

- A. Installation shall be in accordance with fiberglass jacket manufacturers’ recommendations.
- B. Existing timber pile shall be thoroughly cleaned to remove all marine growth and deteriorated wood.

- C. Placement of jackets and grouting shall be done during low tide to minimize impact to water. No grout shall be allowed to leak from jackets during placement.
- D. The grout placement and pump system shall be completely sealed to prevent grout from being deposited into the water and outside the fiberglass jacket.

**END OF SECTION**



**SECTION 316213**  
**CONCRETE PILES**

**PART 1 GENERAL**

1.1 SCOPE OF WORK

- A. The work in this section consists of furnishing all labor, material, tools, equipment, and incidentals and doing all the work required to furnish, deliver, and install precast, prestressed concrete piles complete in place.

1.2 REFERENCES

- A. The publications listed below form a part of this specification to the extent referenced. The publications are referred to in the text by the basic designation only. The latest edition for these publications shall apply.

American Concrete Institute (ACI)

ACI 211.1	Selecting Proportions for Normal, Heavyweight and Mass Concrete
ACI 214	Evaluation of Strength Test Results of Concrete
ACI 315	Details and Detailing of Concrete Reinforcement
ACI 318	Building Code Requirements for Reinforced Concrete

American Society for Testing and Materials (ASTM)

ASTM A 82	Steel Wire, Plain, for Concrete Reinforcement
ASTM A 416	Steel Strand, Uncoated Seven-Wire for Prestressed Concrete
ASTM A 706/ A 706M	Low Alloy Steel Deformed and Plain Bars for Concrete Reinforcement
ASTM A 615/A 615M	Deformed and Plain Billet-Steel Bars for Concrete Reinforcements
ASTM C 31	Making and Curing Concrete Test Specimens in the Field
ASTM C 33	Concrete Aggregates
ASTM C 39	Compressive Strength of Cylindrical Concrete Specimens
ASTM C 136	Sieve Analysis of Fine and Coarse Aggregates
ASTM C 143	Slump of Hydraulic Cement Concrete

ASTM C 150	Portland Cement
ASTM C 172	Sampling Freshly Mixed Concrete
ASTM C 260	Air Entraining Admixtures for Concrete
ASTM C 494	Chemical Admixtures for Concrete
ASTM C 618	Fly Ash and Raw or Calcined Natural Pozzolan for Use as a Mineral Admixture in Portland Cement Concrete

Precast/Prestressed Concrete Institute (PCI)

PCI MNL-116	Quality Control for Plants and Production of Precast Prestressed Concrete Products
PCI STD-112	Standard Prestressed Concrete Piles

1.3 SUBMITTALS

Submit the following in accordance with Section 01330, "Submittal Procedures."

A. Shop Drawings:

1. Prepare shop drawings in accordance with ACI 315. Indicate placement of reinforcement including tendons on the drawings. Indicate location of embedded or attached lifting devices, employment of pick-up points, support points other than pick-up points, and any other methods of pick-up. Shop drawings shall bear the seal of a professional engineer with a current registration in the State of California attesting that the piles conform to all design requirements.

B. Pile Driving Plan:

1. Show locations of all the piles and identify each pile with a unique identification number. Provide a plan indicating where the numbered piles are to be installed. Use the identification number on all pile records. Indicate the driving sequence and record the date of driving as work progresses. This plan will be a record document.
2. Provide installation procedures for the pile driving plan. The installation instruction shall contain a schedule of pile installation and proposed crane locations to drive the piles. Indicate how the required tolerances will be met. Jetting of piles will not be allowed.
3. Provide make and model of pile-driving equipment proposed for the work and capacity of each type of equipment proposed for use in the work. Show details of driving helmets, capblocks, and pile cushions.
4. Submit the initial pile installation plan at least 3 weeks prior to the start of pile driving and an updated record plan with each request for payment.

C. Hydro-Acoustic Monitoring Plan: In accordance with Permit requirements.

D. Design Data:

1. Submit a concrete mix design for the piles. Submit at least 3 weeks before concrete is placed. Include the following:
  - i. Strength.
  - ii. Slump.
  - iii. Unit weight of concrete.
  - iv. Quantities of all ingredients.
  - v. Type of Portland cement.
  - vi. Quantity of air entrained.
  - vii. Source of fine and coarse aggregate, including reactivity of aggregate based on previous tests or past service.
  - viii. Sieve analysis for aggregates, including fineness modulus.
  - ix. Admixtures.
  - x. Name and address of proposed concrete supplier.
- E. Quality Control Procedures.
  1. Submit precasting manufacturer's quality control procedures.
- F. Factory Test Reports:
  1. Prior to pile fabrication, submit certified test reports for the following tests specified in ASTM C 33 for all aggregates:
    - i. Aggregate Grading.
    - ii. Amount of Material Finer than No. 200 Sieve.
    - iii. Organic Impurities.
    - iv. Soundness.
    - v. Clay Lumps and Friable Particles.
    - vi. Coal and Lignite.
    - vii. Weight of Slag.
    - viii. Fineness Modulus.
    - ix. Reactive Aggregates.
- G. Field Test Reports:
  1. Submit concrete cylinder compressive strength test results.
- H. Certificates:
  1. Prestressing Steel.
    - i. Certification from suppliers attesting to the ultimate strength of the strands.
  2. Reinforcing Steel.
    - i. Certification from suppliers shall attest to the yield strength of the reinforcing steel.

3. Concrete Mix Design.

- i. Certify, using a City approved independent commercial testing laboratory, that proportioning of mix is in accordance with ACI 211.1 or ACI 318 for specified strength and is based on aggregate data which has been determined by laboratory tests during last twelve months.

4. Corrosion Inhibiting Additive.

- i. Certification from manufacturer attesting that the proposed product has been in use for five years in waterfront concrete construction without harmful reactivity with cement, aggregate or reinforcing.

- I. Records: Contractor shall submit pile driving records within 48 hours of completion of pile driving operations.

**PART 2 PRODUCTS**

2.1 MATERIALS

- A. Cement: ASTM C 150, Type II, low alkali.
- B. Water: Use potable water.
- C. Aggregates: ASTM C 33, except as modified herein. Provide aggregate free from any substance which may be deleteriously reactive with alkalis in cement in an amount sufficient to cause excessive expansion of concrete.
- D. Admixtures:
  1. All concrete shall use an air entraining admixture that conforms to the requirements in ASTM C 260 to obtain air entrainment of 5 percent, plus or minus 1 percent.
  2. All concrete shall contain a calcium nitrite corrosion inhibiting solution that conforms to the requirements in ASTM C 494, Type C, as follows:
    - i. The calcium nitrite admixture shall be as manufactured by Grace Construction Products (GCP), "DCI", or approved equal.
    - ii. The calcium nitrite admixture shall be added to the concrete at the rate of 2.5 gallons per cubic yard.
    - iii. The water in the corrosion inhibiting solution shall be considered as part of the mixing water.
  3. Do not use admixtures containing chlorides.
  4. Fly ash shall conform to ASTM C 618, Class F.
  5. Use High-Range Water Reducing Agent, ASTM C 494, Type C as manufactured by GCP or approved equal.
- E. Prestressing Steel: Use seven-wire low relaxation strand conforming to ASTM A 416, Grade 270. Use prestressing steel free of grease, oil, wax, paint, soil, dirt, and loose rust. Do not use prestressing strands or wire having kinks, bends, or other defects.
- F. Reinforcing Steel: All reinforcing steel including dowels shall conform to ASTM A615 Grade 60, or ASTM A 706/ A 706M for bars to be welded.

G. Ties and Spirals: Steel, ASTM A 82 for spirals and ASTM A 615/A 615M for ties.

H. Piles dimensions shall be as shown.

## 2.2 CONCRETE MIX DESIGN

A. ACI 211.1 or ACI 318. The concrete to be used for the piles shall be homogeneous and shall have a minimum compressive strength of 6,000 psi at 28 days, a maximum size aggregate of  $\frac{3}{4}$  inch, and a maximum water/cement ratio = 0.40.

## 2.3 FABRICATION OF PILES

### A. Formwork:

1. Provide forms of metal, braced, and stiffened against deformation, accurately constructed, watertight, and supported on unyielding casting beds. Forms shall produce a smooth, dense surface. Chamfer edges and ends 1 inch, unless otherwise indicated.
2. Forms shall permit movement of pile without damage during release of prestressing force. Make piles to dimensional tolerances in accordance with PCI MNL-116.

### B. Pretensioning:

1. Measure tension to which steel is to be pretensioned by jack pressure read on a calibrated gage and verify by elongation of steel. Use gage calibrated within last 6 months by a laboratory approved by the California Department of Transportation (CALTRANS). Provide means for measuring elongation of steel to nearest  $\frac{1}{8}$  inch. When difference between results of measurement and gage reading is more than 5 percent, determine cause of discrepancy and correct. Give tensioning steel a uniform prestress prior to being brought to design prestress. Induce same initial prestress in each unit when several units of prestressing steel in a pile are stretched simultaneously.

### C. Casting:

1. Conveying: Clean conveying equipment thoroughly before each run. Convey concrete from mixer to forms as rapidly as practicable by methods which will not cause segregation or loss of ingredients. Deposit concrete as nearly as practicable to its final position. During placing, make any free vertical drop of the concrete less than 3 feet. Remove concrete which has segregated in conveying or placing.
2. Placing and Finishing: Perform concrete casting within 3 days after pretensioning steel; however, do not deposit concrete in forms until placement of reinforcement and anchorages has been inspected and approved by pile manufacturer's quality control representative. Produce each pile of dense concrete with reinforcement retained in its proper position during fabrication. Use vibrator with heads smaller than the minimum distance between steel for pretensioning. Finish exposed top surface of square pile to obtain a face that is as smooth and true to line as the formed surfaces of the pile. Make surface of pile ends perpendicular to axis of pile.

### D. Curing of Piles:

1. Moist Curing: Moist cure using moist burlap coverings, plastic sheeting, or membrane curing compound until minimum strength to detension is achieved.

2. Accelerated Curing: After placement of concrete, moist cure for a period of 4 hours. Accelerated cure until concrete has reached specified release strength. Enclose casting bed for accelerated curing with a suitable enclosure. During application of steam or heat, increase the air temperature at a rate not to exceed suggest 50 degrees F per hour. Cure at a maximum temperature of 160 degrees F until concrete has reached specified release strength. Reduce temperature at a rate not to exceed 50 degrees F per hour until a temperature of 20 degrees F above ambient air temperature is reached. After accelerated curing, moist cure using either water or membrane curing until a total accelerated and moist curing time of 72 hours is achieved.
  3. Concrete piles must cure a minimum of 30 days prior to installation.
- E. Detensioning: Perform releasing of prestressed steel in pretensioned piles in such an order that eccentricity of prestress will be minimized. Gradually release tension in strands from anchorage. Detension after approval by pile manufacturer's quality control representative. Perform transfer of prestressing force after concrete has reached a minimum compressive strength of 4,500 psi.
- F. Pile Marking: Mark piling with lines of high visibility, non-permanent paint at one-foot intervals from bottom to top. Number every five feet. Markings shall be clearly visible and legible to the naked eye at a distance of 75 feet. Piles not properly marked will be rejected. Mark pickup points. Maintain a record of pile casting activity which includes concrete test results, casting date, shipping data and other pertinent data to correlate the manufacturing and the driving records.
- 2.4 PRODUCT QUALITY CONTROL
- A. Where piling is manufactured in a plant with an established quality control program as attested to by a current certification in the PCI "Certification Program for Quality Control" perform product quality control in accordance with PCI MNL-116. Where piling is manufactured in plants not currently enrolled in the PCI "Certification Program for Quality Control," set-up a product quality control system in accordance with PCI MNL-116 and perform concrete and aggregate quality control testing using an independent commercial testing laboratory approved by the City in accordance with the following.
1. Aggregate Tests: Take samples of fine and coarse aggregate at concrete batch plant and test. Perform mechanical analysis (one test for each aggregate size) in accordance with ASTM C 136. Tabulate results of tests in accordance with ASTM C 33.
  2. Strength Tests: Sample concrete in accordance with ASTM C 172 at time concrete is deposited for each production line. Perform slump tests in accordance with ASTM C 143. Mold cylinders in accordance with ASTM C 31. Mold at least six cylinders per day or one for every 20 cubic yards of concrete placed, whichever is greater. Cure cylinders in same manner as piles and for accelerated curing, place at coolest point in casting bed. Perform strength tests in accordance with ASTM C 39. Test two cylinders of each set at 7 days or 14 days, or at a time for establishing transfer of prestressing force (release strength) and removal of pile from forms. Test remaining cylinders of each set 28 days after molding.
  3. Changes in Proportions: If, after evaluation of strength test results, compressive strength is less than specified compressive strength, make adjustments in proportions and water content and changes in temperature, moisture, and curing procedures as necessary to secure specified strength. Submit changes in mix design to the City in writing.

4. Compressive Strength Test Results: Evaluate compressive strength test results at 28 days in accordance with ACI 214 using a coefficient of variation of 10 percent. Evaluate strength of concrete by averaging test results of each set of standard cylinders tested at 28 days. Not more than 10 percent of individual cylinders tested shall have a compressive strength less than specified compressive strength and no individual strength shall fall below the specified strength by more than 500 pounds per square inch.

## 2.5 PILE DRIVING EQUIPMENT

- A. The Contractor shall be responsible for selecting a hammer and driving system, which can drive the piles to the design tip elevation without overstressing the piles in either tension or compression.
- B. Any special equipment and methods necessary to drive the piling to the required penetration and within specified tolerances shall be provided by the Contractor.
- C. The Contractor shall anticipate and allow for the presence of surface and subsurface debris. This allowance shall include provisions for the possibility of removing through excavation, debris that obstructs the installation of piling.

## 2.6 PILE CAPS

- A. Guide piles shall be furnished with compatible pile caps to protect exposed surfaces and prevent the roosting of birds. Pile caps should be made of UV rated fiberglass of a minimum 1/8" thickness (as manufactured by Henderson Marine Supply, Richmond, CA or equivalent) and should be fastened to piles with an epoxy adhesive.

## 2.7 EXTERNAL PILE GUIDES

- A. External pile guides shall be the following or equivalent. External pile guides shall be of a size compatible with 15" octagonal concrete piles:
  1. External Square Pile Guide by NW Marine Supply

## 2.8 INTERNAL PILE GUIDES

- A. Internal pile guides shall be one the following or equivalent. Internal pile guides shall be of a size compatible with 15" octagonal concrete piles:
  1. Pile Roller Assembly by Henderson Marina Supply – 4 required per pile

# PART 3 EXECUTION

## 3.1 EQUIPMENT

- A. Pile Hammers:
  1. Furnish a hammer capable of driving piles to indicated tip elevation considering hammer impact velocity; ram weight; stiffness of hammer and pile cushions; cross section, length, and total weight of pile; and character of subsurface material to be encountered.
- B. Driving Helmets and Cushion Blocks:
  1. Hammer Cushion or Capblock: Use a steel driving helmet or cap including a pile cushion between top of pile and driving helmet or cap to prevent impact damage to pile. Use a driving helmet or cap and pile cushion combination capable of protecting pile head, minimizing energy absorption and dissipation, and transmitting hammer energy uniformly over top of

pile. Use pile cushion of solid wood or of laminated construction using plywood, softwood, or hardwood boards with grain parallel to end of pile. Provide pile cushion with thickness of 6 inches minimum and 12 inches maximum. Replace pile cushion for each new pile, and when it becomes highly compressed, charred or burned, or has become spongy or deteriorated in any manner.

### 3.2 DRIVING PILES

- A. Driving Piles: Drive piles to indicated tip elevation. If a pile fails to reach indicated tip elevation, notify the Engineer and perform corrective measures as directed.
- B. Protection of Piles: Take care to avoid damage to piles during handling, placing pile in leads, and during pile driving operations. Support piles laterally during driving. Maintain axial alignment of pile hammer with that of the pile.
- C. Tolerances in Driving
  - 1. Horizontal: within 2 inches of the required butt location shown on the plans.
  - 2. Vertical: within 1/2 inch of the required cut-off elevation shown on the plans.
  - 3. Plumbness: not more than 1.0 percent from plumb.
  - 4. Rotation: not more than 5° rotation from axes parallel and perpendicular to the structure supported by the piles.
- D. Always maintain and check axial alignment and rotational alignment of pile. If subsurface conditions cause pile drifting or rotation beyond allowable alignment tolerance, notify the City and perform corrective measures. The City may direct the Contractor to remove the pile that is installed beyond the tolerances indicated and require the Contractor to reinstall the pile.
- E. Jetting of Piles will not be permitted.
- F. Splicing of piles will not be permitted.
- G. Final Tapping: Leave the pile high by 2 feet to 4 feet if the pile driving rate is not meeting the criteria approved by the City. Leave the pile high for a minimum of 8 hours prior to driving to final grade. Drive beyond final grade to increase capacity only if approved by the City. Final tapping shall not be the basis of a claim for additional compensation by the Contractor.
- H. Build-Ups: Pile section may be extended to cut-off elevation by means of a cast-in-place reinforced concrete build-up if driving beyond the final grade is approved per Paragraph FINAL TAPPING. Make build-up in accordance with PCI STD-112. Contractor shall submit detail for buildup for approval.
- I. Pile Cut-Off: Cut-off piles with a smooth level cut using pneumatic tools, sawing, or other suitable methods approved by City. Cut-off sections of piles shall be removed from the site upon completion of the work.

### 3.3 FIELD QUALITY CONTROL

- A. Pile Records: For each pile, keep a record of the number of blows required for each foot of penetration and number of blows for the last 6 inches of penetration. Include in the record the beginning and ending times of each operation during driving of pile, type and size of hammer used, rate of operation, stroke or equivalent stroke for diesel hammer, type of driving helmet, and

type and dimension of hammer cushion (capblock) and pile cushion used. Record retap data and unusual occurrences during pile driving. Notify the City two weeks prior to start of pile driving.

- B. No pile driving shall occur during the night on weekdays (7:00 p.m. to 7:00 a.m.) and no pile driving on weekends or federal holidays.
- C. The Contractor is responsible for protecting nearby structures from damage during construction. Any damages that occur will be repaired or replaced by the contractor at no additional cost to the City.

#### 3.4 BROKEN AND DAMAGED PILES

- A. Piles damaged during handling or driving shall, at the discretion of the City, be repaired in an acceptable manner or be replaced.
- B. The Contractor shall submit for the City's review his proposed method of repairing piles, which are damaged.
- C. Pile repair or replacement shall be at no cost to the City nor cause any delay in the construction schedule.

#### 3.5 ON-SITE CASTING

- A. On-site casting of guide piles is specifically prohibited.

**END OF SECTION**

Appendix A  
City of Berkeley  
Community Workforce Agreement

**CITY OF BERKELEY**  
**COMMUNITY WORKFORCE AGREEMENT**

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**Agreement to be Bound**

**COMMUNITY WORKFORCE AGREEMENT**  
**For the**  
**City of Berkeley**

This Agreement is made and entered into this June 30, 2017 by and between the City of Berkeley ("City") together with other contractors and/or sub-contractors, who shall become parties to this Agreement by signing the "Agreement to be Bound" (Attachment A), and the Local Unions signatory hereto and the Alameda County Building & Construction Trades Council ("Council") and its affiliated local unions who have executed this Agreement.

**PURPOSE**

The purpose of this Agreement is to support the efforts of the City to increase employment opportunities for workers who reside in Berkeley, to help increase training and employment opportunities Berkeley residents in the construction trades through apprenticeship and pre-apprentice programs as the students graduate from the City's schools, to promote efficiency of construction operations performed for and within the City of Berkeley and to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thereby promoting the public interest in assuring the timely and economical completion of the projects.

**RECITALS**

WHEREAS, the successful completion of the City's construction projects is of the utmost importance to the City of Berkeley; and

WHEREAS, the interests of the general public, the City, the Unions and Contractor(s) would be best served if the construction work proceeded in an orderly manner without disruption because of strikes, sympathy strikes, work stoppages, picketing, lockouts, slowdowns or other interferences with work; and

WHEREAS, the Contractor(s) and the Unions desire to mutually establish and stabilize wages, hours and calendar conditions for the workers employed on construction work for and within the City of Berkeley by the Contractor(s), and further, to encourage close cooperation among the Contractor(s) and the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to this Agreement; and

WHEREAS, contracts for construction work within the City of Berkeley will be awarded in accordance with the applicable provisions of the Charter of the City of Berkeley, the California State Public Contract Code and the Labor Code, including but not limited to requiring competitive bidding and prevailing wages; and

WHEREAS, the City of Berkeley has the absolute right to select the lowest responsive and responsible bidder for the award of the construction contracts on the Projects; and

WHEREAS, the parties signatory to this Agreement pledge their full good faith and trust to work towards a mutually satisfactory completion of the Projects;

NOW, THEREFORE, IT IS AGREED BETWEEN AND AMONG THE PARTIES HERETO, AS FOLLOWS:

## **ARTICLE 1** **DEFINITIONS**

1.1 "Agreement" means this Community Workforce Agreement.

1.2 "Berkeley Resident" means any individual who is a current resident of Berkeley can certify through a utility bill, or other similar means acceptable to the parties to this Agreement, that the individual resides within the boundaries of the Berkeley City Limits.

1.4 "City" means the City of Berkeley.

1.5 "Completion" means that point at which the City accepts a project at issue by filing a Notice of Completion, or as otherwise provided by applicable state law. "Punch list" items and any other work within the scope of this Agreement not completed prior to commencement of revenue service shall nonetheless be included within the scope of this Agreement. It is understood by the parties that portions of the Projects may be completed in phases and Completion of any such phase may occur prior to Completion of the Projects.

1.6 "Contractor(s)" and/or "Subcontractor(s)" means any individual, firm, partnership or corporation, or combination thereof, including joint ventures, which is an independent business enterprise and has entered into a contract with the City or any of its contractors or subcontractors of any tier, with respect to the construction work necessary for any part of the Projects. This shall include subcontractors not required to be listed in the bid documents. As applicable depending on its context, "Contractor" shall refer to Contractor or Contractor and Subcontractor.

1.7 "Construction Contract(s)" means all of the contract(s) for construction of any of the Projects.

1.8 "Council" means the Alameda County Building and Construction Trades Council, AFL-CIO.

1.9 "New Apprentice" is a Berkeley Resident who is enrolled in a State of California approved apprenticeship program that is a joint labor management apprentice program for no more than twenty-four months

1.11 "Projects" mean any construction project of the City whose value as estimated by the City meets or exceeds \$500,000 (Five hundred thousand) dollars.

1.12 "Union" or "Unions" means the Council and any other labor organization signatory to this Agreement, acting on their own behalf and on behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

1.13 "Project Manager" means the person or persons or business entity designated by the City to oversee all phases of construction on the Projects.

1.14 "Master Labor Agreement" or "MLA" shall mean the collective bargaining agreement of each craft Union that is Signatory to this Agreement

1.15 "Calendar Day" shall mean any day, relating to any day of the week including Saturday, Sunday and public holidays.

1.16 "Apprenticeship Program" -Recognizing the need to develop adequate numbers of competent workers in the construction industry, the Contractor(s)/Employer(s) shall employ apprentices of a California State-approved Joint Apprenticeship Program in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

The apprentice ratios will be in compliance with the applicable provisions of the applicable "Master Labor Agreement".

## **ARTICLE 2**

### **SCOPE OF AGREEMENT**

2.1 Parties: This Agreement shall apply and is limited to all Contractors and subcontractors performing Construction Contracts necessary for the Projects, the City, the Council and any other labor organization signatory to this Agreement, acting in their own behalf and behalf of their respective affiliates and member organizations whose names are subscribed hereto and who have through their officers executed this Agreement.

2.2 Project Description: This Agreement shall govern the award of all of the Construction Contracts identified by the City as part of the Projects. The City has the absolute right to combine, change, consolidate, suspend or cancel Construction Contract(s) or portions of Construction Contract(s) identified as part of the Projects. Should the City suspend or remove any contract from the Projects and thereafter authorize that construction work be commenced on such contract, then such contract shall be performed under the terms of this Agreement. Once a Construction Contract is completed it is no longer covered by this Agreement except when a Contractor is directed to engage in repairs, warranty work or modifications required by its Construction Contract with the City. For the purposes of this

Agreement, a Construction Contract shall be considered Completed as set forth in Section 1.5 of this Agreement.

### 2.3 Covered work:

2.3.1 This Agreement covers, without limitation, all on-site construction, demolition, alteration, painting or repair of buildings, structures, landscaping, temporary fencing and other works and related activities for the Projects that is within the craft jurisdiction of one of the Unions and that is part of the Projects, including, without limitation, pipelines, site preparation, survey work, demolition of existing structures and all construction, demolition or improvements required to be performed as a condition of approval by any public agency. This scope of work includes all soils and materials testing and inspection where such testing and inspection is a classification in which a prevailing wage determination has been published.

2.3.2 The Projects include work necessary for the Projects and/or in temporary yards or areas adjacent to and dedicated to the Projects, and at any on-site batch plant(s) constructed solely to supply materials to the Projects, when those sites are dedicated exclusively to the Projects. This Agreement covers all on-site fabrication work over which the City, Contractor(s) or subcontractor(s) possess the right of control (including work done for the Projects in any temporary yard or area established for the Projects.) This Agreement also covers all off-site fabrication work traditionally performed by the Unions that is part of the Projects, provided such off-site fabrication work is covered by a provision of a current Schedule A Agreement or local addenda to a National Agreement of the applicable Union(s) that is in effect as of the execution date of this Agreement.”

2.3.3 The furnishing of supplies, equipment or materials which are stockpiled for later use shall in no case be considered subcontracting. Construction trucking work, such as the delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated into the construction process as well as the off-hauling of debris and excess fill material and/or mud, shall be covered by the terms and conditions of this Agreement, to the fullest extent provided by law and by prevailing wage determinations of the California Department of Industrial Relations. Employers, including brokers, of persons providing construction trucking work shall provide certified payroll records to the City within ten (10) calendar days of written request or as required by bid specifications.

### 2.4 Exclusions: The following shall be excluded from the scope of this Agreement:

2.4.1 This Agreement is not intended to, and shall not affect or govern the award of public works contracts by the City which are outside the identified scope of work of the Projects.

2.4.2 This Agreement is not intended to, and shall not affect the current or anticipated operation, maintenance, access or use of any of the City's buildings or facilities, whether or not such facilities are identified in Section 1.7 above.

2.4.3 This Agreement shall not apply to a Contractor or subcontractor's executives, managerial employees, engineering employees, design employees, supervisors (except

those covered by existing building and construction trades collective bargaining agreements), office and clerical employees.

2.4.4 This Agreement shall not apply to any work performed on or near or leading to the site of work covered by this Agreement that is undertaken by state, county or other governmental bodies or their contractors; or by public or private utilities or their contractors; or by the City or its contractors for work not part of the scope of the Projects. Parties performing work shall notify in writing, The Council and The District of any work being performed near or leading to the site work that is not covered by this agreement. Further, this Agreement shall not be construed to prohibit or restrict the City or its employees from performing work on or around the Project construction sites or from entering the sites for any purposes deemed necessary or appropriate by the City.

2.4.5 This Agreement shall not apply to the off-site maintenance of leased equipment or the on-site supervision of such work.

2.4.6 This Agreement shall not apply to any start-up, calibration, performance testing, repair, maintenance, operational revisions to systems and/or subsystems performed after Completion.

2.5 Termination, Suspension and/or Delay of Work: It is understood and agreed that the City, at its sole option, may change, terminate, delay and/or suspend any and all portions of the covered work at any time. Further, the City may prohibit some or all work on certain days or during certain hours of the day to comply with applicable codes, laws or regulations, permits or to accommodate the ongoing operations of the City's facilities and/or to mitigate the effect of the ongoing Projects' work on the businesses and residents in the neighborhood of the Project sites; and/or require such other operational or schedule changes that it may be deemed necessary, in its sole judgment, to effectively maintain the primary purpose of the City's facilities and to remain a good neighbor to the residents and businesses in the area of any Projects. In order to permit the Contractors and Unions to make appropriate scheduling plans, the City will provide the affected Contractor and Union(s) with reasonable notice of any changes it requires pursuant to this Section.

2.6 Work covered by this Agreement within the following craft jurisdictions shall be performed under the terms of their National Agreements as follows: the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, and the National Agreement of Elevator Constructors, and any instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Technicians, with the exception that Articles 4, 8, 12 and 13 of this Agreement shall apply to such work.

**ARTICLE 3**  
**EFFECT OF AGREEMENT/SUBCONTRACTORS**

3.1 By executing this Agreement, the Unions and the City agree to be bound by each and every provision of this Agreement.

3.2 By accepting the award of a Construction Contract for the Projects, whether as contractor or subcontractor at any tier, the Contractor/Subcontractor agrees to be bound by each and every provision of this Agreement.

3.3 This Agreement shall only be binding on the signatory parties hereto and shall not apply to the parents, affiliates, subsidiaries, or other ventures of any other party.

3.4 It is understood that this Agreement, together with the referenced MLA, constitute an integrated, self-contained, stand-alone agreement, and that by virtue of having become bound to this Agreement, the Contractor will not be obligated to sign any other local, area, or national agreement as a condition of performing work within the scope of this Agreement. In addition, it is understood and agreed that all grievances and disputes involving the interpretation or application of this Agreement, including the MLA, shall be resolved according to the procedures set forth in Article 12 of this Agreement; provided, however, that should a dispute involve a single MLA and a Contractor signatory thereto, and not involve interpretation or application of this Agreement, then such dispute shall be processed and resolved pursuant to the grievance provisions of that MLA. Should there be a dispute in the first instance as to whether the provisions of Article 12 of this Agreement or the grievance procedures of a MLA apply, the dispute shall be presented initially to arbitrator Judge William Cahill or, if unavailable, arbitrator Earnest Brown, for resolution as to the applicable procedure. Such referral of a dispute as to the applicable procedures shall be done by an immediate conference call among the parties and the arbitrator, and heard and decided within three (3) calendar days. Should the arbitrator hold that Article 12 applies, the parties may, by mutual agreement, submit the issue to the same arbitrator pursuant to the provisions of Article 12, or, absent mutual agreement, commence processing the dispute at Step 1 of that Article.

3.5 Subcontractors. At the time that any Contractor enters into a subcontract with any subcontractor of any tier for the performance of construction or construction trucking work within the scope of this Agreement, the Contractor shall provide a copy of this Agreement, as it may from time to time be modified by the negotiating parties, to said subcontractor and shall require the subcontractor as a part of accepting an award of a construction subcontract to agree to be bound by each and every provision of the Agreement prior to the commencement of work.

3.5.1 Each Contractor and Subcontractor shall evidence their agreement to be bound to this Agreement by executing the Agreement To Be Bound form attached hereto as Appendix A. A copy of the Agreement To Be Bound executed by the Contractors and Subcontractors shall be submitted to the Union(s) prior to both the commencement of work and the Pre-Job Conference and will be a required submittal within the City's bid packages. If the Contractor or Subcontractor refuses to execute the Agreement To Be

Bound, then such Contractor or Subcontractor shall not be awarded a Construction Contract to perform work on the Projects. A Contractor or Subcontractor who executes the Agreement to Be Bound shall be considered a signatory party to this Agreement.

3.6 It is understood that the liability of each Contractor and Subcontractor and the liability of each Union under this Agreement shall be several and not joint. The Unions agree that this Agreement does not have the effect of creating any joint employment status between or among the City and/or any Contractor or Subcontractor.

3.7 With regard to any Contractor or subcontractor that is independently signed to any MLA, this Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in section 3.7.1 of this Agreement. Any such subcontracting clause in a MLA shall remain and be fully enforceable between each craft union and its signatory employers and no provision of this Agreement shall be interpreted and/or applied in any manner that would give this Agreement precedence over subcontracting obligations and restrictions that exist between craft Unions and their respective signatory employers under a MLA, except as specifically set forth in section 3.7.1 in this Agreement. To the extent that the provisions of this Agreement are inconsistent with any other provisions contained in a MLA, the provisions of this Agreement shall prevail

3.7.1 If a craft Union (“Aggrieved Union”) believes that an assignment of work on this Project has been made improperly by a Contractor or subcontractor, even if that assignment was as a result of another craft Union’s successful enforcement of the subcontracting clause in its MLA, as permitted by section 3.7 of this Agreement, the Aggrieved Union may submit a claim under the jurisdictional dispute resolution procedure contained in Article 13 of this Agreement and the decision rendered as part of that process shall be enforceable to require the Contractor or subcontractor that made the work assignment to assign that work prospectively to the Aggrieved Union. An award made to a craft Union under the subcontracting clause of its MLA, as permitted under section 3.7 of this Agreement, shall be valid and fully enforceable by that craft Union unless it conflicts with a jurisdictional award made pursuant to Article 12 of this Agreement. If the award made under MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio*.

#### **ARTICLE 4**

### **WORK STOPPAGES, STRIKES, SYMPATHY STRIKES, JURISDICTIONAL DISPUTES AND LOCKOUTS**

4.1 The Unions, City and Contractor agree that for the duration of the Projects:

4.1.1 There shall be no strikes, sympathy strikes, work stoppages, picketing, hand-billing or otherwise advising the public that a labor dispute exists, or slowdowns of any kind, for any reason, by the Unions or construction persons employed on the Projects, at a job site of the Projects or at any other facility of the City because of a dispute on the Projects. Nor shall the Unions or construction persons employed on the Projects participate in any strikes, sympathy strikes, work stoppages, picketing, hand billing, slowdowns, or

otherwise advising the public that a labor dispute exists at a Project jobsite because of a dispute between Unions and Contractor(s) on any other project.

4.1.2 As to construction persons employed on the Projects, there shall be no lockout of any kind by a Contractor covered by this Agreement. It shall not be a violation of this Article if a Contractor or Subcontractor (1) suspends or terminates a portion of the Project work or (2) discharges an employee for just cause.

4.1.3 If a MLA between a Contractor and the Union expires before the Contractor completes the performance of a Construction Contract and the Union or Contractor gives notice of demand for a new or modified MLA, the Union agrees that it will not strike, picket, hand-bill, slowdown or engage in any other disruptive activity against the Contractor and the Contractor will not lockout construction persons of the Union on said Construction Contract for work covered under this Agreement and the Union and the Contractor agree that the expired MLA shall continue in full force and effect for work covered under this Agreement until a new or modified MLA is reached between the Union and Contractor. If the new or modified MLA reached between the Union and Contractor provides that any terms of the new MLA shall be retroactive, the Contractor agrees to comply with any retroactive terms of the new or modified MLA which are applicable to construction persons employed on the Projects within seven (7) calendar days.

4.1.4 In the case of nonpayment of trust fund contributions on the Projects, the Union shall give the City and the Contractor 5 business days' notice of the intent to withhold labor from the Contractor's or their subcontractor's workforce, during which time the Contractor shall have the opportunity to correct the default. In this instance, a Union's withholding of labor (but not picketing) from a Contractor who has failed to pay its fringe benefit contributions shall not be considered a violation of this Article."

4.2 A party to this Agreement shall institute the following procedure, prior to invoking any other action at law or equity when a breach of this Article 4 is alleged to have occurred:

4.2.1 A party invoking this procedure shall notify, by the most expeditious means available, with notice by facsimile, electronic mail or telephone to the City, to the party alleged to be in violation, to the Council and to the involved local Union if a Union is alleged to be in violation.

4.2.2 Upon receipt of said notice, the City will contact the designated permanent arbitrator, Judge William Cahill, or if unavailable, his alternate Ernest Brown, who shall attempt to convene a hearing within twenty-four (24) hours if it is contended that the violation still exists.

4.2.3 The Arbitrator shall notify the parties by facsimile, electronic mail or telephone of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four (24) hours unless otherwise agreed upon by all parties. A failure of any party to attend said

hearings shall not delay the hearing of evidence or the issuance of any award by the arbitrator.

4.2.4 The sole issue at the hearing shall be whether or not a violation of Article 4, Section 4.1 of this Agreement has occurred. The arbitrator shall have no authority to consider any matter of justification, explanation or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing, and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) calendar days, but its issuance shall not delay compliance with or enforcement of the award. The arbitrator may order cessation of the violation of this Article 4 and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

4.2.5 Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to above in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4.2.4 of this Article 4, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order or enforcement. The Court's order or orders enforcing the arbitrator's award shall be served on all parties by hand or delivered by certified mail.

4.2.6 Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance are waived by the parties.

4.2.7 The fees and expenses of the arbitrator shall be divided equally between the party instituting the arbitration proceedings provided in this Article and the party alleged to be in breach of its obligations under this article.

4.3 Liquidated Damages. If the arbitrator determines that a violation of Section 4.1 has occurred, the breaching party shall, within eight (8) hours of the issuance of the decision take all steps necessary to immediately cease such activities and return to work. If the breaching party involved does not cease such activities by the beginning of the next regularly scheduled shift following the expiration of the eight (8) hour period after the arbitrator's issuance of the decision, then the breaching party shall pay the sum of ten thousand dollars (\$10,000) as liquidated damages to the City per shift until the breach is remedied. The arbitrator shall retain jurisdiction for the sole purpose of determining compliance with this obligation and determining the amount of liquidated damages, if any; but such retention shall not prevent the moving party from seeking judicial enforcement of the initial decision.

## **ARTICLE 5**

### **PRE-JOB CONFERENCE**

5.1 A mandatory pre-job conference shall be held prior to the commencement of each Construction Contract. Such conference shall be attended by a representative each from the participating Contractor(s) and Union(s) and the Project Manager. All efforts will be made to hold the pre-job conference in sufficient time to ensure all parties the ability to properly raise and resolve any issue that may arise out of such meeting, with a goal that such conferences will be held at least 21 work days before the work commences.

## **ARTICLE 6** **NO DISCRIMINATION**

6.1 The Contractors and Unions agree not to engage in any form of discrimination on the ground of or because of race, color, creed, national origin, ancestry, age, religious or political affiliation, gender, sexual orientation or disability against any person, or applicant for employment on the Projects.

## **ARTICLE 7** **UNION SECURITY**

7.1 The Contractors recognize the Union(s) as the sole bargaining representative of all construction persons working within the scope of this Agreement.

7.2 All construction persons who are employed by the Contractor(s) shall, as a condition of employment, on or before the eighth (8th) day of consecutive or cumulative employment on the Projects, be responsible for the payment of the applicable monthly working dues and any associated fees uniformly required for union membership in the applicable local union which is signatory to this Agreement. Further, there is nothing in this Agreement that would prevent non-union construction persons from joining the local union.

## **ARTICLE 8** **REFERRAL AND LOCAL HIRE PROGRAM**

8.1 Referral

8.1.1 Contractor (s) performing construction work on the Projects described in the Agreement shall, in filling craft job requirements, utilize and be bound by the registration facilities and referral systems established or authorized by the Unions signatory hereto ("Job Referral System"). Such Job Referral System will be operated in a non-discriminatory manner and in full compliance with all federal, state, and local laws and regulations, including those which require equal employment opportunities and nondiscrimination.

8.1.2 The Contractor(s) shall have the right to reject any applicant referred by the Union(s), in accordance with the applicable Master Agreement.

8.1.3 The Contractor(s) shall have the unqualified right to select and hire directly all supervisors above general foreman it considers necessary and desirable, without such persons being referred by the Unions(s).

8.1.4 In the event that referral facilities maintained by the Union(s) are unable to fill the requisition of a Contractor(s) for employees within a seventy-two (72) hour period after such requisition is made by the Contractor(s), the Contractor(s) shall be free to obtain employees from any source. Contractor(s) shall promptly notify the Union(s) of any applicants hired from other sources. This provision does NOT affect core employees as defined below.

8.1.5 Unions shall exert their utmost efforts to recruit sufficient numbers of skilled craft persons to fulfill the requirements of the Contractor(s).

#### 8.1.6 Core Employees

All parties agree to make a good faith effort to refer on a priority basis, consistent with the non-discriminatory referral procedures of the hall, qualified and available, and bona-fide Berkeley Residents for Project work.

8.1.7 The parties also recognize and support the City's commitment to provide opportunities for participation on the Projects to Berkeley Residents who are regular, experienced employees ("Core" employees) of contractors and subcontractors awarded work on the Projects and who do not traditionally work under a local collective bargaining agreement(s). In furtherance of this commitment, the parties agree that such contractors and subcontractors awarded work on the Projects may request by name, and the local will honor, referral of persons who have applied to the local union for Project work and who demonstrate the following qualifications:

- (1) Possess any license required by state or federal law for the Project work to be performed;
- (2) Have worked a total of at least one thousand (1,000) hours in the construction craft during the prior three (3) years;
- (3) Were on the Contractor's active payroll for at least sixty (60) out of the one hundred and eighty (180) calendar days prior to the contract award;
- (4) Have the ability to perform safely the basic functions of the applicable trade, and
- (5) Are Berkeley residents.

The Union will refer to such Contractor one journeyman employee from the hiring hall out-of-work list for the affected trade or craft, and will then refer one of such Contractor's "core" employees as a journeyman and shall repeat the process, one and one, until such Contractor's crew requirements are met or until such Contractor has hired five (5) "core"

employees, whichever occurs first. Thereafter, all additional employees in the affected trade or craft shall be hired exclusively from the hiring hall out-of-work list(s). For the duration of the Contractor's work the ratio shall be maintained and when the Contractor's workforce is reduced, employees shall be reduced in the same ratio of core employees to hiring hall referrals as was applied in the initial hiring.

8.1.8 The Contractor shall notify the appropriate Union of the name and social security number of each direct hire and each direct hire shall register with the Union's hiring hall before commencing Project work. If there is any question regarding an employee's eligibility under this Subsection 8.2.1, the City Representative, at a Union's request, shall obtain satisfactory proof of such from the Contractor.

## 8.2 Local Hire

8.2.1 To the extent allowed by law and consistent with the non-discriminatory referral procedures of the Union hiring halls, the Parties agree to a goal that Berkeley Residents will perform a minimum of 20% of the hours worked, on a craft by craft basis for the Projects. The Contractor(s) shall make good faith efforts to reach this goal through the utilization of the Unions' hiring hall procedures. The Unions shall exercise their best efforts in their recruiting and training of Berkeley Resident workers and in their hiring hall procedures to facilitate this 20% goal on the Projects. In the event that referral facilities maintained by the Union(s) are unable to fulfill the 20% local hire requirement, paragraph 8.2.2 of this Article shall not apply. Contractors shall document all efforts to hire locally and provide such documents to the City of Berkeley. The Council will provide an annual census of Berkeley residents, in each of the crafts party to this agreement, to the City of Berkeley. This report will be provided by August 1 of each year of this agreement.

8.2.2 Should any of the contractors performing work on the Projects fail to meet this 20% goal and fail to demonstrate efforts to do so, through a specific submittal process to be included in their contractual requirements and enforced by the grievance procedure. The contract's 10% retention will be held until such time that this failure is remedied, but not longer than sixty (60) calendar days after the date of substantial completion of the Projects or as required by law, in addition to the breach of contract remedies available to the parties for non-performance under this Agreement.

## 8.2.3 Apprenticeship & Workforce Development

A) Consistent with the requirements of California Labor Code §§ 1776, 1777.5 and 1777.6, Contractor(s) will be required to hire 1 New Apprentice Berkeley resident as for every \$500,000 dollars or more of total construction bid amount. The New Apprentice(s) must work a minimum of 10% of the projects work hours. The contractor may deploy the apprentice to work on another concurrent project in order to meet the minimum hours, and those hours will be counted towards the total hours of the craft on the Berkeley project. Certified Payroll must reflect the hours worked.

Contractor must fully document efforts to hire a New Apprentice, through the following steps: 1) requesting New Apprentices through the Union dispatch procedure, 2)

contacting a minimum of three MC3-approved pre-apprenticeship training programs for referral of Berkeley residents. Unions shall provide written documentation to the contractor in response to dispatch requests to fulfill the New Apprentice requirement, the next tier of residents will come from the Green Corridor.

B) There can be no more than 1 entry-level New Apprentices for each craft, provided said crafts have apprenticeship openings and the general contractor will be able to include New Apprentices hired by their subcontractor to meet this requirement. Unions will agree to cooperate with Contractor(s) in furnishing apprentices as requested and the hiring of the apprentices will be in accordance to the Apprenticeship provisions listed in the Master Agreements and or the union agreements with the division of apprenticeship standards, and the apprentices shall be properly supervised and paid in accordance with provisions contained within the MLA'S. The Unions and Contractors will agree to cooperate with local pre-apprenticeship programs to ensure Berkeley residents have the opportunity to apply for and enter the into the apprenticeship programs.

C) The intent of this provision is to utilize Berkeley Resident New Apprentices to the fullest extent permissible by state law and the MLA. Failure of Contractor(s) and their subcontractors to maintain qualified apprentices on the job will be subject to further penalties as determined by the Grievance Committee as identified in Article 12.

8.11 Enforcement, Compliance & Reporting.

Contractors will be required to submit Certified Weekly Payrolls to the City along with monthly workforce utilization reports documenting the Contractor's compliance with the requirements described in this article. At a minimum the monthly reports must include 1) data on Berkeley Resident's work hour utilization on a craft by craft basis, 2) number of New Apprentices hired and the hours they have worked, 3) documentation showing any requests made to the union dispatchers for Berkeley Residents and the Union's response to the request. Enforcement of this article shall be according to the Grievance and Arbitration procedure outlined in Article 12.

**ARTICLE 9**  
**HELMETS TO HARDHATS**

9.1 The parties recognize a desire to facilitate the entry into the Building and Construction Trade Union(s) of Veterans who are interested in careers in the building and construction industry. The parties agree to utilize the services of the Center for Military Recruitment, Assessment and Veteran's Employment ("Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

9.2 The Union(s) and Contractor(s) agree to coordinate with the Center to participate in an integrated database of Veterans interested in working on this Project and of

apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Union(s) will give credit to such Veterans for bona fide, provable past experience.

**ARTICLE 10**  
**GRIEVANCE PROCEDURE**

10.1 Any Contractor which is not otherwise bound through an agreement with a Union to a grievance procedure which confers jurisdiction to consider and resolve disputes over the imposition of discipline or dismissal of its construction persons working on this Project shall be bound to the arbitration procedure contained in the MLA of the craft representing the employee(s) involved in the dispute. For the purposes of this Article, such grievance procedure shall be limited to disputes regarding the imposition of discipline or dismissal arising from work covered by the Agreement. Such Contractor shall not impose discipline or dismissal on its construction persons covered by this Agreement without just cause.

**ARTICLE 11**  
**JOINT ADMINISTRATIVE COMMITTEE**

11.1 The parties to this Agreement shall establish a five (5) person Joint Administrative Committee comprised of at least one and up to two (2) representatives representing the City; two (2) representatives of the signatory Unions and The Council; and one industry representative, mutually selected by the City and The Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement.

11.2 The Joint Administrative Committee shall meet at the request of either party, but not less than once each quarter, to review the implementation of the Agreement and the progress of the Projects including, but not limited to, compliance with Article 8, prevailing wage, safety, Workforce development and Industry trends. Requests for certified payroll made by a Joint Labor/Management Committee to which the Union(s) signatory to this Agreement are a party shall be provided as allowed by law.

**ARTICLE 12**  
**GRIEVANCE ARBITRATION PROCEDURE**

12.1 The parties understand and agree that in the event any dispute arises out of the meaning, interpretation or application of the provisions of this Agreement, the same shall be settled by means of the procedures set out herein. No grievance shall be recognized unless the grieving party provides notice in writing to the signatory party with whom it has a dispute within seven (7) calendar days after becoming aware of the dispute, but in no event more than thirty (30) calendar days after it reasonably should have become aware of the event giving to the dispute. The time limits in this Article 12 may be extended by mutual written agreement of the parties.

12.2 Grievances shall be settled according to the following procedures:

**Step 1:** Within seven (7) calendar days after the receipt of the written notice of grievance, the Business Representative of the involved Local Union, the City's authorized representative, representative of the construction person, and the representative of the involved Contractor shall confer and attempt to resolve the grievance.

**Step 2:** In the event that the representatives are unable to resolve the dispute within seven (7) calendar days after its referral to Step 1, either involved party may submit it within three (3) calendar days to Grievance Committee. The Grievance Committee shall consist of one (1) person selected by the City and one (1) person selected by the Council, which shall meet within seven (7) calendar days after such referral (or such longer time as mutually agreed upon by all representatives of the subcommittee), to confer in an attempt to resolve the grievance. The decision of the Grievance Committee shall be legal, final and binding. If the dispute is not resolved within such time seven (7) calendar days after its referral or such longer time as mutually agreed upon) it may be referred within seven (7) calendar days by either party to Step 3.

**Step 3:** Within seven (7) seven calendar days after referral of a dispute to Step 3, the representatives shall submit the matter to the designated permanent Arbitrator, Judge William Cahill.

12.3 In the event that Judge Cahill is unavailable, the arbitrator shall be Earnest Brown.

12.4 The Arbitrator shall arrange for a hearing no later than fourteen days (14) calendar days after the matter has been submitted to arbitration. A decision shall be given to the parties within five (5) calendar days after completion of the hearing unless such time is extended by mutual agreement. A written opinion may be requested by a party from the Arbitrator. The time limits specified in any step of the Grievance Procedure set forth in Section 12.1 may be extended by mutual agreement of the parties initiated by the written request of one party to the other, at the appropriate step of the Grievance Procedure. However, failure to process a grievance, or failure to respond in writing within the time limits provided above, without the request for an extension of time, shall be deemed a waiver of such grievance without prejudice, or without precedent to the processing of and/or resolution of like or similar grievances or disputes.

12.5 The decision of the Arbitrator shall be binding by all parties. The Arbitrator shall not have authority to change, amend, add, or detract from any of the provisions of the Agreement. The expense of the Arbitrator shall be borne equally by both parties.

12.6 In order to encourage the resolution of disputes and grievances at Step 1 and 2 of this Grievance Procedure, the parties agree that such settlements shall not be precedent-setting.

**ARTICLE 13**  
**JURISDICTIONAL DISPUTES**

13.1 The assignment of Covered Work will be solely the responsibility of the Contractor/Employer(s) performing the work involved; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the "Plan") or any successor Plan.

13.2 All jurisdictional disputes on this Project between or among the Union(s) and the Contractor/Employer(s), parties to this Agreement, shall be settled and adjusted according to the present Plan established by the Building and Construction Trades Department, or any other plan or method of procedure that may be adopted in the future by the Building and Construction Trades Department. Decisions rendered shall be final, binding and conclusive on the Contractor/Employer(s) and Union(s) parties to this Agreement.

13.2.1 If a dispute arising under this Article involves the Northern California Carpenters Regional Council or any of its subordinate bodies, an Arbitrator shall be chosen by the procedures specified in Article V, Section 5, of the Plan from a list composed of John Kagel, Thomas Angelo, Robert Hirsch and Thomas Pagan and the Arbitrator's hearing on the dispute shall be held at the offices of the California State Building and Construction Trades Council in Sacramento, California, within fourteen (14) calendar days of the selection of the Arbitrator. All other procedures shall be as specified in the Plan.

13.3 All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage, or slow-down of any nature, and the Contractor/Employer(s)' assignment shall be adhered to until the dispute is resolved. Individuals violating this Section shall be subject to immediate discharge.

13.4 Each Contractor/Employer(s) shall conduct a Pre-Job Conference with the Council prior to commencing Covered Work. The Primary Employer, Coordinator and the District will be advised in advance of all such conferences and may participate if they wish. Pre-job conferences for different Contractor(s) may be held together.

**ARTICLE 14**  
**APPRENTICES**

14.1 Recognizing the need to maintain continuing support of programs designed to develop adequate numbers of competent workers in the construction industry, the Contractor (s) shall employ apprentices in the respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured.

14.2 The apprentice ratios will be in compliance with the applicable provisions of the California Labor Code and Prevailing Wage Rate Determination.

14.3 There shall be no restrictions on the utilization of apprentices in performing the work of their craft provided they are properly supervised.

14.4 All Apprentices will come from a State approved Labor Management Apprenticeship program.

## **ARTICLE 15** **MANAGEMENT RIGHTS**

15.1 The Contractor shall retain full and exclusive authority for the management of their operations, including the right to direct their work force in their sole discretion with regard to the following: the hiring, promotion, transfer, layoff, corrective action or discharge for just cause of its employees (in accordance with Article 9); the determination of the number of employees needed for the Project work; the selection/hiring of foremen and supervisors; the assignment and schedule of work; the requirement of overtime work, the determination of when it will be worked, and the number of employees engaged in such work, except as otherwise limited by the terms of this Agreement and/or the MLA. No rules, customs or practices shall be permitted or observed which limit or restrict production, or limit or restrict the working efforts of construction persons except that the lawful manning provisions of the MLA shall be recognized.

## **ARTICLE 16** **WAGES/BENEFITS**

16.1 **Wages.** All construction persons covered by this Agreement shall be classified in accordance with work performed and paid the hourly wage rates for those classifications in the applicable MLA for such craft work and in compliance with the applicable prevailing wage rate determination.

16.2 **Benefits.** Contractor agrees to pay contributions into established construction person benefit funds in the amounts designated in the appropriate MLA; provided, however, that each Contractor and Union agree that only such bona fide construction person benefits as included in the prevailing wage determination shall be included in this requirement and required to be paid by the Contractor under this Agreement; provided further, however, that this provision does not relieve Contractors signatory to a local collective bargaining agreement with a signatory Union which would be applicable to the Projects from making any other fund contributions (including, but not limited to, those for contract administration), required by such local agreement. Contractor shall not be required to pay contributions to any other trust funds to satisfy their obligation under this Article. By signing this Agreement, the Contractors adopt and agree to be bound by the written terms of the legally established Trust Agreements, specifying the detailed basis on which the payments are to be made into, and the benefits paid out of, such Trust Funds.

16.3 **Compliance.** It shall be the responsibility of the Contractor(s) and Unions to investigate and monitor compliance with the provisions of the agreement contained in Article 15. Nothing in this agreement shall be construed to interfere with or supersede the

usual and customary legal remedies available to the Unions and/or employee benefit Trust Funds to collect delinquent Trust Fund contributions from Contractors on the Project.

**ARTICLE 17**  
**MODIFIED MASTER LABOR AGREEMENTS**

17.1 Certain Provisions Shall Not Apply. Provisions negotiated into the new or modified MLA which are less favorable to the Contractor than those uniformly required of employers for construction work normally covered by those agreements or which may be construed to apply exclusively or predominately to work covered by this Agreement shall not apply to work covered by this Agreement. Any disagreement between the parties regarding the application of the provisions of any new or modified collective bargaining agreement to work covered by this Agreement shall be resolved under the dispute and grievance arbitration procedures set forth in Article 12 hereof.

**ARTICLE 18**  
**DRUG and ALCOHOL TESTING**

18.1 The use, sale, transfer, purchase and/or possession of a controlled substance, alcohol and/or firearms at any time during the work day is prohibited.

18.2 Employer shall be allowed to utilize employment drug screens. All personnel are subject to random alcohol and drug/alcohol testing at any time, except, the following changes will apply. Employer shall follow said Unions Master Labor Agreement drug polices, regulations and limits. Body fluid tests will utilize urine and saliva specimens. Employer may also selectively require an employee to undergo alcohol or drug/alcohol testing if Employer has reasonable cause to believe that an employee's ability to work safely may be impaired. All requirements and activities of the Employer with regard to drug/alcohol testing shall comply with the provisions of State law.

**ARTICLE 19**  
**SAVINGS CLAUSE**

19.1 The parties agree that in the event any article, provision, clause, sentence or word of this Agreement is determined to be illegal or void as being in contravention of any applicable law, by a court of competent jurisdiction the remainder of the Agreement shall remain in full force and effect. The parties further agree that if any article, provision, clause, sentence or word of the Agreement is determined to be illegal or void, by the court of competent jurisdiction, the parties shall substitute, by mutual agreement, in its place and stead, an article, provision, clause, sentence or word which will meet the objections to its validity and which will be in accordance with the intent and purpose of the article, provision, clause, sentence or word in question.

19.2 The parties also agree that in the event that a decision of a court of competent jurisdiction materially alters the terms of this Agreement such that the intent of the parties is defeated, then the entire Agreement shall be null and void.

**ARTICLE 20**  
**ENTIRE AGREEMENT**

20.1 This Agreement represents the complete understanding of the parties. The provisions of this Agreement, including the MLA, shall apply to the work covered by this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a MLA, the provisions of this Agreement shall prevail. Where a subject is covered by the provisions of a MLA and is not covered by this Agreement, the provisions of the MLA shall prevail. Nothing contained in a MLA, working rule, by-laws, constitution or other similar document of the Unions shall in any way affect, modify or add to this Agreement unless otherwise specifically set forth in this Agreement or mutually agreed to in writing executed by the parties.

20.2 The parties agree that this Agreement covers all matters affecting wages, hours, and other terms and conditions of employment and that during the term of this Agreement the parties will not be required to negotiate on any further matters affecting these or any other subject not specifically set forth in this Agreement except by mutual agreement of the parties.

20.3 This Agreement may be executed in counterparts, such that original signatures may appear on separate pages and when bound together all necessary signatures shall constitute an original. Facsimile signature pages transmitted to other parties to this Agreement shall be deemed the equivalent to original signatures.

**ARTICLE 21**  
**TERM**

21.1 The Agreement shall be included as a condition of the award of the Construction Contracts.

21.2 The Agreement shall continue in full force and effect for a term of three years from the Effective Date and shall be applicable to all Projects until completion that are advertised for bidding during the term.

21.3 This Agreement shall continue in full force and effect until Completion of the Project. The parties may mutually agree to extend and/or amend this Agreement.

**SIGNATURES**

**City of Berkeley**

By: \_\_\_\_\_

Title:

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

**Alameda County Building & Construction Trades Council, AFL-CIO**

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

**Signatory Unions**

**Asbestos Workers, Local 16 Boilermakers, Local 549**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Bricklayers & Allied Craftsmen, Local 3 Cement Masons, Local 300**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Electrical Workers, Local 595 Elevator Constructors, Local 8**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Hod Carriers, Local 166 Iron Workers, Local 378**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Laborers, Local 67 Laborers, Local 304**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Operating Engineers, Local 3 Plasterers, Local 66**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Roofers, Local 81 Sheet Metal Workers, Local 104**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Sign Display, Local 510 Sprinkler Fitters, Local 483**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Teamsters, Local 853 United Association of Journeymen and Apprentices Fitting Industry, Underground Utility & Landscape, Local 355**

By: \_\_\_\_\_ By: \_\_\_\_\_

**United Association of Steamfitters, Ironworkers City and the RDA Council of Pipefitters, Plumbers, & Gas California Fitters, Local 342**

By: \_\_\_\_\_ By: \_\_\_\_\_

**Council No. 16 Northern California**

**International Union of Laborers Painters & Allied Trades** (On behalf of Painters, Local 3; Carpet & Linoleum Layers, Local 12; Glass Workers, Local 169; Auto & Marine Painters, Local 1176)

By: \_\_\_\_\_ By: \_\_\_\_\_

**Northern California Carpenters Regional Council** (on behalf of Carpenters, Local 713; Carpenters, Local 2236; Lathers, Local 68L; Millwrights, Local 102; Pile Drivers, Local 34)

By: \_\_\_\_\_

**AGREEMENT TO BE BOUND**

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Project's Community Workforce Agreement ("Agreement"), a copy of which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;
3. Agrees to secure from any Contractor (as defined in said Agreement) which is or becomes a subcontractor (of any tier) to it, and from any successors, a duly executed Agreement to be bound in form identical to this document.
4. Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft agreement contained in Schedule "A" of Agreement.

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

Company Name: \_\_\_\_\_

Name of Prime Contractor or Higher Level Subcontractor:  
\_\_\_\_\_

Name of Project: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

Contractor's License #: \_\_\_\_\_

Motor Carrier Permit (CA) #: \_\_\_\_\_

RESOLUTION NO. 68,299-N.S.

COMMUNITY WORKFORCE AGREEMENT WITH BUILDING TRADES COUNCIL,  
ET.AL. FOR CITY OF BERKELEY CONSTRUCTION PROJECTS OVER \$500,000

WHEREAS, since its January 18, 2011 adoption, the Community Workforce Agreement has incorporated community interests by providing Berkeley residents access to quality union jobs with better standards for pay and benefits; and

WHEREAS, the City has operated continuously under the guidelines of the CWA, which has enhanced local hiring efforts by ensuring a portion of workers on certain City of Berkeley construction projects are from the local area, and that City projects will not be affected by work stoppages due to labor issues; and

WHEREAS, by Resolution No. 65,157-N.S. on January 18, 2011, Council approved the CWA for a term of three years and authorized the City Manager to execute the Agreement with the Alameda County Building and Construction Trades Council, AFL-CIO and twenty-two labor organizations regarding the provision of union labor to City construction projects in excess of \$1 million dollars; and

WHEREAS, on May 15, 2012, Council approved the City Manager's recommendation to maintain the CWA's \$1 million dollar threshold for publicly-funded construction projects for an additional twelve months; and

WHEREAS, on June 23, 2015, Council approved Resolution No. 67,111-N.S. reducing the threshold from \$1 million to \$500,000, with that threshold continuing to be based on the engineer's estimate and authorizing the City Manager to extend the then-current CWA for three years; and

WHEREAS, the City has since that time honored the terms of that Agreement and its key components, and the Parties have worked diligently and cooperatively to reach an accord on newly added contract language and a new expiration term.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract with the Building Trades Council and twenty-two labor organizations regarding the provision of labor to City of Berkeley construction projects in Berkeley with an estimated value in excess of \$500,000 for a three-year term that will expire June 30, 2020.

The foregoing Resolution was adopted by the Berkeley City Council on January 23, 2018 by the following vote:

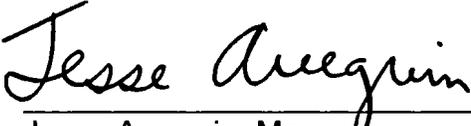
Ayes: Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: Bartlett.

Attest:

  
Mark Numainville, City Clerk

  
Jesse Arreguin, Mayor

RESOLUTION NO. 69,661-N.S.

CONTRACT AMENDMENT: COMMUNITY WORKFORCE AGREEMENT EXTENSION WITH BUILDING AND CONSTRUCTION TRADES COUNCIL ET.AL FOR CONSTRUCTION PROJECT AT OR ABOVE \$500,000

WHEREAS, since its January 18, 2011 adoption, the Community Workforce Agreement (hereafter CWA) has incorporated community interests by providing Berkeley residents access to quality union jobs with better standards for pay and benefits; and

WHEREAS, by Resolution No. 65,157-N.S. on January 18, 2011, Council approved the CWA for a term of three years and authorized the City Manager to execute the Agreement with the Alameda County Building and Construction Trades Council, AFL-CIO and twenty-two labor organizations regarding the provision of union labor to City construction projects in excess of \$1 million dollars; and

WHEREAS, on May 15, 2012, Council approved the City Manager's recommendation to maintain the CWA's \$1 million dollar threshold for publicly-funded construction projects for an additional twelve months; and

WHEREAS, on June 23, 2015, Council approved Resolution No. 67,111-N.S. reducing the threshold from \$1 million to \$500,000, with that threshold continuing to be based on the engineer's estimate and authorizing the City Manager to extend the then-current CWA for three years; and

WHEREAS, on January 23, 2018, Council approved Resolution No. 68,299-N.S. maintaining the \$500,000 threshold based on the engineer's estimate and authorizing the City Manager to extend the then-current CWA for two years; and

WHEREAS, the CWA will support the efforts of the City to increase employment opportunities for Berkeley residents, including youth, through apprenticeship and pre-apprenticeship programs; and

WHEREAS, the CWA helps to provide for peaceful settlement of labor disputes and grievances without strikes or lockouts, thus promoting the public interest in assuring the timely and economical completion of the projects.

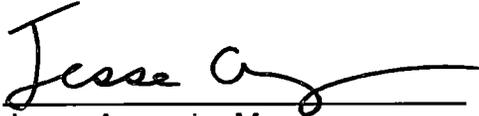
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract amendment with the Building Trades Council and twenty-two labor organizations regarding the provision of labor to construction projects in Berkeley with an estimated value in excess of \$500,000 for a three-year term that will expire June 30, 2023.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

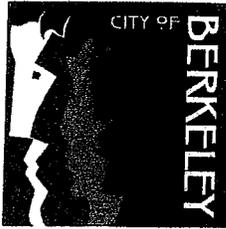
Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Mark Numainville, City Clerk



Health Housing & Community Services Department  
Housing & Community Services Division  
Employment Programs

## Community Workforce Agreement – Public Works

### Forms:

**CWA Summary:** captures main points of the 24-page CWA document

**Agreement to Be Bound** (also known as Letter of Assent): to be signed by all contractors and subs regardless of tier

**Pre-Job Conference Request:** Project manager to submit to Delfina (or designee) as PM is preparing documents, contract etc. Pre-job must occur prior to start of project.

**Hiring Plan:** to be completed by each contractor & sub prior to start of project

**Cumulative CWA Workforce Utilization Report:** to be submitted with Certified Payroll by the 25<sup>th</sup> of the following month.

*A Vibrant and Healthy Berkeley for All*

2180 Milvia Street, 1<sup>st</sup> Floor, Berkeley, CA 94704 Tel: 510.981.4970 TDD: 510.981.6903 Fax: 510.981.4975

E-mail: [housing@ci.berkeley.ca.us](mailto:housing@ci.berkeley.ca.us) - <http://www.cityofberkeley.info/housing/>



## CITY OF BERKELEY

### BIDDING & CONTRACTING UNDER THE COMMUNITY WORKFORCE AGREEMENT (CWA)

#### • **Local Workforce Hiring Goals**

The City of Berkeley's local workforce-hiring goal is 20% of craft hours worked, on a craft by craft basis on locally funded projects. City Staff will provide a template to be used by the general contractor (GC) for reporting the summary of the total work hours and total number of Berkeley residents, this report is to be submitted with each certified payroll (CP), including CP for each subcontractor. GC can compile the report for the subcontractors or can require each sub to prepare their own report. Please include documentation detailing efforts to meet the local hire goals, i.e., dispatch requests to the unions. Please note the GC is responsible for the local hire component for the entire project. This report will be reviewed by the Joint Administrative Committee (JAC) to monitor compliance of the local workforce hiring goals. The JAC may periodically request contractors to attend a JAC meeting to describe and discuss their local hire efforts. GC and the subs are strongly encouraged to utilize the city-funded pre-apprenticeship program, Rising Sun Energy Center, for the hiring of Berkeley residents on the projects. Rising Sun staff will work closely with the trades and the contractor to facilitate the hiring of the program graduates for entry into the trades. City staff will conduct periodic interviews of workers throughout the project.

#### • **Certified Payrolls**

Contractors are required to submit certified payrolls (CP) on a monthly basis to the Public Works Project Manager. The monthly report described above shall reflect the information provided on the Certified Payrolls. Address & trade for each worker must be included in Certified Payroll and is subject to verification by City staff. Please redact Social Security Numbers from CP prior to sending to city staff. When submitting CP, please attach any documentation pertinent to your good faith efforts, such as dispatch requests & union hall responses to those requests.

#### • **Core (Regular, experienced) Employees**

A non-signatory contractor may use up to five (5) of its own "core" employees provided that the first worker hire comes from the union, second worker is "core", third worker from the union, fourth worker is "core", and so forth. The contractors' worker must comply with the Union Hall's registration process; the contractor and subcontractor may request by name, and the local will honor, referral of the core employee(s) who have applied to the local union hall for work on the project and who demonstrate the following qualifications: 1) possess any license required by state or federal law, 2) have worked at least 1,000 hours in the construction craft during the prior three years, 3) have been on the Contractor's active payroll for at least sixty (60) out of the one hundred and eighty (180) hours in the calendar year immediately prior to contract award, 4) must have the ability to safely perform the basic functions of the applicable trade, and 5) must reside in Berkeley.

#### • **Hiring Plan**

A hiring plan is to be submitted prior to the Notice to Proceed date, with the understanding that the workforce may change during the project. The hiring plan is used as baseline information, with the monthly workforce utilization reports, certified payroll and dispatch request documentation serving as confirmation of good faith efforts to hire locally.

#### • **Apprentices**

Consistent with the requirements of California Labor Code § 1776, 1777.5 and 1777.6, contractors and their subcontractors are required to hire at least one Berkeley resident as a First Period Apprentice for \$500,000 or more of total bid amount, thereafter, for every five million dollars of the total bid amount the Prime Contractor and their subcontractors are required to hire one additional first period apprentice. Berkeley residents that participate in local workforce development programs will be screened and referred for the apprenticeship opportunities, city staff, union halls & training programs will facilitate this process.



CITY OF BERKELEY

BIDDING & CONTRACTING UNDER THE COMMUNITY WORKFORCE AGREEMENT (CWA)

• **California Prevailing Wages**

All construction workers will be paid prevailing wages as determined by the State of California. Benefits are the established labor-management vacation, pension or other form of deferred compensation plan, apprenticeship and health benefit funds for each hour worked. Any local collectively bargained wage and/or fringe benefit increase shall be recognized on the date on which they become effective.

• **Agreement to be Bound**

All general contractors and all sub-contractors, including trucking, and regardless of tier, must sign an *Agreement to be Bound* to the CWA. This agreement binds the contractor to the terms of the CWA for the awarded project only. It does not bind any contractor to a union agreement for any other project.

• **Pre-Job Conference**

**Prior** to start of construction, the successful general contractor and all subcontractors are required to attend a pre-job conference with the affected Building & Construction Trades Council. The Pre-Job request form shall include subcontractor information including scopes of work. The Agreements to be Bound shall be submitted **prior** to the Pre-job Conference. General Contractor and subcontractors will make craft/trade work assignments at this meeting. Should any union disagree, it may follow the established jurisdictional dispute resolution process provided in the Community Workforce Agreement. The pre-job conference may be held via conference call arranged by the building trades, city staff will also participate in the pre-job conference.

• **Joint Administrative Committee**

This Committee shall be comprised of up to two (2) representative selected by the City; up to two (2) representatives of the signatory Unions and Alameda County Building and Construction Trades Council; and one (1) contractor representative, mutually selected by the City and the Alameda County Building and Construction Trades Council. Each representative shall designate an alternate who shall serve in his or her absence for any purpose contemplated by this Agreement. The Joint Administrative Committee shall meets regularly to review the implementation of the Agreement and the progress of the Projects including, but not limited to, compliance with Article 8, prevailing wage, safety, craft workforce levels and construction progress. The JAC may contact the Contractor and/or their subcontractors in writing to request their presence at a JAC meeting to describe good faith efforts throughout the project or at the end of a project.

**CWA Administration**

Delfina Geiken  
Employment Programs Administrator  
Department of Health, Housing and Community Services

2180 Milvia, 2<sup>nd</sup> floor  
Berkeley, CA 94704  
[dgeiken@cityofberkeley.info](mailto:dgeiken@cityofberkeley.info)  
(510) 981-7551

Nathan Dahl  
Community Development Project Coordinator  
Department of Health, Housing and Community Services

2180 Milvia, 2<sup>nd</sup> floor  
Berkeley, CA 94704  
[ndahl@cityofberkeley.info](mailto:ndahl@cityofberkeley.info)  
(510) 981-5405

To view the full City Council report:

[http://www.cityofberkeley.info/Clerk/City\\_Council/2015/06\\_Jun/Documents/2015-06-23\\_Item\\_52\\_Contract\\_Community\\_Workforce\\_-\\_Rev.aspx](http://www.cityofberkeley.info/Clerk/City_Council/2015/06_Jun/Documents/2015-06-23_Item_52_Contract_Community_Workforce_-_Rev.aspx)

## AGREEMENT TO BE BOUND

The undersigned, as a Contractor or Subcontractor ("Contractor") on a City Project ("Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the Project's Community Workforce Agreement ("Agreement"), a copy of which was received and is acknowledged, hereby:

1. Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.
2. Certifies that it has no commitments or agreements which would preclude its full and complete compliance with the terms and conditions of said Agreement;
3. Agrees to secure from any Contractor (as defined in said Agreement) which is or becomes a subcontractor (of any tier to it, and from any successors, a duly executed Agreement to be bound in form identical to this document.
4. Contractor agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the direct benefit of the construction persons, including Health and Welfare, Pension, Training, Vacation, and/or other direct benefits provided pursuant to the appropriate craft agreement contained in Schedule "A" of Agreement.

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

Company Name: \_\_\_\_\_

Name of Prime Contractor or Higher Level Subcontractor: \_\_\_\_\_  
\_\_\_\_\_

Name of Project: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

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

Contractor's License #: \_\_\_\_\_

Motor Carrier Permit (CA) #: \_\_\_\_\_



## Pre-Job Conference Request Template

Please fill out this request for a Pre-Job form. **Do not** submit a PDF or Excel spreadsheet. Please allow ~7 business days for confirmation of your Pre-Job. A Pre-Job Notice will be sent via email once confirmed. If you have any questions, please call Kelly Elena Marshall at 510-430-8664.

**Date of Pre-Job request:** **To be filled out by BTC**  
**Time of Pre-Job Request:** **To be filled out by BTC**

**Name of Job:**

**General Scope of Job:**

**Project Address:**

**General Contractor:**

**Contact:** Provide name, title, cell # and email address

**Contract Amount:**

**Project Start Date:**

**\*\*This request cannot be processed w/o all Agreements to be Bound, attached\*\***

### List of sub(s):

1. Name of Company:  
Company Address:  
CSLB #:  
Contact Person:  
Phone number  
Email:  
Scope of work:  
Sub to:  
Estimated Start Date:  
Estimated Completion Date/Duration:



## Cumulative CWA Workforce Utilization Report

Report Period:	CoB Project Manager:
Project Name:	
General Contractor:	
Start Date:	
Bid Amount:	
Prepared By:	

Craft	Total Local Hire	Enter Total All Craft Hours on Project	Enter Total Number of Workers on Project	All Berkeley		Apprentices Number	
				Enter Total Hours	total number of Berkeley residents	Total all new and/or 1st pd apprentices on project	1st period Berkeley
example: laborers	24.00%	500.00	7	120	3	4	1
	#DIV/0!						
	#DIV/0!	0.00					
	#DIV/0!	0.00					
	#DIV/0!	0.00					
	#DIV/0!						
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	#DIV/0!						
	#DIV/0!						
	#DIV/0!						
Totals	#DIV/0!	0.00	0	0.00	0	0	0

**Enter totals (numbers) in columns C-H. Include apprentice hrs in totals**

**To be submitted monthly with Certified Payroll**

**Carry over numbers each month so the report is cumulative, add a worksheet via tab to keep in one document.**

row 26 will auto calculate

# Appendix B

1. Biological Assessment
2. National Marine Fisheries Service (NMFS) Letter of Concurrence (LOC)
3. U.S Army Corps of Engineers (USACE) Nationwide Permit (NWP)
4. Regional Water Quality Control Board (RWQCB) 401 Water Quality Certification (WQC)
5. Bay Conservation and Development Commission (BCDC) permit – Under Review

# Berkeley Marina Pile Replacement and Maintenance Project Biological Assessment

Produced for the City of Berkeley  
January 6, 2021



Produced by Moffatt & Nichol  
2185 N. California Blvd. Suite 500  
Walnut Creek CA, 94596  
(925) 944-5411 | [www.moffattnichol.com](http://www.moffattnichol.com)



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## APPENDICES

Appendix A – EFH Assessment



## 1. LIST OF ACRONYMS

ACZA	ammoniacal copper zinc arsenate
BA	Biological Assessment
Bay	San Francisco Bay
BCDC	Bay Conservation and Development Commission
BMP	Best Management Practices
Caltrans	California Department of Transportation
CCC	Central California Coast
CCV	California Central Valley
CDFW	California Department of Fish and Wildlife
CH	Critical Habitat
CNDDDB	California Natural Diversity Database
CVSR	Central Valley (Sacramento) spring-run
CWA	Clean Water Act
dB	Decibel (s)
dBA	A-weighted decibels
DDT	Dichlorodiphenyltrichloroethane
Delta	Sacramento-San Joaquin Delta
DPS	Distinct Population Segment
EFH	Essential Fish Habitat
EPA	Environmental Protection Agency
ESA	Endangered Species Act
ESU	Evolutionarily Significant Unit
FMP	Fisheries Management Plan
HAPC	Habitat Area of Particular Concern
IPAC	Information for Planning and Consultation
Marina	Berkeley Marina
M&N	Moffatt & Nichol
MMPA	Marine Mammal Protection Act
MSA	Magnuson Stevens Act
NLAA	Not Likely to Adversely Affect
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
PCBs	polychlorinated Biphenyls
PCE	Primary Constituent Elements
PPT	Parts Per Thousand
PSU	Practical Salinity Units
Project	Berkeley Marina Pile Replacement and Maintenance Project
RMS	Root Mean Square



SAV	Submerged Aquatic Vegetation
SEL	Sound Exposure Level
SELCum	Sound Exposure Level Cumulative
SRWR	Sacramento River winter-run
USFWS	U.S. Fish and Wildlife Service
WSDOT	Washington State Department of Transportation



## 2. INTRODUCTION

### 2.1. BACKGROUND/HISTORY

The purpose of this Biological Assessment (BA) is to address potential effects of the Berkeley Marina Pile Repairs and Maintenance Project (Project) on species, listed as endangered or threatened under the Endangered Species Act (ESA), or their designated critical habitat (CH). The purpose of this Project is to restore and maintain Marina dock facilities for structural integrity, safety and aesthetics. The Project involves repair and/or replacement of up to 120, 12- to 14-inch treated creosote or ammoniacal copper zinc arsenate (ACZA) timber piles over the duration of the permit. In addition to the 120 piles proposed for replacement, 11 piles will be removed and not replaced, and five new concrete piles will be installed based on a wind and engineering analysis of the Marina.

Piles will be repaired or replaced as funding becomes available with priority given to piles exhibiting the most damage and at the most critical locations. Pile damage was assessed during above-water visual inspections completed at the site at low tide by Mofatt & Nichol (M&N) engineers (M&N 2020). The piles will be replaced or optionally repaired depending on the severity of the damage of the existing pile, location and accessibility. Maintenance repairs for damaged piles, if completed, will consist of placing a fiberglass jacket around the damaged pile and filling the interstitial space between the pile and the jacket with grout to restore the structural integrity. Grout will not come into contact with the surrounding surface water. The existing pile will remain in-place fully encased by the grouted fiberglass jacket. For replacement, Pile replacement will consist of removing the existing damaged pile will be removed and replacing it with a new concrete pile consistent with past repairs completed at the marina. The project also proposes minor maintenance activities at the Berkeley Marina such as:

- Decking repairs
- Utility repairs
- Pile guide repairs
- Gangway Repairs
- Repair to piles that support shore buildings (marina office and restrooms)

These minor repairs activities would be completed on an as needed basis. The proposed Project is necessary to maintain public safety and ensure the structural integrity of the waterfront floating docks. There is no proposed expansion of the marina, increase in overwater coverage, or increase in marina operations under this Project.

This Project has the potential to impact the following ESA-listed species and/or their CH: green sturgeon (*Acipenser medirostris*), Central California coast steelhead (*Oncorhynchus mykiss*) California Central Valley steelhead (*Oncorhynchus mykiss*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), California least tern (*Sterna antillarum browni*), and gray whale (*Eschrichtius robustus*).



The Project also has the potential to impact the following species protected under the Marine Mammal Protection Act (MMPA): harbor seals (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and harbor porpoises (*Phocoena phocoena*) and Essential Fish Habitat (EFH) under the Magnuson Stevens Act (MSA).

This BA prepared by M&N evaluates the proposed action in compliance with Section 7 of the ESA. Section 7 assures that, through consultation (or conferencing for proposed species) with the Services; both US Fish and Wildlife Services (USFWS) and the National Oceanic and Atmospheric Administration's (NOAA) Fisheries Service, also known as the National Marine Fisheries Service (NMFS), federal actions do not jeopardize the continued existence of any threatened, endangered, or proposed species, or result in the destruction or adverse modification of CH. This BA also includes assessment of MMPA species and EFH under the MSA.

### **2.1.1. SITE BACKGROUND**

Berkeley Marina (Marina) is located at the terminus of University Avenue in the City of Berkeley, California, and was constructed on artificial fill in the 1960s and 1970s (Figure 1). Rip rap along the Marina shoreline provides shoreline stabilization and protection. The Marina consists of a boat yard, sailing club, Berkeley Yacht club, UC Berkeley Cal Adventures, Racing Canoe Center, Public Park and Playground, bait and tackle shop, fuel dock, boat launch, and restaurants (Figure 2). Activities at the Marina include waterfront hiking, sailing, kayaking, park activities, stand-up paddle boarding, windsurfing, kiteboarding, and sportfishing (City of Berkeley 2020). There are two breakwaters located approximately 450 feet northwest of the Marina entrance, one concrete sheet pile breakwater that is approximately 440 feet long and one rubble breakwater that is approximately 750 feet long.

The Marina is surrounded by 100 acres of parks including the Adventure Playground, Cesar Chavez Park, Horseshoe Park, and Shorebird park (Figure 2). Cesar Chavez Park is a 90-acre park located on the northern end of the marina that was built on a former landfill. Cesar Chavez Park offers hiking trails (some paved), a multi-purpose turf area, a 17-acre off-leash dog play area, picnic and BBQ areas, shoreline and wetland areas, and a wildlife sanctuary at the undeveloped northern end of the park. Horseshoe Park is approximately 3.4 acres and offers views of the Marina and shoreline area. Shorebird Park is approximately 6.2 acres and is located along the southern end of the Marina. Shorebird Park has a multi-purpose turf area, hiking trails, picnicking sites, playgrounds, and hosts the Shorebird Nature Center.

The marina consists of 14 floating docks that are used for mooring, a public boat launch, one dock that is leased out by Olympic Sailing, one dock owned by Hornblower Cruises, and one gas dock at the northwest corner of the Marina. Dock A is leased by Olympic Sailing and docks B through O are used for boat mooring. Available moorage includes several day visitor boat slips that are free for up to four hours, short-term one to ten-night guest spots, and long-term eleven to thirty-night guest spots (City of Berkeley 2020). K dock is a public dock, but the other docks are private.

The docks range in length from approximately 170 feet to 466 feet and range in width from 8 feet to 12 feet (K dock). The docks consist of fingers that make up 867 boat slips at docks B through O. The fingers on the docks vary from 24 to 52 feet long and 3 to 6 feet wide. The majority of the marina docks are constructed with concrete decking, but F and G docks are made entirely of ACZA treated timber. The concrete docks have previously been repaired with ACZA treated timber decking, plywood, and composite lumber in some areas. The docks are supported by staggered Ace- roto-mold tubs



(floats). Access to docks B through O is provided by metal gangways. The gangways are either connected to the shore at concrete abutments (Figure 3) or connect to pile supported ACZA treated timber access piers (Figure 4). The waterward end of the gangway rests on the floating docks. Existing utilities on the docks include water and electricity to the boat slips. The utilities are routed from the shore to the Marina via the gangway structure.

The docks are supported by pile guides. Where the dock fingers connect to the main walkway there is a steel triangle frame (knee) that sometimes has a pile guide fit within it (Figure 5), referred to as an interior pile. There are also pile guides at the ends of many of the fingers, referred to as an exterior pile (Figure 6). Longer fingers (above 30 ft in length) may have internal pile guides and/or external pile guides (Figure 7). The Berkeley Marina Waterfront Office (Figure 8) Berkeley Yacht Club (Figure 9), and marina restrooms (Figure 10) extend overwater and are also pile supported. Piles driven within the pile guides range in diameter from 12 to 18-inches.

The marina structures are supported by a total of approximately 483 piles. Docks B through O are supported by approximately 431 total piles, the gangways/ access docks are supported by approximately 19 total piles, and the overwater building are supported by approximately 33 total piles. The buildings are also supported by approximately 10 buried post footings consisting of pre-cast concrete and ACZA treated wood posts installed along the riprap shoreline (Figure 11). The majority of the timber piles were installed in the 1960s and 1970s and many are exhibiting substantial damage. All piles at the marina were originally creosote treated or ACZA treated wood piles (Figure 5). The majority (about 54%) of the piles are still treated wood (creosote or ACZA), however approximately 216 piles have been replaced with concrete piles (Figure 12). Approximately 90% of the 267 treated wood piles are creosote treated. Treated wood piles throughout the marina range in diameter from 12- to 14-inches. Concrete piles throughout the marina range from 14 to 18-inches in diameter with most 14-inches in diameter.



Figure 1. Project Location





*Figure 3. Dock B Concrete Abutment Gangway Connection*



*Figure 4. ACZA Treated Wood Access Dock*



Figure 5. Steel Triangle Pile Frame (Knee)

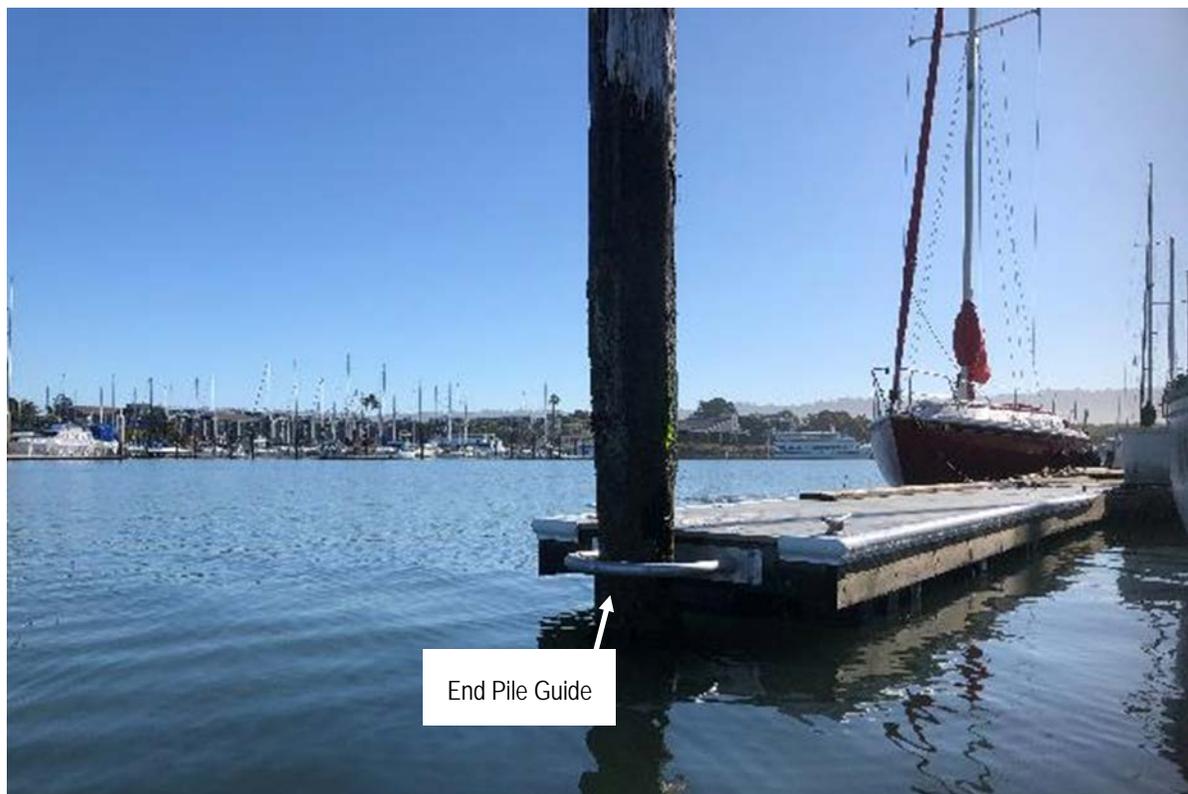


Figure 6. Exterior Pile Guide



*Figure 7. External Pile Guide*



*Figure 8. Berkeley Marina Waterfront Office*



*Figure 9. Yacht Club*



*Figure 10. Marina Restrooms*



*Figure 11. Buried Post Footings*



*Figure 12. Concrete Piles*



## 2.1.2. PROJECT DETAILS

Many of the piles throughout the Marina were originally installed in the 1960s and 1970s and are now exhibiting severe damage. In some cases, the pile damage is so severe that the structural integrity of the dock is of concern. Slip tenants have recently voiced their concerns over the Marina's deteriorated nature. Berth rentals declined from 88% in 2015 to 77% in 2018. Lease revenue from restaurants and hotels has also declined. Both boaters and commercial tenants have cited the Marina's deteriorating infrastructure, as well as safety and security concerns for the declines in berth and commercial lease rentals. Marina revenue primarily comes from berth rentals and commercial lease rentals. There has been a structural deficit in the Marina Fund for the last twenty years that has been offset by staffing reductions and the delay of capital improvements. It is no longer possible to delay these repairs due to the extent of the current damage.

A Condition Assessment of the timber and concrete piles at docks D through E and J through O was completed by the City in 2019. Substantial damage to the treated wood piles was noted throughout these docks. The concrete piles are newer and it was noted in the 2019 Condition Assessment that these were generally in good condition with no signs of cracking or dust. M&N completed a follow-up survey of docks B through C and F through O on July 22, 2020 and July 23, 2020. M&N also surveyed the piles supporting the overwater buildings and gangways associated with the docks. The results from the pile assessment are summarized in Table 1 and can be seen in Figure 13.

*Table 1. M&N 2020 Pile Assessment*

Pile Material	Timber						Concrete	Jacketed Timber	
	Stub	Severe	Major	Moderate	Minor	Good		Conc	HDPE Jacket
Condition Rating	22	23	22	41	102	18	216	31	8
Number of Piles	22	23	22	41	102	18	216	31	8
Total Piles by Material	228						216	39	
Percentage of Total Piles by Material	47%						45%	8%	
Overall Total Piles	483								

Good	Minor	Moderate
		
<p>Timber pile shows no signs of section loss and is in like-new condition.</p>	<p>Timber pile has &lt;25% section loss due to hourglassing, depressions, notches, or small cavities.</p>	<p>Pile has between 25% and 50% section loss due to cavities and/or hourglassing.</p>
Major	Severe	Stub
		
<p>Pile has between 50% and 75% section loss due to large cavities/rot.</p>	<p>Pile has section loss between 75% and 100% due to cavities/rot or the pile moves easily under lateral pressure indicating a lack of embedment depth in the seabed.</p>	<p>Pile has 100% section loss and the upper portion of the pile has fallen into the sea or has been removed.</p>
Conc	HDPE Jacket	Concrete Case
		
<p>Concrete pile with no signs of rust staining or spalling.</p>	<p>Timber pile jacketed with an HDPE wrap.</p>	<p>Timber pile encased in a 4.5" thick concrete shell.</p>

Figure 13. Pile Condition Rating Key



M&N did not survey docks D and E, and pile replacement at these docks is not proposed under this Project. M&N noted that the 216 piles concrete piles at dock B through C and F through O were in generally good condition and are not in need of replacement. All 267 treated wood piles will eventually be replaced or repaired as they deteriorate and as funding becomes available. Under this Project up to 120 treated timber piles could be repaired or replaced within a 5-year period. Prioritization will be given to piles exhibiting the most severe damage. Approximately 90% of the 120 treated timber piles to be replaced are creosote treated. In addition to the 120 piles proposed for replacement, 11 piles will be removed and not replaced, and five new concrete piles will be installed based on a wind and engineering analysis of the Marina.

Pile removal, replacement, and repair will likely occur from a barge. There are three main methods for pile repair/ replacement:

1. Piles will be removed and replaced with concrete piles
2. Piles will have fiberglass jackets installed around damaged areas

Piles that are replaced, ranging in size from 12- to 14 inches in diameter, will be removed with a vibratory extractor and replaced with 16-inch concrete piles. Installation of concrete piles will need to be completed by an impact hammer from a barge mounted crane. Vibratory pile driving of concrete piles is not proposed due to its ineffectiveness in driving concrete piles and the risk of damaging the pile during vibratory installation. It is anticipated that it will require a maximum of 175 blows to install each pile and that a maximum of eight piles could be installed each day. A wood cushion block is routinely used when driving piles to minimize potential noise impacts and will be made a condition of the contractor's requirements. During pile removal, piles will only be cut if they cannot be removed in-whole using vibratory extraction or if they break during removal.

The majority of the piles will be removed and replaced in the same location including those within the existing pile guides on the docks. Piles that break will be driven on the same dock in a nearby location. Based on a wind analysis of the Marina, five new structural piles will need to be added to ensure the integrity of the Marina. Eleven piles that have no effect on the structural integrity of the docks will be removed and not replaced. Therefore, there will be a net decrease of nine piles at the Marina. The Project proposes to replace creosote treated wood piles with biologically inert concrete piles. This is anticipated to have an overall long-term environmental benefit. Existing creosote treated wood piles throughout the marina range in diameter from 12- to 14-inches. The concrete replacement piles will be 16-inches in diameter. The new concrete piles may be round, hexagonal, or square.

In some cases full replacement may not be necessary and it may be feasible to repair the pile to provide adequate structural integrity. Fiberglass jackets would be installed around some of the existing damaged piles to restore their structural integrity. Up to 20 of the 120 piles proposed for repairs or replacement may be repaired with jacket installation. Fiberglass jacketing involves placing a fiberglass shell with a vertical tongue and groove seam around the circumference of the section of damaged pile. The interior between the pile and the jacket would then be filled with underwater grout. The top four inches and the bottom four to six inches of the jacket will be filled with epoxy grout to ensure a watertight seal so that grout does not come into contact with the Bay water. Pile jacket installation would be performed by hand from a small boat and diver or from the dock deck.



The following general maintenance activities are also proposed within the Marina on an as needed basis:

1. Replace up to 2000 square feet of 2 -inch thick treated wood deck paneling or concrete deck paneling with approximately 2000 square feet of composite (plastic/fiberglass), ACZA treated wood, or precast concrete deck paneling .
2. Repair of damaged utilities including electric, sewer, and water (all above water).
3. Repair or replacement of up to 120 pile guides.
4. Gangway/access dock repairs (decking, utilities under gangway).

All general maintenance repairs (aside from pile repair and replacement) will be completed above water and with the use of hand tools. Deck panels will be prestressed precast concrete, composite lumber, or ACZA treated wood. Sealing of ACZA treated wood cut ends of decking will occur with a non-toxic penetrating sealer such as Acri-Soy or latex paint.

Maintenance activities could occur at any time during the year, however all in-water work will only occur during the in-water work window (anticipated to be June 1 through November 30). Public access will be maintained throughout the duration of the proposed maintenance and repairs. It may be necessary to fence off small work areas during maintenance activities for public safety. Maintenance activities would comply with the City of Berkeley's construction noise ordinance (City of Berkeley 2020b). Maintenance activities will only occur between the hours of 7:00am to 7:00pm on a weekday and between the hours of 9:00am and 8:00pm on a weekend or holiday.

Proposed work will begin upon obtaining all necessary local, state, and federal permits and/or approvals. Work will be performed in accordance with conditions of the applicable permits. Repairs will be completed on an as needed basis and as funding becomes available. Priority will be given to piles exhibiting the most severe damage. Other minor repair activities such as deck replacement, pile guide repairs, and utility repairs would likely require less than two weeks to complete.

The following pieces of equipment may be used for the proposed repairs:

- Small work boat
- Barge
- Crane and hammer for pile driving
- Vibratory pile extractor
- Pneumatic tools
- Power (electric and gas) saw
- Hand tools
- Diver(s)
- Truck for transportation of construction equipment and materials

## **2.2. ACTION AREA**

The Project proposes maintenance of Berkeley Marina infrastructure including the repair and replacement of piles, deck repairs, pile guide repair, and utility repairs. The proposed Project activities could create noise disturbances and sediment



disturbances. The Action Area includes all areas that may be directly or indirectly affected by the Project and expands beyond the immediate location of the action. Water quality and turbidity impacts from sediment resuspension may occur during in-water construction activities, especially pile driving and pile jacket installation. Water quality and turbidity impacts are anticipated to be minor and localized for the proposed activity. Benthic sediment disturbance could occur during in-water construction, specifically pile jacketing and pile driving, but is anticipated to be minor and localized given the limited nature of the proposed work. Noise impacts from construction activities are anticipated to be the largest potential impact from the proposed Project and were used to define the Action Area.

Pile sleeving could require the use of a diver, small boat, and hand tools and would not be anticipated to produce substantial underwater noise. The use of an impact pile driver to install new 16-inch concrete piles has the greatest potential to create in-water noise. The use of an impact pile driver also has the greatest potential to create in-air noise.

The calculated Action Area represents the largest potential area of impact; however, the Action Area is anticipated to be substantially reduced through avoidance and minimization measures. The calculated Action Area is based on the distance at which in-water and in-air noise generated by the proposed construction activities would take to attenuate to background levels. Noise area calculations were completed in accordance with the Washington Department of Transportation (WSDOT) 2019 Construction Noise Impact Assessment Guidelines (WSDOT 2019).

### **2.2.1. IN-WATER**

The Project occurs in a heavily trafficked marina with 867 boat slips. The Marina is located in San Francisco Bay (Bay) which experiences heavy industrial use and boat traffic. Underwater ambient noise levels for the Marina are not available, however underwater ambient noise levels for Oakland Outer Harbor ranged from 120 to 150 decibels (dB) (Strategic Environmental Consulting 2004). Oakland Outer Harbor is also located in the Bay, receives boat traffic, and is approximately 3.3 miles south of the Marina. Therefore, ambient noise for the Marina would be anticipated to be comparable to the noise measurements taken at Oakland Outer Harbor. It has been conservatively assumed that ambient underwater noise at the Marina is 135 dB. A background noise level of 135 dB was used to calculate the in-water Action Area.

Pile driving has the greatest potential to create in-water noise. The Project proposes to repair or replace up to 120, 12- to 14-inch piles. Replacement piles would be completed by installing 16-inch diameter concrete piles. In addition to the 120 piles proposed for replacement, 11 piles will be removed and not replaced, and five new 16-inch diameter concrete piles will be installed based on a wind and engineering analysis of the Marina. Piles could also be repaired using fiberglass jackets, however this will not involve pile driving.

#### Impact Pile Driving- Installation of 16-inch Concrete Piles

The underwater unattenuated noise from impact pile driving of 18-inch octagonal concrete piles in Berkeley, California ranged from 159 to 166 dB root mean square (rms), 181 to 185 dB peak, and 154 to 155 dB Sound Exposure Level (SEL) (Caltrans 2015). The replacement piles proposed under this Project are smaller (16-inches), however based on the proximity of these two sites and likely similar geotechnical conditions it has been assumed that the proposed pile driving of



16-inch concrete piles could result in comparable noise levels. Therefore, a noise level of up to 166 dBrms was used to determine that in-water Action Area.

The calculated in-water Action Area during impact pile driving of concrete piles extends approximately 0.73 miles from the source. Due to the confined nature of the Marina, in-water construction related noise would be confined by physical obstructions that limit the extent of the calculated Action Area as shown in Figure 14. A ten percent noise spreading arc was applied when in-water noise encounters adjacent land masses. The two breakwaters would also be anticipated to block noise, however for the purpose of establishing an Action Area attenuation from the breakwaters was not considered.

### **2.2.2. IN-AIR**

Ambient in-air noise at the Marina would be anticipated to be relatively high at the project site due to activity at the marina, the surrounding public parks, and close proximity to the I-580 W/I-80 E. In-air ambient noise levels in urbanized areas are typically 60 to 65 A-weighted decibels (dBA) (WSDOT 2019). Based on the location of the repairs, we have conservatively assumed a 60 dBA background noise level. Pile driving has the greatest potential to create in-air noise.

#### Impact Pile Driving- Installation of 16-inch Concrete Piles

In-air noise measurements are not available for impact pile driving of 16-inch concrete piles. The unweighted in-air noise levels for the impact pile driving of 18-inch concrete piles has been documented at 94dBrms at 15.25 meters from the source (Soderberg and Laughlin 2016). The A-weighted noise levels for the impact pile driving of 18-inch concrete piles has been documented at up to 89 dBA at 15.25 meters (50 feet) from the source. The 94 dBrms value was conservatively used to calculate the in-air Action Area. The in-air Action Area extends 0.32 miles from the source (Figure 14).



Figure 14. Action Area

### 2.3. MINIMIZATION MEASURES

The proposed Project would replace existing damaged treated piles (creosote and ACZA) with biologically inert concrete piles. The piles may be replaced or repaired depending on the severity of the damage of the existing pile, location, and accessibility. Up to 20 of the 120 piles proposed for repair or replacement may be repaired by installing a pile jacket. Both the installation of pile jackets and removal of creosote treated wood from the marina water are anticipated to provide a long-term benefit to water quality. The Project has been designed to be completed in a way that avoids and minimizes potential adverse impacts to the environment. In-water work is limited to pile replacement and repairs. All other maintenance work will occur above water from the floating docks.

The following Best Management Practices (BMPs), avoidance, and minimization measures are proposed to assure that potential impacts are reduced.

#### General



1. Floating booms shall be used during the installation and removal of damaged piles to contain debris potentially discharged into waters and any debris shall be removed as soon as possible, and no later than the end of each workday.
2. In the event that debris fall into the water, personnel in workboats within the work area will immediately retrieve the debris for proper handling and disposal. All debris will be disposed of at an authorized upland disposal site.
3. All construction material, wastes, debris, sediment, rubbish, trash, etc., will be removed from the site on a regular basis during work and at Project completion. Debris will be transported to an authorized upland disposal area.
4. Construction materials stored on shore will be kept in an area that does not freely drain to the Bay, free from standing water and wet soil, and protected from rain (if applicable). Construction materials with the potential to be eroded and entrained will be covered every night and during any rainfall event (if applicable).
5. Work barges will not be allowed to ground out.
6. Work barges will not be positioned over submerged aquatic vegetation (SAV) for more than 24 hours.
7. Well-maintained equipment will be used to perform construction work and, except in the case of failure or breakdown, equipment maintenance will be performed off-site. Crews will check heavy equipment daily for leaks. If leaks are discovered, they will be immediately contained and the use of the equipment will be suspended until repaired. The source of the leak will be identified, material will be cleaned up, and the cleaning materials will be collected and properly disposed.
8. The construction contractor shall have a spill contingency plan for hazardous waste spills into the San Francisco Bay. The plan shall include floating booms and absorbent materials to recover hazardous wastes. Non-buoyant debris discharged into waters shall be recovered (by divers) as soon as possible after discharge.
9. To prevent the spread of invasive species, all equipment that may have come into contact with invasive plants or their seeds shall be cleaned before arriving on-site and will be cleaned before removal from the site.

#### **Pile Driving and Removal BMPs, Minimization, and Avoidance Measures**

10. To avoid key migration periods for protected aquatic species, in-water work is proposed within the in-water work window (anticipated to be June 1 through November 30).
11. Marine mammal monitoring of an exclusion zone further defined in Section 5.3.3 of this BA will be conducted by a qualified biologist prior to commencement of pile driving. Work activities shall be halted when a marine mammal enters the 26-meter (86 feet) safety zone and resume only after the animal has been gone from the area for a minimum of 15 minutes.
12. A "soft start" technique shall be employed when initiating impact pile driving to provide marine mammals the opportunity to vacate the area.
13. To reduce any potential pile-driving noise impacts, the City shall use a wood (or equivalent) cushion block between the hammer and piles.



14. Fiberglass jackets shall be filled with marine grade grout. The jacket shall be installed, sealed, and extend above high tide to minimize the risk of grout contacting surface waters.
15. Installation and application of epoxy, resin, or cementitious grout/fill shall be conducted when predicted weather and ocean conditions allow effective control, full containment, and will remain dry until cured in order to prevent any leaching of uncured treatment materials into coastal waters. Jackets will be installed during low tide to the extent feasible. Work will cease during inclement weather (heavy rain). The construction contractor shall be responsible for checking daily tide and current reports.
16. Vibratory extraction will be used to remove piles from the marine environment as this method typically results in the least amount of disturbance and full removal of the pile. If the pile cannot be removed using vibratory extraction or if it breaks during removal it will be cut below the mudline.
17. Operator will “Wake up” pile to break up bond with sediment. Bond breaking avoids pulling out a large block of soil – possibly breaking off the pile in the process.
18. Removed piles, stubs, and associated sediments (if any) will be contained on a barge. If piles are placed directly on the barge and not in a container, the storage area will consist of a row of hay or straw bales, filter fabric, or similar material placed around the perimeter of the barge.
19. Containment basin shall be constructed of durable plastic sheeting with continuous sidewalls supported by hay bales, ecology blocks, other non-contaminated materials, or support structure to contain all sediment and creosote. Containment basin shall be lined with oil absorbent boom.
20. Piles shall be cut into lengths as required by the disposal company.

### 3. LISTED SPECIES AND CRITICAL HABITAT IN THE ACTION AREA

The following ESA-listed species could occur within the Action Area and may be affected by the proposed action; green sturgeon, Central California Coast (CCC) Steelhead, California Central Valley (CCV) Steelhead, Sacramento Winter-run (SRWR) Chinook Salmon, Central Valley (Sacramento) spring-run (CVSR) Chinook salmon, California least tern, and gray whales. Harbor seals, California sea lion, and harbor porpoise are protected under the MMPA and could occur in the Action Area. Green sturgeon, CCC steelhead, and SRWR Chinook salmon CH occurs in the Action Area (Figure 15). Species and their CH with potential to occur in the Action Areas are presented in Tables 2, 3, and 4 as well as Figure 15. Any species and/or CH not discussed in this BA were determined to not be present and/or it was determined that the proposed action would have no effect on these species and CH. It was determined that several Information for Planning and Consultation (IPAC) listed species would either do not occur in the Action Area or would not be impacted by the proposed Project. A brief discussion on these species is provided in Table 5 and Section 3.4.

*Table 2. NMFS ESA-Listed Species with Potential to Occur in the Action Area*

Specie	Scientific Name	Status	Critical Habitat
Green Sturgeon-Southern DPS	<i>Acipenser medirostris</i>	Threatened	Yes
Central California Coast Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	Yes
California Central Valley Steelhead	<i>Oncorhynchus mykiss</i>	Threatened	No
Sacramento Winter-run Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Endangered	Yes



Central Valley Spring-run Chinook Salmon	<i>Oncorhynchus tshawytscha</i>	Threatened	No
Gray Whale	<i>Eschrichtius robustus</i>	Endangered	None designated

Source: [http://www.westcoast.fisheries.noaa.gov/maps\\_data/endangered\\_species\\_act\\_critical\\_habitat.html](http://www.westcoast.fisheries.noaa.gov/maps_data/endangered_species_act_critical_habitat.html)

**Table 3. USFWS ESA Listed Species with Potential to Occur in the Action Area**

Specie	Scientific Name	Status	Critical Habitat
California Least Tern	<i>Sterna antillarum browni</i>	Endangered	No
Southern Sea Otter	<i>Enhydra lutris nereis</i>	Threatened	No
Green Sea turtle	<i>Chelonia mydas</i>	Threatened	No

Source: <https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick> <https://apps.wildlife.ca.gov/rarefind/view/RareFind.aspx#>

**Table 4. Marine Mammal Species with Potential to Occur in the Action Area**

Specie	Scientific Name	Status	Additional Information
Harbor Seal	<i>Phoca vitulina</i>	MMPA	Likely to occur in project vicinity, less common in Action Area
California Sea Lion	<i>Zalophus californianus</i>	MMPA	Likely to occur in project vicinity, less common in Action Area
Harbor Porpoise	<i>Phocoena phocoena</i>	MMPA	Could occur in project vicinity, but uncommon.

Source: [https://www.westcoast.fisheries.noaa.gov/protected\\_species/marine\\_mammals/marine\\_mammals.html](https://www.westcoast.fisheries.noaa.gov/protected_species/marine_mammals/marine_mammals.html)

**Table 5. IPAC Species Considered but not Anticipated to Occur in Action Area**

Specie	Scientific Name	Status	Critical Habitat	Additional Information
California Ridgeway's rail	<i>Rallus obsoletus obsoletus</i>	Endangered	No	See Section 3.4
Tidewater goby	<i>Eucyclogobius newberryi</i>	Endangered	No	See section 3.4
Delta Smelt	<i>Hypomesus transpacificus</i>	Threatened	No	See Section 3.4
Western Snowy Plover	<i>Charadrius alexandrinus nivosus</i>	Threatened	No	See Section 3.4
Salt Marsh Harvest Mouse	<i>Reithrodontomys raviventris</i>	Endangered	No	Occur in saline or brackish marsh habitats (USFWS 2010). No suitable habitat within Action Area.
Green Sea Turtle	<i>Chelonia mydas</i>	Threatened	No	Unlikely to occur within the Bay.
Alameda Whipsnake	<i>Masticophis lateralis euryxanthus</i>	Threatened	No	Associated with patches of chaparral or coastal scrub vegetation. Work will be confined to the Marina and Bay waters. Impacts are not anticipated.
California Red-legged Frog	<i>Rana draytonii</i>	Threatened	No	Action Area includes a developed marina and Bay waters. No suitable habitat within Action Area
Callippe Silverspot Butterfly	<i>Speyeria callippe callippe</i>	Endangered	No	Work will be confined to the Marina and Bay waters. Impacts are not anticipated.
San Bruno Elfin Butterfly	<i>Callophrys mossii bayensis</i>	Endangered	No	Work will be confined to the Marina and Bay waters. Impacts are not anticipated.
California Seablite	<i>Suaeda californica</i>	Endangered	No	Work will be confined to the Marina and Bay waters. Impacts to terrestrial plants are not anticipated.

Species	Scientific Name	Status	Critical Habitat	Additional Information
Pallid Manzanita	<i>Arctostaphylos pallida</i>	Threatened	No	Work will be confined to the Marina and Bay waters. Impacts to terrestrial plants are not anticipated.
Santa Cruz Tarplant	<i>Holocarpha macradenia</i>	Threatened	No	Work will be confined to the Marina and Bay waters. Impacts to terrestrial plants are not anticipated.

Source: <https://ecos.fws.gov/ipac/>

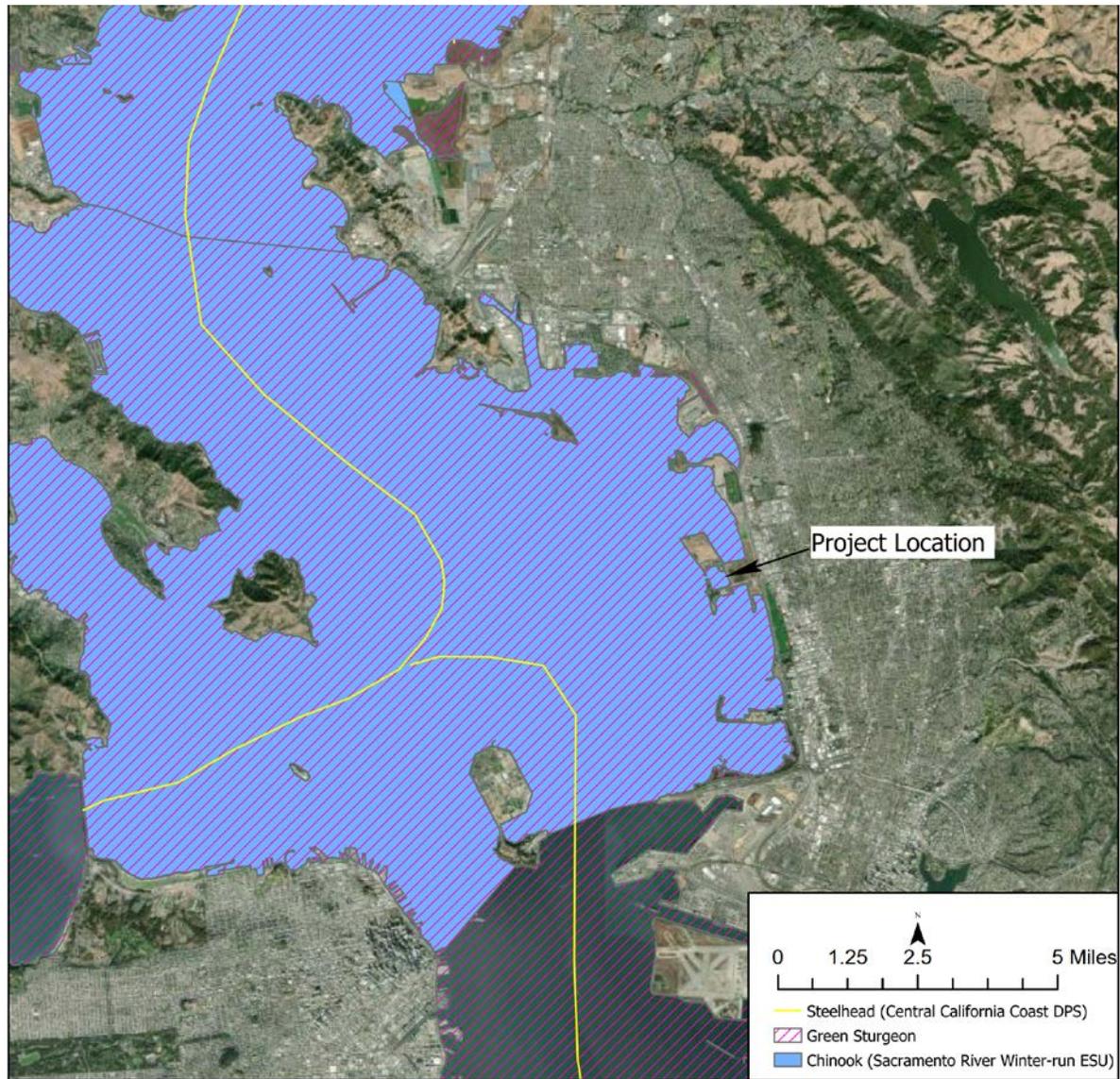


Figure 15: Critical Habitat Map

### 3.1. NMFS LISTED SPECIES

#### 3.1.1. GREEN STURGEON

The Southern Distinct Population Segment (DPS) of green sturgeon are listed as threatened under the ESA (NMFS 2005). Southern DPS green sturgeon are widely distributed, anadromous, marine-oriented sturgeon found in nearshore coastal



waters from California to Canada (Adams et al. 2007). They are highly migratory, moving along the coast in search of food. Green sturgeon are opportunistic bottom feeders. Juveniles and adults in estuaries feed on shrimp, clams, crabs, and bottom fish (Moyle 2002). Adults move into the Bay between February and early May during spawning runs. Adults then move to their spawning rivers and spawning peaks in May through June. The Sacramento River has been identified as the only known spawning location for southern DPS green sturgeon (Moyle 2002). Adult green sturgeon migrate back out to the ocean after spawning. Juvenile green sturgeon will spend one to four years in freshwater before migrating back out to bays and Deltas and eventually into the ocean (Adams et al. 2007). Green sturgeon tend to congregate in estuaries (including San Francisco Bay) in California during the summer and fall months.

They have been found at a variety of depths, but usually occupy water depths of less than 33 feet. They feed along the bottom of the water column typically in shallow tidal flats. Juvenile, subadults and adult southern DPS green sturgeon are present in the Bay at various times throughout the year. Green sturgeon could occur in the Action Area. Critical Habitat has been identified within the Action Area (Figure 15).

### **3.1.2. CENTRAL CALIFORNIA COAST STEELHEAD**

Central California Coast (CCC) steelhead are listed as threatened under the ESA. Steelhead are widely distributed, anadromous fish. The CCC evolutionarily significant unit (ESU) is a distinctive subdivision of steelhead found in California whose distribution includes coastal river basins from the Russian River south to Soquel and Aptos Creek, and the drainages of San Francisco and San Pablo Bays, including the Napa River (Busby et al. 1996).

Central California Coast (CCC) steelhead tend to enter the Bay from December to April while traveling to their natal streams (NMFS 2016a). However, migrating steelhead may be seen in San Francisco Bay as early as August (Leidy 2000). Little is known about their migration paths within the San Francisco Bay, but recent studies have indicated that the primary migration corridor occurs in the northern and central reaches of the Bay (NMFS 2016a). Steelhead are iteroparous and do not die after spawning. Juvenile steelhead salmon rear in freshwater environments for one to four years and then pass through the Bay as they make their way back out to sea. Emigration timing is highly variable, but peak emigration in the Bay typically occurs during late winter and spring months (NMFS 2016a). Central California Coast (CCC) steelhead remain at sea for one to four growing seasons. Steelhead tend to forage in the open waters of estuarine and riverine tidal wetland habitats and are drift feeders. Central California Coast (CCC) steelhead could occur in the Action Area. Critical Habitat has been identified within the Action Area (Figure 15).

### **3.1.3. CALIFORNIA CENTRAL VALLEY STEELHEAD**

California Central Valley (CCV) steelhead are listed as threatened under the ESA. The CCV steelhead is an ESU of steelhead found in California whose distribution includes river reaches accessible by the Sacramento and San Joaquin River systems, waters westward from Chipps Island to Carquinez Bridge, waters of San Pablo Bay, and the northern waters of San Francisco Bay (NMFS 2000).

California Central Valley (CCV) steelhead have a similar life history as CCC steelhead and could occur in the Action Area. Critical habitat has not been identified in the Action Area.



### **3.1.4. SACRAMENTO RIVER WINTER-RUN CHINOOK SALMON**

Sacramento River winter-run (SRWR) Chinook salmon are listed as endangered under the ESA. Sacramento River winter-run (SRWR) Chinook salmon are an ESU of Chinook salmon found in California whose distribution includes the Sacramento River and its tributaries (Myers et al. 1998). Chinook salmon are anadromous and semelparous fish.

Sacramento River winter-run (SRWR) Chinook salmon migrate through the Bay on their way to the Sacramento River, entering the Bay between November and June (NMFS 2016a). After entering the Sacramento River they delay spawning until late April to mid- August (NMFS 2016a). Juveniles begin emerging in late June through October and tend to spend four to seven months in freshwater before migrating out (Myers et al. 1998). Juvenile Chinook spend time rearing in estuarine environments and forage in shallow areas with protective cover before emigrating out to the ocean. Most SRWR smolts occur in the Sacramento-San Joaquin Delta (Delta) from October through early May. Sacramento River winter-run (SRWR) Chinook salmon then make their way north where they remain localized primarily in California coastal waters. Sacramento River winter-run (SRWR) Chinook salmon could occur in Action Area. Critical Habitat has been identified in the Action Area.

### **3.1.5. CENTRAL VALLEY (SACRAMENTO) SPRING-RUN CHINOOK SALMON**

Central Valley (Sacramento) spring-run (CVSR) Chinook salmon are listed as threatened under the ESA. Central Valley spring-run (CVSR) salmon are an ESU of Chinook salmon found in California, whose distribution includes the Sacramento river and its tributaries (Myers et al. 1998). Central Valley spring-run (CVSR) Chinook salmon are anadromous, semelparous fish that return to spawn in freshwater when they are three to eight years old (Myers et al. 1998).

Central Valley spring-run (CVSR) Chinook salmon migrate through the bay on their way to the Sacramento River, entering the Bay between November and June. from February to April. They delay spawning until the fall, typically spawning in the Sacramento River from late September through October (NMFS 2016a). Juveniles begin emerging from November through March and rear in freshwater for 3 to 15 months before emigration. Emigration timing is highly variable, but peak emigrations in the Bay typically occurs during late winter and spring months (NMFS 2016a). Juvenile Chinook spend time rearing in estuarine environments and forage in shallow areas with protective cover before emigrating out to the ocean. Most CVSR Chinook smolts are present in the Delta from mid-March through mid-May. Central Valley spring-run (CVSR) Chinook salmon could occur in Action Area. Critical habitat has not been identified in the Action Area.

### **3.1.6. GRAY WHALES**

Gray whales are listed as endangered under the ESA and are protected under the MMPA. Gray whales are typically found along the western coastline of North America. They spend their winters in Baja California and their summers in Alaska. They feed along the bottom of the sea floor by stirring up and straining bottom sediments. Gray whales were historically uncommon in the San Francisco Bay, however in recent years sightings have become more frequent (SRS Technologies 2004). Although sightings are rare they are most commonly observed between December and May. Due to a recent increase in sightings, potential impacts on gray whales have been evaluated in this BA. Critical habitat for gray whales has not been designated.



## **3.2. USFWS LISTED SPECIES**

### **3.2.1. CALIFORNIA LEAST TERN**

The California least tern is ESA-listed as endangered. California least tern are found along the Pacific coast of California from San Francisco to Baja (CDFW 2013). They typically feed on fish, shrimp and other invertebrates in shallow open water estuaries and lagoons where they plunge for their food. They are migratory species and in California they can be found nesting from mid-May to mid-June. They nest in small colonies on bare or sparsely vegetated flat substrates such as sand beaches, alkali flats, landfills, or paved areas. According to the California Natural Diversity Database (CNDDDB) the nearest known nesting area for California least tern is at the Alameda Naval Air Station, approximately 5 miles south of Berkeley Marina. In the winter they are thought to migrate to the Pacific Coast of South America. California least tern are not known to nest within the Action Area, but could occur foraging here.

## **3.3. MARINE MAMMAL PROTECTION ACT SPECIES**

This BA focuses on endangered or threatened species that may occur in the Action Area. However, a brief overview of marine mammals protected under the MMPA that could occur in the Action Areas is presented below.

### **3.3.1. HARBOR SEAL**

Harbor seals are not listed under the ESA, however they are protected under the MMPA. Bay-Delta Harbor seal populations are estimated at 500 to 700 individuals (JNMFS 2007). Although harbor seals are permanent residents of the Bay, they are typically found in higher numbers during the winter when large concentrations of Pacific herring and salmonids are found in the Bay. Breeding season typically occurs from March to June. There are about 12 haulout sites in San Francisco Bay (SRS Technologies 2004). The nearest known haulout to Berkeley Marina is Brooks Island approximately 2.5 miles northwest of the Marina (Greig and Allen 2015). This is a secondary haulout. The nearest primary haulout occurs at Yerba Buena Island. Neither of these sites are considered pupping sites. Peak numbers at this site occur between November and February. The largest number of seals reported at this site was 344 individuals in 1992 (Kopec and Harvey 1995). It is typical for harbor seals to forage near their haulout sites. It is anticipated that harbor seals may occur within the Action Area foraging.

### **3.3.2. CALIFORNIA SEA LION**

California Sea lions are not listed under the ESA in the United States, however they are protected under the MMPA. Bay-Delta populations are generally between 200 and 300 individuals in the Winter (Goals Project 2000). Bay-Delta populations tend to be highest when they are migrating from breeding areas on the Farallon and California Channel Island, as well as when salmon and Pacific herring populations are high (ESA 2017). The primary haulout site is Pier 39 in San Francisco Bay approximately 6 miles southwest of the Marina. Small numbers of sea lions may also occur hauled out on buoys throughout the Bay. Little is known about sea lion foraging patterns within the Bay, however it is anticipated that they could occur foraging within the Action Area.

### **3.3.3. HARBOR PORPOISE**



Harbor porpoises are not listed under the ESA in the United States, however they are protected under the MMPA. They are typically found in open water areas, with occasional sightings occur in the Bay. Although it is unlikely that harbor porpoises would occur within the Action Area based on their rare occurrence within the Bay, potential impacts to this species is considered in this BA.

### 3.4. SPECIES EVALUATED BUT UNLIKELY TO OCCUR IN ACTION AREA

#### 3.4.1. DELTA SMELT

Delta smelt are ESA-listed as threatened. CDFW has conducted fall midwater trawl surveys since 1967 to estimate the abundance of Delta smelt. The fall midwater trawl surveys sample over 122 stations every month from September to December. These surveys have indicated a general decline in Delta smelt populations with zero individuals being found in 2019 (CDFW 2019). Table 6 summarizes recent fall midwater trawl Delta smelt stock indices.

*Table 6: Delta Smelt Fall Midwater Trawl Index*

Year	Delta Smelt Fall Midwater Trawl Index
2019	0
2018	0
2017	2
2016	8
2015	7
2014	9
2013	18
2012	42
2011	343
2010	29

Source: CDFW Delta smelt fall midwater trawl surveys

Information for Planning and Consultation (IPAC) has identified the Delta smelt as a species that could potentially occur in the Action Area. According to USFWS the current range of the Delta smelt in San Francisco Bay includes areas from Berkeley northward (USFWS 2019). Recent Delta Smelt fish distribution maps show that Delta smelt are limited to San Pablo Bay and the Sacramento- San Joaquin Delta. Delta smelt occur in waters with less than 10-14 salinity or about one third sea water (USFWS 2016). The San Francisco Estuary Delta Smelt Catch and Seasonal Salinity Gradient Study plots the February to June salinity gradient with the annual average catch per unit effort (CPUE) of Delta smelt from years 1980 to 2012 (Foresman 2015). In 2012 from February through June the Action Area consisted of salinity levels that ranged from 22 to 28 practical salinity units (PSU). Delta smelt were not caught within the Action Area or within San Francisco Bay during the study. All catches from 1980 to 2012 were limited to the San Pablo Bay and Sacramento- San Joaquin Delta. The nearest recorded catch to Berkeley Marina was in 1997 in the San Pablo Bay approximately 9 miles north of the Marina. Based on the lack of Delta smelt caught in recent Delta smelt midwater trawls, lack of historical catches near Berkeley Marina, and lack of low salinity water within the Action Area, Delta smelt are not anticipated to occur within the Action Area. Delta smelt are not discussed further in this BA.



### **3.4.2. TIDEWATER GOBY**

Tidewater goby occur in brackish waters such as shallow lagoons and lower stream reaches (USFWS 2007). The Action Area consists of the Marina and Bay waters. Salinity within the Action Area in 2012 from February through June ranged from 22 to 28 PSU (Foresman 2015). Brackish water habitat does not occur within the Action Area. According to CNDDDB, tidewater goby occur in Berkeley Aquatic Park, approximately 0.35 miles from the Marina. Berkeley Aquatic Park is completely confined from the in-water Action Area by I-580 W/I-80 E. Based on the lack of tidewater goby habitat within the Action Area, they are not anticipated to occur within the Action Area and are not discussed further.

### **3.4.3. RIDGWAY'S RAIL**

The Ridgway's rail is ESA-listed as endangered. Ridgway's rail habitat consists of coastal wetlands and brackish areas in San Francisco and Monterey Bay. They tend to forage along tidal creeks, along mudflats, and within marsh vegetations (USFWS 2013). They feed on crabs, mussels, clams, snails, insects, spiders, worms, and occasionally mice and dead fish. They nest in areas dominated by cordgrass within the lower intertidal zone. Breeding season generally occurs from February 1 and nesting extends into August (USFWS 2017). According to the CNDDDB the nearest occurrence is 2.5 miles south in Mclaughlin East shore State Park. These birds typically walk and do not typically swim or fly (USFWS 2017). The Action Area consists of the marina and deep bay waters. The shoreline along the Marina consists of rip rap. There are no shallow water habitat areas that would provide optimal foraging habitat for Ridgway's rail. Based on the lack of known sightings within the Action Area and lack of optimal habitat Ridgway's rail are not anticipated to occur in the Action Area.

### **3.4.4. WESTERN SNOWY PLOVER**

Western snowy plover habitat generally consists of sandy beaches, salt pond levees and shores of large alkali lakes (USFWS 2007b). They nest on flat open areas with sandy or saline substrates and forage for invertebrates in sand, along surf-cast kelp within the intertidal, on salt pans, on spoil sites, and along the edges of salt marshes, salt ponds, and lagoons. The Action Area consists of a developed marina, and open water. The shoreline along the Marina consists of rip rap. There are no sandy beaches, salt pond levees, or alkali lakes within the Action Area that could provide nesting or foraging habitat for Western snowy plover. According to CNDDDB, the nearest known occurrence of Western snowy plover is on Bay Farm Island approximately 8.5 miles south of the Marina. Based on the nearest known occurrence of western snowy plover, and lack of suitable habitat western snowy plover are not anticipated to occur in the Action Area.

## **3.5. HABITATS OF PARTICULAR CONCERN**

Habitats of Particular Concern (HAPC) are considered important to ecosystem function, rare, or sensitive to human activities. HAPC are high priority areas for conservation, management and/or research. Within the San Francisco Bay-Delta Region NMFS has identified two communities considered special aquatic sites: eelgrass and native oyster beds.

### **3.5.1. EELGRASS**

Eelgrass has been granted special management considerations by the California Department of Fish and Wildlife (CDFW), USFWS, NMFS, Environmental Protection Agency (EPA), and the Bay Conservation and Development Commission (BCDC) due to the array of biological services it provides. Eelgrass can provide nursery grounds for San Francisco Bay-



Delta fish, provide substrate for a variety of benthic organism, rearing habitat, foraging areas for waterfowl, spawning habitat, and stabilization of shorelines (Boyer and Wyllie-Echeverria 2010). Eelgrass typically occurs in shallow, soft-bottom habitats. Threats to eelgrass beds within the San Francisco Bay include contact with boat propellers and anchors, dredging, and construction of in-water facilities such as docks and breakwaters.

Eelgrass has not been mapped within the Action Area. The nearest mapped eelgrass bed is located 0.6 miles south of the Marina near Berkeley Aquatic Park on the western side of I-580 W/I-80 E. The second nearest mapped eelgrass bed is 0.7 miles north of the Marina near Golden Gate Fields and (CDFW 2015). The Marina is a heavily trafficked area with substantial overwater shading from floating docks and boats. The Marina would not provide optimal habitat for eelgrass. Based on available eelgrass mapping and site conditions, eelgrass is not anticipated to occur within the marina.

### **3.5.2. NATIVE OYSTER BEDS**

NMFS has identified Olympia oysters (*Ostrea lurida*) as a HAPC. Olympia oysters are native to Western North America and can provide physical habitat for juvenile fish, foraging fish, crustaceans, worms, and birds (ESA 2015). They have also been noted to enhance sediment stabilization and can improve water quality by reducing suspended sediments. Olympia oysters occur in brackish waters with salinities greater than 22 parts per thousand (ppt). They tend to occur in areas with hard substrate and low siltation rates. Oysters can occur growing on manmade structures such as marina floats, rip rap shorelines, and pilings. Threats to Olympia oysters include limited suitable hard substrate habitat, poor water quality, and predation from marina snails, birds, at rays, and crabs.

Several accounts indicate that Olympia oysters were at one point abundant within the Bay (Zabin et al. 2010). However, recent studies indicate that, while Olympia oysters have been observed within San Francisco Bay from Carquines Strait to the South Bay they are no longer as common, especially in the North Bay. Small numbers of oysters have recently been documented at various rocky intertidal, rocky subtidal, and manmade habitats in the Central Bay. One extensive study by UC Davis from 2006 to 2007 indicated that while oyster scars can be found at many locations in the Bay, most live oyster populations occur at the Richmond and San Mateo bridges. Some Olympia oysters are known to occur at Berkeley Marina and there are large densities of intertidal populations at Berkeley Shorebird park just north of the Marina. From 2006 to 2008, UC Davis deployed two types of recruitment substrate at Berkeley Marina and found that recruitment rates were good (Zabin et al. 2010).

## **4. ENVIRONMENTAL BASELINE CONDITIONS**

The Project proposes general maintenance of the Marina including pile repairs, pile replacement, decking replacement and utility repairs. The Marina consists of a boat yard, sailing club, Berkeley Yacht club, UC Berkeley Cal Adventures, Racing Canoe Center, Public Park and Playground, bait and tackle shop, fuel dock, boat launch, and restaurants. There are 867 total slips at docks B through O. There are two breakwaters located approximately 450 feet northwest of the Marina entrance, one concrete sheet pile breakwater that is approximately 440 feet long and one rubble breakwater that is approximately 750 feet long.

Berkeley Marina is located in San Francisco Bay which receives tidal saltwater inputs from the Pacific Ocean (NPS 2017). San Francisco Bay can be divided into three segments the North Bay, Central Bay, and South Bay. The Project is located



in the Central Bay which consists of predominantly cold saline ocean water and low total suspended sediments. Water quality within the Central Bay is primarily influenced by tidal inflow which dictates circulation, flushing, and water exchange. Common sources of pollution in the Bay include oil leaks, grease, construction materials, waste materials, landscaping runoff, and erosion of disturbed sediments. The Central Bay is listed as an impaired waterway. Clean Water Act (CWA) 303(d) Listed pollutants in Central Bay include: chlordane, dichlorodiphenyltrichloroethane (DDT), dieldrin, dioxin compounds, furan compounds, invasive species, mercury, polychlorinated biphenyls (PCBs), selenium, and trash. Oxygen levels in the Bay are typically well oxygenated.

## 5. EFFECTS OF THE ACTION

Potential direct and indirect impacts from the proposed activities are described below. Temporary and localized water quality/turbidity impacts could occur. The majority of sediment disturbances would occur from pile removal and driving. Water quality and turbidity impacts from sediment resuspension are anticipated to be minor and localized for the proposed activity. Creosote piles will be removed from the environment and replaced with biologically inert concrete piles, providing long-term water quality benefits. Best Management Practices (BMPs) will minimize any potential for water quality impacts to be significant on aquatic species or habitat.

### 5.1. DIRECT IMPACTS

Direct impacts are generally defined as impacts that physically contact the species and have the potential to cause physical damage. Direct impacts are caused by the activity and occur at the same time and place of the proposed activity. The Project has the potential to create the following direct impacts:

- **Noise:** In-water and in-air noise disturbances as defined by the Action Area in Section 2.2. All in-water work would comply with the established work window(s) approved by the state and federal agencies (anticipated to be June 1 through November 30). Potential in-water noise impacts would be species specific and are further defined below in Section 5.3 of this BA.
- **Water quality:** Temporary and localized water quality/turbidity impacts could occur to species and/or critical habitats identified in Section 3 of this BA. Sediment disturbances would occur during pile jacketing and pile driving. These activities would not be anticipated to substantially increase turbidity levels. The Project does not propose the addition of structures that could create physical impediments, only maintenance of existing structures. No dredging or fill is proposed. No additional overwater coverage is proposed. Water quality and turbidity impacts from sediment resuspension are anticipated to be minor, localized, and temporary. Treated wood piles (creosote and ACZA) would be removed from the environment and replaced with inert concrete piles providing long-term water quality benefits. Approximately 90% of the treated wood piles to be removed are creosote treated. The minimization measures discussed in Section 2.3 of this BA would minimize the potential for adverse impacts to protected aquatic species or habitat.
- **Benthic Disturbance:** Physical injury or mortality of benthic organisms (i.e. polychaetes, oligochaetes, clams, and amphipods) can occur during benthic disturbances caused by in-water activities. This can disrupt the benthic community used by some fish and/or prey species in the immediate vicinity of the in-water work. Piles proposed



for replacement vary from 12 to 14-inches and would be replaced with 16-inch piles. If all the 120 piles replaced are 12-inches in diameter and they are replaced with 16-inch diameter piles this would result in up to 74 square feet (sf) of additional over a 5-year period. In addition, five new 16-inch diameter concrete piles would be installed which could result in up to 7 sf of additional fill over a 5-year period. If all 11 removed piles are 12-inches in diameter, approximately 8 sf of fill would be removed. Net additional fill at the Marina over a 5-year period is 73 sf and is attributable to a slight increase in pile size. This increase in fill is minor and the benefit of removing treated wood from the marine environment is anticipated to out weight the slight increase in fill. Piles would be driven into pre-disturbed areas to minimize potential benthic disturbances. Any temporary reduction in prey species at the project site during construction is anticipated to be minor/negligible. The removal treated wood piles could provide a long-term benefit to benthic communities. Recolonization of more mobile and shorter-lived benthic invertebrates (amphipods) will likely occur relatively quickly (Pemberton and MacEachern 1997), followed by the recovery of larger benthic macroinvertebrates (mollusks and larger polychaetes) (Hitchcock et al. 1996).

## 5.2. INDIRECT IMPACTS

Indirect impacts are generally defined as ecosystem changes that could affect food web dynamics. Indirect impacts are caused by the activity and are later in time or farther removed in distance but are still reasonably foreseeable. The Project has the potential to cause the following indirect impacts.

- Prey species: Impacts to forage fish or other prey species are unlikely due to the location of the repairs and limited/minor, localized nature of the Project. Potential impacts to prey species for the identified species are further discussed in Section 5.3 of this BA.
- Essential Fish Habitat (EFH): EFH has been identified for a variety of fish under the Coastal Pelagic Fisheries Management Plan (FMP), Pacific Groundfish FMP, and Pacific Coast Salmon FMP. Impacts to EFH are unlikely due to the minor, localized nature of the Project and BMPs to protect water quality. Please see Appendix A for further discussion on EFH.
- Habitats of Particular Concern (HAPC): Impacts to Olympia oyster beds, could occur, but are unlikely. Piles will be driven into pre-disturbed sediments and the removal of creosote could provide long-term benefits to oysters. Potential impacts to Olympia oysters are discussed in Section 5.3.4 of the BA. Eelgrass has not been identified in the Action Area and the Project is not anticipated to impact eelgrass.

## 5.3. SPECIES SPECIFIC IMPACTS

ESA-listed species could occur within the Action Area and may be affected by the proposed action: green sturgeon, Central California Coast (CCC) Steelhead, California Central Valley (CCV) Steelhead, Sacramento River Winter-run (SRWR) Chinook Salmon, Central Valley (Sacramento) spring-run (CVSR) Chinook salmon, California least tern, and gray whales. In addition, harbor seals, California sea lion, and harbor porpoise are protected under the MMPA and could occur in the Action Area. Green sturgeon, Central California Coast steelhead, and Sacramento Winter-run Chinook CH occurs in the Action Area. Effects to these species are discussed in this Section of the BA.



### 5.3.1. NMFS LISTED SPECIES

#### 5.3.1.1. Green Sturgeon

Green sturgeon could occur within the Action Area. Direct and indirect adverse impacts could occur but are anticipated to be unlikely given the extent of the proposed activities, and conservation measures. Direct impacts to green sturgeon could occur due to noise, water quality, and/or benthic impacts. Indirect impacts could occur due to impacts to prey species.

#### Noise

In-water noise has the potential to directly impact fish by causing physical injury or altering behavior when in-water noise threshold levels are exceeded (NMFS 2008). Thresholds are established for fish greater than two grams and less than two grams. These thresholds are summarized in Table 7. Green sturgeon that could occur in the Action Area would be anticipated to be greater than 2 grams.

*Table 7: In-water Noise Criteria Thresholds for Fish*

NOAA NMFS Threshold		Fish > 2 Grams	Fish < 2 Grams
Interim Injury Criteria Threshold	Threshold	187 db SELcum,	183 db SELcum
	Distance to threshold (meters)	9	17
Behavioral Threshold	Threshold	150 dBrms	
	Distance to threshold (meters)	117	1117

Source: [https://www.wsdot.wa.gov/sites/default/files/2018/01/17/ENV-FW-BA\\_InterimCriteriaAgree.pdf](https://www.wsdot.wa.gov/sites/default/files/2018/01/17/ENV-FW-BA_InterimCriteriaAgree.pdf)

The loudest potential underwater noise would result from the use of an impact pile driver. As discussed in Section 2.2, the noise levels from the proposed impact pile driving of 16-inch diameter concrete piles could reach up to 185 dB peak, 166 dBrms, or 155 dB SEL at 10 meters from the source. According to the NMFS noise impact calculator for fish (NMFS 2009), the accumulated sound levels anticipated from the proposed in-water construction could exceed the physical injury threshold for fish greater than two grams within a small 9-meter (30-foot) area around each pile proposed for replacement. Green sturgeon would be unlikely to occur within this small threshold area during active construction. The Project proposes to use a soft start technique which would allow fish to exit the threshold area before full strength pile driving begins. Therefore, injury of green sturgeon due to exceedances over the interim injury criteria threshold are not anticipated.

The behavioral threshold for noise impacts to green sturgeon, although not formal regulatory standard, is 150 dBrms (NMFS 2008). Behavioral impacts could include fleeing of the area, and or ceasing of feeding or spawning in the area. Whether or not substantial impacts occur at noise levels exceeding this threshold relies heavily on project timing, project duration, species life history and other site-specific factors (WSDOT 2019). Pile driving of 16-inch concrete piles could produce noise levels of up to 166 dBrms and could exceed the Level B behavioral threshold within 117 meters (385 feet) of each pile proposed for replacement. The behavioral threshold area would not extend beyond the enclosed Marina. The marina is heavily used and would not be anticipated to provide optimal feeding habitat for green sturgeon. Green sturgeon spawn in freshwater and would not spawn in saline waters of the Marina.



As described in Section 2.2, potential noise impacts are based on the greatest potential noise and were conservatively calculated using data from larger piles, and the maximum number of pile strikes per day. Typical Project-related noise would be anticipated to be less than the maximum used for this impact analysis. For instance, this analysis assumes all piles are replaced with 16-inch diameter concrete piles. Any potential impacts associated with exceedances over this behavioral threshold would be avoided and minimized through the implementation of conservation measures described in section 2.3 of this BA such as the use of a wood cushion block and soft start technique.

#### Water Quality

Decreased water quality has the potential to directly impact fish. The Project may create minor temporary water quality impacts due to suspended sediments during in-water construction activities. Potential increases in turbidity levels are expected to be temporary and localized. Furthermore, the partially enclosed nature of the marina would help confine any potential turbidity impacts. Potential water quality impacts are anticipated to be minor, temporary, and localized. The Project would be anticipated to provide long-term water quality benefits by removing treated wood (creosote and ACZA) from the marine environment. The majority of the piles of the piles proposed for removal are creosote treated.

#### Benthic Disturbance

Benthic sediment disturbance could occur during pile jacketing and pile replacement. Up to 73 sf of benthic habitat could be permanently disturbed during the installation of larger piles. Pile driving and sleeving could bury benthic organisms that occur adjacent to the existing piles. The piles would be driven into pre-disturbed soil which would be anticipated to minimize potential impacts to benthic communities. Mobile benthic organisms would be anticipated to temporarily flee from the area during pile repairs and/or replacement. Sessile benthic organisms impacted during pile replacement and/or repair would be anticipated to recover quickly. Benthic organisms growing on existing treated wood piles would be impacted during pile removal and installation of pile jackets. Recolonization of the new jackets and/or replacement piles by more mobile and shorter-lived benthic invertebrates (amphipods) will likely occur relatively quickly (Pemberton and MacEachern 1997), followed by the recovery of larger benthic macroinvertebrates (mollusks and larger polychaetas) (Hitchcock et al. 1996). Any potential direct benthic disturbances are anticipated to be minor and temporary. The removal of treated wood piles and replacement with biologically inert concrete piles could provide long-term benefits to benthic communities.

#### Prey Species

Impacts to prey species have the potential to cause indirect impacts to their predators through reduced food supply. Green sturgeon prey that could be impacted by the Project include shrimp, clams, crabs, and bottom fish. The Project occurs in an active, confined Marina and is not anticipated to provide optimal forage habitat for green sturgeon. As discussed above, impacts to benthic organisms and fish would be minor and therefore substantial impacts to green sturgeon prey species are not anticipated. The Project may provide long-term benefits to prey species by removing treated wood from the marine environment.

#### Critical Habitat

Critical habitat for green sturgeon occurs in the Action Area. The Primary Constituent Elements (PCEs) of green sturgeon estuarine critical habitat include (NMFS 2018a):



- Food resources: Abundant prey items within estuarine habitats and substrates for juvenile, subadult, and adult life stages.
- Water flow: Within bays and estuaries adjacent to the Sacramento River (i.e., the Sacramento-San Joaquin Delta and the Suisun, San Pablo, and San Francisco bays), sufficient flow into the bay and estuary to allow adults to successfully orient to the incoming flow and migrate upstream to spawning grounds.
- Water quality: Water quality, including temperature, salinity, oxygen content, and other chemical characteristics, necessary for normal behavior, growth, and viability of all life stages.
- Migratory corridor: A migratory pathway necessary for the safe and timely passage of all life stages within estuarine habitats and between estuarine and riverine or marine habitats.
- Depth: A diversity of depths necessary for shelter, foraging, and migration of juvenile, subadult, and adult life stages.
- Sediment quality: Sediment quality (i.e., chemical characteristics) necessary for normal behavior, growth, and viability of all life stages.

The Project is not anticipated to adversely impact estuarine habitat PCEs for green sturgeon. The Project would have no effect on waterflow, migratory corridors (It is unlikely that green sturgeon would enter the partially enclosed Marina during migrations), or water depth. The Project is not be anticipated to substantially impact available food sources given the minor and temporary nature of the Project and the implementation of proposed minimization measures. The removal of treated wood may provide long-term benefits to water quality and sediment quality.

#### Determination

Due to a lack of identified direct and indirect impacts the Project may affect but is *not likely to adversely affect* green sturgeon. Critical habitat for green sturgeon occurs in the Action Area. The Project is *not likely to adversely affect* green sturgeon CH identified within the Action Area.

#### **5.3.1.2. Central California Coast Steelhead, California Central Valley steelhead, Sacramento River Winter-run Chinook, Central Valley Spring-run Chinook**

ESA-listed salmonids that may occur within the Action Area are: CCC steelhead, CCV steelhead, SRWR Chinook, and CVSR Chinook. The Bay is primarily used as a migration corridor for these salmonids. Direct and indirect adverse impacts could occur but are anticipated to be unlikely given the extent of the proposed activities, and conservation measures. Direct impacts to ESA-listed salmonids could occur due to noise, water quality, and/or benthic impacts. Indirect impacts could occur due to impacts to prey species.

#### Noise

In-water noise has the potential to directly impact fish by causing physical injury or altering behavior when in-water noise threshold levels are exceeded (NMFS 2008). Thresholds are established for fish greater than two grams and less than two



grams. These thresholds are summarized in Table 7 and described in Section 5.3.1.1. Emigrating salmonid juveniles within the Action Area may be less than 2 grams and immigrating salmonids would be greater than 2 grams.

As described in Section 5.3.1.1 for salmonids, the sound levels from the proposed in-water construction the accumulated sound levels anticipated from the proposed in-water construction could exceed the physical injury threshold for fish greater than two grams within a small 9-meter (30-foot) area around each pile proposed for replacement. The physical injury criteria threshold could be exceeded within a small 17-meter (56 foot) area around each pile for fish less than two grams. The behavioral threshold, although not a formal regulatory standard could be exceeded within 117 meters (356 feet) of each pile proposed for replacement.

As described in Section 2.2., potential noise impacts are based on the greatest potential noise generation and were conservatively calculated using data from larger piles, and the maximum number of pile strikes per day. Typical Project-related noise impact would be anticipated to be less than the maximum used for this impact analysis. Any potential impacts associated with exceedances over the behavioral threshold would be avoided and minimized through the implementation of conservation measures described in Section 2.3 of this BA, including compliance with the in-water work window (anticipated to be June 1 through November 30), use of a soft start technique for pile driving, and use of a wood cushion block when operating the impact hammer.

#### Water Quality

Decreased water quality has the potential to directly impact fish. The Project may create minor temporary water quality impacts due to suspended sediments during in-water construction activities. However, any potential elevations in turbidity levels would be minor, temporary and localized (Section 5.3.1.1). The Project would be anticipated to provide long-term water quality benefits by removing treated wood from the marine environment.

#### Benthic Disturbance

Benthic sediment disturbance could occur during construction especially during pile jacket installation and pile replacement. Up to 73 sf of benthic habitat could be permanently disturbed during the installation of larger piles. Disturbed benthic communities would be anticipated to recolonize relatively quickly and any potential direct benthic disturbance impacts would be minor and temporary as discussed in Section 5.3.1.1. The removal of treated wood piles and replacement with biologically inert concrete piles could provide long-term benefits to benthic communities.

#### Prey Species

Impacts to prey species have the potential to cause indirect impacts to their predators through reduced food supply. Salmonid prey that could be impacted by the Project include crustaceans, invertebrates and small fish such as herring, sand lance and surf smelt. The Project occurs in an active, partially confined Marina and is not anticipated to provide optimal forage habitat for salmonids. Impacts to benthic organisms and fish would be minor and therefore substantial impacts to salmonid prey species are not anticipated. The Project may provide long-term benefits to prey species by removing treated wood from the marine environment.



### Critical Habitat

California Central Valley (CCV) steelhead and CVSR Chinook CH does not occur in the Action Area. Critical habitat for CCC steelhead and SRWR Chinook does occur within the Action Area. The PCEs of CCC steelhead and SRWR Chinook CH in estuarine areas includes (NMFS 2005):

1. Estuarine areas free of obstruction with water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater; natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, and side channels; and juvenile and adult forage, including aquatic invertebrates and fishes, supporting growth and maturation.

The Project is not anticipated to impact estuarine habitat PCEs for CCC steelhead and SRWR Chinook. The Project would have no effect on water quantity, salinity, natural cover, or side channels. The Project would not be anticipated to substantially impact preyplace such as aquatic invertebrates and fish. The removal of treated wood may provide long-term benefits to water quality.

### Determination

The Project may affect but is *not likely to adversely affect* ESA-listed salmonids that could occur within the Action Area based on the lack of identified direct and indirect impacts. The Project is *not likely to adversely affect* CCC steelhead and SRWR Chinook CH identified within the Action Area. California Central Valley (CCV) steelhead and CVSR Chinook CH does not occur in the Action Area. The Project would have *no effect* on CCV steelhead and CVSR Chinook CH.

#### **5.3.1.3. Gray Whales**

Please see Section 5.3.3 for a discussion on potential impacts to marine mammals including gray whales.

### **5.3.2. USFWS LISTED SPECIES**

#### **5.3.2.1. California Least Tern**

The California least tern could occur foraging within the Action Area, but is not known to nest in the Action Area. Direct and indirect impacts could occur but would be considered unlikely given the extent of the proposed activities and conservation measures. Direct impacts could occur due to noise and indirect impacts could occur due to impacts to prey species.

### Noise

Construction noise has the potential to disturb California least tern that could occur in the Action Area. The proposed pile driving of 16-inch concrete piles could produce A-weighted noise levels of up to 89 dBrms and the unweighted noise level to be 94 dBrms at 15.25 meters (50 feet) from the source (Section 2.2 and WSDOT 2019). These in-air noise levels would be anticipated to dissipate to background noise levels within 0.32 miles from the source. California least tern preferred habitat includes barren beaches and open shallow water habitat for foraging. The shoreline along the Marina consists of rip rap. There are no barren beaches along the shoreline within the in-air Action Area that could provide preferable habitat for



California least tern. The Marina experiences heavy boat traffic and would not be anticipated to provide preferable shallow open water foraging habitat for California least tern. Noise-impacts to foraging California least tern are not anticipated due to the low likelihood that individuals would forage in the Action Area. The nearest known least tern nesting habitat is 5 miles south of the Marina, outside of the Action Area. Therefore, noise impacts to nesting or breeding California Least tern would not be anticipated.

#### Prey Species/ Water Quality

Impacts to prey species have the potential to cause indirect impacts to their predators through reduced food supply. California least tern prey that could be impacted by the Project include small fish. The Marina is not anticipated to provide optimal open water foraging habitat for California least tern given its enclosed nature and heavy boat traffic. Potential adverse impacts to fish prey species from the proposed Project would be minor. The Project may provide long-term benefits to prey species by removing treated wood from the marine environment.

Elevated turbidity has the potential to decrease California least tern's ability to find prey. The Project may impact water quality due to suspended sediments during in-water construction activities. The potential increase in turbidity levels would be minor, temporary, and localized (Section 5.3.1.1). Potential foraging habitat disruption resulting from elevated turbidity levels would be localized and temporary. Foraging species are expected to forage outside of the Marina if foraging areas within the marina are disturbed during Project activities. Substantial impacts to California least tern prey species are not anticipated.

### **5.3.3. MARINE MAMMAL PROTECTION ACT SPECIES**

A preliminary noise assessment was completed to further assess the severity of in-water noise on protected marine mammals that could enter the harbor. It is assumed that the activity with the greatest potential adverse noise impact and associated Level A and Level B distances would be the impact pile driving of 16-inch diameter concrete piles. The potential noise impacts from the impact pile driving of 16-inch diameter concrete piles were analyzed using the most recent and available technical guidance and data (NMFS 2018b and WSDOT 2019).

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) User Spreadsheets in combination with the WSDOT 2019 Biological Assessment Preparation Manual was used to calculate in-water distances to Level A (potential injury) and Level B (potential disturbance) harassment isopleths from impact pile driving activities. The Maximum anticipated unweighted SEL, 155 dB SEL, was used for these calculations. NMFS advises the use of SEL in calculating isopleths. The maximum unweighted SEL was used to calculate the Sound Exposure Level Cumulative (SELcum) according to NMFS User Spreadsheet.

- Level A Harassment: Level A harassment is defined under the MMPA as “any act of pursuit, torment, or annoyance that has the potential to injure a marine mammal or marine mammal stock in the wild”. The thresholds for Level A harassment during impact pile driving are documented in Table 5.

Level A harassment isopleth calculations for impact pile driving assumed that all installed piles are 16-inch diameter concrete piles, would require 175 blows per pile, and a maximum of 8 piles would be driven within a 24-hour period. The distance to the harassment threshold have been conservatively calculated using the dB SEL



anticipated during the installation of 16-inch concrete piles (155 dB SEL). Distances to isopleths for Level A harassment associated with impact driving are presented in Table 8.

- Level B Harassment: Level B harassment is defined as “any act of pursuit, torment, or annoyance that has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering, but does not have the potential to injure a marine mammal or marine mammal stock in the wild”. The thresholds for behavioral disruption during impact pile driving are documented in Table 8.

To derive the Level B harassment isopleths for impact pile driving, the most conservative (maximum) noise dBrms value, 166 dBrms for pile driving activities was used. Distances to isopleths for Level B harassment associated with impact driving are presented in Table 8.

**Table 8: In-water Distances for Cetaceans and Pinnipeds to Reach Harassment Thresholds**

Hearing Group		Low-Frequency Cetaceans	Mid-Frequency Cetaceans	High-Frequency Cetaceans	Phocid Pinnipeds	Otariid Pinnipeds
Level A Harassment (Impact)	Threshold	183 dB SEL	185 dB SEL	155 dB SEL	185 dB SEL	203 dB SEL
	Distance	17 meters	0.6 meters	20.2 meters	9.1 meters	0.7meters
Level B Harassment (Impact)	Threshold	160 dB <sub>rms</sub>				
	Distance	26 meters				

Harbor seals, sea lions, harbor porpoises, and gray whales were identified as having the potential to occur within the Action Area. Harbor seals are phocid pinnipeds, sea lions are otariid pinnipeds, gray whales are mid-frequency cetaceans, and harbor porpoises are high-frequency cetaceans. The maximum distance to the Level A Harassment threshold during impact pile driving is 20.2 meters (67 feet) from the source (Table 8). The Level B Harassment threshold area extends 26 meters (86 feet) from the source (Table 8) and would be applied during all pile driving activities. These threshold areas are entirely within the Marina and occur within a small area around each pile. Cetaceans are not anticipated to occur within the Marina and therefore noise impacts to cetaceans are not anticipated. Pinnipeds however may occur within these threshold areas.

For this Project, the proposed exclusion zone (pile driving shutdown area) includes all marine waters within the Level A and Level B zones. Marine mammal monitoring of the 26-meter exclusion zone will be conducted by a qualified biologist prior to commencement of pile driving and during pile driving activities. Work activities shall be halted when a marine mammal enters the 26-meter safety zone and resume only after the animal has been gone from the area for a minimum of 15 minutes. This will prevent all possible Level A or Level B harassment to marine mammals.

The NMFS do-not-exceed disturbance criteria for Level B harassment (90 dB re 20 µPa RMS for harbor seals and 100 dB re 20 µPa RMS for all other pinnipeds such as sea lions) (NMFS 2016b) was used for in-air noise exposure of hauled-out pinnipeds. Increases in in-air noise levels from construction activities will be temporary and intermittent for the construction period. Assessments by WSDOT have documented A-weighted noise levels for the impact pile driving of 18-inch concrete piles to be 89 dBA and the unweighted noise level to be 94 dBrms at 15.25 meters from the source. The installation of 16-



inch concrete piles would not be anticipated to exceed 89 dBA or 94 dBrms. According to WSDOT, the un-weighted RMS sound level should be used for analyzing potential impacts to hauled out pinnipeds, therefore 94 dBrms was used for our analysis. The in-air Level B threshold area for seals is 24.2 meters (78 feet) and the in-air Level B threshold area for sea lions is 7.7 meters (26 feet). The proposed 26-meter (86 foot) shutdown zone would be conservative of any potential adverse airborne noise impacts. The nearest harbor seal haulout is located approximately 2.5 miles (4,025 meters) from the site and the nearest sea lion haul out is 6 miles (9,656 meters) from the site, outside of the 26-meter shutdown zone. Impacts to hauled out harbor seals or sea lions are not anticipated based on the nearest haulouts location several miles from the Project site. All activities will be halted until the harbor seal leaves the exclusion zone on its own accord if harbor seals or sea lions occur foraging within the 26-meter shutdown zone.

As described in Section 2.2, potential noise impacts are based on the greatest potential noise and were conservatively calculated using data from larger piles, and the maximum number of pile strikes per day. Typical Project-related noise would be anticipated to be less than the maximum used for this impact analysis. For instance, this analysis assumes all piles are replaced with 16-inch diameter concrete piles. Any potential impacts associated with exceedances over this behavioral threshold would be avoided and minimized through the implementation of conservation measures described in section 2.3 of this BA such as the use of a wood cushion block and soft start technique.

#### **5.3.4. HABITATS OF PARTICULAR CONCERN**

##### **Eelgrass**

Eelgrass beds have not been identified within the Action Area (see Section 3.5). Additionally, replacement piles would be driven into pre-disturbed sediments where piles have been removed. The Project does not propose additional overwater coverage and construction barges would not be allowed to ground out or remain over any SAV for more than 24 hours. Therefore, impacts to eelgrass beds are not anticipated.

##### **Olympia Oyster Beds**

Olympia oyster beds could occur within the Marina. Potential impacts to Olympia oyster beds would be limited to the immediate vicinity of pile removal and pile driving activities which have the potential to bury oysters. The piles would be removed/driven into soft sediments, while oysters tend to inhabit hard substrates. Replacement piles would be driven into pre-disturbed soils, unlikely to hold oysters. There is the potential that a small number of oysters could be impacted should they occur growing on the creosote piles proposed for removal or proposed for sleeving. However, replacement piles and/or jackets will provide comparable habitat for oysters to re-inhabit. The removal of treated wood piles and replacement with biologically inert concrete piles could provide long-term benefits to water quality which could potentially benefit Olympia oyster beds. Substantial impacts to Olympia oysters or their potential habitat are not anticipated.

## **6. CUMULATIVE EFFECTS**

Cumulative effects are those effects of future state or private activities, not including federal activities, that are reasonably certain to occur within the Action Area subject to consultation (50 CFR 402.02). The proposed Project involves the on-going maintenance of Berkeley Marina. There are no other known federal projects, within the foreseeable future proposed to take place within the Action Area.



## 7. CONCLUSIONS

Direct and indirect adverse impacts could occur from the proposed Project based on the evaluation completed for this BA. The Project could result in minor temporary direct impacts to ESA-listed species or marine mammals due to construction related noise, water quality, and benthic disturbance. Indirect impacts to ESA-listed species or marine mammals could occur due to impacts to prey species, EFH, or HAPC. However, the project is not likely to adversely affect (NLAA) protected species based on implementation of the conservation measures proposed in section 2.3 of this BA including compliance with the in-water work window, water quality BMPs, marine mammal monitoring, and using a soft start technique and a wood cushion block for impact pile driving . Potential impacts are summarized in the following table (Table 9).



**Table 9. Effects Determination Summary**

Species	Scientific Name	Agency	Status	Species Effects Determinations	CH Effects Determinations
Green Sturgeon	<i>Acipenser medirostris</i>	NMFS	Threatened	NLAA	NLAA
CCC Steelhead	<i>Oncorhynchus mykiss</i>	NMFS	Threatened	NLAA	NLAA
CCV Steelhead	<i>Oncorhynchus mykiss</i>	NMFS	Threatened	NLAA	No Effect
SRWR Chinook	<i>Oncorhynchus tshawytscha</i>	NMFS	Endangered	NLAA	No Effect
CVSR Chinook	<i>Oncorhynchus tshawytscha</i>	NMFS	Threatened	NLAA	No Effect
Gray Whale	<i>Eschrichtius robustus</i>	NMFS	Endangered, MMPA	NLAA	N/A
California Least tern	<i>Sterna antillarum browni</i>	USFWS	Endangered	NLAA	No effect
Harbor Seal	<i>Phoca vitulina</i>	NMFS	MMPA	NLAA	N/A
California Sea Lion	<i>Zalophus californianus</i>	NMFS	MMPA	NLAA	N/A
Harbor Porpoise	<i>Phocoena phocoena</i>	NMFS	MMPA	NLAA	N/A
Eelgrass	<i>Zostera marina</i>	CDFW, USFWS, NMFS, EPA and BCDC	HAPC	No effect	N/A
Olympia Oyster Beds	<i>Ostrea lurida</i>	NMFS	HAPC	NLAA	N/A

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## Appendices

### Appendix A – EFH Assessment

#### A. DESCRIPTION OF THE PROPOSED ACTION

Please see Section 2 of this BA.

#### B. ADDRESSES EFH FOR APPROPRIATE FISHERIES MANAGEMENT PLANS (FMP)

Three Fisheries Management Plans (FMPs) have been identified for the Action Area; Pacific Groundfish, Coastal Pelagic and Pacific Coast Salmon. General impacts are anticipated to be similar to those described in the BA (minor, localized and short-term).

#### C. EFFECTS OF THE PROPOSED ACTION

##### i. Effect on EFH

Pacific Groundfish: The Pacific Groundfish FMP protects a variety of bottom dwelling fish. Essential Fish Habitat (EFH) for Pacific groundfish includes water depths up to 100 feet. There are 83 species within the groundfish FMP including roundfish, flatfish, rockfish, sharks, and skates. Benthic sediments within the immediate vicinity of pile driving activities could be disturbed. The Project would drive piles into previously disturbed sediments and would therefore be anticipated to produce minimal benthic disturbance. No other fill activities are proposed. This disturbance area is considered to be minimal and would not be anticipated to impact bottom dwelling fish. The removal of creosote treated wood could provide long-term benefits to sediment quality.

Coastal Pelagic Species: The Coastal Pelagic FMP protects a variety of fish associated with open water coastal habitats. Essential Fish Habitat (EFH) for Coastal pelagic species includes waters with temperatures that range from 10 to 26 degrees centigrade. There are five species within this FMP including pacific sardine, pacific mackerel, northern anchovy, jack mackerel, and market squid. Project impacts are generally confined to shallow estuarine areas within Berkeley Marina where pelagic species would be unlikely to occur. Any noise, water quality, or benthic impacts would be anticipated to be minor and localized. The removal of creosote treated wood could provide long-term benefits to sediment and water quality.

Salmon EFH: The Pacific Salmon FMP protects a variety of salmonid species. Essential Fish Habitat (EFH) for salmonids extends from the shoreline to the 200-mile limit of the exclusive economic zone (EEZ) and beyond. The Pacific salmon includes listed and unlisted Coho, Chinook, and Puget Sound Pink salmon. Chinook salmon are the one species within this FMP that occurs within San Francisco Bay. SRWR Chinook, and CVSR Chinook could occur within the Action Area during immigration and emigration (See BA Section 3.1). Spawning habitat does not occur within the Action Area. Impacts to salmonid habitat are anticipated to be minor (See BA Section 5.3.1.2). The removal of creosote treated wood could provide long-term benefits to sediment and water quality.

ii. Effects on Managed Species (unless effects to an individual species are unique, it is not necessary to discuss adverse effects on a species-by species basis)



Adverse impacts to managed species are unlikely due to the minor nature of the project and the implementation of conservation measures to reduce the risk of impacts to aquatic resources. The removal of creosote treated wood could benefit managed species over the long term.

iii. Effects on Associated Species, Including Prey Species

Adverse impacts to associated species are unlikely due to the minor nature of the project and the implementation of conservation measures to reduce the risk of impacts to aquatic resources. The removal of creosote treated wood could benefit prey species over the long term.

iv. Cumulative Effects

Cumulative effects are those effects of future state or private activities, not including federal activities, that are reasonably certain to occur within the Action Area of the federal action and are subject to consultation (50 CFR 402.02). These activities include land and shoreline development. The proposed Project involves maintenance of the Berkeley Marina. There are no other known federal projects within the foreseeable future proposed to take place within the area. Cumulative effects have not been identified.

#### **D. PROPOSED CONSERVATION MEASURES**

Proposed conservation measures are the same as those described in section 2.3 of this BA.

#### **E. CONCLUSIONS BY EFH (TAKING INTO ACCOUNT PROPOSED CONSERVATION MEASURES)**

The Project occurs within EFH for Pacific Groundfish, Coastal Pelagic and Pacific Coast Salmon. The Project *may adversely effect* EFH. However, adverse impacts are anticipated to be minor due to the nature of the project and the implementation of conservation measures to reduce the risk of impacts to biological resources. The removal of creosote treated wood could provide long-term benefits to EFH.



**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS  
450 GOLDEN GATE AVENUE  
SAN FRANCISCO, CALIFORNIA 94102

August 3, 2022

Regulatory Division

Subject: File Number SPN-2009-00140S

Mr. Scott Ferris  
Director of Parks, Recreation, and Waterfront  
City of Berkeley  
2180 Milvia Street, Third Floor  
Berkeley, California 94704  
sferris@cityofberkeley.info

Dear Mr. Ferris:

This correspondence is in reference to your submittal of February 11, 2022, concerning Department of the Army (DA) authorization for the Berkeley Marina Pile Replacement and Maintenance Project. This project will restore and maintain dock facilities for structural integrity, safety, and aesthetics within the 52-acre marina area, located at 201 University Avenue, Berkeley, Alameda County, California (Lat.: 37.866028°, Long.: -122.312846°).

Work within U.S. Army Corps of Engineers' (Corps) jurisdiction will include the repair and/or replacement of up to 215 piles over a five-year period, as well as the replacement of 2,000 sq. ft. of 2-inch thick treated wood deck paneling with composite, ACZA treated wood and/or precast concrete deck paneling, the repair and/or replacement of 215 pile guides, gangway access and dock repairs. The current piles are 12-14 inches in diameter treated creosote piles. The replacement piles will be up to 16 inches in diameter and made of concrete. Up to 15 of the current piles will be removed and not replaced, and 10 new piles will be installed. The project will not require placement of fill material in waters of the U.S. All work shall be completed in accordance with the plans and drawings titled "USACE File #SPN-2009-00140, Berkeley Marina-Pile Maintenance and Replacement, January 24, 2022, Figure 1 to 9," provided as enclosure 1.

Section 404 of the Clean Water Act (CWA) generally regulates the discharge of dredged or fill material below the plane of ordinary high water in non-tidal waters of the United States, below the high tide line in tidal waters of the United States, and within the lateral extent of wetlands adjacent to these waters. Section 10 of the Rivers and Harbors Act (RHA) generally regulates construction of structures and work, including excavation, dredging, and discharges of dredged or fill material occurring below the plane of mean high water in tidal waters of the United States; in former diked baylands currently below mean high water; outside the limits of mean high water but affecting the navigable capacity of tidal waters; or below the plane of ordinary high water in non-tidal waters designated as navigable waters of the United States. Navigable waters of the United States generally include all waters subject to the ebb and flow of

the tide; and/or all waters presently used, or have been used in the past, or may be susceptible for future use to transport interstate or foreign commerce.

Based on a review of the information in your submittal, the project qualifies for authorization under Department of the Army Nationwide Permit (NWP) 3 for Maintenance, 86 Fed. Reg. 73522, December 27, 2021, pursuant to Section 10 of the RHA of 1899, as amended (33 U.S.C. § 403 *et seq.*). The project must be in compliance with the terms of the NWP, the general conditions of the Nationwide Permit Program, and the San Francisco District regional conditions cited on our website ([www.spn.usace.army.mil/Missions/Regulatory/Permitting/Nationwide/](http://www.spn.usace.army.mil/Missions/Regulatory/Permitting/Nationwide/)). You must also be in compliance with any special conditions specified in this letter for the NWP authorization to remain valid. Non-compliance with any term or condition could result in the revocation of the NWP authorization for your project, thereby requiring you to obtain an Individual Permit from the Corps. This NWP authorization does not obviate the need to obtain other State or local approvals required by law.

This verification will remain valid until March 14, 2026, unless the NWP authorization is modified, suspended, or revoked. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon a NWP will remain authorized provided the activity is completed within 12 months of the date of a NWP's expiration, modification, or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 C.F.R. § 330.4(e) and 33 C.F.R. § 330.5(c) or (d). This verification will remain valid if, during the time period between now and March 14, 2026, the activity complies with any subsequent modification of the NWP authorization. The Chief of Engineers will periodically review NWPs and their conditions and will decide to modify, reissue, or revoke the permits. If a NWP is not modified or reissued within five years of its effective date, it automatically expires and becomes null and void. It is incumbent upon you to remain informed of any changes to the NWPs. Changes to the NWPs would be announced by Public Notice posted on our website ([www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx](http://www.spn.usace.army.mil/Missions/Regulatory/Public-Notices.aspx)). Upon completion of the project and all associated mitigation requirements, you shall sign and return the Certification of Compliance, enclosure 2, verifying that you have complied with the terms and conditions of the permit.

The State has the discretion to require a water quality certification for a Section 10 activity if the state determines that the activity is likely to result in a discharge during construction or operation. If the State issues a water quality certification for a Section 10-only activity, those conditions become part of the DA permit.

This authorization will not be effective until you have obtained a concurrence from the San Francisco Bay Conservation and Development Commission that your project will comply with California's Coastal Zone Management Act. If the Commission fails to act on a valid request for

concurrence with your certification within six months after receipt, the Corps will presume a concurrence has been obtained. You shall submit a copy of the concurrence to the Corps prior to the commencement of work.

General Condition 18 stipulates that project authorization under a NWP does not allow for the incidental take of any federally-listed species in the absence of a biological opinion with incidental take provisions. As the principal federal lead agency for this project, the Corps initiated consultation with the National Marine Fisheries Service (NMFS) to address project related impacts to listed species, pursuant to Section 7(a) of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531 *et seq.* and to address project related impacts to Essential Fish Habitat (EFH) for various life stages of fish species managed with the Pacific Groundfish Fishery Management Plan, the Coastal Pelagics Fishery Management Plan, and the Pacific Coast Salmon Fishery Management Plan, pursuant to the Magnuson-Stevens Fishery Conservation and Management Act of 1996, as amended, 16 U.S.C. § 1801 *et seq.* By letter of July 7, 2022, cited in enclosure 3, the NMFS, concurred with the determination that the project was not likely to adversely affect Sacramento River winter-run and Central Valley spring-run Chinook Salmon (*Oncorhynchus tshawytscha*), Central California Coast and California Central Valley steelhead (*Oncorhynchus mykiss*), and North American green sturgeon (*Acipenser medirostris*) and designated critical habitat for these species. The NMFS did not provide any practical EFH conservation recommendations.

In order to ensure compliance with this NWP authorization, the following special conditions shall be implemented:

1. The NMFS concurred with the determination that the project was not likely to adversely affect Sacramento River winter-run and Central Valley spring-run Chinook Salmon, Central California Coast and California Central Valley steelhead, and North American green sturgeon and designated critical habitat for these species. This concurrence was premised, in part, on project work restrictions and the description of the proposed action outlined in enclosure 3. These work restrictions are incorporated as special conditions to the NWP authorization for your project to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
2. Incidents where any individuals of Sacramento River winter-run and Central Valley spring-run Chinook Salmon, Central California Coast and California Central Valley steelhead, and North American green sturgeon listed by NOAA Fisheries under the Endangered Species Act appear to be injured or killed as a result of discharges of dredged or fill material into waters of the United States or structures or work in navigable waters of the United States authorized by this NWP shall be reported to NOAA Fisheries, Office of Protected Resources, at (301) 713-1401 and the Regulatory Office of the San Francisco District of the U.S. Army Corps of Engineers

at (415) 503-6795. The finder should leave the animal alone, make note of any circumstances likely causing the death or injury, note the location and number of individuals involved, and, if possible, take photographs. Adult animals should not be disturbed unless circumstances arise where they are obviously injured or killed by discharge exposure or some unnatural cause. The finder may be asked to carry out instructions provided by NOAA Fisheries, Office of Protected Resources, to collect specimens or take other measures to ensure that evidence intrinsic to the specimen is preserved.

3. All work shall be performed between June 15 and November 30.
4. All appropriate best management practices shall be implemented throughout the project site to help minimize sediment disturbance and suspension within the water.
5. An annual post construction report shall be submitted by March 31 after the conclusion of each year's construction activities. The report shall document construction activities and contain as-built drawings (if different from drawings submitted with application).

You may refer any questions on this matter to Jordan Harroun of my Regulatory staff by telephone at (415) 503-6580 or by e-mail at [Jordan.D.Harroun@usace.army.mil](mailto:Jordan.D.Harroun@usace.army.mil). All correspondence should be addressed to the Regulatory Division, South Branch, referencing the file number at the head of this letter.

The San Francisco District is committed to improving service to our customers. My Regulatory staff seeks to achieve the goals of the Regulatory Program in an efficient and cooperative manner while preserving and protecting our nation's aquatic resources. If you would like to provide comments on our Regulatory Program, please complete the Customer Service Survey Form available on our website: <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>

Sincerely,



Katerina Galacatos, Ph.D.  
South Branch Chief  
Regulatory Division

Digitally signed by Katerina Galacatos  
Date: 2022.08.03 19:32:28 -07'00'

Enclosures

Copies Furnished Electronically:

CA RWQCB, Oakland, CA (Attn. Derek Beauduy, [Derek.Beauduy@waterboards.ca.gov](mailto:Derek.Beauduy@waterboards.ca.gov),  
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**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

**NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404-4731**

July 7, 2022

Refer to NMFS No: WCRO-2022-01329

James Mazza  
Chief, Regulatory Division  
U.S. Department of the Army  
San Francisco District, Corps of Engineers  
450 Golden Gate Avenue, 4<sup>th</sup> Floor  
San Francisco, California 94102-3404

Re: Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Berkeley Marina Pile Replacement and Maintenance Project in Berkeley, California (Corps File No. 2009-00140)

Dear Mr. Mazza:

On May 25, 2022, NOAA's National Marine Fisheries Service (NMFS) received your request for a written concurrence that the U.S. Army Corps of Engineers' (Corps) proposed authorization of the Berkeley Marina Pile Replacement and Maintenance Project (Project) by the City of Berkeley under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) is not likely to adversely affect species listed as threatened or endangered or critical habitats designated under the Endangered Species Act (ESA). This response to your request was prepared by NMFS pursuant to section 7(a)(2) of the ESA and implementing regulations at 50 CFR 402.

Thank you also for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)) for this action.

This letter underwent pre-dissemination review using standards for utility, integrity, and objectivity in compliance with applicable guidelines issued under the Data Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106-554). The document will be available within two weeks at the Environmental Consultation Organizer [<https://www.fisheries.noaa.gov/resource/tool-app/environmental-consultation-organizer-eco>]. A complete record of this consultation is on file at NMFS North-Central Coast Office in Santa Rosa, California.

### **Consultation History**

By email to NMFS dated March 21, 2022, the Corps requested review of this Project for potential inclusion under the 2018 Programmatic Consultation for Corps-Permitted Actions that are Not Likely to Adversely Affect Select Listed Species in California (2018 NLAA



Programmatic). On March 25, 2022, NMFS requested additional information via email regarding light transmittance for the proposed dock repairs. On April 19, 2022, the Corps responded via email that installation of grating between the existing concrete docks would weaken the system and conflict with standards for accessibility required by the Americans With Disability Act. Based on the information provided, NMFS responded to the Corps via email on April 19, 2022, that the Project did not qualify for inclusion under the NLAA Programmatic Consultation because the dock replacements did not provide for light transmittance.

On May 25, 2022, NMFS received the Corps' letter requesting initiation of an individual consultation for the Project. This consultation package included a Biological Assessment prepared by Moffat & Nichol for the City of Berkeley. On June 8, 2022, NMFS met with the Corps and representatives from the City of Berkeley and Moffat & Nichol to clarify project elements and discuss potential conservation measures. NMFS received sufficient information on June 8, 2022, to initiate consultation.

### **Proposed Action and Action Area**

The City of Berkeley (Applicant) proposes to repair and/or replace up to 215 piles, install 10 new piles, and permanently remove 15 piles over a five-year period. Up to 15 of the 215 piles to be replaced may instead be repaired. Approximately 90% of the piles to be replaced are creosote treated. The existing timber piles range from 12- to 14- inches in diameter, while the replacement concrete piles will be 16-inches in diameter. Piles in the Berkeley Marina (Marina) provide support for docks and buildings. The majority of the timber piles in the Marina were installed in the 1960s and 1970s, and are now exhibiting substantial damage. There is no proposed expansion of the Marina, increase in overwater coverage, or increase in Marina operations under this Project.

Pile repairs consist of placing a fiberglass jacket around the damaged pile, and filling the interstitial space between the pile and the jacket with grout to restore the structural integrity. Pile jacket installation will be performed with hand tools by a diver from a small boat, or from the dock deck. The timber piles to be replaced will be removed with a vibratory pile extractor and disposed of offsite. Piles will be cut (below the mudline) if they cannot be removed in-whole using vibratory extraction, or if they break during removal. The new 16-inch diameter concrete piles will be installed with an impact hammer from a barge-mounted crane. Vibratory pile driving is not proposed due to its ineffectiveness in driving concrete piles and the risk of damaging the pile during installation. A maximum of eight piles will be driven within a 24-hour period. Each pile will require 175 blows per pile. Pile installation will employ a soft start technique and a wood block cushion. In-water work is restricted to pile replacement and repair, and will occur between June 1 and November 30 during daylight hours. Pile replacement and repair will occur over five years on an as needed basis as funding becomes available. The Applicant proposes to implement Best Management Practices (BMPs) to avoid and minimize potential impacts from construction activities, as detailed in the Project's Biological Assessment.

Above water operations proposed as part of this Project include repair of damaged utilities (electric, sewer, and water), gangway and access dock repairs, dock replacement, and repair or replacement of up to 215 pile guides. Up to 2,000 square feet of treated wood deck paneling or concrete deck paneling will be replaced with 2,000 square feet of composite, Ammoniacal

Copper Zinc Arsenate (ACZA) treated wood, and/or precast concrete deck paneling. All general maintenance repairs (aside from pile repair and replacement) will be completed above water and with the use of hand tools. Above water maintenance activities will take place throughout the year.

We considered, under the ESA whether or not the proposed action would cause any other activities and determined that it would not.

#### *Action area*

The action area for this project consists of approximately 322 acres within the Marina. The Marina is located at the terminus of University Avenue in the City of Berkeley, Alameda County, California. There are two breakwaters located approximately 450 feet northwest of the Marina entrance, one concrete sheet pile breakwater that is approximately 440 feet long and one rubble breakwater that is approximately 750 feet long. Riprap along the Marina shoreline provides stabilization and protection. The Marina consists of 14 floating docks that are used for mooring. Available moorage includes several day visitor boat slips for up to four hours, and both short and long-term overnight guest spots. The docks range in length from approximately 170 feet to 446 feet and range in width from eight feet to 12 feet. The docks consist of fingers that make up 867 boat slips, and fingers on the docks vary from 24 to 52 feet long and three to six feet wide. The majority of the marina docks are constructed with concrete decking, though two docks are made entirely of ACZA treated timber. The docks are supported by staggered floats.

#### **Background and Action Agency's Effects Determination**

The Corps determined that the proposed Project may affect, but is not likely to adversely affect federally listed species and their critical habitat based on the localized nature of the proposed maintenance work, the proposed avoidance and minimization measures, and the ability of listed species to avoid the area during proposed construction.

Available information indicates the following listed species (Evolutionarily Significant Units [ESU] or Distinct Population Segments [DPS]) under the jurisdiction of NMFS may be affected by the Project:

**Central California Coast steelhead DPS** (*Oncorhynchus mykiss*)

threatened (71 FR 834; January 5, 2006)  
critical habitat (70 FR 52488; September 2, 2005);

**Central Valley steelhead DPS** (*Oncorhynchus mykiss*)

threatened (71 FR 834; January 5, 2006);

**Sacramento River winter-run Chinook salmon ESU** (*Oncorhynchus tshawytscha*)

endangered (70 FR 37160; June 8, 2005)  
critical habitat (58 FR 33212; June 16, 1993);

**Central Valley spring-run Chinook salmon ESU** (*Oncorhynchus tshawytscha*)

threatened (70 FR 37160; June 28, 2005); and

**North American green sturgeon Southern DPS** (*Acipenser medirostris*)

threatened (71 FR 17757; April 7, 2006)  
critical habitat (74 FR 52300; October 9, 2009).

Steelhead life history is summarized in Busby *et al.* (1996), and Chinook salmon life history is summarized in Vogel and Marine (1991). Central California Coast steelhead, Central Valley steelhead, Sacramento River winter-run Chinook salmon, and Central Valley spring-run Chinook salmon pass through the San Francisco Bay to rear as juveniles or to upstream areas to spawn as adults. Their migrations take place in the winter and spring months.

The life history of green sturgeon in California is summarized in Vick *et al.* (2021). The Southern DPS of the North American green sturgeon are anadromous, entering the San Francisco Bay in late winter to spring to migrate to spawning sites in the Sacramento River and its tributaries. After spawning, adult green sturgeon may remain upstream for days to months prior to migrating to the Pacific Ocean through the mainstem Sacramento River. Juveniles typically migrate downstream and live in the lower delta and bays for 3-4 years before entering the Pacific Ocean. Green sturgeon forage on benthic prey items throughout the San Francisco Bay estuary, notably shallow tidal flats dominated by burrowing shrimp and other benthic prey (Dumbauld *et al.* 2008). Green sturgeon may be present in the San Francisco Bay and action area year-round (Vick *et al.* 2021).

Regarding EFH, the Corps also determined that the proposed Project may adversely affected EFH, but that adverse effects would be temporary and minor, resulting in temporary increase in turbidity and impacts to water quality during construction. The project area is located with an area identified as EFH for various life stages of fish species managed within the Pacific Coast Salmon Fishery Management Plan (FMP), the Pacific Groundfish FMP, and the Coastal Pelagic FMP. San Francisco Bay, including the Project area, is also designated as an estuary habitat area of particular concern (HAPC) for various federally managed fish species as defined in the Pacific Salmon and Groundfish FMPs. HAPC are described in the regulations as subsets of EFH that are rare, particularly susceptible to human-induced degradation, especially ecologically important, or located in an environmentally stressed area. Designated HAPC are not afforded additional regulatory protection under the MSA; however federal projects with potential adverse impacts to HAPC are more carefully scrutinized during the consultation process.

## ENDANGERED SPECIES ACT

### Effects of the Action

Under the ESA, “effects of the action” are all consequences to listed species or critical habitat that are caused by the proposed action, including the consequences of other activities that are caused by the proposed action. A consequence is caused by the proposed action if it would not occur but for the proposed action and it is reasonably certain to occur. Effects of the action may occur later in time and may include consequences occurring outside the immediate area involved in the action (50 CFR 402.02). In our analysis, which describes the effects of the proposed action, we considered 50 CFR 402.17(a) and (b). When evaluating whether the proposed action is not likely to adversely affect listed species or critical habitat, NMFS considers whether the effects are expected to be completely beneficial, insignificant, or discountable. Completely beneficial effects are contemporaneous positive effects without any adverse effects to the species or critical habitat. Insignificant effects relate to the size of the impact and should never reach the scale where take occurs. Effects are considered discountable if they are extremely unlikely to occur.

The effects of the proposed action include temporary increases in underwater noise and turbidity during construction, and a small loss of benthic habitat. By restricting the work period between June 1 and November 30, the proposed construction schedule avoids the primary migration periods of ESA-listed anadromous salmonids in the San Francisco Bay. Thus, NMFS anticipates listed salmonids will not be present in the action area during Project activities. As discussed below, impacts from pile repair, removal, and installation will be temporary and fully dissipate prior to the salmonid migration period. Therefore, any effects to listed anadromous salmonids associated with construction are anticipated to be discountable.

For Southern DPS green sturgeon, the effects of the proposed action are likely to include elevated underwater sound levels, degraded water quality, and benthic habitat disturbance.

The Project includes the repair and replacement of up to 215 timber piles over a five-year period. Replacement 16-inch diameter concrete piles will be installed with an impact hammer, with a wood block for noise attenuation during pile driving. Underwater construction can result in elevated levels of underwater sound that, depending on the type of construction, can disturb, injure, or kill fish (Popper and Hawkins 2019). Monitoring of underwater sound levels associated with impact hammer activities have been performed previously for concrete pile installation in the San Francisco Bay. Based on the hydroacoustic data collected from a previous installation of 18-inch concrete piles in Berkeley, California (Buehler *et al.*, 2015), the noise level estimate for the proposed impact pile driving of 16-inch diameter concrete piles could reach up to 185 dB peak, 166 dB root mean square (rms), and 155 dB Sound Exposure Level (SEL) at 10 meters from the sound source. This data was selected for comparison due to the similarities in pile material and size, as well as similar geotechnical conditions and proximity to the Marina. Using these estimated noise levels and the estimated maximum number of strikes per day for a daily limit of eight piles (1,400 strikes), the accumulated SEL at 10 meters is calculated to be 186 dB. As such, the accumulated sound levels from the proposed in-water construction could reach or exceed the physical injury threshold (187 dB SEL<sub>cum</sub>) for fish larger than two grams within a 9-meter area around each pile proposed for replacement. Additionally, the estimated noise level of 166 dB rms exceeds the behavior threshold for noise impacts to Southern DPS green sturgeon, which is 150 dB rms.

However, while Southern DPS green sturgeon may be present in the San Francisco Bay year-round, the Marina does not provide an optimal habitat for foraging or shelter for this species. The Marina has 867 boat slips and experiences heavy industrial use and boat traffic. The presence of boats and docks contribute to overhanging space that result in shading of the water column and benthic habitats. Shading can reduce primary productivity, change invertebrate assemblages, and reduce the density and diversity of benthic invertebrates (Glasby *et al.*, 1999, Struck *et al.*, 2004, Stutes *et al.*, 2006). As such, the Marina is unlikely to be a productive foraging space for Southern DPS green sturgeon. For any Southern DPS green sturgeon present in the action area during pile driving, the Applicant proposes to use a soft start technique to initiate pile driving to provide the opportunity for fish to disperse to other areas. Based on the existing heavily trafficked nature of the action area, the limited resources for foraging in the action area, and the proposed soft start initiation of pile driving, it is unlikely an individual green sturgeon would remain for an extended period within a 9-meter radius of a pile during installation and be

subjected to accumulated sound levels that reach or exceed the physical injury threshold of 187 dB SELcum. If green sturgeon are present in the vicinity of a pile driving event, they would likely be startled and temporarily leave the immediate area of Project activities. Green sturgeon that react behaviorally would have adequate aquatic habitat in adjacent areas in the Marina and San Francisco Bay to disperse where similar areas are available for foraging and refuge. For these reasons, the effects of underwater sound levels associated with impact pile driving on Southern DPS green sturgeon in the Marina are expected to be insignificant. The physical obstructions provided by the existing breakwaters in the action area are expected to limit the extent of elevated underwater sound levels during pile driving to the confines of the Marina.

Existing piles will be removed with a vibratory extractor. Based on hydroacoustic data collected from projects using vibratory pile installation or extraction methods (Molnar *et al.*, 2020), the sound pressure levels generated by this Project's use of vibratory extractor would not present a risk of physical injury or mortality to listed fish species. Noise levels associated with operating hand tools during pile repair are also not expected to present a risk of injury to listed fish species. Thus, the effects of underwater sound levels associated with the use of a vibratory pile extractor and hand tools are expected to be insignificant.

Impacts to water quality in the form of increased turbidity and disturbance to benthic habitat are expected to occur during pile removal, installation, and repair. Fish may suffer reduced feeding ability under turbid conditions (Benfield and Minello 1996). Fish may even experience gill injury if exposed to excessively high levels of turbidity (Nightingale and Simenstad 2001). However, excessively high levels of turbidity rising to the level of injury are not anticipated to occur during pile installation for this Project. Additionally, as mentioned above, conditions in the Marina do not provide optimal foraging habitat for fish. A maximum of eight piles will be installed per day, with activities spread out over the course of five years. Increases in turbidity are limited to the duration of construction, and are expected to settle out of suspension after the following tidal cycle. Pile removal, replacement, and repair will occur from a barge. Proposed construction BMPs are expected to adequately contain construction debris and prevent the discharge of contaminants into waters of the Marina. Based on the above, the effects of minor, localized, and temporary degradation of water quality are expected to be insignificant for threatened green sturgeon.

The action area is located within designated critical habitat for Sacramento River winter-run Chinook salmon, Central California Coast steelhead, and Southern DPS green sturgeon. The designation of critical habitat for these species uses the term primary constituent element (PCE) or essential features. The new critical habitat regulations (81 FR 7414) replace this term with physical or biological features (PBFs). This shift in terminology does not change the approach used in conducting our analysis, whether the original designation identified primary constituent elements, physical or biological features, or essential features. In this letter of concurrence, we use the term PBF to mean PCE or essential feature, as appropriate for the specific critical habitat.

The PBFs essential for the conservation of Sacramento River winter-run Chinook salmon are: (1) access from the Pacific Ocean to appropriate areas in the upper Sacramento River; (2) availability of clean gravel for spawning substrate; (3) adequate river flows for spawning, incubation of eggs, fry development and emergence, and downstream transport of juveniles; (4) water temperatures between 42.5 and 57.5 °F (5.8 and 14.1 °C) for successful spawning, egg

incubation, and fry development; (5) habitat areas and adequate prey that are not contaminated; (6) riparian habitat that provides for successful juvenile development and survival; and (7) access downstream so that juveniles can migrate from spawning grounds to San Francisco Bay and the Pacific Ocean. PBFs of designated critical habitat for CCC steelhead include estuarine areas free of obstruction with water quality, water quantity, and salinity conditions supporting juvenile and adult physiological transitions between fresh- and saltwater; natural cover such as submerged and overhanging large wood, aquatic vegetation, large rocks and boulders, supporting growth and maturation. PBFs of designated critical habitat for Southern DPS green sturgeon in estuarine areas include adequate food resources, water flow, water quality, migratory corridors, water depths, and sediment quality.

During construction, critical habitat will be temporarily affected by increases in turbidity and disturbance of benthic substrate. However, as discussed above, effects to water quality are expected to be insignificant. Additionally, removal of creosote-treated piles and replacement with biologically inert concrete piles will provide long-term water quality benefits. Pile construction activities will disturb benthic substrate immediately surrounding and beneath the piles. Substrate disturbance could potentially reduce the density of benthic invertebrates that inhabit the action area. However, the benthic habitat in the area has been highly modified and degraded by the existing Marina and ongoing maritime activities, and substrate within the Marina is unlikely to provide quality foraging habitat. The Applicant will also make the effort to install replacement piles within the footprint of piles that have been removed, thereby working in pre-disturbed substrate. Substrate disturbed during construction is expected to return to pre-project conditions within a few weeks due to recolonization of benthic invertebrates from adjacent areas.

The Project's proposed replacement of up to 215 timber piles, installation of 10 new piles, and permanent removal of up to 15 timber piles will result in a permanent loss of benthic habitat (approximately 132 square feet). As discussed above, the Marina does not provide optimal foraging habitat for fish. This permanent loss of habitat represents a small portion of available fish foraging habitat, and ample productive forage habitats exist in the surrounding benthic areas and waters of the San Francisco Bay.

Up to 2,000 square feet of deck paneling will be replaced as part of this Project. Deck replacement will not add more overwater surface area to the existing Marina, but will allow 2,000 square feet of overwater shading to persist into the future. Overwater structures such as docks and piers result in shading of the water column and benthic habitats, which can have negative impacts on primary productivity, submerged aquatic vegetation (SAV) growth, and invertebrate assemblages. The area to be affected by this Project's overwater structure in the action area is limited to within the confines of the Marina. There are currently no SAVs within the Marina, and existing conditions in the Marina are not expected to support growth of SAVs. Given the highly modified condition of the Marina and existing vessel traffic, the deck replacement portion of this Project is not expected to degrade PBFs of designated critical habitat in the action area.

## **Conclusion**

Based on this analysis, NMFS concurs with the Corps that the proposed action is not likely to adversely affect the subject listed species and designated critical habitats.

## **Reinitiation of Consultation**

Reinitiation of consultation is required and shall be requested by the Corps or by NMFS, where discretionary Federal involvement or control over the action has been retained or is authorized by law and (1) the proposed action causes take; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action (50 CFR 402.16). This concludes the ESA consultation.

## **MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

Section 305(b) of the MSA directs Federal agencies to consult with NMFS on all actions or proposed actions that may adversely affect EFH. Under the MSA, this consultation is intended to promote the conservation of EFH as necessary to support sustainable fisheries and the managed species' contribution to a healthy ecosystem. For the purposes of the MSA, EFH means "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity", and includes the associated physical, chemical, and biological properties that are used by fish (50 CFR 600.10). Adverse effect means any impact that reduces quality or quantity of EFH, and may include direct or indirect physical, chemical, or biological alteration of the waters or substrate and loss of (or injury to) benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH. Adverse effects may result from actions occurring within EFH or outside of it and may include direct, indirect, site-specific or habitat-wide impacts, including individual, cumulative, or synergistic consequences of actions (50 CFR 600.810). Section 305(b) of the MSA also requires NMFS to recommend measures that can be taken by the action agency to conserve EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset the adverse effects of the action on EFH (50 CFR 600.905(b)).

NMFS determined the proposed action would adversely affect EFH designated under the Pacific Groundfish and Coastal Pelagic FMPs due to localized increases in sound and turbidity during construction, and permanent impacts to benthic habitat. However, the anticipated effects of increased sound and turbidity to EFH are expected to be temporary and localized. The area of permanent impact to benthic habitat is very small and ample fish forage area exists in adjacent areas within San Francisco Bay. Additionally, the removal of creosote-treated timber piles will improve water quality in the long-term. Thus, NMFS has no practical EFH Conservation Recommendations to provide.

The Corps must reinitiate EFH consultation with NMFS if the proposed action is substantially revised in a way that may adversely affect EFH, or if new information becomes available that

affects the basis for NMFS' EFH conservation recommendations (50 CFR 600. 920(l)). This concludes the MSA consultation.

Please direct questions regarding this letter to Lu Wang, Santa Rosa, California at 707-575-6077 or via email at [lu.wang@noaa.gov](mailto:lu.wang@noaa.gov).

Sincerely,



Gary Stern  
San Francisco Bay Branch Chief  
North Central Coastal Office

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Scott Ferris, Dept. of Parks, Recreation, and Waterfront, City of Berkeley, California  
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Copy to E-File: FRN 151422WCR2022SR00118

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## CLEAN WATER ACT SECTION 401 WATER QUALITY CERTIFICATION AND ORDER FOR THE

**Berkeley Marina Pile Replacements Project**

**Alameda County**

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*Sent via electronic mail: No hard copy to follow*

**Effective Date:** December 2, 2022  
**RM:** 446521  
**Place ID:** 879269  
**WDID No.** 2 CW 446521

**Applicant:** City of Berkeley  
2180 Milvia Street, Third Floor  
Berkeley, CA 94704  
Attn: Scott Ferris, Director of Parks, Recreation, and Waterfront  
Phone: 510-981-6711  
Email: [sferris@cityofberkeley.info](mailto:sferris@cityofberkeley.info)

**Water Board Staff:** Brian Wines  
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JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

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## **Certification and Order Coverage**

This Clean Water Act (CWA) section 401 Water Quality Certification (Certification) and Order (Order) is issued to the City of Berkeley (Permittee).

Pursuant to CWA Section 404, on August 3, 2022, the U.S. Army Corps of Engineers, Regulatory Branch (Corps) provided the Permittee with authorization to fill and discharge to waters of the U.S. under CWA Section 404 and Section 10 of the Rivers and Harbors Act of 1899, under a Nationwide Permit (NWP) 3 (Maintenance) (Corps File No. SPN-2009-00140).

The Permittee applied to the San Francisco Bay Regional Water Quality Control Board (Water Board) requesting Certification verifying the Berkeley Marina Pile Replacements Project (Project) does not violate State water quality standards. The application for Certification was received on February 4, 2022, and supplemental information was provided through October 24, 2022 (Application). The following sections are derived from the Application.

### **1. Project**

The Project purpose is to restore and maintain dock facilities at the Berkeley Marina for structural integrity, public safety, and aesthetic purposes.

#### **1.1 Site Description**

The Project site consists of the 52-acre Berkeley Marina (Marina), located at 201 University Avenue in the City of Berkeley (Lat.: 37.866028°, Long.: -122.312846°) (Att. A, Figs. 1 and 2).

#### **1.2 Project Background**

The Marina was constructed on artificial fill in the 1960s and 1970s. Activities at the Marina include waterfront hiking, sailing, kayaking, park activities, stand-up paddle boarding, windsurfing, kiteboarding, and sportfishing. Rock riprap armoring along the Marina shoreline provides shoreline stabilization. Two breakwaters are located about 450 feet northwest of the Marina entrance; a 440-foot long concrete sheet pile breakwater and a 750-foot long rubble breakwater.

The Marina consists of 14 floating docks (Att. A, Fig. 2). Dock A is leased by Olympic Sailing and Docks B through O are used for boat mooring. The docks range in length from 170 to 466 feet and in width from 8 to 12 feet. The majority of the docks are constructed with concrete decking, but Docks F and G are made entirely of ammoniacal copper zinc arsenate (ACZA)-treated timber. The concrete docks have previously been repaired with ACZA-treated timber decking, plywood, and composite lumber in some areas. Access to Docks B through O is provided by metal gangways.

Overwater structures are supported by 483 piles. Docks B through O are supported by 431 piles, the gangways and access docks are supported by 19 piles, and overwater buildings are supported by 33 piles. All piles at the Marina were originally creosote-

treated or ACZA-treated wood piles. About 54 percent of the piles are still treated wood, but 216 piles have been replaced with concrete piles. Treated wood piles range from 12 to 14 inches in diameter. Concrete piles range from 14 to 18 inches in diameter.

Many of the Marina piles were originally installed in the 1960s and 1970s and are exhibiting severe damage. In some cases, the pile damage is so severe that the dock's structural integrity may be compromised. Berth rentals and lease revenue from restaurants and hotels have been declining and boaters and commercial tenants have cited the Marina's deteriorating infrastructure, as well as safety and security concerns, for the declines in berth and commercial lease rentals. The Project will implement repairs necessary to restore Marina infrastructure.

### 1.3 Construction Summary

Project plans are included in the Design Sheets, *Berkeley Marina Pile Repairs* (Moffett & Nichol, 1/24/2022), in Att. A. The Project will repair and/or replace of up to 215 creosote- or ACZA-treated timber piles over a five-year period. In addition, 15 treated timber piles will be removed and not replaced and up to 10 new concrete piles will be installed.

Damaged piles will be replaced or repaired, depending on the severity of damage to the existing pile. Repairs will consist of placing a fiberglass jacket around the damaged pile and filling the interstitial space between the pile and the jacket with grout. The top four inches and the bottom four to six inches of the jacket will be filled with epoxy grout to ensure a watertight seal so that grout does not come into contact with Bay water. Pile jacket installation will be performed by hand from a small boat or from the dock deck. Jacket installation may also be performed by a diver.

Treated wood piles will be removed with a vibratory extractor and replaced with 16-inch diameter concrete piles. Concrete piles will be installed with an impact hammer, because vibratory pile driving can damage concrete piles. Concrete pile installation will require a maximum of up to 1,400 blows per day. It is anticipated that each concrete pile requires 175 blows and that eight piles will be installed each day. A wood cushion block will be used when driving piles to minimize acoustic impacts to marine life. Piles will be completely removed to the maximum extent possible. Piles that cannot be completely removed will be cut below the mudline. Pile removal and replacement will be conducted from a barge.

The Project also includes the following overwater maintenance activities that will be implemented on an as-needed basis, and which will be completed above water using hand tools:

- Replacement of up to 2,000 square feet of treated wood deck paneling or concrete deck paneling with 2,000 square feet of precast concrete panels or composite (plastic/fiberglass) decking.
- Repair of damaged above-water utilities, including electric, sewer, and water lines.

- Repair or replacement of up to 215 pile guides.
- Repair of gangways and access docks.

## 2. Impacts to Waters of the State

The Water Board has independently reviewed the Project record to analyze impacts to water quality and the environment and designated beneficial uses within the Project’s watershed. The *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan) defines the beneficial uses of waters of the State. The Project will affect Central San Francisco Bay. The beneficial uses assigned to the Central Bay in the Basin Plan are industrial service supply, industrial process supply, commercial and sport fishing, shellfish harvesting, estuarine habitat, fish migration, preservation of rare and endangered species, fish spawning, wildlife habitat, water contact recreation, noncontact water recreation, and navigation.

### 2.1 Fill and Discharge

Project implementation will temporarily impact the beneficial uses of preservation of rare and endangered species, wildlife habitat, and water contact recreation. Replacement of treated piles with inert piles will improve these beneficial uses in the long term.

215 piles will be replaced or repaired, 15 piles will be removed, and 10 new piles will be installed over a 5-year period. Therefore, there will be a net decrease of five piles at the Marina. If all of the 215 12-inch diameter piles are replaced with new 16-inch diameter piles, this will result in up to 130 square feet of additional fill over a 5-year period. In addition, 10 new 16-inch diameter concrete piles will be installed, resulting in in up to 14 square feet of additional fill over the 5-year period. The removal of 15 piles will restore 12 square feet of benthic habitat. The net additional fill at the Marina over a 5-year period will be 132 square feet (Table 1) (Note: Net fill impacts will be smaller if the replaced piles are 14-inches in diameter).

**Table 1. Net Project Fill**

Project Element	Number of Piles	Total Fill (square feet)	Total Cut (square feet)
16-inch concrete installed	225	313	--
12-inch treated wood removed	230	--	181
<b>Net Fill</b>	<b>132 square feet</b>		
* Fill impacts in the table represent a worst-case scenario that assumes the least amount of cut and greatest amount of fill.			

There Project will result in a net fill of up to 132 square feet (0.003 acres). This slight increase in the surface area of fill is anticipated to be offset by the water quality benefits associated with the removal of creosote-treated timber from the marine environment.

The Project has the potential to impact the following special status species and/or their critical habitat: green sturgeon (*Acipenser medirostris*), Central California coast steelhead (*Oncorhynchus mykiss*) California Central Valley steelhead (*Oncorhynchus mykiss*), Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*), Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), California least tern (*Sterna antillarum browni*), and gray whale (*Eschrichtius robustus*).

The Project also has the potential to impact the following species that are protected under the Marine Mammal Protection Act (MMPA): harbor seals (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and harbor porpoises (*Phocoena phocoena*) and to impact Essential Fish Habitat (EFH) that is protected under the Magnuson Stevens Act (MSA).

### 3. Mitigation

The Project will result in net additional fill in the Marina of 0.003 acres. This will be mitigated through the removal of wood piles treated with creosote or ACZA, which are toxic to aquatic life.

The following Best Management Practices (BMPs) will be implemented to minimize Project impacts during construction.

- Floating booms will be used during the installation and removal of piles to contain any debris discharged into water.
- If debris is discharged to water, it will be removed as soon as possible, and no later than the end of each workday. Debris will be disposed of at an authorized upland disposal site.
- Construction materials stored on shore will be kept in an area that does not freely drain to the Bay, is free from standing water and wet soil, and is protected from rain. Construction materials with the potential to be eroded and entrained will be covered every night and during any rainfall event.
- Work barges will not be allowed to ground out.
- Well-maintained equipment will be used to perform construction work and, except in the case of failure or breakdown, equipment maintenance will be performed off-site. Crews will check heavy equipment daily for leaks. If leaks are discovered, they will be immediately contained, and the use of the equipment will be suspended until it is repaired. The source of the leak will be identified, material will be cleaned up, and the cleaning materials will be collected and properly disposed.
- The construction contractor will have a spill contingency plan for hazardous waste spills into the San Francisco Bay. The plan will include floating booms and absorbent materials to recover hazardous wastes. Non-buoyant debris discharged into waters shall be recovered as soon as possible after discharge.
- To avoid key migration periods of protected aquatic species, in-water work is restricted to the June 1 through November 30 in-water work window.
- Marine mammal monitoring will be conducted within an exclusion zone extending

86-feet from the pile driving location. Monitoring will be conducted by a qualified biologist prior to the commencement of pile driving and during pile driving. Work shall be halted when a marine mammal enters the 86-foot safety zone and work may only resume after the animal has been gone from the exclusion zone for a minimum of 15 minutes.

- A “soft start” technique shall be employed when initiating impact pile driving to provide marine mammals the opportunity to vacate the area.
- To minimize pile-driving noise impacts, a wood (or equivalent) cushion block will be placed between the hammer and piles.
- Fiberglass jackets will be filled with marine-grade grout. Installation and application of epoxy, resin, or cementitious grout/fill will be conducted when predicted weather and ocean conditions allow effective control and containment, and allow the epoxy, resin, or grout to remain dry until cured. Jackets will be installed during low tide to the extent feasible. Work will cease during rain. The construction contractor is responsible for checking daily tide and current reports to verify that is safe to use epoxy, resin, or grout.
- Vibratory extraction will be used to remove piles from the Bay substrate. If the pile cannot be removed using vibratory extraction, or if it breaks during removal, it will be cut below the mudline.
- The operator will “wake up” a pile to break up the bond with sediment. Bond breaking avoids pulling out a large block of sediment and possibly breaking off the pile in the process.
- Removed piles, stubs, and any associated sediments will be contained on a barge. If piles are placed directly on the barge and not in a container, the storage area will consist of a row of hay or straw bales, filter fabric, or similar material placed around the perimeter of the barge.
- Containment basins for removed pilings and sediment will be constructed of durable plastic sheeting with continuous sidewalls that are supported by hay bales, ecology blocks, or other non-contaminated materials. Containment basins will be lined with an oil absorbent boom.

The effects of the Project include temporary increases in underwater noise and turbidity during construction, and a small loss of benthic habitat. The Corps determined that the Project may affect, but is not likely to adversely affect, federally listed species and their critical habitat based on the localized nature of the proposed maintenance work, the implementation of the proposed BMPs, and the ability of listed species to avoid the area during proposed construction. On July 7, 2022, the National Marine Fisheries Service (NMFS) provided the *Endangered Species Act Section 7(a)(2) Concurrence Letter and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for the Berkeley Marina Pile Replacement and Maintenance Project in Berkeley, California* (Corps File No. 2009-00140) (NMFS Reference No. WCRO-2022-01329) (Letter of Concurrence). The Letter of Concurrence agreed with the Corps determination that the Project, if implemented as described in the Application, was not likely to adversely affect federally listed species and their critical habitat.

The Letter of Concurrence determined that the Project would adversely affect EFH designated under the Pacific Groundfish and Coastal Pelagic Fishery Management Plans due to localized increases in sound and turbidity during construction, and permanent impacts to benthic habitat. However, the anticipated effects of increased sound and turbidity to EFH are expected to be temporary and localized. The area of permanent impact to benthic habitat is very small and ample fish forage area exists in adjacent areas within the Bay. Additionally, the removal of creosote-treated timber piles will improve water quality in the long term. Therefore, NMFS did not provide EFH Conservation Recommendations in the Letter of Concurrence.

#### 4. CEQA Compliance

The City of Berkeley, acting as the California Environmental Quality Act (CEQA) lead agency, determined that the Project was categorically exempt from review under CEQA pursuant to a Class 1 Categorical Exemption (CEQA Guidelines section 15301) and a Class 2 Categorical Exemption (CEQA Guidelines section 15302) as a project that provides maintenance to an existing facility and repairs or replaces components of an existing facility, without increasing the capacity of the existing facility or changing its location. The City filed a Notice of Exemption (NOE) for the Project with the Alameda County Clerk on January 20, 2021. The Water Board, as a responsible agency under CEQA, concurs with the NOE. Implementation of the mitigation measures and BMPs specified in this Certification will mitigate the Project's impacts to waters of the State to a less than significant level.

#### 5. Conditions

I, Eileen White, Executive Officer, do hereby issue this Order certifying that any discharge from the proposed Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the CWA, and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this Order, including the following:

##### 5.1 Regulatory Compliance and Work Windows

1. **Design Conformance.** The Project shall be constructed in conformance with the Application materials and as described in this Certification, including the Design Sheets, *Berkeley Marina Pile Repairs* (Moffett & Nichol, 1/24/2022), in Att. A. Any changes to the Project that may impact waters of the State must be accepted by the Executive Officer before they are implemented. To request Executive Officer acceptance, the Permittee shall submit the proposed revisions, clearly marked and described, to the attention of the

Water Board staff listed on the cover page of this Certification. The Permittee shall not implement the proposed revisions until notified that they have been accepted by the Executive Officer;

**Rationale:** *This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and final restoration work has been conducted in accordance with the permit and all applicable conditions. (California Water Code (CWC) section 13264).*

2. **Corps Compliance.** The Permittee shall adhere to the conditions of the NWP issued by the Corps (Corps File No. SPN-2009-00140);
3. **NMFS Compliance.** The Permittee shall adhere to the Project description, including BMPs, presented in the Letter of Concurrence issued by NMFS on July 7, 2022 (NMFS Reference No. WCRO-2022-01329);

**Rationale:** *Conditions 2 and 3 are required pursuant to California Code of Regulations (CCR) Title 23, section 3856(e), which requires that copies be provided to the Water Boards of “any final and signed federal, state, and local licenses, permits, and agreements (or copies of the draft documents, if not finalized) that will be required for any construction, operation, maintenance, or other actions associated with the activity.”*

4. **Work Window.** To minimize potential impacts to listed fish species, construction in waters of the State is restricted to the June 1 to November 30 in water work window. Over water maintenance activities are not restricted to this work window;
5. **Precipitation and Construction Planning.** Precipitation forecasts shall be considered when planning construction activities. The Permittee shall monitor the 72-hour forecast from the National Weather Service at <http://www.nws.noaa.gov>. When there is a forecast of more than 40% chance of rain, or at the onset of unanticipated precipitation, the Permittee shall not install pile jackets on that day.

**Rationale:** *Conditions 4 and 5 are necessary to ensure avoidance and minimization of impacts to waters of the State and associated beneficial uses from construction activities (CWC section 13369(b)(1)(B) and (C); Basin Plan section 4.19).*

## 5.2 General Construction

6. **Discharge Prohibition.** No unauthorized construction-related materials or wastes (e.g., debris, soil, silt, excessive bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life) shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When construction is completed, any excess material shall be removed from the

work area and any areas adjacent to the work area where such material may be discharged to waters of the State;

7. **Equipment Maintenance Prohibition.** No fueling, cleaning, or maintenance of vehicles or equipment, other than boats or barges used in piling repair or replacement, shall take place within waters of the State, or within any areas where an accidental discharge to waters of the State may occur; and construction materials and heavy equipment must be stored outside of waters of the State. When work within waters of the State is necessary, best management practices shall be implemented to prevent accidental discharges;
8. **Beneficial Use Impacts.** All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat; measures shall be employed to minimize disturbances along waters of the State that will adversely impact the water quality of waters of the State. To minimize impacts to fish and marine mammals, a biologist approved by NMFS shall be onsite to monitor the work area during all pile installations using an impact hammer;

***Rationale:** Conditions 6 through 8 are necessary to ensure avoidance and minimization of impacts to waters of the State from construction activities (CWC section 13376 et seq.). These conditions are also necessary to minimize adverse impacts to water quality from construction activities to the maximum extent practicable (State Board Resolution No. 68-16; 40 CFR part 131.12 (a)(1); CWC section 13369; Basin Plan section 2.1.14), to ensure that Project implementation does not impact water quality in ways that impair the designated beneficial uses of waters of the State (Basin Plan chapters (Chs.) 3 and 4), to ensure minimization of impacts to waters of the State, and, as well as to ensure successful restoration of all temporary impacts authorized (State Board Resolution No. 68-16; 40 CFR part 131.12 (a)(1); CWC sections 13264 and 13369; Basin Plan Chs. 3 and 4).*

### **5.3 Pre-Construction Reporting and Other Requirements**

9. **Commencement of Construction.** The Permittee shall submit a Start of Construction (SOC) Report acceptable to the Executive Officer. The SOC Report shall be submitted no later than seven days prior to start of work to repair or replace piles and notify the Water Board at least 48 hours prior to initiating in-water work. Notification may be via telephone, email, delivered written notice, or other verifiable means. The SOC Report shall be submitted in the same timeframe specified herein for multiple construction seasons, if necessary, via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include **SOC\_446521\_ Berkeley Marina Pile Replacements Project**;

***Rationale:** This condition is necessary to assist in scheduling compliance inspections to ensure compliance with the permit and applicable conditions (CWC section 13267).*

#### 5.4 Active Construction and Post-Construction Reporting Requirements

10. **As-Built Report** The Permittee shall prepare an as-built report acceptable to the Executive Officer upon the completion of the Project. The as-built report shall be submitted to the Water Board no later than 60 days after completing Project activities. The report shall include the actual number of piles that were repaired or replaced, a summary of any incidents that resulted in discharges to waters of the State, and a report describing any observations of marine mammals in the pile driving exclusion zones and the actions taken in response to those observations. The as-built report shall include the 100 percent construction plans marked with the contractor's field notes that clearly depict any deviations from the designs reviewed by the Water Board, or the BMPs listed in the discussion of Mitigation in the body of this Certification. The as-built report shall explain the need for any deviations to the approved design. The as-built report(s) shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include **As-Built\_446521\_ Berkeley Marina Pile Replacements Project** in the email subject line when sent electronically or in the cover letter for hard copy submissions;

***Rationale:** This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and restoration work has been conducted in accordance with the permit and all applicable conditions (CWC section 13267).*

11. **Project Construction Completion Report.** The Permittee shall submit a Notice of Project Construction Completion (NOC) acceptable to the Executive Officer to notify the Water Board that the Project has been completed. The Completion Notice shall be submitted to the Water Board no later than 60 days after completing all Project construction activities. The Completion Notice shall include the as-built reports (see Condition 12), the date the first Project-related disturbance of waters of the State occurred, and the date construction was completed for the Project. The Completion Notice shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include **NOC\_446521\_ Berkeley Marina Pile Replacements Project** in the email subject line when sent electronically or in the cover letter for hard copy submissions;

***Rationale:** This condition is necessary to ensure compliance with the permit and applicable conditions and to ensure that the proposed work and restoration work has been conducted in accordance with the permit and all applicable conditions (CWC section 13267).*

## 5.5 Reporting Requirements

12. **Annual Reports.** After each June 1 to November 30 in-water work window, the Permittee shall submit an annual report (AMR) acceptable to the Executive Officer. The annual report shall include the number of piles that were repaired and the number of piles that were replaced during that year's in-water work window, a summary of any incidents that resulted in discharges to waters of the State, and a report describing any observations of marine mammals in the pile driving exclusion zones and the actions taken in response to those observations. The annual report shall discuss any deviations from the BMPs listed in the discussion of Mitigation in the body of this Certification and explain the need for such deviations. Annual reports shall be submitted via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see the address on the letterhead), and include **AMR\_446521\_Berkeley Marina Pile Replacements Project** in the email subject line when sent electronically or in the cover letter for hard copy submissions;

***Rationale:** This condition is necessary to ensure avoidance and minimization of impacts to waters of the State, as well as ensure successful mitigation of impacts to the functions of the aquatic environment during construction of the proposed project (23 CCR sections 3013 and 3861(d), Dredge or Fill Procedures section IV. A.2(d) & B.4. CWC section 13267; 33 CFR parts 332.4(a)(C)(4) and 332.6(a)(1)).*

## 5.6 Administrative and General Compliance

13. **Site Access.** The Permittee shall grant Water Board staff or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to: (1) enter upon the Project site or compensatory mitigation site(s) where a regulated facility or activity is located or conducted, or where records are kept; (2) have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order; (3) inspect any facilities, equipment, practices, or operations regulated or required under this Order; and (4) sample or monitor for the purposes of assuring Order compliance;

***Rationale:** This condition is necessary to assist in scheduling compliance inspections and to ensure compliance with the permit and applicable conditions (CWC section 13267).*

14. **Certification and Order at Site.** A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors;

***Rationale:** This condition is necessary to ensure compliance with the permit and applicable conditions (CWC sections 13170 and 13245).*

15. **Ownership Change Notification**. The Permittee shall provide a signed and dated notification to the Water Board of any change in ownership or interest in ownership of any Project area at least 10 days prior to the transfer of ownership. The purchaser shall also submit a written request to the Water Board to be named as the permittee in an amended order. Until this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order;

***Rationale:** This condition is necessary to ensure compliance with the permit and applicable conditions (CWC section 13264).*

16. **Water Quality Violations Notification**. The Permittee shall notify the Water Board of any violations of water quality standards, along with the cause of such violations, as soon as practicable (ideally within 24 hours). Notification may be via telephone, email, delivered written notice, or other verifiable means;

***Rationale:** This condition is necessary to minimize adverse impacts to water quality (CWC sections 13385 and 13267).*

17. **Discharge Change Notification**. In accordance with Water Code section 13260, the Permittee shall file with the Water Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. Changes to discharges include, but are not be limited to, significant new soil disturbances, proposed expansions of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be impacted;

***Rationale:** This condition is necessary to ensure compliance with the permit and applicable conditions (CWC section 13264).*

18. **Submittal of Reports**. Where this Certification requires submittal of reports, including plans, reports, or related information, the submitted reports shall be acceptable to the Executive Officer;
19. **Individual Waste Discharge Requirements**. Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to CWC sections 13263 and/or 13377 and 23 CCR section 3857;
20. **Expiration**. This Order shall continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project;

## 5.7 Standard Conditions

21. **Certification and Order Modification**. This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC sections 13320 and 13330 and 23 CCR section 3867;
22. **Hydroelectric Facilities**. This Order does not apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought;
23. **Application Fee**. This Certification and Order is conditioned upon full payment of the required fee, including annual fees, as set forth in 23 CCR section 3833. The required \$2,147 fee was calculated using the 2021/2022 Water Quality Certification Dredge and Fill Application Fee Calculator for a Category E – *Low Impact Discharge*. Payment in full was received by the Water Board on March 21, 2022;

***Rationale:*** *Conditions 21 through 23 are standard conditions that “shall be included as conditions of all water quality certification actions” (23 CCR Section 3860(a)).*

## 5.8 Annual Fees

24. **Annual Fee**. In accordance with 23 CCR section 2200, the Permittee shall pay an annual fee to the Water Board each fiscal year (July 1 – June 30) until Project construction activities are completed and an acceptable Notice of Project Construction Completion is received by the Water Board. If monitoring is required, the Permittee shall pay an annual fee to the Water Board until monitoring activities are completed and an acceptable Notice of Mitigation Monitoring Completion is received by the Water Board (Note: the Annual Post Discharge Monitoring Fee may be changed by the State Water Board; at the time of Certification it was \$323 per year for Category E projects). Annual fees will be automatically invoiced to the Permittee. The Permittee must notify the Water Board at Project completion with a final report in order to request to terminate annual billing. Notification shall reference **NMMC\_446521\_Berkeley Marina Pile Replacements Project** and should be sent to the staff listed at the bottom of this Certification and to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov). Water Board staff will verify the conditions of the Certification have been met and may request a site visit at that time to confirm the Project’s status and compliance with the Certification.

*In addition to the information noted above, Conditions 1-8 and 12 are individually required to ensure compliance with narrative water quality objectives in the Basin Plan, the state anti-degradation policy (State Water Board Resolution No. 68-16), the*

*California Wetlands Conservation Policy (Executive Order W-59-93, Basin Plan Chs. 4 and 5), and Water Board policies for the protection of wetlands and waters (Basin Plan Ch. 4, including Ch. 4.23).*

*The conditions above are individually authorized as noted above and by 23 CCR sections 3838 and 3859 and CWC Div. 7, Ch. 4, Article 4, Waste Discharge Requirements.*

This Order applies to the Project as proposed in the application materials and designs referenced above in the conditions of Certification. Be advised that failure to implement the Project in conformance with this Order is a violation of this Certification. Any violation of Certification conditions is a violation of State law and subject to administrative civil liability pursuant to CWC sections 13350, 13385, or 13399.2. Failure to meet any condition of this Certification may subject the Permittee to civil liability imposed by the Water Board to a maximum of \$10,000 per day of violation and/or \$10 for each gallon of waste discharged in violation of this action above 1,000 gallons. Any requirement for a report made as a condition to this Certification (e.g., conditions 9, 10, 11, 12, 15, 16, 17, and 24) is a formal requirement pursuant to CWC sections 13267 and 13383, and failure or refusal to provide, or falsification of such required report, is subject to civil liability as described in CWC section 13268 and criminal liability under 13387. The burden, including costs, of these reports bears a reasonable relationship to the need for the report and the benefits to be obtained. Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements.

If you have any questions concerning this Order, please contact Brian Wines of my staff at (510) 622-5680 or [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov). All future correspondence regarding this Project should reference RM **446521** as indicated at the top of this letter.

Sincerely,

  
  
Digitally signed by  
Keith H. Lichten,  
Division Manager  
Date: 2022.12.02  
17:05:37 -08'00'  
\_\_\_\_\_  
for Eileen White  
Executive Officer

Attachment A: Project Figures and Design Sheets

cc: SWRCB, DWQ, [stateboard401@waterboards.ca.gov](mailto:stateboard401@waterboards.ca.gov)  
Water Board, Victor Aelion, [victor.aelion@waterboards.ca.gov](mailto:victor.aelion@waterboards.ca.gov)  
U.S. EPA, Region IX:  
Region IX Mailbox, [r9cwa401@epa.gov](mailto:r9cwa401@epa.gov)  
Jennifer Siu, [siu.jennifer@epa.gov](mailto:siu.jennifer@epa.gov)

Water Quality Certification  
Berkeley Marina Pile Replacements Project

RM: 446521  
WDID# 2 CW 446521

cc (cont.): Corps:

Katerina Galacatos, [katerina.galacatos@usace.army.mil](mailto:katerina.galacatos@usace.army.mil)

Jordan Harroun, [jordan.d.harroun@usace.army.mil](mailto:jordan.d.harroun@usace.army.mil)

Moffatt & Nichol, Taylor Meyers, [tmeyers@moffattnichol.com](mailto:tmeyers@moffattnichol.com)

## **ATTACHMENT A**

# **Water Quality Certification for the Berkeley Marina Pile Replacements Project in the City of Berkeley Alameda County**

## **Project Figures and Design Sheets**



Figure 1. Project Location



# BERKELEY MARINA PILE REPAIRS

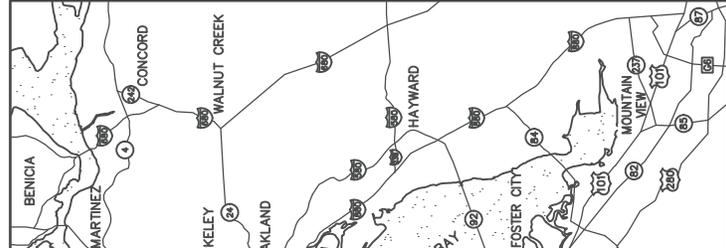
## BERKELEY DEPARTMENT OF PARKS, RECREATION, AND WATERF BERKELEY, CA



SHEET INDEX		SHEET NO.	TITLE SHEET
1	T-001	TITLE SHEET	SHEET T
2	G-001	GENERAL NOTES	
3	C-001	RESTROOM, F, AND G DOCKS CON	
4	C-002	OFFICE, J, AND K DOCKS CONDI	
5	C-003	RESTROOM, L, M, AND N DOCKS	
6	C-004	RESTROOM AND O DOCK CONDI	
7	C-005	CONCRETE PILE DETAILS	
8	C-006	PILE REPAIR DETAILS	

### ABBREVIATIONS

@	AT	AMERICAN SOCIETY FOR TESTING AND MATE
ASTM		AMERICAN SOCIETY FOR TESTING AND MATE
BMP		BEST MANAGEMENT PRACTICES
BOT		BOTTOM
☐		CENTERLINE
CLR		CLEAR
DIA		DIAMETER
FT		FEET
HDPE		HIGH DENSITY POLY ETHYLENE
MAX		MAXIMUM
MIN		MINIMUM
MLLW		MEAN LOWER LOW WATER
NTS		NOT TO SCALE
PSI		POUNDS PER SQUARE INCH
RR		RESTROOM
SS		STAINLESS STEEL
TYP		TYPICAL
UNON		UNLESS OTHERWISE NOTED
VIF		VERIFY IN FIELD



Y MAP

LOCATION PLAN

2020. ALL EXISTING CONCRETE PILES WERE WITH 0% SECTION LOSS.

OVER LOW WATER, BASED ON "SAN FRANCISCO STUDY", DATED FEBRUARY 2016. TIDAL RANGE

	ELEVATION (FT)
	+6.27
	+5.70
	+3.39
	+1.08
(8 (NAVD88))	+0.07
	±0.00

NOT CALLED OUT TO BE DEMOLISHED. REPAIR RES TO REMAIN.

TOR SHALL BE RESPONSIBLE FOR JOBSITE

(±) OR "VIF" INDICATE UNVERIFIED DIMENSIONS E FIELD VERIFIED BY THE CONTRACTOR.

EXISTING CONDITIONS IN THE FIELD BEFORE (DISCREPANCIES OR FIELD CHANGES PRIOR TO OF DISCREPANCIES BETWEEN THE EXISTING CONTRACTOR SHALL OBTAIN WRITTEN DIRECTION DATED DIMENSIONS TAKE PRECEDENCE OVER DRAWINGS.

THE COMMENCEMENT OF CONSTRUCTION AS Y.

IT ANY MATERIAL FROM FALLING INTO THE TRUCTION. ALL CAUGHT MATERIAL SHALL BE OF THE WORK DAY.

DEBRIS, WOOD PRESERVATIVES, OTHER FROM ENTERING THE MARINA AND SAN

HOUSEKEEPING; KEEP ALL MATERIALS COVERED TACKLES ON SITE AND DISPOSE OF WASTE S IN WET WEATHER.

N OF WORK TO ENSURE NO DEBRIS, TRASH, OR T THE SITE OR IN ADJACENT COASTAL WATERS.

OUTSIDE OF THE LIMITS OF THE DESIGNATED SHALL BE RESTORED TO THEIR WATER WITHIN 3 DAYS OF COMPLETION OF

SERVICING SHALL NOT TAKE PLACE ON THE AINED AND WASHED IN CONFINED AREAS OCATED MORE THAN 100 FEET AWAY FROM THE

CORDANCE WITH APPLICABLE REGULATORY NS PER PERMITS FROM THE FOLLOWING

(USACE)  
ROL BOARD (RWQCB)  
OPMENT COMMISSION (BCDC)

3. DECK SCREWS SHALL BE 8" STRONG-DRIVE SDWS TIMBER STAINLESS STEEL SCREWS.

4. DRIFT PIN MATERIAL SHALL BE STAINLESS STEEL, DIAMETER TO MATCH EXISTING.

**REINFORCEMENT**

1. REINFORCEMENT SHALL CONFIRM TO ASTM A615.
2. REINFORCING BARS SHALL NOT BE WELDED WITHOUT THE ENGINEER'S APPROVAL.

**GROUT**

1. CEMENTITIOUS UNDERWATER GROUT SHALL BE SIMPSON FX-225 NON-SHRINK CEMENTITIOUS UNDERWATER GROUT OR ENGINEER APPROVED EQUAL.
2. MARINE EPOXY GROUT SHALL BE SIMPSON FX-70-6MP MULTI-PURPOSE MARINE EPOXY GROUT OR ENGINEER APPROVED EQUAL.
3. TOP SEAL EPOXY SHALL BE FX-763 TROWEL-GRADE EPOXY MIXED WITH FX-702 SILICA FILLER OR ENGINEER APPROVED EQUAL.
4. ALL GROUT SHALL BE PLACED TO OBTAIN UNIFORM COVERAGE WITHOUT VOIDS. THE CONTRACTOR SHALL SUBMIT A GROUTING PROCEDURE FOR APPROVAL BY THE ENGINEER.

**CONSTRUCTION PHASING**

1. CONSTRUCTION WILL BE DONE IN 5 PHASES AS SHOWN IN THE TABLES TO THE RIGHT, IN THE PRIORITY ORDER SPECIFIED.
2. IF THE COST TO ADDRESS ALL PILES INDICATED ON THE DRAWINGS EXCEEDS THE PROJECT BUDGET, PILES WILL BE SELECTED IN THE PRIORITY ORDER INDICATED.

**PILE REPLACEMENT**

1. EXISTING TIMBER PILINGS (ACZA OR CREOSOTE TREATED) INDICATED FOR REPLACEMENT ON THE DRAWINGS SHALL BE COMPLETELY REMOVED, DISPOSED OF, AND REPLACED WITH A NEW CONCRETE PILE. SEE SHEET C-005 FOR CONCRETE PILE DETAILS.
2. REMOVED TIMBER PILINGS (CREOSOTE OR ACZA TREATED) WILL BE PROPERLY DISPOSED OFF-SITE IN ACCORDANCE WITH STATE AND LOCAL LAWS AND ORDINANCES.

**PILE INSTALLATION**

1. WHERE INDICATED ON THE DRAWINGS, INSTALL NEW CONCRETE PILE. SEE SHEET C-005 FOR CONCRETE PILE DETAILS.
2. VERIFY IN FIELD THAT THERE ARE NO EXISTING TIMBER PILE REMAINS AT LOCATIONS INDICATED FOR PILE INSTALLATION. IF A TIMBER PILE REMAIN IS FOUND, REMOVE AND PROPERLY DISPOSE THE REMAINING PILE IN ACCORDANCE WITH STATE AND LOCAL LAWS AND ORDINANCES.

**PILE REMOVAL**

1. WHERE INDICATED ON THE DRAWINGS, COMPLETELY REMOVE AND DISPOSE EXISTING TIMBER PILE (ACZA OR CREOSOTE TREATED). REMOVED PILES WILL BE PROPERLY DISPOSED IN ACCORDANCE WITH STATE AND LOCAL LAWS AND ORDINANCES.

**PILE REPAIR**

1. TIMBER PILINGS INDICATED FOR REPAIR SHALL BE REPAIRED WITH A FIBERGLASS JACKET ENCASING A STEEL REINFORCED EPOXY GROUT FILL, SIMPSON FX-70 SYSTEM OR ENGINEER APPROVED EQUAL. SEE SHEET C-006 FOR PILE REPAIR DETAILS.
2. FIBERGLASS JACKET AND GROUT PORTS SHALL BE INSTALLED PER MANUFACTURERS SPECIFICATIONS.
3. MONITOR PRESSURE-INJECTION OR GRAVITY-FEED GROUT APPLICATION TO ENSURE MATERIAL DOES NOT LEAK INTO WATER.
4. EXCESS GROUT PUMPED OUT THROUGH PORTS OR JACKET OPENINGS SHALL BE COLLECTED AND REMOVED FROM WATER.

**CROSS-REFERENCE LEGEND**

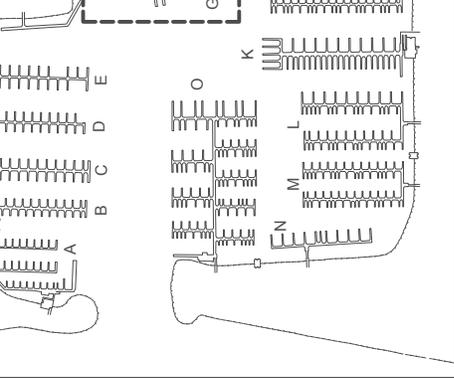
4	O-313/315	REPLACEMENT
5	O-310/312	REPLACEMENT
6	O-503/505	REPLACEMENT
7	O-709/711	REPLACEMENT
8	O-922/924	REPLACEMENT
9	O-916/918 INT	REPLACEMENT
10	O-912/914	INSTALL
11	O-906/908 INT	REPLACEMENT
12	O-805/807	REPLACEMENT
13	O-603/605 INT	REPLACEMENT
14	O-412/414	REPLACEMENT
15	O-415/417 INT	REPLACEMENT
16	O-403/405 INT	REPLACEMENT
17	O-004/006	REPLACEMENT
18	N-101/102	REPLACEMENT
19	M-229/231	REPLACEMENT
20	M-228/230	REPLACEMENT
21	M-GATE	REPLACEMENT
22	M-145/147 INT	REPLACEMENT
23	M-148/198	REPLACEMENT
24	L-245/247 INT	REPLACEMENT
25	L-223/225	REPLACEMENT
26	L-221/223 INT	REPLACEMENT
27	L-134/136 SEP	REMOVE
28	L-132/134	REPLACEMENT
29	L-124/126	REPLACEMENT
30	L-120/122	REPLACEMENT
31	L-108/110	REPLACEMENT
32	L-001/102	REPLACEMENT
33	K-103/105 INT	REPLACEMENT
34	K-111/113	REPLACEMENT
35	K-144/145	REPLACEMENT
36	K-102/104	REPLACEMENT
37	J-301/303	REMOVE
38	J-325/327	REMOVE
39	J-399 SEP	REMOVE
40	J-398 SEP	REMOVE
41	RR-1	REPAIR

PHASE 4 - CONSTRUCTION		
PRIORITY	PILE	
1	K-101/101	
2	K-109/11	
3	K-113/111	
4	K-115/117	
5	K-117/111	
6	K-127/129	
7	K-129/13	
8	K-137/133	
9	K-143/144	
10	K-134/136	
11	K-122/121	
12	N-119/120	
13	N-111/112	
14	N-104/105	

PHASE 5 - CONSTRUCTION		
PRIORITY	PILE	
1	O-307/300	
2	O-317/321	
3	O-608/616	
4	O-208/212	
5	O-202/204	
6	O-017/099	
7	O-005/000	
8	O-003/005	
9	N-112/113 S	
10	M-211/213	
11	M-140/141	
12	L-212/212	
13	L-GATE	
14	L-101 INT	
15	L-119/121	
16	L-131/133	
17	L-145/198	
18	L-126/128 S	
19	L-112/111	
20	L-110/112 S	
21	J-317/319	
22	J-319/321	
23	J-333/333	
24	J-399	
25	J-398	
26	J-246/246	
27	J-239/242	
28	J-121/119	

PHASE 2 - CONSTRUCTION ORDER		
PRIORITY	PILE	REPAIR METHOD
1	O-306/308	REPLACEMENT
2	O-314/316	REPLACEMENT
3	O-516/520E	REPLACEMENT
4	O-512/514	REPLACEMENT
5	O-815/817	REPLACEMENT
6	O-620/698	REPLACEMENT
7	O-405/407	REPLACEMENT
8	O-214/216 INT	REPLACEMENT
9	M-133/135 INT	REPLACEMENT
10	L-233/235 INT	REPLACEMENT
11	L-118/120 SEP	REMOVE
12	K-146/149	REPLACEMENT
13	K-147 INT	REPLACEMENT
14	K-110/112	REPLACEMENT
15	J-355/357 INT	REPLACEMENT
16	J-329/331 INT	REPLACEMENT
17	J-298 SEP	REMOVE
18	J-211/213 INT	REPLACEMENT

SECTION/DETAIL IDENTIFICATION



**KEY PLAN**

**EXISTING CONDITIONS LEGEND**

- FOR INFORMATIONAL PURPOSES ONLY
- TIMBER PILE
  - CONCRETE PILE
  - STUB (> 100% SECTION LOSS)
  - SEVERE (> 75% SECTION LOSS OR BAD FOUNDATION)
  - MAJOR (BETWEEN 50% AND 75% SECTION LOSS)
  - MODERATE (BETWEEN 25% AND 50% SECTION LOSS)
  - MINOR (<25% SECTION LOSS)
  - GOOD (0% SECTION LOSS)
  - HDPE JACKETED TIMBER PILE
  - CONCRETE ENCASED HDPE JACKETED TIMBER PILE

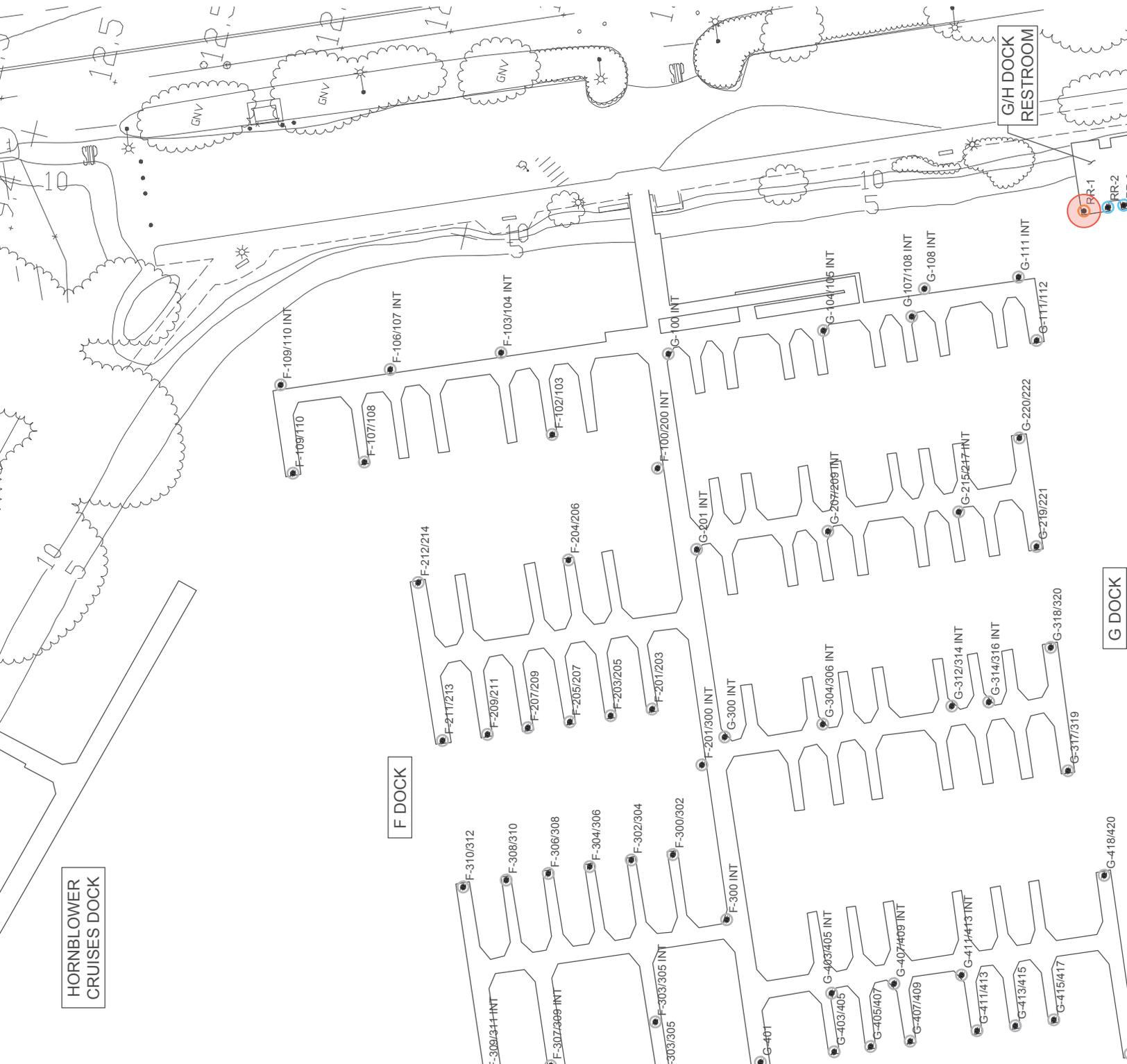
**CONSTRUCTION PHASE LEGEND**

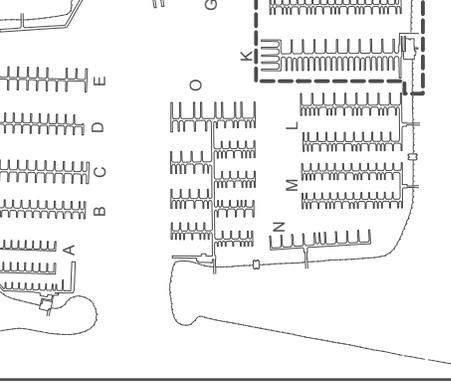
COLOR INDICATES CONSTRUCTION PHASE - REFER TO SHEET G-001 FOR PILE PRIORITY WITHIN EACH PHASE.

- CONSTRUCTION PHASE 1
- CONSTRUCTION PHASE 2
- CONSTRUCTION PHASE 3
- CONSTRUCTION PHASE 4
- CONSTRUCTION PHASE 5

**REPAIR METHOD LEGEND**

- SHAPE INDICATES REPAIR METHOD
- REPLACEMENT
  - REPAIR - SEE C-006





**KEY PLAN**

**EXISTING CONDITIONS LEGEND**

FOR INFORMATIONAL PURPOSES ONLY

- TIMBER PILE
- CONCRETE PILE
- STUB (> 100% SECTION LOSS)
- SEVERE (> 75% SECTION LOSS OR BAD F
- MAJOR (BETWEEN 50% AND 75% SECTION
- MODERATE (BETWEEN 25% AND 50% SECT
- MINOR (<25% SECTION LOSS)
- GOOD (0% SECTION LOSS)
- HDPE JACKETED TIMBER PILE
- CONCRETE ENCASED HDPE JACKETED T

**CONSTRUCTION PHASE LEGEND**

COLOR INDICATES CONSTRUCTION PHASE - R

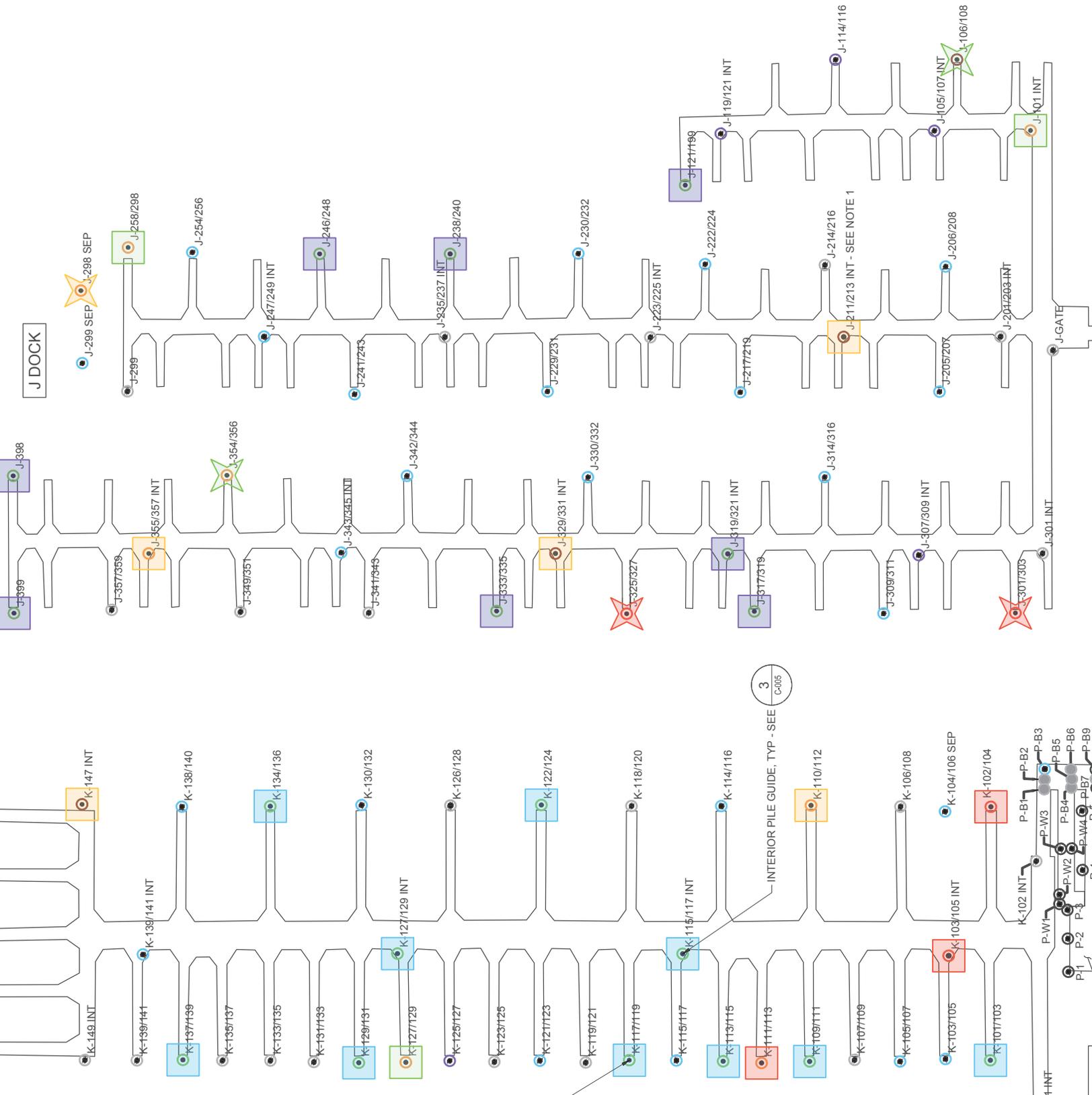
SHEET G-001 FOR PILE PRIORITY WITHIN EACH

- CONSTRUCTION PHASE 1
- CONSTRUCTION PHASE 2
- CONSTRUCTION PHASE 3
- CONSTRUCTION PHASE 4
- CONSTRUCTION PHASE 5

**REPAIR METHOD LEGEND**

SHAPE INDICATES REPAIR METHOD

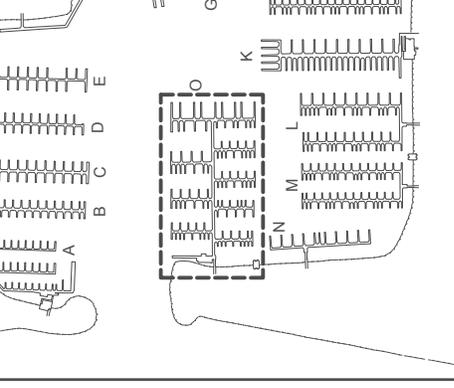
- REPLACEMENT
- REPAIR - SEE 1 C-006



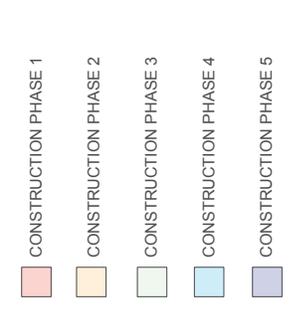
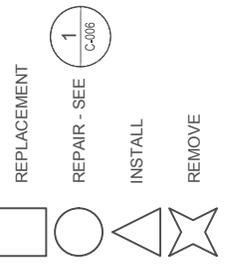
3  
C-005

INTERIOR PILE GUIDE, TYP - SEE



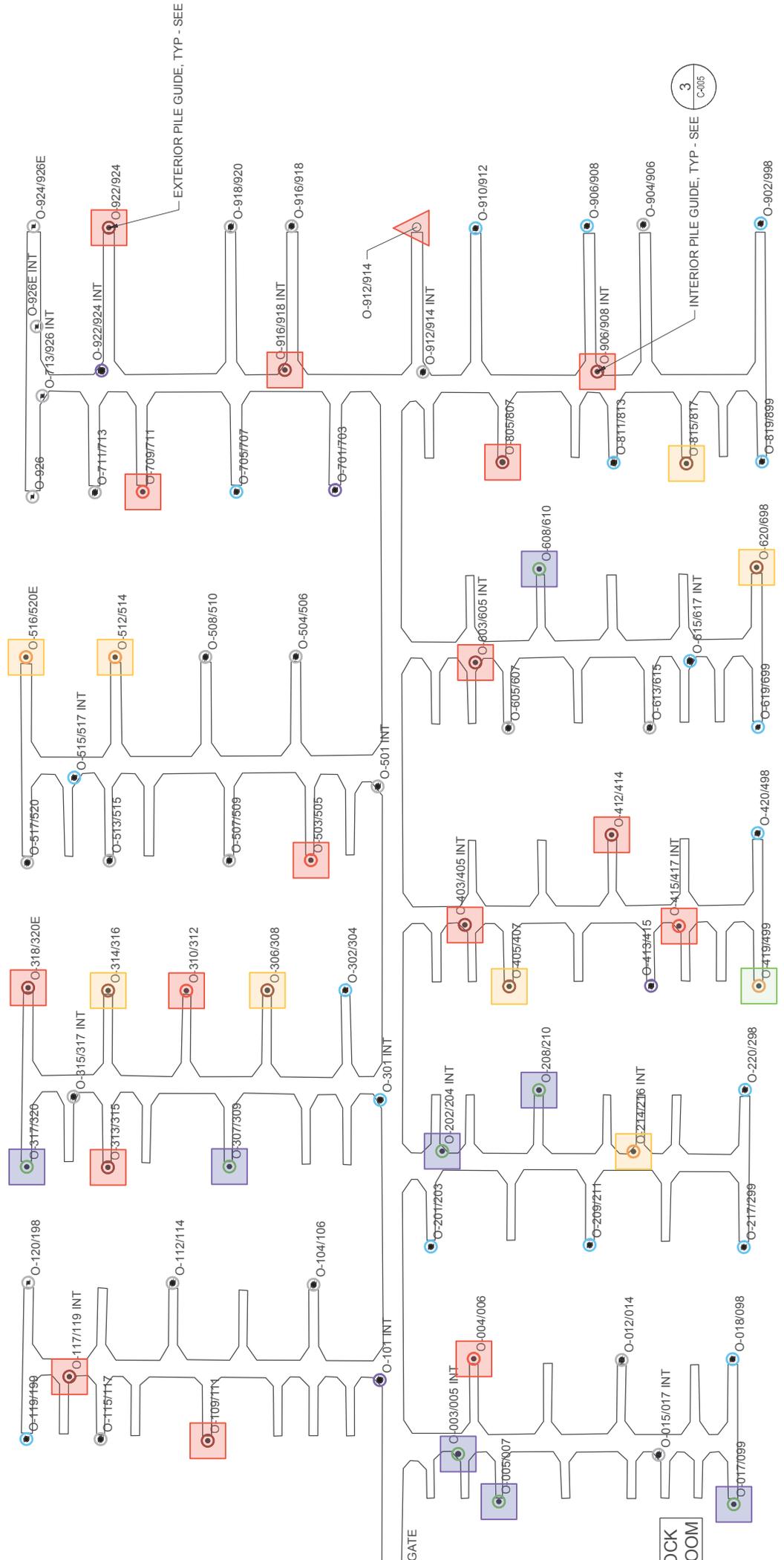


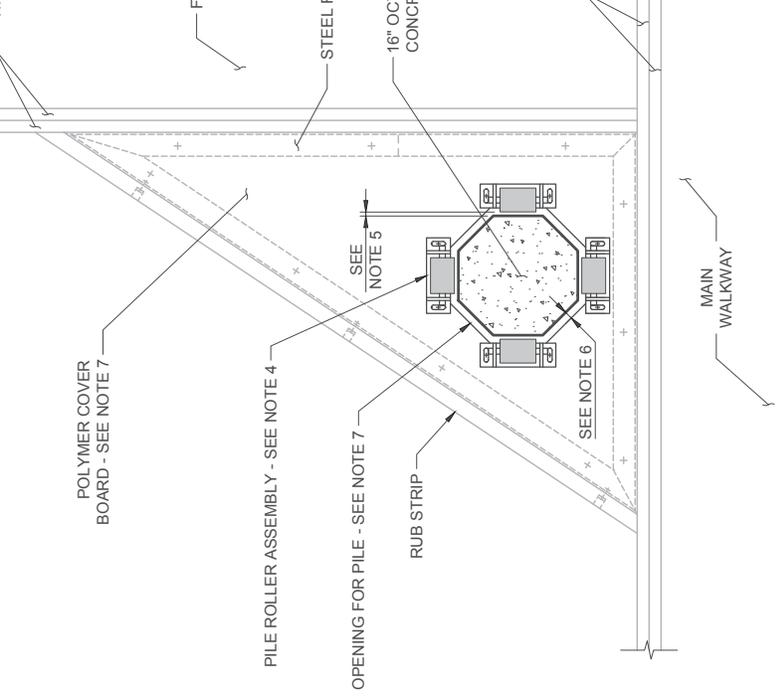
KEY PLAN



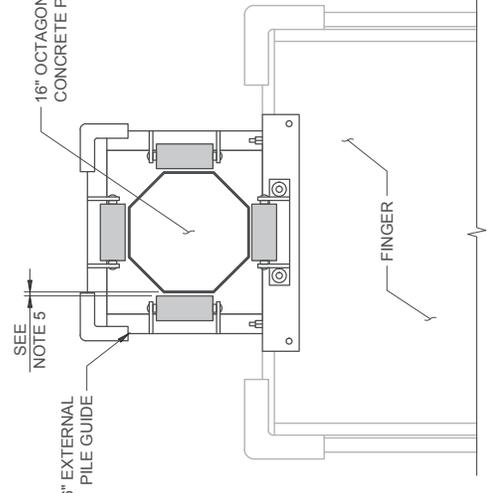
- TIMBER PILE
- CONCRETE PILE
- STUB (> 75% SECTION LOSS)
- SEVERE (> 75% SECTION LOSS OR BAD FOUNDATION)
- MAJOR (BETWEEN 50% AND 75% SECTION LOSS)
- MODERATE (BETWEEN 25% AND 50% SECTION LOSS)
- MINOR (<25% SECTION LOSS)
- GOOD (0% SECTION LOSS)
- HDPE JACKETED TIMBER PILE
- CONCRETE ENCASED HDPE JACKETED TIMBER PILE

O DOCK

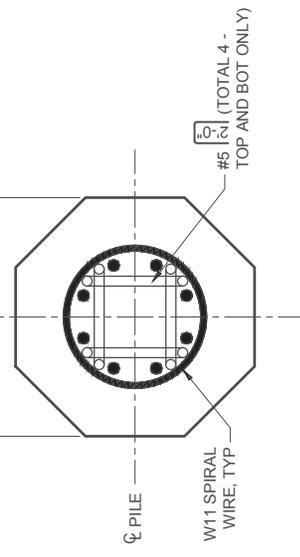




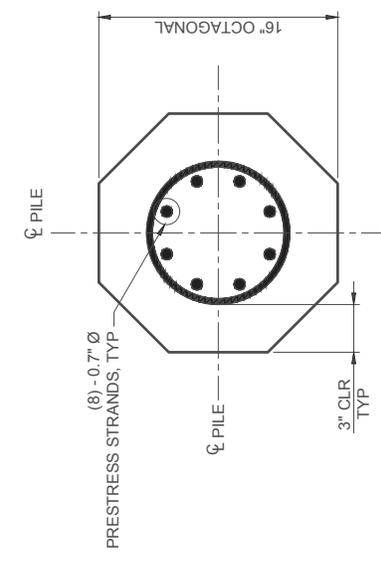
2 INTERIOR PILE GUIDE DETAIL  
SCALE: 1" = 1'



3 EXTERIOR PILE GUIDE DETAIL  
SCALE: 1" = 1'



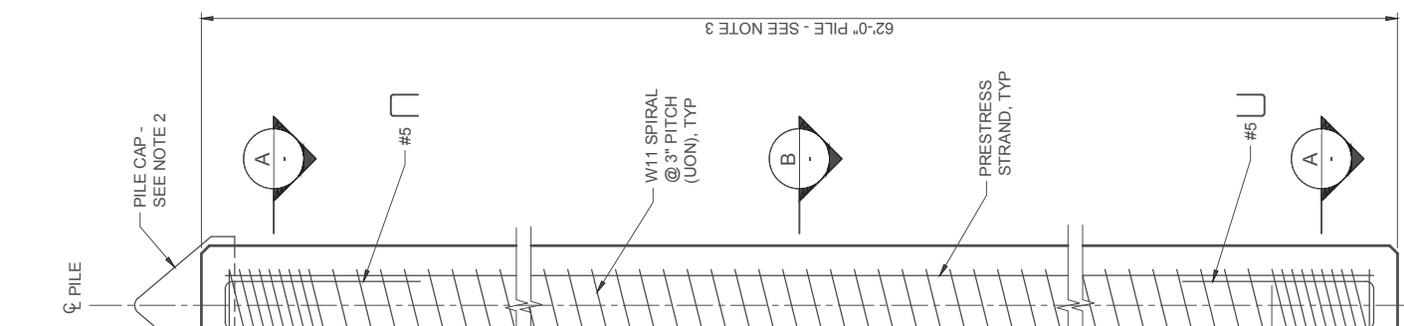
A CONCRETE PILE END SECTION  
SCALE: 1" = 0'-6"



B CONCRETE PILE MID SECTION  
SCALE: 1" = 0'-6"

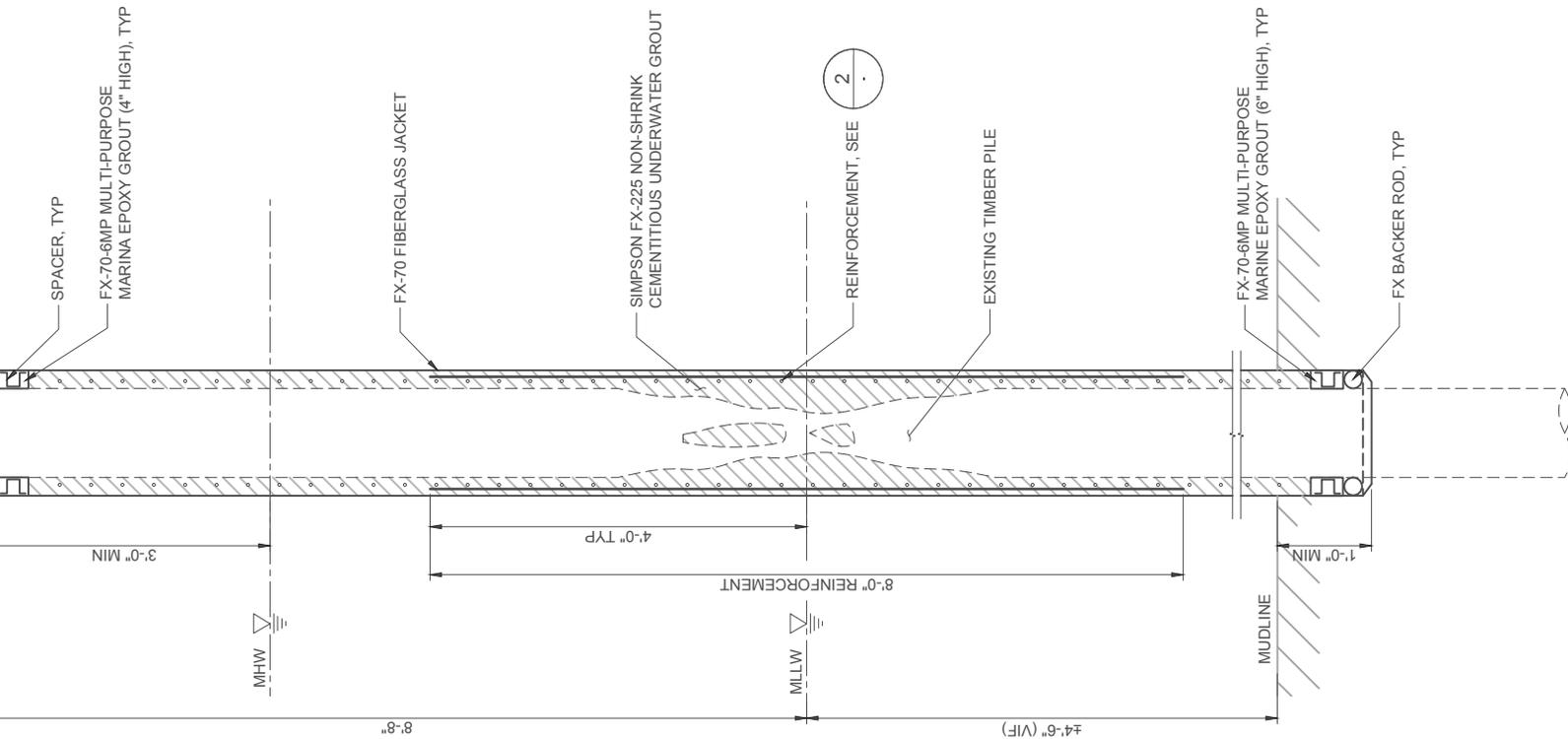
NOTES

- PILE TIP TO PENETRATE AT LEAST 15'-0" BELOW THE BOTTOM OF THE SOFT TO MEDIUM STIFF BAY MUD. IF PILE IS UNABLE TO BE DRIVEN TO INDICATED TIP ELEVATION, NOTIFY THE ENGINEER AND PERFORM CORRECTIVE MEASURES AS DIRECTED. CUT OFF ALL PILE SECTIONS WHICH PROTRUDE ABOVE THE INDICATED PILE TOP ELEVATION.
- PILE CAP SHALL BE HIGH GLOSS FIBERGLASS WITH A MINIMUM WALL THICKNESS OF 1/8 INCH. PROVIDE A LAYER OF GEL-COTE PROTECTION. USE EPOXY ADHESIVE TO ATTACH THE FIBERGLASS PILE CAP ON TOP OF THE PILE.
- PILE DETAILS:
  - CONCRETE STRENGTH:  
 $f'_c = 6,000 \text{ PSI @ 28 DAYS}$   
 $f'_{ci} = 4,500 \text{ PSI @ TRANSFER}$
  - STEEL:  
 PRESTRESSING STEEL: ASTM A416 GRADE 270 (LOW-RELAXATION STRAND)  
 MILD STEEL: ASTM A706 (DEFORMED)  
 MILD STEEL SPIRALS: ASTM A82
  - PRESTRESSING:  
 JACKING FORCE PER STRAND SHALL BE 70% OF ULTIMATE  
 CALCULATED LOSSES = 63.7 KSI  
 WORKING FORCE PER STRAND = 48.2 KIPS  
 JACKING FORCE = 385.8 KIPS  
 FINAL EFFECTIVE PRESTRESS IN CONCRETE AFTER ALL LOSSES = 2070 PSI ( $\pm 2\%$ )
- LAPPED SPLICES IN SPIRAL REINFORCEMENT SHALL BE LAPPED AT LEAST 80 WIRE DIAMETERS. SPIRAL REINFORCEMENT AT SPLICE ENDS SHALL BE TERMINATED WITH A 135° HOOK WITH A 6" TAIL HOOKED AROUND A LONGITUDINAL STRAND.
- CONCRETE COVER FOR ALL REINFORCEMENT SHALL BE 3 INCHES MIN.
- MOMENT CAPACITY: PILES SHALL HAVE A NOMINAL MOMENT CAPACITY OF 120 KIP-FEET.
- PILE ROLLER ASSEMBLY MOUNT SHALL BE COMPATIBLE WITH A 15" Ø OCTAGONAL PILE.
- LATERAL CLEARANCE FOR PILE ROLLER IS 0'-1/2" MINIMUM AND 1" MAXIMUM AT ALL WATER LEVELS.



ELEVATION

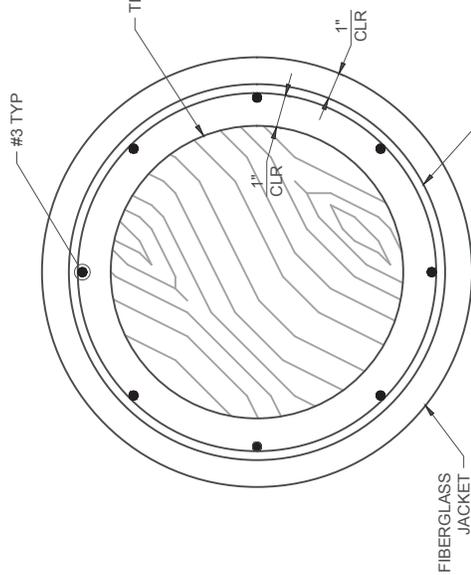
ELEVATION



**NOTES**

ORDER OF WORK:

1. MECHANICALLY (WATER BLAST / WIRE BRUSH) REMOVE GREASE, RUST, MARINE GROWTH, LOOSE AND UNSOUND WOOD, AND OTHER BOND INHIBITING MATERIALS.
2. PROVIDE PATH FOR WATER TO ESCAPE AS GROUT DISPLACES IT FROM BELOW. LEAVE NO POCKETS, CUT A GROOVE OR DRILL HOLES AT TOP OF INTERIOR VOIDS.
3. INSTALL FIBERGLASS JACKET AROUND PILE PER MANUFACTURER'S SPECIFICATION WITH REINFORCEMENT IN ANNULUS. GROUT SO



2 REINFORCEMENT DETAIL  
SCALE: 3" = 1'