

**EXHIBIT 6<sup>1</sup>**

**FORMS OF PAYMENT AND PERFORMANCE SECURITY**

Exhibit 6A: Financial Close Security

Exhibit 6B: Form of D&C Payment Bond<sup>1</sup>

Exhibit 6C: Form of D&C Performance Bond<sup>1</sup>

Exhibit 6D: Form of Multiple Obligee Rider for D&C Payment Bond<sup>1</sup>

Exhibit 6E: Form of Multiple Obligee Rider for D&C Performance Bond<sup>1</sup>

Exhibit 6F: Form of D&C Contractor Guaranty

<sup>1</sup> If the bond is to secure the performance or payment obligations of the D&C Contractor or other Key Contractor, rather than Non-Profit Entity, then the form of the bond shall be revised in accordance with Section 10.3.1.8 of this Agreement.

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<sup>1</sup> Exhibit 6 remains under development and negotiation.

**EXHIBIT 6A**

**FORM OF FINANCIAL CLOSE SECURITY**

**FORM 6A-1 - FORM OF FINANCIAL CLOSE BOND<sup>1</sup>**

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

**KNOW ALL PERSONS BY THESE PRESENTS**, that the \_\_\_\_\_, as Principal and \_\_\_\_\_, as Surety, each authorized and licensed to transact business in the State of California (“**State**”), and each a corporation duly organized under the laws of the State indicated on the attached page, having its principal place of business at the address listed on the attached page, in the State indicated on the attached page, and each Surety authorized as a surety in the State, are jointly and severally held and firmly bound unto the City and County of San Francisco (the “**City**”), a municipal corporation acting by and through the **San Francisco Municipal Transportation Authority (“SFMTA”)**, in the sum of Fifteen **United States Dollars (US \$15,000,000)**] (the “**Bonded Sum**”), the payment of which we each bind ourselves, and our heirs, executors, administrators, representatives, successors, and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the Principal has entered into an Infrastructure Facility Design-Build-Finance Agreement with the City dated as of \_\_\_\_\_, 2026 (the “**Agreement**”) to design, construct and finance the Infrastructure Facility of the Potrero Yard Modernization Project (the “**Project**”);

**NOW, THEREFORE**, the condition of this bond is such that this obligation shall be null and void upon (a) occurrence of Financial Close for the Project by the Financial Close Deadline set forth in the Agreement; or (b) Principal’s receipt of written Notice from City that the Agreement is terminated pursuant to Section 17.6 of the Agreement; otherwise it shall remain in full force and effect, and the Bonded Sum will be forfeited to City as liquidated damages and not as a penalty, upon receipt by Principal and Surety of Notice of such forfeiture from City:

The Surety hereby agrees to pay to City the full Bonded Sum hereinabove set forth, as liquidated damages and not as a penalty, within ten days after Notice from City that Principal has failed to achieve Financial Close by the Financial Close Deadline set forth in the Agreement, and such failure is not excused in accordance with the Agreement.

The following terms and conditions shall apply with respect to this bond:

1. If suit is brought on this bond by City and judgment is recovered, Surety shall pay all costs incurred by City in bringing such suit, including, without limitation, reasonable attorneys’ fees and costs as determined by the court.

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<sup>1</sup> The amount of a single bond may be less than \$15,000,000 on the condition that Principal provides Financial Close Security that totals \$15,000,000 in the aggregate.

2. Any extension(s) of the time for award of the Agreement that Principal may grant in accordance with the Agreement or otherwise, shall be subject to the reasonable approval of Surety.

3. Correspondence, Notices or claims relating to this bond should be sent to Surety at the following address:

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This agreement shall be binding on the Principal and Surety executing the same, their legal representatives, successors and assigns.

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

**SIGNED and SEALED** this \_\_\_\_\_ day of \_\_\_\_\_, 2026

\_\_\_\_\_  
Principal

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

\_\_\_\_\_  
Surety

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

Attorney in Fact

***[add appropriate Surety acknowledgments]***

**FORM 6A-2 - FORM OF FINANCIAL CLOSE LETTER OF CREDIT<sup>c</sup>**

**IRREVOCABLE STANDBY LETTER OF CREDIT – FINANCIAL CLOSE**

**ISSUER:** \_\_\_\_\_

**PLACE FOR PRESENTATION OF DRAFT:** (Name and Address of Bank/Branch -- **MUST** be San Francisco, California, Los Angeles, California, Chicago, Illinois, or New York, New York address)

**APPLICANT: POTRERO NEIGHBORHOOD COLLECTIVE LLC**

**BENEFICIARY:** CITY AND COUNTY OF SAN FRANCISCO  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue  
San Francisco, CA 94103  
Attention: Bree Mawhorter, Chief Financial Officer

**LETTER OF CREDIT NUMBER:** \_\_\_\_\_

**PLACE AND DATE OF ISSUE:** \_\_\_\_\_

**AMOUNT: Fifteen Million United States Dollars (US \$15,000,000)]**

**EXPIRATION DATE:** \_\_\_\_\_, 2026

The above named Issuer issues this Irrevocable Standby Letter of Credit in favor of the City and County of San Francisco (“**City**”), for any sum or sums up to the aggregate amount of Fifteen Million **United States Dollars (US \$15,000,000)**, available by draft at sight drawn on the Issuer. Any draft under this Irrevocable Standby Letter of Credit shall be signed by an authorized representative of the above named Beneficiary and shall:

1. Identify this Irrevocable Standby Letter of Credit by the name of the Issuer, and the Letter of Credit number, amount, and place and date of issue, stated above; and
2. State:

“This drawing is due to Potrero Neighborhood Collective LLC’s failure to achieve Financial Close by the Financial Close Deadline set forth in the Infrastructure Facility Design-Build-Finance Agreement with the City and County of San Francisco dated as of \_\_\_\_ 2026 (the “**Agreement**”) without excuse under the Agreement.”

\_\_\_\_\_

<sup>c</sup> The amount of a single letter of credit may be less, on the condition that Proposer provides Financial Close Security that totals \$15,000,000 in the aggregate.

All drafts presented in compliance with the terms of this Irrevocable Standby Letter of Credit will be honored if presented by physical delivery of such original documents or via overnight courier of such original documents to \_\_\_\_\_ (Name & San Francisco, California, Los Angeles, California, Chicago, Illinois, or New York, New York address) on or before the stated expiration date described above or any extended expiration date.

This Irrevocable Standby Letter of Credit is subject to the rules of the “International Standby Practices” ISP98. If a conflict between ISP98 and New York law should arise, New York law shall prevail, without regard to principles of conflicts of law. If legal proceedings are initiated by any party with respect to payment of the Irrevocable Standby Letter of Credit, we agree that such proceeding shall be governed by New York law and may be brought in the State Courts of New York, venue in New York City, provided that the obligations of City shall be governed and construed in accordance with California law. Venue for any proceeding involving issues related to the obligations of City shall be in San Francisco, California.

Any failure by you to draw upon this Irrevocable Standby Letter of Credit as permitted hereunder shall not cause this Irrevocable Standby Letter of Credit to be unavailable for any future drawing, provided that this Irrevocable Standby Letter of Credit has not expired prior to such future drawing and that all requirements of this Irrevocable Standby Letter of Credit are independently satisfied with respect to any such future drawing.

Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement.

Issuer:

By: \_\_\_\_\_ (Authorized signature of Issuer)

**EXHIBIT 6B**

**FORM OF D&C PAYMENT BOND**  
**(Bond No. \_\_\_\_\_)**

**KNOW ALL MEN BY THESE PRESENTS:**

That PRG-Potrero Properties LLC (“Non-Profit Entity”) has entered into a contract with the City and County of San Francisco (the “City”), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency (“SFMTA”), bearing the date of [INSERT DATE], 2026 (the “Project Agreement”), to design, build and finance the Infrastructure Facility of the Potrero Yard Modernization Project (the “Project”); and

That Potrero Neighborhood Collective LLC (“Principal Project Company”), an entity duly authorized to do business in the State of California (the “State”) entered into a contract (the “Project Implementation Agreement”) with Non-Profit Entity bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project;

That Webcor Construction, LP (Design-Builder Name), an entity duly authorized to do business in the State of California (the “State”) and having its principal place of business at \_\_\_\_\_ ([Street Address, City, State, Zip and Phone #]) (the “Principal” or “Contractor”), have entered into a contract (the “Contract”) with Principal Project Company bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project; That the Principal and \_\_\_\_\_ (the “Surety”), duly authorized to do business in the State, having its principal place of business at \_\_\_\_\_ (Home Office Address) are held and firmly bound unto Principal Project Company, in the full and just sum of **SIX HUNDRED TWELVE MILLION ONE HUNDRED SEVEN THOUSAND DOLLARS** lawful money of the United States of America (**US\$612,107,000**), to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally;

**CONDITIONS OF THIS BOND ARE AS FOLLOWS:**

- A. Principal shall promptly make all payments owing when due to all persons who furnish labor, services, or materials for the prosecution of the work provided for in the Contract.
- B. Each said claimant shall have a right of action against the Principal and Surety for the amount due him or her, including unpaid finance charges due under the claimant’s contract.
- C. A claimant, except a laborer, who is not in privity with the Principal shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the Principal with a notice that he or she intends to look to this Bond for protection. A claimant who is not in privity with the Principal and who has not received payment for his or her labor, materials, or supplies shall deliver to the Principal and to the Surety written notice of the performance of the labor or delivery of the materials, or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but

not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the rental equipment was last on the job site available for use. No action for the labor, materials, or supplies may be instituted against the Principal or the Surety unless both notices have been given. Notices required or permitted may be served in accordance with Section 8106, California Civil Code. An action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or the Surety on this Bond within 1 year after the performance of the labor or completion of delivery of the materials or supplies, or within 90 days after receipt of final payment (or the payment estimate containing Principal Project Company's final reconciliation of quantities if no further payment is earned and due as a result of deductive adjustments) by the Principal or Surety, whichever comes last. The time periods for service of a notice of nonpayment or for bringing an action against a Principal or a Surety shall be measured from the last day of furnishing labor, services, or materials by the claimant.

- D. An action must be instituted by a claimant, whether in privity with the Principal or not, against the Principal or the Surety on this Bond within 365 days after the expiration of the Warranty Period (pursuant to the Project Agreement). A claimant may not waive in advance his or her right to bring an action under this Bond against the Surety. In any action brought to enforce a claim against this Bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.
- E. The amount of this Bond is a fixed amount and shall not be changed.
- F. Neither any change in or under the Contract, nor any compliance or noncompliance with any formalities provided in the Contract nor the change shall relieve the Surety of its obligations under this Bond.

IN WITNESS WHEREOF, Principal and Surety have executed these presents and the Surety has affixed its seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**PRINCIPAL:** Webcor Construction, LP Date: \_\_\_\_\_

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

Print Name & Title: \_\_\_\_\_

**NAME OF SURETY:** \_\_\_\_\_

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

Signature (Attorney-in-Fact): \_\_\_\_\_

(Affix Seal)

Print Full Name, Address and Telephone No.

\_\_\_\_\_

**[If more than one Surety, then add appropriate number of lines to signature block]**

**NOTES CONCERNING SURETY AND EXECUTION:**

**A. SURETY COMPANY REQUIREMENTS**

To be acceptable to the City, the Surety shall meet all of the requirements of the Project Agreement, laws of California and the regulations of the City, and has the City's approval.

**B. EXECUTION OF BOND**

1. Enter the Surety's name and address on each copy of this Bond in the space provided.
2. Have each copy of this Bond signed by the same person that signed the Contract on behalf of the Principal (affix Corporate Seal, if appropriate).
3. Have each copy of this Bond signed by the person authorized to sign on behalf of the Surety. Put the date the signature was affixed in the space provided. Print that person's name in the place provided on each copy of this Bond. Also, have the Surety's Corporate Seal affixed to each copy of this Bond beside that person's signature (no facsimiles are acceptable).
4. Each copy of this Bond must have a Power of Attorney attached indicating that the person in item B.3 above is authorized to sign on behalf of the Surety.

5. Each copy of the Power of Attorney must have the Surety's Corporate Seal manually affixed unless facsimile seal is authorized.
6. The date of execution of the Power of Attorney is the same as the date shown on the signature line for the Surety Attorney-In-Fact.

**CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_ in the year of \_\_\_\_\_ before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

\_\_\_\_\_ (SEAL) \_\_\_\_\_

*Signature of Notary Public*

**EXHIBIT 6C**

**FORM OF D&C PERFORMANCE BOND**

**KNOW ALL MEN BY THESE PRESENTS:**

That PRG – Potrero Properties LLC (“Non-Profit Entity”) has entered into a contract with the City and County of San Francisco (the “City”), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency (“SFMTA”), bearing the date of [INSERT DATE], 2026 (the “Project Agreement”), to design, build and finance the Infrastructure Facility of the Potrero Yard Modernization Project (the “Project”); and

That Potrero Neighborhood Collective LLC (“Principal Project Company”), an entity duly authorized to do business in the State of California (the “State”) entered into a contract (the “Project Implementation Agreement”) with Non-Profit Entity bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project;

That Webcor Construction, LP (Design-Builder Name), an entity duly authorized to do business in the State of California (the “State”) and having its principal place of business at \_\_\_\_\_ ([Street Address, City, State, Zip and Phone #]) (the “Principal” or “Contractor”), have entered into a contract (the “Contract”) with Principal Project Company bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project; and

That the Principal and \_\_\_\_\_ (the “Surety”), duly authorized to do business in the State, having its principal place of business at \_\_\_\_\_ (Home Office Address) are held and firmly bound unto Principal Project Company in the full and just sum of **SIX HUNDRED TWELVE MILLION ONE HUNDRED SEVEN THOUSAND DOLLARS** lawful money of the United States of America (**US\$612,107,000**), to whom payment well and truly will be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally and firmly by these presents;

**WHEREAS**, it was one of the conditions of the Contract, the Project Implementation Agreement and the Project Agreement that these presents shall be executed;

**NOW, THEREFORE**, the conditions of this obligation are such that if Principal shall faithfully, promptly, efficiently and fully perform in accordance with the obligations of the Contract and shall indemnify and save harmless Principal Project Company from all cost and damage by reason of Principal’s failure to do so, and further if the Principal shall promptly pay all State Workers’ Compensation and Unemployment Compensation taxes incurred in the performance of the Contract obligations and shall be liable to the City in a civil action instituted by the City or any officer of the City authorized in such cases for double any amount in money or property the City may lose or be overcharged or otherwise defrauded of, by reason of any wrongful or criminal act, if any, of the Principal, its agents, and employees, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Principal Project Company may, but is not obligated to, provide written notice to Principal, with a copy to the Surety and each Additional Obligee, that Principal Project Company is considering declaring a default by Principal under the Contract. The notice may indicate that Principal Project

Company is requesting a conference among Principal Project Company, Principal and the Surety to discuss Principal's performance or payment. If a conference is not requested by Principal Project Company in any such notice, then the Surety may, within five (5) business days after receipt of such notice, deliver written notice to Principal Project Company requesting such a conference. If Principal Project Company or the Surety requests such a conference, then Principal Project Company, Principal and the Surety will attend. Such conference shall be held within ten (10) business days of delivery of the relevant notice requesting such conference. Failure on the part of Principal Project Company to comply with the notice provisions in this paragraph or participate in any conference shall not constitute a failure to comply with a condition precedent to the Surety's obligations or release the Surety from its obligations.

Should the Principal be declared to be in default of its obligations under the Contract, the Surety shall pay Principal Project Company all costs assessed against the Principal because of the default(s) which were not withheld from Contract proceeds, and upon Principal Project Company's demand, the Surety shall (i) take over performance of the Contract obligations; provided, however, that in the event Principal Project Company elects to have the Surety take over performance of the Contract obligations, the Surety may not select the Principal or any affiliate of the Principal to perform the Contract obligations for and on behalf of the Surety without Principal Project Company's express written consent; (ii) waive the right to take over performance of the Contract obligations and tender payment of an amount necessary to compensate Principal Project Company and the Additional Obligees, as applicable, for all costs assessed against and amount owing from Principal because of its breach of the Contract, up to the full penal sum of this Performance Bond; or (iii) obtain bids or negotiated proposals from qualified Contractors acceptable to Principal Project Company and City for a contract for performance of the Contract obligations, arrangement for a contract to be prepared for execution by Principal Project Company and a contractor selected with the concurrence of Principal Project Company and City, acting reasonably, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract.

The Surety shall be fully liable under this bond up to the full penal sum hereof, regardless of any modifications (of whatever amount) to the Contract amount. The obligations covered by this bond specifically include liability for liquidated damages and warranties as specified in the Contract, as well as any Design Work performed prior to the effective date of the Contract, but in any event shall not exceed the penal sum of this Bond.

WITNESS the signature of the Principal and the signature of the Surety by \_\_\_\_\_ its \_\_\_\_\_ (Agent or Attorney-in-Fact) with the seals of said Principal and Surety hereunto affixed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Complete the following as appropriate

<p>_____</p> <p>Webcor Construction, LP</p> <p>Authorized Signature: _____</p> <p>*Signature: _____</p> <p>Printed Name: _____</p>
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*
_____
Title: _____
(Seal)
*Include the signature and printed name of each partner required to be affixed per partnership agreement.

Principal shall record this bond in the official records of the Clerk of Court of the county where the improvement is located prior to commencing the work.

Organized and existing under the laws of the State of _____ and authorized to do business in the State of California, pursuant to the laws of the State of California.	
Countersigned: _____ California Licensed Insurance Agent Print information below (California Licensed Insurance Agent; whether in Attorney-in-Fact or Countersignature role): Name: _____ Business _____ Address: _____ Telephone: _____	_____ Surety Company Name (Print)      (Seal) By: _____ _____ California Licensed Insurance Agent or Attorney-in-Fact (Surety) <input type="checkbox"/> Above Signatory is also a California Licensed Insurance Agent (check if applicable and complete business name, address and telephone number block; if not, have such an agent countersign and complete block). NOTE: Power of Attorney showing authority of Surety's Agent or Attorney-in-Fact is to be attached.

**[If more than one Surety, then add appropriate number of lines to signature block]**

Send "Notices to City" to:

\_\_\_\_\_

**CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of \_\_\_\_\_

County of \_\_\_\_\_

On this \_\_\_ day of \_\_\_\_\_ in the year of 2025 before me, a notary public in and for the county and state aforesaid, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to within the instrument and acknowledged to me that he/she executed the same in his/her authorized capacity(ies), and that by his/her signature(s) on the instrument, the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal:

\_\_\_\_\_ (SEAL) \_\_\_\_\_

*Signature of Notary Public*

**EXHIBIT 6D**

**FORM OF MULTIPLE OBLIGEE RIDER – PAYMENT BOND**

MULTIPLE OBLIGEE

RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Payment Bond No. \_\_\_\_\_ (the "Payment Bond").

WHEREAS, PRG-Potrero Properties LLC ("Non-Profit Entity") has entered into a contract with the City and County of San Francisco (the "City"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("SFMTA"), bearing the date of [INSERT DATE], 2026 (the "Project Agreement"), to design, build and finance the Infrastructure Facility of the Potrero Yard Modernization Project (the "Project");

WHEREAS Potrero Neighborhood Collective LLC ("Primary Obligee"), an entity duly authorized to do business in the State of California (the "State") entered into a contract (the "Project Implementation Agreement") with Non-Profit Entity bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project;

WHEREAS, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2026, Webcor Construction, LP, (hereinafter called the "Principal"), entered into a written agreement (hereinafter called the "Contract") with Primary Obligee for the Project; and

WHEREAS, the Primary Obligee requires that Principal provide the Payment Bond and that the Non-Profit Entity, the City and County of San Francisco, and U.S. Bank Trust Company, National Associated, as collateral agent, be named as additional obligees under the Payment Bond; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider currently with the execution of the Payment Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned agree and stipulate that (i) Non-Profit Entity; (ii) the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transportation Agency and (iii) U.S. Bank Trust Company, National Association, as collateral agent shall be added to the Payment Bond as named obligees (hereinafter referred to as "Additional Obligees").

PROVIDED, HOWEVER, that the Surety shall not be liable under the Payment Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract in all material respects at the time and in the manner therein set forth; and

PROVIDED, FURTHER that the aggregate liability of the Surety under this Payment Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of said Payment Bond, that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and that the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract; and

PROVIDED, FURTHER that in the event of a conflict between the Payment Bond and this Rider, this Rider shall govern and control. All references to the Payment Bond, either in the Payment Bond or in this Rider, shall include and refer to the Payment Bond as supplemented and amended by this Rider. Except as herein modified, the Payment Bond shall be and remains in full force and effect.

Except as herein modified, said Payment Bond No. \_\_\_\_\_ shall be and remains in full force and effect.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:		Webcor Construction, LP (Name of Principal)
	(SEAL)	
_____		By: _____
Secretary		Title: _____

Attest:		_____
	(SEAL)	(Surety / Co-Surety)
_____		By: _____
Signature		Title: _____
Bonding Agent's Name: _____		_____
Agent's Address: _____		_____
		(Business Address of Surety / Co-Surety)

Attest:		_____
	(SEAL)	(Co-Surety)
_____		By: _____
Signature		Title: _____
Bonding Agent's Name: _____		_____
Agent's Address: _____		_____
		(Business Address of Co-Surety)

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Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
\_\_\_\_\_  
(Business Address of Co-Surety)

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Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
\_\_\_\_\_  
(Business Address of Co-Surety)

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Approved as to legal form and sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_ 2026

\_\_\_\_\_  
Deputy City Attorney

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[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

**EXHIBIT 6E**

**FORM OF MULTIPLE OBLIGEE RIDER – PERFORMANCE BOND**

MULTIPLE OBLIGEE

RIDER

This Rider is executed concurrently with and shall be attached to and form a part of Performance Bond No. \_\_\_\_\_ (the "Performance Bond").

WHEREAS, PRG-Potrero Properties LLC ("Non-Profit Entity") has entered into a contract with the City and County of San Francisco (the "City"), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency ("SFMTA"), bearing the date of \_\_\_\_\_, 2026 (the "Project Agreement"), to design, build and finance the Infrastructure Facility of the Potrero Yard Modernization Project (the "Project");

WHEREAS Potrero Neighborhood Collective LLC ("Primary Obligee"), an entity duly authorized to do business in the State of California (the "State") entered into a contract (the "Project Implementation Agreement") with Non-Profit Entity bearing the date of \_\_\_\_\_, 2026 related to the performance of design and construction work in connection with the Project;

WHEREAS, on or about the \_\_\_\_\_ day of \_\_\_\_\_, 2026, Webcor Construction, LP, (hereinafter called the "Principal"), entered into a written agreement (hereinafter called the "Contract") with Primary Obligee for the Project; and

WHEREAS, Principal and the Surety have agreed to execute and deliver this Rider currently with the execution of the Performance Bond upon the conditions herein stated.

NOW, THEREFORE, the undersigned agree and stipulate that (i) Non-Profit Entity; (ii) the City and County of San Francisco, a municipal corporation acting by and through the San Francisco Municipal Transportation Agency, and (iii) U.S. Bank Trust Company, National Association, as collateral agent, shall be added to the Performance Bond as named obligees (hereinafter referred to as "Additional Obligees").

PROVIDED, HOWEVER, that the Surety shall not be liable under the Performance Bond to the Primary Obligee, the Additional Obligees, or any of them, unless the Primary Obligee, the Additional Obligees, or any of them, shall make payments to the Principal (or in the case the Surety arranges for completion of the Contract, to the Surety) strictly in accordance with the terms of said Contract as to payments and shall perform all other obligations to be performed under said Contract in all material respects at the time and in the manner therein set forth; and

PROVIDED, FURTHER that the aggregate liability of the Surety under this Performance Bond, to any or all of the obligees, as their interests may appear, is limited to the penal sum of said Performance Bond, that the Additional Obligees' rights hereunder are subject to the same defenses Principal and/or Surety have against the Primary Obligee, and that the total liability of the Surety shall in no event exceed the amount recoverable from the Principal by the Primary Obligee under the Contract; and

PROVIDED, FURTHER that the Surety may, at its option, make any payments under said Performance Bond by check issued jointly to all of the obligees; and

PROVIDED, FURTHER that in the event of a conflict between the Performance Bond and this Rider, this Rider shall govern and control. All references to the Performance Bond, either in the Performance Bond or in this Rider, shall include and refer to the Performance Bond as supplemented and amended by this Rider. Except as herein modified, the Performance Bond shall be and remains in full force and effect.

Except as herein modified, said Performance Bond No. \_\_\_\_\_ shall be and remains in full force and effect.

Signed, sealed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Attest:

(SEAL)

Webcor Construction, LP  
(Name of Principal)

\_\_\_\_\_  
Secretary

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

Attest:

(SEAL)

\_\_\_\_\_  
(Surety / Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Surety / Co-Surety)

Attest:

(SEAL)

\_\_\_\_\_  
(Co-Surety)

\_\_\_\_\_  
Signature  
Bonding Agent's Name: \_\_\_\_\_

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

Agent's Address: \_\_\_\_\_

\_\_\_\_\_  
(Business Address of Co-Surety)

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

Attest: \_\_\_\_\_  
(SEAL) (Co-Surety)

Signature \_\_\_\_\_ By: \_\_\_\_\_  
Bonding Agent's Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Agent's Address: \_\_\_\_\_  
(Business Address of Co-Surety)

Approved as to legal form and sufficiency this  
\_\_\_\_\_ day of \_\_\_\_\_ 2026

\_\_\_\_\_  
Deputy City Attorney

[Note: Add lines to signature block if needed, and strike signature lines not used.]

[Note: The bond shall be signed by authorized persons. Where such persons are signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the legal entity involved, evidence of authority must be furnished.]

**EXHIBIT 6F****FORM OF D&C CONTRACTOR GUARANTY**

This Guaranty (the “**Guaranty**”) is made as of \_\_\_\_\_, 2026 by Obayashi Corporation (“**Guarantor**”), a Japanese corporation organized under the laws of Japan, in favor of the City and County of San Francisco (“**City**”), a municipal corporation acting in its proprietary capacity by and through the San Francisco Municipal Transportation Agency (“**SFMTA**”), PRG – Potrero Properties LLC (“**Non-Profit Entity**” or “**NPE**”), a Delaware limited liability company whose sole member is Provident Resources Group Inc., a Georgia non-profit corporation and a tax-exempt entity under Section 501(a) of the Internal Revenue Code as an entity organized under Section 501(c)(3) of the Internal Revenue Code, and Potrero Neighborhood Collective LLC (the “**Principal Project Company**” or “**PPC**”) (each a “**Beneficiary**” and collectively, the “**Beneficiaries**”), as of the date set forth on the signature page to this Guaranty, and is made with reference to the following facts:

A. City and NPE have entered into that certain Infrastructure Facility Project Agreement dated on or about the date hereof (as amended from time to time, the “**Project Agreement**”) pursuant to which NPE has agreed to design, construct, and finance a transit operations facility (the “**Infrastructure Facility**”) and to integrate the Infrastructure Facility and its interface with a future Housing and Commercial Component, as detailed in the Project Agreement and related contract documents (the “**Project**”).

B. NPE, contemporaneously with the execution of the Project Agreement, has entered into that certain Project Implementation Agreement dated on or about the date hereof (as amended from time to time, the “**Project Implementation Agreement**”) with PPX whereby the PPC will design and build the Project and perform certain support and administrative functions with respect to the financing of the Project, all as more particularly described in the Project Implementation Agreement, and perform, on behalf of the NPE, certain obligations of the NPE under the Project Agreement.

C. PPC and Webcor Construction, LP, a California limited partnership (“**D&C Contractor**”) have entered into that certain \_\_\_\_\_ Contract dated on or about the date hereof (as amended from time to time, the “**D&C Contract**”) pursuant to which D&C Contractor has agreed to design and construct the Project as the prime design and construction contractor of NPE and PPC. Unless the context otherwise requires, capitalized terms used but not separately defined in this Guaranty have the meaning given to them in the D&C Contract.

D. Guarantor has agreed to enter into this Guaranty to (i) induce City to enter into the Project Agreement, (ii) induce NPE to enter into the Project Agreement and the Project Implementation Agreement, (iii) induce PPC to enter into the Project Implementation Agreement and the D&C Contract, and (iv) consummate the transactions contemplated by the Project Agreement, the Project Implementation Agreement and the D&C Contract.

E. Guarantor owns and holds, directly or indirectly, an equity interest in the D&C Contractor. The execution of the Project Agreement, the Project Implementation Agreement and the D&C Contract by the parties thereto and the consummation of the transactions contemplated by the Project Agreement, the Project Implementation Agreement and D&C Contract will materially benefit Guarantor.

F. Without this Guaranty, City would not have entered into the Project Agreement with NPE, NPE would not have entered into the Project Agreement with City or the Project Implementation Agreement with PPC, and PPC would not have entered into the Project Implementation Agreement with NPE or the D&C Contract with D&C Contractor.

**NOW, THEREFORE**, in consideration of the foregoing Recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor agrees as follows:

**1. Guaranty.**

1.1 Guarantor guarantees to each Beneficiary and its successors and assigns the full and prompt payment and performance when due of all of the obligations of the D&C Contractor arising out of, in connection with, under or related to the D&C Contract (including, without limitation, the D&C Contractor's obligation to pay Liquidated Damages and indemnify). The obligations guaranteed pursuant to this Guaranty are collectively referred to in this Guaranty as the "**Guaranteed Obligations.**"

1.2 This Guaranty shall be effective as of the effective date of the D&C Contract, and terminates upon the later of (a) the date upon which D&C Contractor has fully performed and discharged all of its obligations under the D&C Contract (including, without limitation, all obligations during the Warranty Period); and (b) the date upon which Guarantor has fully performed and discharged all of its obligations under this Guaranty.

1.3 Guarantor covenants to each Beneficiary that if at any time the D&C Contractor should default in the performance when due of, observance when due of, or should commit a breach of, any of the Guaranteed Obligations, Guarantor shall promptly, upon written notice by any Beneficiary, perform or pay the Guaranteed Obligations or cause the performance or payment of the Guaranteed Obligations, provided, however, that the respective Beneficiary shall have no claim against the Guarantor for non-payment or non-performance of the Guaranteed Obligations to the extent, and only to the extent, that D&C Contractor is lawfully excused from performing or paying in accordance with the express terms and conditions of the D&C Contract.

1.4 In no event shall the aggregate total liability of the Guarantor under this Guaranty exceed the total amount of D&C Contractor's liability under the D&C Contract.

1.5 Guarantor agrees that, to the extent Guarantor's obligations under this Guaranty relate to obligations of D&C Contractor which require performance other than the payment of money, Beneficiaries may proceed against Guarantor to effect specific performance of such obligations (to the extent that such relief is available). Guarantor agrees to assume the D&C Contract or to procure the assumption of the D&C Contract through the substitution of another legal entity wholly-owned by the Guarantor and/or any other guarantor of the D&C Contractor's obligations or otherwise approved by City in its sole discretion, and to perform or to procure the performance of all of the terms and conditions under the D&C Contract should the D&C Contract be disaffirmed or rejected by a trustee or court in a bankruptcy proceeding involving D&C Contractor, or, at the option of any Beneficiary, Guarantor shall, in the event of D&C Contractor's bankruptcy, make and enter into or have made and entered into, by one or more entities reasonably satisfactory to Beneficiaries, new contract documents for the balance of the term of the D&C Contract, which new contract documents shall be in form and substance identical to the replaced D&C Contract.

**2. Unconditional Obligations.** This Guaranty is a guaranty of payment and performance and not of collection. Except as provided in Section 18 (Defenses), this Guaranty is an absolute, unconditional and irrevocable guaranty of the full and prompt payment and performance when due of all of the Guaranteed Obligations, whether or not from time to time reduced or extinguished or hereafter increased or incurred and whether or not enforceable against D&C Contractor. If any payment made by D&C Contractor or any other Person and applied to the Guaranteed Obligations is at any time annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be repaid or refunded, then, to the extent of such payment or repayment, the liability of Guarantor will be and remain in full force and effect as fully as if such payment had never been made. Guarantor covenants that this Guaranty will be fulfilled or discharged only by the complete payment and performance of the Guaranteed Obligations, whether by the D&C Contractor or Guarantor. Guarantor's obligations hereunder will not be released, discharged or otherwise affected by the existence of any claim or set-off which D&C Contractor has or Guarantor may have against any Beneficiary, whether in connection with this Guaranty or any unrelated transaction, provided that nothing in this Guaranty will be deemed a waiver by Guarantor of any claim or prevent the assertion of any claim by separate suit.

This Guaranty will in all respects be a continuing, absolute, and unconditional guaranty irrespective of the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any part thereof or any instrument or agreement evidencing any of the Guaranteed Obligations or relating thereto, or the existence, validity, enforceability, perfection, or extent of any collateral therefor or any other circumstances relating to the Guaranteed Obligations, except as provided in Section 18 (Defenses).

**3. Independent Obligations.** Guarantor agrees that the Guaranteed Obligations are independent of the obligations of D&C Contractor and if any default occurs under this Guaranty, a separate action or actions may be brought and prosecuted against Guarantor whether or not the D&C Contractor is joined therein. Beneficiaries may maintain successive actions for other defaults of Guarantor. Beneficiaries' rights under this Guaranty will not be exhausted by the exercise of any of its rights or remedies or by any such action or by any number of successive actions until and unless all Guaranteed Obligations have been indefeasibly paid and fully performed.

3.1 Guarantor agrees that any Beneficiary may enforce this Guaranty, at any time and from time to time, without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against D&C Contractor. Guarantor waives the right to require Beneficiaries to proceed against the D&C Contractor, to exercise any right or remedy under any of the D&C Contract or to pursue any other remedy or to enforce any other right.

3.2 Guarantor will continue to be subject to this Guaranty notwithstanding: (a) any modification, agreement or stipulation between D&C Contractor and NPE or their respective successors and assigns, with respect to any of the D&C Contract or the Guaranteed Obligations; (b) any waiver of or failure to enforce the Guaranteed Obligations or any of the terms, covenants or conditions contained in any of the D&C Contract or any modification thereof; (c) any release of the D&C Contractor from any liability with respect to any of the D&C Contract; or (d) any release or subordination of any collateral then held by any Beneficiary as security for the performance by D&C Contractor of the Guaranteed Obligations.

3.3 The Guaranteed Obligations are not conditional or contingent upon the genuineness, validity, regularity or enforceability of the Project Agreement or the D&C Contract

or the pursuit by Beneficiaries of any remedies which Beneficiaries either now have or may hereafter have with respect thereto under the Project Agreement or the D&C Contract.

3.4 Notwithstanding any other term or provision of this Guaranty, in the event that the D&C Contractor's obligations have been changed by any modification, agreement or stipulation between D&C Contractor and PPC or their respective successors or assigns, the term "Guaranteed Obligations" as used in this Guaranty shall mean the Guaranteed Obligations as so changed, except that the Guaranteed Obligations shall be determined without regard to the effect of any such modification, agreement or stipulation in the context of a bankruptcy or insolvency proceeding in which D&C Contractor is the debtor, unless otherwise specified in the modification, agreement or stipulation.

#### **4. Liability of Guarantor.**

4.1 Any Beneficiary may enforce this Guaranty upon the occurrence of a breach by D&C Contractor of any of the Guaranteed Obligations, notwithstanding the existence of any dispute between PPC and D&C Contractor or among some or all of City, NPE, PPC and D&C Contractor with respect to the existence of such a breach.

4.2 Guarantor's performance of some, but not all, of the Guaranteed Obligations will in no way limit, affect, modify or abridge Guarantor's liability for those Guaranteed Obligations that have not been performed.

4.3 Beneficiaries, upon such terms as they deem appropriate, without notice or demand and without affecting the validity or enforceability of this Guaranty or giving rise to any reduction, limitation, impairment, discharge or termination of Guarantor's liability under this Guaranty, from time to time may:

(a) with respect to the financial obligations of D&C Contractor, if and as permitted by the D&C Contract, renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of financial obligations that are Guaranteed Obligations, and/or subordinate the payment of the same to the payment of any other obligations;

(b) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto;

(c) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment and performance of this Guaranty or the Guaranteed Obligations;

(d) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify any security for performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person with respect to the Guaranteed Obligations;

(e) enforce and apply any security hereafter held by or for the benefit of Beneficiaries in respect of this Guaranty or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Beneficiaries may have against any such security, as Beneficiaries in their discretion may determine; and

(f) exercise any other rights available and as permitted under the D&C Contract.

4.4 This Guaranty and the obligations of Guarantor under this Guaranty will be valid and enforceable and will not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than indefeasible performance in full of the Guaranteed Obligations), including without limitation the occurrence of any of the following, whether or not Guarantor will have had notice or knowledge of any of them:

(a) any failure or omission to assert or enforce an agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the D&C Contract, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement or instrument relating thereto;

(b) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including without limitation provisions relating to events of default) of the Project Agreement, Project Implementation Agreement, D&C Contract or any agreement or instrument executed pursuant thereto; or

(c) Beneficiaries' knowledge of or consent to the change, reorganization or termination of the corporate structure or existence of D&C Contractor.

## **5. Waivers.**

5.1 Guarantor waives all defenses based on suretyship or impairment of collateral. The parties intend the waiver of suretyship impairment of collateral defenses to be total and complete and, in addition to the effect provided for under the laws of the state, to have the effects described in Section 48 of the Restatement (Third) of the Law of Suretyship and Guaranty and under Article 3 of the UCC.

5.2 Without limiting the general waiver in Section 5.1, to the fullest extent permitted by law, Guarantor hereby waives and agrees not to assert or take advantage of:

(a) any right to require Beneficiaries to proceed against D&C Contractor or any other Person or to proceed against or exhaust any security held by Guarantee at any time or to pursue any right or remedy under any of the D&C Contract or any other remedy in any Beneficiary's power before proceeding against Guarantor;

(b) any defense that may arise by reason of the incapacity, lack of authority, death or disability of, or revocation hereby by Guarantor or any other Person or the failure of any Beneficiary to file or enforce a claim against the assets or estate (either in administration, bankruptcy or any other proceeding) of any such Person;

(c) any defense that may arise by reason of lack of or deficiency in any presentment, demand for payment or performance or otherwise, protest or notice of any other kind.

(d) any right or defense arising out of an election of remedies by any Beneficiary even though the election of remedies, such as nonjudicial foreclosure with respect to any security for the Guaranteed Obligations, has destroyed the Guarantor's rights of subrogation

and reimbursement against D&C Contractor by the operation of Section 580d of the California Code of Civil Procedure or otherwise;

(e) all notices to Guarantor or to any other Person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification, accrual of any of the obligations of D&C Contractor under any of the D&C Contract, or of default in the payment or performance of any such obligations, enforcement of any right or remedy with respect thereto or notice of any other matters relating thereto;

(f) any defense based upon discharge or release of any security given or held by any Beneficiary in connection with the Guaranteed Obligations;

(g) any duty on the part of any Beneficiary to disclose to Guarantor any matter, fact or thing the Beneficiary may now or hereafter know about D&C Contractor or its business, operations or conditions, regardless of whether the Beneficiary has reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, has reason to believe that such facts are unknown to Guarantor, or has a reasonable opportunity to communicate such facts to Guarantor. Guarantor acknowledges that it is fully responsible for being and keeping informed of the financial condition of D&C Contractor and of all circumstances bearing on the risk of non-payment of any Guaranteed Obligations;

(h) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect ownership or economic interests in D&C Contractor;

(i) any defense it might have that liquidated damages or stipulated damages owing under the D&C Contract constitute a penalty or that they do not bear a reasonable relation to the actual damages; and

(j) any and all suretyship defenses under applicable law.

5.3 To the extent not addressed elsewhere by this Guaranty, Guarantor expressly waives any and all benefits, rights and/or defenses which might otherwise be available to Guarantor under the following sections of the California Civil Code:

(a) Section 2809 (the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal)

(b) Section 2810 (a surety is not liable if, for any reason other than the mere personal disability of the principal, there is no liability upon the part of the principal at the time of execution of the contract, or the liability of the principal thereafter ceases);

(c) Section 2819 (a surety is exonerated if the creditor alters the original obligation of the principal without the consent of the surety);

(d) Section 2822 (a surety's right to have the principal designate the portion of any obligation to be satisfied by the surety in the event that the principal provides partial satisfaction of such obligation);

(e) Section 2845 (a surety is exonerated to the extent that the creditor fails to proceed against the principal, or to pursue any other remedy in the creditor's power which the surety cannot pursue and which would lighten the surety's burden);

(f) Section 2846 (a surety may compel the principal to perform the obligation when due);

(g) Section 2847 (if a surety satisfies the principal obligation, or any part thereof, the principal is obligated to reimburse the surety for the amounts paid by the surety);

(h) Section 2850 (whenever the property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation);

(i) Section 2899 (where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself, or of injustice to other persons, must resort to the property in a certain order, on the demand of any party interested); and

(j) Section 3433 (where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons).

5.4 To the extent not addressed elsewhere by this Guaranty, Guarantor expressly agrees not to exercise or take advantage of any rights, benefits and/or defenses which might be available to Guarantor under the following California Civil Code Sections, unless and until the Guaranteed Obligations shall have been indefeasibly paid and satisfied in full:

(a) Section 2839 (performance of the principal obligation, or an offer of such performance, duly made as provided in the California Civil Code, exonerates a surety);

(b) Section 2848 (a surety, upon satisfaction of the obligation of the principal, is entitled to enforce remedies which the creditor then has against the principal and to pursue his co-sureties or other third parties after the surety has satisfied the underlying debt, or at least more than his share of it); and

(c) Section 2849 (a surety is entitled to the benefit of security held by the creditor for the performance of the principal obligation held by the creditor).

**6. Waiver of Subrogation and Rights of Reimbursement.** Until the Guaranteed Obligations have been indefeasibly paid in full, Guarantor waives any claim, right or remedy which it may now have or may hereafter acquire against D&C Contractor that arises from the performance of Guarantor under this Guaranty, including, without limitation, any claim, right or remedy of subrogation, reimbursement, exoneration, contribution, or indemnification (including, without limitation, by reason of Sections 2787 to 2855, inclusive, of the California Civil Code), or participation in any claim, right or remedy of any Beneficiary against D&C Contractor, or any other security or collateral that any Beneficiary now has or hereafter acquires, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise. All existing or future indebtedness of D&C Contractor or any shareholders, partners, members, joint venturers of D&C Contractor to Guarantor is subordinated to all of the Guaranteed Obligations until such time as all Guaranteed Obligations shall have been indefeasibly paid in full. Whenever and for so long as D&C Contractor shall be in default in the performance of a Guaranteed Obligation, no payments with respect to any such indebtedness shall be made by

D&C Contractor or any shareholders, partners, members, joint venturers of D&C Contractor to Guarantor without the prior written consent of Beneficiaries. Any payment by D&C Contractor or any shareholders, partners, members, joint venturers of D&C Contractor to Guarantor in violation of this provision shall be deemed to have been received by Guarantor as trustee for Beneficiaries.

7. **Cumulative Rights.** All rights, powers and remedies of Beneficiaries under this Guaranty will be in addition to and not in lieu of all other rights, powers and remedies given to Beneficiaries, whether at law, in equity or otherwise.

8. **Notices.**

8.1 Any communication, notice or demand of any kind whatsoever under this Guaranty shall be in writing and (a) delivered personally; (b) sent by certified mail, postage prepaid, with return receipt requested; (c) sent by a recognized overnight mail or courier service, postage prepaid, with delivery receipt requested, or (d) sent by email communication followed by a hard copy and with receipt confirmed by telephone, addressed as follows:

If to NPE:	PRG – Potrero Properties LLC c/o Provident Resources Group Inc. Attention: President and Chief Executive Officer 5565 Bankers Avenue Baton Rouge, LA 70808 Phone: 225-766-3977 Email: <input type="text"/>
If to PPC:	<input type="text"/> Attention: <input type="text"/> <input type="text"/> <input type="text"/> Phone: <input type="text"/> Email: <input type="text"/>
If to City:	San Francisco Municipal Transportation Agency (SFMTA) Attention: Chris Lazaro 1 South Van Ness, 8 <sup>th</sup> Floor San Francisco, CA 94103 Phone: 415-549-6572 Email: <a href="mailto:Chris.Lazaro@sfmta.com">Chris.Lazaro@sfmta.com</a>

With copies to: Office of the City Attorney  
Attention: Real Estate & Finance Group  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Phone: 415-554-3960  
Email: [isidro.jimenez@sfcityatty.org](mailto:isidro.jimenez@sfcityatty.org)  
Re: Potrero Yard Modernization Project

If to D&C Contractor: Webcor Construction, LP  
Attention: Thomas Taylor  
207 King Street, Suite 300  
San Francisco, CA 94107  
Phone: [REDACTED]  
Email: [ttaylor@webcor.com](mailto:ttaylor@webcor.com)

With copies to: Webcor Construction, LP  
Attention: General Counsel  
207 King Street, Suite 300  
San Francisco, CA 94107  
Phone: [REDACTED]  
Email: [legal@webcor.com](mailto:legal@webcor.com)

If to Guarantor: Obayashi Corporation  
Attention: Yuichiro Sakai, Senior Executive Vice President  
950 Tower Lane, Suite 800  
Foster City, CA 94404  
Phone: 650-952-4910  
Email: [Yuichiro.Sakai@obayashi-usa.com](mailto:Yuichiro.Sakai@obayashi-usa.com)

With copies to: Rogers Joseph O'Donnell, PC  
Attention: Mark J. Linderman, Esq.  
311 California Street, 10th Floor  
San Francisco, CA 94104  
Phone: 415-365-5321  
Email: [mlinderman@rjo.com](mailto:mlinderman@rjo.com)

8.2 The Guarantor and each Beneficiary may from time to time change its address for the purpose of notices by a similar notice specifying a new address, but no such change is effective until it is actually received by the party sought to be charged with its contents.

8.3 All notices and other communications required or permitted under this Guaranty which are addressed as provided in this Section 8 are effective upon delivery, if delivered personally or by overnight mail, and, are effective five days following deposit in the United States mail, postage prepaid if delivered by mail.

**9. No Waiver.** Any forbearance or failure to exercise, and any delay by a Beneficiary in exercising, any right, power or remedy under this Guaranty will not impair any such right, power or remedy, or be construed to be a waiver thereof, nor will it preclude the further exercise of any such right, power or remedy.

**10. Assignability.** This Guaranty is binding upon the successors and assigns of Guarantor and inures to the benefit of the successors and assigns of each Beneficiary, including to the Collateral Agent as security or in connection with enforcement of such security, but is not assignable by Guarantor without the prior written consent of both Beneficiaries, which consent may be granted or withheld in Beneficiaries' sole discretion. Any assignment by Guarantor effected in accordance with this Section 10 will not relieve Guarantor of its obligations and liabilities under this Guaranty.

**11. Amendments.** No amendment of this Guaranty shall be effective unless in writing and signed by Guarantor and both Beneficiaries, subject to the consent of the Collateral Agent under the DBC Lenders' Direct Agreement. No waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless such waiver shall be in writing and signed by both Beneficiaries, subject to the consent of the Collateral Agent under the DBC Lenders' Direct Agreement. Any such waiver shall be effective only in the specific instance and for the specific purpose for which it was given.

**12. Captions.** The captions in this Guaranty are for convenience of reference only and do not modify, explain, enlarge or restrict any of the provisions of this Guaranty.

**13. Construction of Agreement.** Ambiguities or uncertainties in the wording of this Guaranty will not be construed for or against any party, but will be construed in the manner that most accurately reflects the parties' intent as of the date hereof.

**14. Representations and Warranties.** In addition to the representations and warranties with respect to solvency set forth in Section 16 (Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency), Guarantor represents and warrants that:

(a) it is a corporation duly organized, validly existing, and in good standing under the laws of Japan, and authorized to do business within the United States and the State of California;

(b) it has requisite corporate power and authority to execute, deliver and perform this Guaranty;

(c) the execution, delivery and performance by Guarantor of this Guaranty have been duly authorized by all necessary corporate action on the part of Guarantor and proof of such authorization will be provided with the execution of this Guaranty;

(d) this Guaranty has been duly executed and delivered and constitutes the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms;

(e) neither the execution nor delivery of this Guaranty nor compliance with or fulfillment of the terms, conditions, and provisions hereof, will conflict with, result in a material breach or violation of the terms, conditions, or provisions of, or constitute a material default, an event of default, or an event creating rights of acceleration, termination, or cancellation, or a loss of rights under: (i) the certificate of incorporation or by-laws of Guarantor, (ii) any judgment, decree, order, contract, agreement, indenture, instrument, note, mortgage, lease, governmental permit, or other authorization, right restriction, or obligation to which Guarantor is a party or any of its property is subject or by which Guarantor is bound, or (iii) any federal, state, or local law, statute, ordinance, rule or regulation applicable to Guarantor;

(f) it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the D&C Contract or referred to therein, and the financial status of D&C Contractor and the ability of D&C Contractor to pay and perform the Guaranteed Obligations;

(j) it has reviewed and approved copies of the D&C Contract and is fully informed of the remedies PPC may pursue, with or without notice to D&C Contractor or any other Person, in the event of default of any of the Guaranteed Obligations;

(k) it has made, and so long as the Guaranteed Obligations (or any portion thereof) remain unsatisfied it will make, its own credit analysis of D&C Contractor and will keep itself fully informed as to all aspects of the financial condition of D&C Contractor, the performance of the Guaranteed Obligations and all other circumstances bearing upon the risk of nonpayment or nonperformance of the Guaranteed Obligations;

(l) no consent, authorization, approval, order, license, certificate, or permit or act of or from, or declaration or filing with, any governmental authority or any party to any contract, agreement, instrument, lease, or license to which Guarantor is a party or by which Guarantor is bound, is required for the execution, delivery, or compliance with the terms hereof by Guarantor, except as have been obtained prior to the date of this Guaranty;

(m) there is no pending or, to the best of its knowledge, threatened action, suit, proceeding, arbitration, litigation, or investigation of or before any Governmental Entity which challenges the validity or enforceability of this Guaranty;

(n) it is not subject to any outstanding judgment, rule, writ, injunction or decree of any Governmental Entity that adversely affects its ability to perform its obligations under this Guaranty; and

(o) it derives a substantial direct or indirect economic benefit from the D&C Contract.

**15. Limitation by Law.** All rights, remedies and powers provided in this Guaranty may be exercised only to the extent that such exercise does not violate any applicable provision of law, and all the provisions of this Guaranty are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they will not render this Guaranty invalid or unenforceable, in whole or in part.

**16. Bankruptcy; Post-Petition Interest; Reinstatement of Guaranty; Solvency.**

16.1 The obligations of Guarantor under this Guaranty will not be reduced, limited, impaired, discharged, deferred, suspended or terminated by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of D&C Contractor or by any defense which D&C Contractor may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Beneficiaries are not obligated to file any claim relating to the Guaranteed Obligations if D&C Contractor becomes subject to a bankruptcy, reorganization, or similar proceeding, and the failure of Beneficiaries so to file will not affect Guarantor's obligations under this Guaranty.

16.2 Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any proceeding referred to in

Section 16.1 above (or, if interest on any portion of the Guaranteed Obligations ceases to accrue by operation of law by reason of the commencement of said proceeding, such interest as would have accrued on such portion of the Guaranteed Obligations if said proceedings had not been commenced) will be included in the Guaranteed Obligations. Guarantor will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or any similar person to pay Beneficiaries, or allow the claim of any Beneficiary in respect of, any such interest accruing after the date on which such proceeding is commenced.

**17. Governing Law.** The validity, interpretation and effect of this Guaranty are governed by and will be construed in accordance with the laws of the State of California applicable to contracts made and to be performed in such State and without regard to conflicts of law doctrines except to the extent that certain matters are preempted by Federal law. Guarantor consents to the jurisdiction of the State of California with regard to this Guaranty. The venue for any action regarding this Guaranty shall be the City and County of San Francisco, California.

**18. Defenses.** Notwithstanding any other provision to the contrary, Guarantor shall be entitled to the benefit of all defenses available to the D&C Contractor under the D&C Contract except (a) those expressly waived in this Guaranty, (b) failure of consideration, lack of authority of the D&C Contractor and any other defense to formation of the D&C Contract, and (c) defenses available to the D&C Contractor under any federal or state law respecting bankruptcy, arrangement, reorganization or similar relief of debtors.

**19. Attorneys' Fees.** Guarantor agrees to pay to each Beneficiary reasonable attorneys' fees and all costs and other expenses (whether by lawsuit or otherwise, and including, without limitation, such fees and costs of litigation, arbitration and bankruptcy, and including, without limitation, appeals) incurred by each Beneficiary in enforcing, collecting or compromising any Guaranteed Obligation or enforcing or collecting this Guaranty against Guarantor or in attempting to do any or all of the foregoing.

**20. Joint and Several Liability.** If the Guarantor is comprised of more than one individual and/or entity, such individuals and/or entities, as applicable, shall be jointly and severally liable for the Guaranteed Obligations. If more than one guaranty is executed with respect to D&C Contractor and the Project, each guarantor under such a guaranty shall be jointly and severally liable with the other guarantors with respect to the obligations guaranteed under such guaranties.

**21. Entire Agreement.** This Guaranty contains the entire agreement of Guarantor with respect to the transactions contemplated hereby, and supersedes all negotiations, representations, warranties, commitments, offers, contracts and writings prior to the date hereof, written or oral, with respect to the subject matter hereof. No waiver, modification or amendment of any provision of this Guaranty is effective unless made in writing and duly signed by Guarantor and each Beneficiary, and then only to the specific purpose, extent and interest so provided.

**22. Severability.** If any clause, provision, section or part of this Guaranty is ruled invalid by a court having proper jurisdiction, it will be adjusted rather than voided, to achieve the intent of the parties, and all of the provisions deemed unenforceable will be deemed valid and enforceable to the greatest extent possible.

**23. Guarantor Acknowledgements.** Guarantor acknowledges having read all of the provisions of this guaranty and agrees to its terms. Guarantor agrees that no formal acceptance by beneficiaries is necessary to make this guaranty effective.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty, and it is effective, as of the date first written above.

**OBAYASHI CORPORATION** ,  
a Japanese corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT 7****INSURANCE REQUIREMENTS**

Non-Profit Entity shall obtain and keep in force, or cause to be obtained and kept in force, the following policies of insurance, in accordance with the terms of this Exhibit 7. Each policy shall be obtained and be effective as set forth below. Each policy shall contain, or be endorsed to contain, a provision that coverage cannot be canceled, voided, suspended, lapsed or modified or reduced in coverage except for 60 days' (or for non-payment of premium, 10 days') prior written notice has been given to City.

**1. Insurance during the Design and Construction Period and Through the Warranty Period**

As a condition precedent to Financial Close and issuance of NTP 1, Non-Profit Entity shall obtain and keep in force, or cause to be obtained and kept in force, from and after the Financial Close Date and throughout the D&C Period and until the expiration of the Warranty Period, the following insurance coverage.

1.1. Worker's Compensation and Employer's Liability. Worker's compensation and employer's liability insurance for Non-Profit Entity and Contractors as required by applicable Law, and employer's liability insurance having coverage limits of \$1,000,000 for each accident, \$1,000,000 for disease (each employee), and \$1,000,000 for disease (policy limit). Policies shall contain a voluntary compensation endorsement; an alternative employer endorsement; and on an "if any" basis, endorsements providing coverage for all states, U.S. Longshore and Harbor Workers' Act, Jones Act and Federal Employer's Liabilities Act.

1.2. Commercial General Liability. A commercial general liability insurance policy, written on an occurrence basis and covering liabilities arising out of the construction of the Project. Coverage shall be at least as broad as the broadest available version of Insurance Services Office form CG 00 01. This insurance policy shall:

- (a) have a limit for any one occurrence of not less than \$2,000,000 per occurrence, a \$4,000,000 general aggregate with one reinstatement during the D&C Period, and a \$4,000,000 completed operations aggregate, applicable solely to the construction of the Project;
- (b) have no "contractor's limitation" endorsements, as that term is defined, as of the date of this Agreement, in the Glossary of Insurance and Risk Management Terms published by the International Risk Management Institute, that have not been reviewed and approved by the City. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability assumed under an insured contract;
- (c) have no exclusion for professional services except the latest ISO form CG 22 79 or CG 22 80 or both;
- (d) include products and completed operations liability coverage for a period of not less than the California Statute of Repose which is currently 10 years following Final Completion or the Termination Date, whichever occurs later; and

- (e) be maintained throughout the Term until expiration of the Warranty Period.

The City, SFMTA, and San Francisco Board of Supervisors and their employees, officers, and officials shall be added to the primary policy as insureds using Insurance Services Office forms CG 20 10 10 01 and CG 20 37 10 01 or, in City's sole discretion, forms providing the same scope of coverage, including coverage for completed operations. The policy shall provide for separation of insureds. The policy shall contain no insured vs. insured exclusion. Non-Profit Entity shall require its Contractors to have these additional insureds included as insureds in the same manner as specified for Non-Profit Entity in this Section 1.2 (Commercial General Liability), and shall prohibit use of any endorsement forms that require, to effect additional insured status, the execution or existence of any contract directly between such Contractors and any of the additional insureds. Exclusions are prohibited for work within 50 feet of a railroad. For use of any unmanned aircraft vehicles (UAV), any Non-Profit Entity-Related Entity may provide insurance either through an aircraft liability insurance policy, or by endorsement to the entity's commercial general liability insurance policy and excess liability policies, which shall be not less than \$10,000,000 per occurrence.

1.3. Commercial Excess Liability. A policy or policies of commercial umbrella/excess liability insurance covering bodily injury, property damage, personal injury and advertising injury with an annual reinstatement of limits of not less than \$100,000,000 per occurrence and general aggregate. There shall also be a project-specific products and completed operations aggregate of not less than \$100,000,000. Coverage may be arranged in any combination or structure so that total required limits of liability are met. Coverage must apply as excess over commercial general liability insurance as required in Section 1.2 (Commercial General Liability), and may apply as excess over commercial automobile liability insurance and employer's liability insurance. Umbrella/excess liability policies shall follow form to all underlying policies, including coverage in the excess liability policies for insureds covered under the primary policies.

1.4. Commercial Automobile Liability. Commercial automobile liability insurance with limits of liability of not less than \$20,000,000 combined single limit for Non-Profit Entity and Key Contractors. The required limits can be met in any combination of primary and excess/umbrella liability policies. Coverage shall be at least as broad coverage provided in Insurance Services Office form CA 00 01. The insurance must cover "any auto" ("**Symbol 1**"). If Non-Profit Entity or any Contractor's activities involve transportation of materials (including Hazardous Materials) that require endorsement MCS 90 (as described below), the automobile liability Insurance Policy for Non-Profit Entity or such Contractor shall be endorsed to include for private, non-commercial vehicles Motor Carrier Act Endorsement- Hazardous Materials Clean up (MCS-90) and shall be endorsed to provide coverage for liability arising from release of pollutants (CA 99 48 – Pollution Liability – Broadened Coverage for Covered Autos – Business Auto, Motor Carrier and Truckers Coverage Form).

1.5. Contractor's Pollution Liability. Contractor's pollution liability insurance written on an occurrence form with a limit for any one occurrence of not less than \$20,000,000 and a policy aggregate limit of \$20,000,000. The policy must be written on an occurrence basis and not on a "claims made" form. The policy must include coverage to extend to the full California statute of repose, which is currently 10 years.

The policy shall cover sums that the insured becomes legally obligated to pay to a third party or for the investigation, removal, remediation (including associated monitoring) or disposal of soil, surface water, groundwater or other contamination to the extent required by environmental laws (together "**clean-up costs**") caused by pollution conditions resulting from

covered operations, subject to the policy terms and conditions, including bodily injury, property damage (including natural resource damages), clean-up costs, and legal defense costs. Such policy shall cover claims related to pollution conditions to the extent such are caused (a) by the performance of Work, (b) by transportation, including loading and unloading, by owned and non-owned vehicles and/or (c) by other activities performed by or on behalf of Non-Profit Entity that occur on the Project. The policy shall have no exclusions or limitations for loss occurring over water including but not limited to a navigable waterway. Coverage shall apply to sudden and non-sudden pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, or gases, waste materials, or other irritants, contaminants, or pollutants. The policy shall contain a severability provision.

1.6. Professional Liability Insurance. Professional liability insurance, in one or more policies, at Non-Profit Entity's discretion, which shall:

- (a) cover claims for liability for providing Design Work for the Project;
- (b) cover claims for liability for providing Design Work by any Contractor;
- (c) be in an amount not less than \$20,000,000 per claim and in the aggregate;
- (d) have a deductible or self-insured retention no greater than \$1,000,000 unless approved by the City;
- (e) cover the performance of Design Work or other professional services in connection with the Project (except Design Work that results in the provision of a product) and shall be fully retroactive to the first date any such Design Work was performed, with no exclusion for prior acts applying to any pre-award professional services provided by any insured; and
- (f) have an extended reporting period, or be renewed to be continuous for a period, of not less than ten years after the Effective Date.

1.7. Builder's Risk. A builder's risk insurance policy covering all real property at the Project Site, during testing and commissioning, while in transit and at any temporary off-site location; including all materials, supplies, machinery, fixtures and equipment intended to become a permanent part of the Project or for permanent use in the Project. Property that is incidental to the construction; foundations, including pilings, but excluding normal settling, shrinkage, or expansion. All temporary structures at the Project Site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project shall be insured and declared to and approved by the insurers and to the extent the cost thereof is included in the Work, included in the coverage while on or about the Project Site awaiting or during construction. The builder's risk policy:

- (a) shall be obtained prior to the start of construction and maintained until the end of the D&C Period;
- (b) shall be in an amount not less than the estimated completed value of the Project or other such amount as may be agreed up on by Non-Profit Entity and the City;
- (c) shall be written on an "all risk," replacement cost basis with no coinsurance clauses or penalties;

- (d) during any period of exposure to loss of property in transit, shall cover transit, including ocean marine (unless insured by the Supplier or through a separate marine cargo policy), with sub-limits sufficient to insure the maximum value of any property in transit at any one time;
- (e) shall cover physical damage arising because of faulty workmanship or materials;
- (f) shall cover ensuing loss from design error not otherwise excluded (LEG 3);
- (g) shall cover water damage and flood, (including the overflow of inland or tidal waters, the unusual accumulation or runoff of surface waters from any source, or mudslides or mudflows which are caused by flooding) with a sublimit of no less than \$10,000,000;
- (h) shall cover physical damage resulting from machinery accidents but excluding normal and natural wear and tear, corrosion, erosion, inherent vice or latent defect in the machinery;
- (i) shall cover demolition and debris removal coverage, with a sublimit of 20% of the loss or no less than \$10,000,000 insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project;
- (j) shall cover increased cost for repair, rebuilding or reconstruction of damaged property due to enforcement of any law or ordinance with a sublimit of no less than \$20,000,000, including professional fees with a sublimit of no less than \$10,000,000;
- (k) shall include a sublimit for soft costs to include recurring costs should there be physical damage to the project, delay costs, loss of revenues during a delayed opening, including architects and engineers fees, and owner's extended project costs including administration and overhead during a restoration period of 12 months,
- (l) shall include civil authority ingress and egress;
- (m) shall cover plans, blueprints and specifications;
- (n) shall cover full collapse, including collapse resulting from design error, as set forth in LEG3 coverage;
- (o) shall include as named insureds City, SFMTA, Non-Profit Entity, and Contractors;
- (p) shall not include "as their interests may appear" language pertaining to insureds;
- (q) shall include a blanket waiver of subrogation as required by contract; and
- (r) may include deductibles, but such deductible shall not exceed \$1,000,000 per occurrence unless prior approval from the City.

1.8. Railroad Protective Liability. If required by any railroad, a railroad protective liability insurance policy or policies as required by one or more railroads operating near or

adjacent to the Project location. The terms, limits, and specifications of such policy(ies) are set forth by each railroad.

1.9. Other. Any other form of insurance and with such limits, in such form, in amounts and for risks as the City or SFMTA, acting reasonably, may require from time to time. Non-Profit Entity's compensation shall be adjusted to reflect the cost of any such additionally required insurance.

**EXHIBIT 8****DAILY DELAY COST AMOUNT**

<b><u>Duration</u></b>	<b><u>Period</u></b>	<b><u>Daily Delay Cost Amount</u></b>
NTP 1 Until Demolition Commencement	1	\$20,000
Demolition Commencement Until First Tower Crane Erected and Assembled at Project Site	2	\$33,000
First Tower Crane Erected and Assembled at Project Site Until Last Tower Crane Disassembled and Demobilized	3	\$50,000
Last Tower Crane Disassembled and Demobilized Until Receipt of Temporary Certificate of Occupancy	4	\$33,000
Receipt of Temporary Certificate of Occupancy Until Substantial Completion Date	5	\$16,000
After Substantial Completion Date	6	\$0

**NOTES**

- Demolition Commencement (Period 2) shall be deemed to occur when Non-Profit Entity has: (i) obtained all Regulatory Approvals required to commence demolition; (ii) established site access, laydown areas, and temporary facilities for the demolition; (iii) mobilized and made operational the equipment necessary to prosecute demolition Work; (iv) assigned and scheduled crews to the initial demolition Work areas and such crews are at the Project Site and ready to commence the demolition Work; and (v) issued a two-week look-ahead showing continuous demolition production on the approved Project Schedule.

**EXHIBIT 9**

**CHANGE PROCEDURES**

**1. City Change Procedures**

**1.1** The provisions of this Section 1 (City Change Procedures) and of Section 2 (Unilateral Change Orders) shall apply with respect to any City Change.

**1.2** If City desires to initiate or evaluate whether to initiate a City Change, then City may issue a proposed Change Order (a “**Proposed Change Order**”). The Proposed Change Order shall state the nature, extent and details of the contemplated City Change.

**1.3 Response to Proposed Change Order**

**1.3.1** As soon as possible, and in any case, within 20 days after City delivers to Non-Profit Entity a Proposed Change Order, Non-Profit Entity shall deliver to City a change proposal (“**Change Proposal**”) prepared in accordance with this Section 1.3 (Response to Proposed Change Order). Except as expressly set forth in this Section 1.3.1, the obligation of Non-Profit Entity to provide a Change Proposal is not Extra Work and shall not entitle Non-Profit Entity to any additional compensation, time extension or other relief. Upon receipt of a Proposed Change Order from City, if Non-Profit Entity believes it will incur substantial additional design costs to prepare a Change Proposal, Non-Profit Entity, within 10 days of the receipt of the Proposed Change Order, provide Notice to City setting forth the reasonable additional design costs that Non-Profit Entity will incur to prepare such Change Proposal. Failure to provide such Notice within such 10 day period shall forfeit any Claim for payment for such design costs. Upon delivery of such Notice by Non-Profit Entity, Non-Profit Entity shall promptly meet with City, at City’s request, to explain and discuss such potential costs and such discussions and negotiations shall occur on an Open Book Basis. City, in its sole discretion, may agree to compensate Non-Profit Entity for such specified and approved reasonable additional design costs as Extra Work Costs, in which case, Non-Profit Entity shall proceed with the Change Proposal as required in the Contract Documents. Payment of such approved amounts shall be the sole compensation to Non-Profit Entity and no other compensation, time extension or other relief shall be available or provided. Should City elect, in its sole discretion, to not approve such potential costs, the Proposed Change Order shall be deemed withdrawn. The Parties agree that the foregoing payment of reasonable additional design costs for preparation of a Change Proposal shall only apply to unusual circumstances involving substantial design and substantial additional design costs.

**1.3.2** Each Change Proposal shall include:

- (a) a detailed explanation of how the contemplated City Change would impact both the D&C Work ;
- (b) if the Proposed Change Order is issued before Substantial Completion, a detailed description of any suggested adjustments to the Project Schedule. This includes changes to any Contract Deadline that would be necessary because of potential delays caused by implementing the contemplated City Change;
- (c) if adjustments to any Contract Deadline are suggested:

- (i) a time impact analysis that identifies Critical Path impacts (including activity numbers, durations, predecessor and successor activities, resources, costs and impact, if any, on Float). The time impact analysis must show how schedule changes or disruptions would affect the Contract Deadlines while complying with the requirements of Section 1.2.6 of Division 1 of the Technical Requirements;
  - (ii) an assessment of the feasibility of accelerating the Work to meet the original deadline or to reduce the total delay period; and
  - (iii) if acceleration is feasible, an estimate of the cost to accelerate, as well as information about any Extra Work Costs, Financing Delay Costs, and Delay Costs, if any, payable by City if the schedule is not accelerated;
- (d) a detailed, itemized estimate of any applicable Extra Work Costs, Financing Delay Costs or Delay Costs claimed; Non-Profit Entity shall provide all information on an Open Book Basis as specified in Exhibit 13 (Costs Schedule);
- (e) an estimate of the cost savings, if any, resulting from the contemplated City Change, including reductions in direct labor, material and equipment, site overhead and home office overhead, operations and maintenance, and financing costs;
- (f) where relief from obligations under the Contract Documents is sought, the effect of the contemplated City Change on Non-Profit Entity's ability to perform any of its obligations under the Contract Documents that if not performed would result in the accrual of Noncompliance Points, the assessment of Deductions or the occurrence of a NPE Default, in each case including details of the relevant obligations, the effect on each such obligation, the likely duration of that effect and the specific relief sought;
- (g) a description of any additional consents or approvals required, including amendments, if any, of any Regulatory Approvals required to implement the contemplated City Change;
- (h) a detailed description of the steps Non-Profit Entity will take to implement the contemplated City Change, including measures that Non-Profit Entity will take to mitigate the costs, delay and other consequences of the contemplated City Change; and
- (i) any other relevant information related to the contemplated City Change.

#### **1.4 Negotiation of Change Order**

**1.4.1** Following City's receipt of Non-Profit Entity's Change Proposal and City's further assessment of the cost, schedule and other impacts of the contemplated City Change, City and Non-Profit Entity, shall engage in good faith negotiations to reach agreement on the terms of a change order, including any Extra Work Costs, Financing Delay Costs or Delay Costs, adjustment of the Contract Deadlines or other relief to which Non-Profit Entity is entitled, and any net cost savings and schedule savings to which City is entitled.

**1.4.2** City may, by written Notice, modify or abandon a contemplated City Change at any time prior to the Parties reaching an agreement on the Change Order. Non-Profit Entity will, as soon as practicable but in no event more than 10 Business Days after receipt of a modification, provide Notice to City of any subsequent changes to the Change Proposal.

**1.4.3** A City Change will become effective upon mutual execution of a written change order (a “**Change Order**”). The Change Order shall be in a form provided by City, and shall specify, as applicable, the timing and method for payment or deduction of any Extra Work Costs, Financing Delay Costs, Delay Costs or Financing Costs, or for realizing any net savings in the cost of the Work.

## **1.5 Disagreement on Change Proposal**

If the Parties do not agree on a Change Proposal, then City may seek to resolve any points of disagreement through the Contract Dispute Procedures without issuing a Unilateral Change Order, or City may issue a Unilateral Change Order.

## **2. Unilateral Change Orders**

**2.1** City may, at any time, in its sole discretion, issue a Unilateral Change Order to Non-Profit Entity regarding any matter for which a Change Order can be issued or, in the event of any Contract Dispute, regarding the scope of the Work or whether Non-Profit Entity has performed the Work in accordance with the requirements of the Contract Documents (a “**Unilateral Change Order**”). The Unilateral Change Order will state that it is issued under this Section 2 (Unilateral Change Orders), will describe the Work to be performed and will state the basis for determining compensation, if any, and schedule adjustment, if any. The Unilateral Change Order will either: (a) direct Non-Profit Entity to implement a City Change; or (b) state that disputed Work is within Non-Profit Entity’s original scope of Work or is necessary to comply with the requirements of the Contract Documents.

**2.2** If the Unilateral Change Order does not state that the Work constitutes a City Change, Non-Profit Entity shall proceed with the Work as directed but may assert a Claim that a City Change has occurred under the procedures in Article 12 (City Change Process; Unilateral Change Orders; Deviations) of this Agreement.

**2.3** If the Unilateral Change Order provides for the implementation of a City Change, Non-Profit Entity shall, within 21 Business Days after the issuance of the Unilateral Change Order, deliver to City a Change Proposal in accordance with Section 1.3 (Response to Proposed Change Order) of this Exhibit 9 (Change Procedures), and the Parties shall subsequently follow the procedures and provisions set forth in Section 1.4 (Negotiation of Change Order) of this Exhibit 9 (Change Procedures).

**2.4** If the Unilateral Change Order provides for the implementation of a City Change or Non-Profit Entity intends to assert a Claim under Section 2.2, Non-Profit Entity shall maintain records for such Work in accordance with Section 2.2.9 of Exhibit 13 (Costs Schedule), pending resolution of the Contract Dispute or execution of a Change Order.

**2.5** The fact that a Unilateral Change Order was issued by City shall not be considered evidence that a City Change has occurred. The determination whether a City Change has occurred shall be based on an analysis of the original requirements of the Contract Documents and a determination as to whether the Unilateral Change Order in fact constituted a change in those requirements.

### **3. Non-Profit Entity Change Requests**

**3.1** Non-Profit Entity may, at any time, request a Change by submitting to City a written request for a Change ("**NPE Change Request**"). NPE Change Requests must comply with the requirements of Section 1.3.2 of this Exhibit 9 (Change Procedures) and be in a form approved by the City.

**3.2** City has the sole discretion to accept or reject any NPE Change Request. If the City accepts a NPE Change Request, Non-Profit Entity shall execute a Change Order and implement the proposed change in accordance with the Change Order, applicable Technical Requirements, the Project Management Plan, Good Industry Practice and all applicable Law. Acceptance is only valid when documented in a written Change Order signed by City's Authorized Representative or their designee appointed in writing.

**3.3** If City accepts a NPE Change Request, Non-Profit Entity shall be solely responsible for bearing any increase in the Extra Work Costs or other costs, and any additional risks that result from the accepted Change, except as may otherwise be provided in the Change Order. Non-Profit Entity shall not be entitled to any extension of the Project Schedule or any Contract Deadline due to delays or other impacts that result from the City accepting the NPE Change Request, except as may otherwise be provided in the Change Order.

**3.4** If a NPE Change Request accepted by City results in a net cost savings to Non-Profit Entity, City will be entitled to 50% of such savings. City will obtain its share of the savings in the manner described in Section 1.4.3 and otherwise in accordance with Exhibit 13 (Costs Schedule).

Certain minor changes to the Technical Requirements without significant cost savings may be approved in writing by City as Deviations, and in such event, shall not require a Change Order. Any other change in the requirements of the Contract Documents shall require a Change Order (if relating solely to the scope of Work and/or Technical Requirements) and/or an amendment to the applicable Contract Documents (if relating to any provision of the Contract Documents, other than the Technical Requirements, or any other commercial term).

**EXHIBIT 10**

**INITIAL DESIGNATION OF AUTHORIZED REPRESENTATIVES**

City Representative: ]

Chris Lazaro, Project Director  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 8th Floor  
San Francisco, CA 94103  
Attn: Chris Lazaro  
Email: [Chris.Lazaro@sfmta.com](mailto:Chris.Lazaro@sfmta.com)  
Telephone: 415-549-6572

Non-Profit Entity Representative:

[NAME], [TITLE]

[ADDRESS]

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

Telephone: [ \_\_\_\_\_ ]

**EXHIBIT 11**

**SUBMITTALS REVIEW PROCESS**

**1. Submittal Requirements**

Each Submittal provided by Non-Profit Entity to City for information, review and comment, review and acceptance or approval shall:

- (a) be accurate, complete and in conformity with the Contract Documents;
- (b) include a completed transmittal form in form agreed between City and Non-Profit Entity; and
- (c) include all necessary information and documentation concerning the subject matter and any additional information reasonably requested by City.

**2. Submittal Types and Time Periods**

**2.1** Submittals provided by Non-Profit Entity to City will consist of the following types:

- (a) Submittals for information. Submittals for City information do not include any deadline for City to respond. City may provide comments at any time or not at all.
- (b) Submittals for review and comment. For any Submittal subject to review and comment, City may respond at any time or not all. Non-Profit Entity is only required to resubmit a Submittal if City responds within 14 days. City responses include: (i) reviewed with no comments; (ii) reviewed with comments, resubmittal not required; or (iii) reviewed with comments, resubmittal required. Submittals are subject to City's review and comment unless either the Contract Documents or the City-accepted Submittal Schedule contemplates a different type of review.
- (c) Submittals for review and acceptance. For any Submittal subject to City review and acceptance, City will have 21 days to respond. City responses include: (i) reviewed and accepted; (ii) reviewed and accepted with comments, resubmittal not required; or (iii) reviewed and not accepted with comments, resubmittal required.
- (d) Submittals for approval. For any Submittal subject to City approval, City will have 21 days to respond. City responses include: (i) approved; (ii) approved with comments, resubmittal not required; or (iii) not approved with comments, resubmittal required.

**2.2** If any other provision of the Contract Documents expressly provides a longer or shorter period for City to act in response to a specific Submittal, then such period shall prevail over the time periods set forth in Section 2.1.

**2.3** The Parties shall agree in good faith upon any necessary extensions of the review period to accommodate particularly complex or comprehensive Submittals.

**2.4** If the number of Submittals delivered simultaneously to City exceeds the limits specified in Section 1.3 of Division 1 of the Technical Requirements, then City may extend the applicable period for it to act with respect to such Submittals to allow City a reasonable period to respond, and no such extension shall constitute a City-Caused Delay Event or other basis for any Claim. Submittals are considered “delivered simultaneously” if the review time periods available to City under this Article 2 (Submittal Types and Time Periods) for two or more Submittals entirely or partially overlap.

**2.5** Whenever City is in receipt of Submittals delivered simultaneously, Non-Profit Entity may provide Notice to City including a requested order of priority for processing such Submittals. Upon receipt of such Notice, City will use reasonable efforts to accommodate the requested order of priority; provided, however, that City will not be obligated to shorten the review times otherwise applicable under this Article 2 (Submittal Types and Time Periods).

**2.6** All time periods for City to act under this Article 2 (Submittal Types and Time Periods) shall be extended by the period of any delay in City’s review caused by any Delay Event or any NPE Fault.

**2.7** During any time that City is entitled to increase the level of its Oversight under Section 15.5 (Persistent NPE Default and Increased Oversight) of this Agreement, the applicable period for City to act on any Submittals received during such time and not related to addressing events that instigated the Section 15.5 (Persistent NPE Default and Increased Oversight) of this Agreement action shall be extended as reasonably needed due to the increased level of Oversight, but not to exceed an additional 10 Business Days per Submittal. No such extension shall constitute a City-Caused Delay Event or other basis for any Claim.

**2.8** Non-Profit Entity may, by Notice to City, request expedited action on a specific Submittal. City has no obligation to expedite any Submittal but upon receipt of such a request will use reasonable efforts to accommodate such request within the practical limitations (a) on availability of City personnel relevant to the request or (b) imposed by restrictions upon City’s rights under agreements with Third Parties and Utility Owners. However, City’s obligation to use reasonable efforts to accommodate such a request shall not apply with respect to the review periods described in Section 2.7.

### **3. City Actions Relevant to Submittals**

If a Submittal is subject to City’s acceptance or approval, Non-Profit Entity may not proceed without receiving City’s acceptance or approval, as applicable.

### **4. City Objection, Rejection Binding**

**4.1** Any exception, objection, rejection, non-acceptance or disapproval by City shall be deemed reasonable if, among other reasons, the determination is based on any of the following grounds:

- (a) the Submittal or subject provision fails to comply, or is inconsistent, with any applicable Standards and Specifications or any covenant, condition, requirement, term or provision of the Contract Documents, Project Management Plan;

- (b) the Submittal or subject provision does not at a minimum meet Good Industry Practice;
- (c) Non-Profit Entity has not provided all necessary information and documentation concerning the subject matter and any additional information reasonably requested relating to the Submittal (provided that Non-Profit Entity may subsequently resubmit the Submittal with the required or reasonably requested content or information); or
- (d) adoption of the Submittal or subject provision, or of any course of action proposed in the Submittal, would result in a conflict with or violation of any Law or Regulatory Approval.

**4.2** Non-Profit Entity shall respond in writing to all of City's comments (including any exceptions, objections, rejections and disapprovals) relating to a Submittal, and subject to Sections 2.1(a) and (b), shall make modifications to the Submittal as necessary to fully reflect and resolve all such comments in accordance with the review processes in this Exhibit 11 (Submittals Review Process), prior to executing the Work identified in the Submittal.

**4.3** If Non-Profit Entity does not accommodate or otherwise resolve any City comment, Non-Profit Entity shall, within 10 Business Days after receipt of City's comments, provide an explanation setting out:

- (a) why modifications based on City's comments are not required;
- (b) the facts, analyses and reasons that support Non-Profit Entity's conclusion; and
- (c) the basis for any belief that incorporating City's comments or resolving exceptions, objections, rejections or disapprovals that would render the Submittal erroneous, defective or reflective of less than Good Industry Practice.

**4.4** Promptly following delivery of Non-Profit Entity's explanation under Section 4.3, Non-Profit Entity shall meet with City with the goal of reaching agreement regarding changes to be made to the Submittal. City may at any time issue a Unilateral Change Order, in which case Non-Profit Entity shall proceed in accordance with City's Unilateral Change Order with the right to seek resolution of the Contract Dispute under the Contract Dispute Procedures.

**4.5** If Non-Profit Entity fails to provide an explanation to City in accordance with Section 4.3, City may deliver to Non-Profit Entity a Notice setting out comments that have not been addressed and relevant dates for Non-Profit Entity to respond. If Non-Profit Entity fails to address such comments by the dates specified by City, Non-Profit Entity shall make all changes necessary to accommodate and resolve the comment and will be fully responsible for such changes without right to assert a City-Caused Delay Event or other basis for a Claim that City has assumed design or other liability.

**EXHIBIT 12**

**INTENTIONALLY OMITTED**

## **EXHIBIT 13**

### **COSTS SCHEDULE**

#### **1.0 Overview and General Principles**

**1.1** This Exhibit 13 (Costs Schedule) describes the methods for calculating:

- (A) Extra Work Costs, Delay Costs, and Financing Delay Costs owing from City to Non-Profit Entity pursuant to Article 12 (City Change Process; Unilateral Change Orders; Deviations) and Article 14 (Compensation and Other Relief for Delay Events) of this Agreement; and
- (B) Any other amount expressly payable by City or Non-Profit Entity under this Agreement.

**1.2** The following general principles apply to Extra Work Costs, Delay Costs, and Financing Delay Costs calculated under this Exhibit 13 (Costs Schedule):

- (A) Non-Profit Entity shall provide all information referred to in this Exhibit 13 (Costs Schedule) or Exhibit 9 (Change Procedures) on an Open Book Basis;
- (B) All payments or deductions made by City to Non-Profit Entity in accordance with this Exhibit 13 (Costs Schedule) will be made as and when incurred or in arrears in accordance with Section 7.0 (Form of Timing of Compensation) or as otherwise expressly provided under this Agreement;
- (C) In calculating Extra Work Costs, Delay Costs, and Financing Costs, the time value of money and timing of cash flows shall be accounted for. This means cash flows, whether they are costs incurred or payments received, shall be discounted or inflated to reflect when they occur (if applicable);
- (D) Extra Work Costs shall not include Delay Costs or Financing Delay Costs; and
- (E) No amounts shall be double counted.

**1.3** Non-Profit Entity's recovery for any Extra Work Costs, Delay Costs, and Financing Delay Costs under this Exhibit 13 (Costs Schedule) is subject to Non-Profit Entity complying with the timeframes specified in Article 14 (Compensation and Other Relief for Delay Events), and Exhibit 9 (Change Procedures) as applicable, and otherwise in accordance with this Agreement.

#### **2.0 Extra Work Costs**

##### **2.1 Methods of Determining Extra Work Costs**

Extra Work Costs, payable in accordance with Article 14 (Compensation and Other Relief for Delay Events) or Exhibit 9 (Change Procedures) of this Agreement, shall be determined using the following methods:

- (A) negotiated lump sum;
- (B) unit prices; or
- (C) Force Account.

Each method is described below.

## 2.2 Negotiated Lump Sum

If the City determines in its good faith discretion, Extra Work Costs will be determined on a negotiated lump sum basis. Subject to the City's right to issue a Unilateral Change Order, lump sum costs of Extra Work, negotiated and agreed with Non-Profit Entity shall be based on the direct costs to perform the Extra Work, as follows:

**2.2.1 Direct Costs.** The City will pay Non-Profit Entity the sum of the direct costs of labor, materials, and equipment used to perform Extra Work as follows:

- (A) Labor. The direct costs of labor for workers that actually perform Extra Work. Such workers include superintendents and supervisory foremen only if they are at the Project Site planning, coordinating, or overseeing Extra Work. With respect to any material changes to the scope and nature of D&C Work that is covered through an Allowance, such workers may also include additional D&C Contractor project supervisory personnel (e.g., project managers and project engineers) directly involved in planning, coordinating, or overseeing such Extra Work, to the extent reasonably required in order to perform such expanded Allowance-related D&C Work. All other supervision costs shall be included in the markup defined in Section 2.2.3 (Markup for Overhead and Profit). Whether the employer is Non-Profit Entity, a Contractor, a lower tier Contactor, or other forces, the direct cost of labor is the sum of the following:
  - (1) Actual Wages. The actual wages paid, including any actual payments by the employer for its workers' health and welfare, pension, vacation, training, and similar purposes.
  - (2) Labor Surcharge. The applicable labor surcharges in the California Department of Transportation's Labor Surcharge and Equipment Rental Rates publication in effect on the date the Extra Work is completed. These labor surcharges shall constitute full compensation for employer's payment of workers' compensation insurance, Social Security, Medicare, state and federal unemployment insurance, and state training taxes. City will not pay any other fixed labor burdens unless approved in writing by the City.
  - (3) Subsistence and Travel Allowance. The actual allowance paid to workers for subsistence and travel.
- (B) Materials. The direct costs of materials required and furnished specifically for Extra Work. This includes only the direct expenditure, including sales tax, borne by the purchaser from the Supplier and any transportation expenses (e.g., shipping fees, freight charges), except delivery charges unless specifically

required for the Extra Work. If a genuine Supplier offers a trade discount to purchaser, Non-Profit Entity shall credit the City with this discount, even if the discount was not originally taken. If materials originate from a Supplier wholly or partially owned by a NPE-Related Entity, the City's payment therefor shall not exceed the current wholesale price, as determined by the City. The term "trade discount" includes the concept of cash discounting.

- (C) Equipment. The direct costs of equipment are the applicable rental rates for equipment in the California Department of Transportation's Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) in effect on the date the Extra Work is completed.
- (1) As deemed appropriate, the City may adjust such rental rates and use them to compute payments for equipment, regardless of whether the equipment is under the control of a NPE-Related Entity through direct ownership, leasing, renting, or other method of acquisition; except that, for equipment rented or leased in arm's length transactions with outside vendors, the City will reimburse Non-Profit Entity at the actual rental or leased invoice rates when such rates are reasonably in line with the applicable rates specified in the Labor Surcharge & Equipment Rental Rate Book (including its supplement Miscellaneous Equipment Rental Rates) as determined by the City. Arm's length rental or lease transactions are those in which the firm involved in the rental or lease of such equipment is not associated with, owned by, have common management, directorship, facilities, or stockholders with the firm renting the equipment. Non-Profit Entity has the burden of proof to demonstrate that a rental or lease transaction was an arm's length transaction. Non-Profit Entity shall submit copies of all rental or lease invoices, and other information as requested by the City, if any, as supporting documentation with each Proposed Change Order cost proposal.
  - (2) For equipment that is not listed in the Labor Surcharge & Equipment Rental Rate Book, Non-Profit Entity shall provide to the City three separate quotes for rental of the applicable equipment for City's consideration.
  - (3) The City will pay for equipment based on daily, weekly, or monthly rates, whichever are lowest. The City will not pay for equipment based on hourly rates including operator. Unless otherwise specified, Non-Profit Entity shall use manufacturer's ratings and manufacturer-approved modifications to classify equipment for determination of applicable rental rates. If, however, equipment of unwarranted size or type and cost is used, Non-Profit Entity shall calculate the cost at the rental rate for equipment of proper size and type.
  - (4) The City will pay for equipment only for the time the equipment is in productive operation on the Extra Work. The City will not pay for equipment while inoperative due to breakdown or for non-work days. In addition, the City will not pay for any equipment rental time required to move the equipment to and from the Project Site. The City will pay for equipment loading and transportation costs, in lieu of rental time, only if

the equipment does not move under its own power and is utilized solely for the Extra Work. The City will not pay for mobilization or demobilization of equipment already on the Project Site. The City will reimburse Non-Profit Entity for equipment that is idle, non-operating, or in standby mode at the lesser of Caltrans' rates, as adjusted by Caltrans Delay Factor (defined in the Labor Surcharge & Equipment Rental Rate Book), as adjusted by its standby calculation, unless such equipment is rented or leased as provided above.

- (5) Individual pieces of equipment having a replacement value of \$1,000 or less are considered small tools or small equipment; City will not pay for such tools and equipment since the costs of these tools and equipment are included as part of markups for overhead and profit as defined in Section 2.2.3 (Markup for Overhead and Profit).
- (6) Payment to Non-Profit Entity for the use of equipment as set forth in this Exhibit 13 (Costs Schedule) shall constitute full compensation to Non-Profit Entity for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Non-Profit Entity incidental to the use of the equipment.

**2.2.2 Costs Included as Part of Markup for Overhead and Profit.** To the total of the direct costs of labor, materials, and equipment computed as provided in Section 2.2.1 (Direct Costs), the City will pay Non-Profit Entity markups for overhead and profit, as specified in Section 2.2.3 (Markup for Overhead and Profit). These markups shall constitute full compensation for all direct and indirect overhead costs and profit, which shall be deemed to include all items of expense not specifically listed in Section 2.2.1 (Direct Costs) as direct costs. The City shall not be obligated to pay for any separate allowance or itemization for any overhead costs. The following is a list, not intended to be comprehensive, of the types of costs that are included in the markups for overhead and profit for all Extra Work:

- (A) Home office and field personnel including, principals, project managers, superintendents and supervisory foremen (unless they are at the Project Site planning, coordinating, or overseeing Extra Work), estimators, project engineers, detailers, draftspersons, schedulers, consultants, watchpersons, payroll clerks, administrative assistants, and secretaries.
- (B) All field and home office expenses, including: field trailers; parking; storage sheds; office equipment and supplies; telephone service at the Project Site; long-distance telephone calls; fax machines; computers and software; internet and e-mail services; temporary utilities; sanitary facilities and services; janitorial services; small tools and equipment with a cost under \$1,000 each; portable scaffolding; blocking; shores; appliances; job vehicles (except for job vehicles assigned solely to construction foremen and personnel that report to construction foremen); security and fencing; conformance to all regulatory requirements including compliance with safety regulations, safety programs, and safety meetings; cartage; warranties; record documents; and all related maintenance costs.

- (C) Administrative functions, including reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, scheduling, schedule updating and revising, expediting, surveying, engineering, drawing, detailing, revising shop drawings, preparing record drawings, carting, cleaning, protecting the Work, and other incidental Work related to the Change Order.
- (D) All other costs and taxes required to be paid, but not included under direct costs as defined in Section 2.2.1 (Direct Costs).

**2.2.3 Markup for Overhead and Profit.** To the actual total direct costs of labor, material, and equipment used to perform Extra Work, the City will apply the following markups for overhead and profit:

- (A) Initial Markup. An initial maximum markup for the NPE-Related Entity that actually performs any portion of the Extra Work based on the direct cost categories, as follows:

Direct Cost Categories	Maximum Markup
Non-Profit Entity – labor, materials and equipment	0%
Principal Project Company – labor *	10%
Principal Project Company – materials*	10%
Principal Project Company – equipment*	10%
Prime Contractor/Subcontractor (of any tier) – labor	15%
Prime Contractor/Subcontractor (of any tier) – materials	15%
Prime Contractor/Subcontractor (of any tier) – equipment	15%

\* Extra Work self-performed by Principal Project Company.

- (B) Additional Markup. An additional markup for the administration of Extra Work performed by Prime Contractors or Subcontractors, as follows:
  - (1) For Principal Project Company, a maximum markup of 3.0%.
  - (2) Subject to clause (5) below, for Prime Contractor, a maximum markup of 5.81% of the cost of that portion of the Extra Work performed by lower tier Contractors (which amount includes any gross receipts tax and other applicable business taxes applicable to the Extra Work).
  - (3) Subject to clause (5) below, for Subcontractors, a maximum of 5.0% of the cost of that portion of the Extra Work performed by lower tier Contractors.

- (4) the premium for the D&C Contractor Guaranty, which shall be a maximum markup of 0.35%. Non-Profit Entity shall provide reasonable documentation supporting the actual payment of such amount to D&C Contractor's parent for the D&C Contractor Guaranty.
- (5) The total cumulative additional markup under this subsection (B) shall not exceed 16.5%, regardless of the number of Contractor tiers involved with the Extra Work.

#### **2.2.4 Adjustments and Considerations for Extra Work Costs.**

- (A) When both additions and credits are involved in any one Change Order, Non-Profit Entity's markup for direct costs shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Extra Work. For example, if a Change Order adds 14 units on one drawing and deletes 5 units on another drawing, the markup shall be based on the net addition of 9 units. No markup will be allowed if the deductive cost exceeds the additive cost.
- (B) If the City issues written notice of deletion of a portion of Extra Work after the commencement of such Extra Work or after Non-Profit Entity has ordered acceptable materials for such Work which cannot be cancelled, or if part or all of such Extra Work is not performed by Non-Profit Entity because it is unnecessary due to actual Project Site conditions, City will pay Non-Profit Entity for direct costs of such Work actually performed plus markup for overhead and profit as provided in Section 2.2.3 (Markup for Overhead and Profit).
- (C) The City shall not be obligated to compensate Non-Profit Entity for costs incurred after Non-Profit Entity receives the City's written notice deleting the portion of Extra Work.
- (D) Materials ordered by Non-Profit Entity prior to the City's issuance of a notice of deletion and paid for by the City shall become the property of the City, and the City will pay for the actual cost of any further handling of such material. If the material is returnable to the vendor, and if the City so directs, Non-Profit Entity shall return the material and the City will pay Non-Profit Entity only for the actual charges made by the vendor for returning the material including restocking charges.
- (E) Non-Profit Entity shall be solely responsible for determining which of its Contractors and Suppliers are assigned Change Orders. The City will not provide additional compensation to Non-Profit Entity for the cost of its Contractors and Suppliers to review, post, coordinate, or perform related tasks to administer Change Orders.

**2.2.5 Records.** Non-Profit Entity shall maintain its records in such a manner as to provide a clear distinction between the direct costs of Change Orders and the cost of original Work. This requirement pertains to all types of Change Orders, as well as the additions, deletions, revisions, and Claims initiated by Non-Profit Entity.

## 2.3 Unit Prices

If mutually agreed by the Parties or specified in the Contract Documents, the cost of Extra Work will be determined on a unit-cost basis.

**2.3.1 Initial Estimate.** The City will calculate an initial cost estimate by multiplying the pre-agreed unit prices by the estimated quantities indicated in the corresponding Change Order.

**2.3.2 Final Cost Calculation.** The actual cost payable to Non-Profit Entity for the Extra Work will be based on the real quantities of work completed, not the initial estimates.

**2.3.3 Overhead and Profit.** Unit prices must include any overhead and profit, the calculation of which shall follow the guidelines provided in this Exhibit 13 (Costs Schedule).

## 2.4 Force Account

If the City determines in its good faith discretion, Extra Work Costs will be determined on a Force Account basis. In such a case, the City will direct Non-Profit Entity to proceed with the Extra Work on a Force Account basis, subject to a "not to exceed" budget established by the City.

**2.4.1 General.** When the City pays Extra Work on a Force Account basis, all direct costs itemized in accordance with Section 2.2.1 (Direct Costs) shall be subject to the approval of the City and compensation will be determined as set forth in this Exhibit 13 (Costs Schedule).

- (A) All requirements for direct costs and markup for overhead and profit provided in Section 2.2.3 (Markup for Overhead and Profit) shall apply to Force Account Work. However, the City will pay only the actual necessary costs verified in the field by the City on a daily basis.
- (B) Non-Profit Entity shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work. Compensation for these costs shall be fully covered by the markup for overhead and profit markup as provided in Section 2.3 (Unit Prices).
- (C) Notification and Verification. Before commencing any Force Account Work, Non-Profit Entity shall provide written notice to the City at least 24 hours before the scheduled Work. The Force Account Work must be witnessed, documented, and approved in writing by the City on the day the Work is performed. Failure by the Non-Profit Entity to provide timely notice to the City before initiating Force Account Work shall result in the City not being obligated to compensate for such Work.

In addition, Non-Profit Entity shall notify the City when the cumulative costs incurred by Non-Profit Entity for the Force Account Work equal 80% of the budget pre-established by the City. The City shall not be obligated to compensate Non-Profit Entity for Force Account Work exceeding the "not to exceed" budget amount if Non-Profit Entity fails to provide the required notice before exceeding 80% of the Force Account budget.

- (D) Reports. Non-Profit Entity shall diligently proceed with City-directed Force Account Work and shall submit to the City no later than 12:00 p.m. of the day following performance of Force Account Work a daily Force Account Work report on a form obtained from the City. The report shall provide an itemized, detailed account of the daily Force Account labor, material, and equipment, including names of the individuals and the specific pieces of equipment identified by manufacturer's model type and serial number. Non-Profit Entity's authorized representative shall complete and sign the report. The City shall not be obligated to compensate Non-Profit Entity for Force Account Work for which Non-Profit Entity does not timely complete and submit the aforementioned report to the City.
- (E) Agreement. If Non-Profit Entity and the City reach a negotiated, signed agreement on the cost of a Change Order while the Extra Work is proceeding on a Force Account basis, Non-Profit Entity's signed written reports shall be discontinued and all previously signed reports shall become invalid.

## **2.5 Bonds and Insurance**

The following costs with respect to D&C Work performed under a Change Order will be paid on a reimbursement basis on the basis of the amount actually paid, without markup: (a) additional premiums for the Payment Bond and the Performance Bond; and (b) additional insurance premiums for the (i) contractor-controlled insurance program, (ii) difference in conditions insurance, (iii) contractor's professional protective indemnity insurance, (iv) builder's risk insurance, and (v) subcontractor default insurance. Non-Profit Entity shall provide reasonable documentation supporting the payment to an insurer and/or surety of the amounts for which reimbursement is sought.

## **3.0 Intentionally Omitted**

## **4.0 Financing Delay Costs**

Financing Delay Costs, when allowed under this Agreement, will be paid in the form and timing as described in Section 7.0 (Form and Timing of Compensation).

## **5.0 Directed Acceleration**

If the City orders Non-Profit Entity to accelerate the D&C Work in accordance with Section 1.3.2(c) of Exhibit 9 (Change Procedures), and in the absence of agreed upon compensation, the City will compensate Non-Profit Entity for performance of the accelerated work in accordance with Section 2.4 (Force Account).

## **6.0 Unrecoverable Costs**

Non-Profit Entity is not entitled to compensation for the following costs:

- (A) Loss of anticipated profit.
- (B) Consequential damages, including loss of bonding capacity, loss of bidding opportunities, insolvency, and the effects of force account work on other projects, or business interruption.

- (C) Indirect costs.
- (D) Attorneys' fees, claim preparation expenses, and the costs of litigation.
- (E) Unabsorbed or extended field or home office overhead or any damages using an Eichleay or similar equation, except as otherwise provided in the mark ups specified in Section 2.2.2 (Costs Included as Part of Markup for Overhead and Profit).
- (F) The cost of project management services provided by Non-Profit Entity or Principal Project Company.

The following do not constitute cause for a Claim for Extra Work Costs or Delay Costs:

- (1) The inability to secure satisfactory materials, for reasons beyond Non-Profit Entity's control, from the source upon which the proposal was based, unless project specific single source Suppliers are specified by City; or
- (2) Changes in carrier rates or the alteration of transportation facilities for these materials during the Term.

## **7.0 Form and Timing of Compensation**

### **7.1 Payments or Deductions of Extra Work Costs, Delay Costs and Financing Delay Costs**

If a Delay Event:

- (A) results in an amount owing from Non-Profit Entity to City in accordance with this Agreement, City will deduct such amount from the Milestone Payment (only to the extent that such Delay Event affects the D&C Work prior to the Substantial Completion Date) or Availability Payments payable to Non-Profit Entity after the Delay Event, or if no subsequent Milestone Payment or Availability Payments are payable to Non-Profit Entity, such amount will be a debt due and payable by Non-Profit Entity to City;
- (B) results in an amount owing from City to Non-Profit Entity that is not financed by Non-Profit Entity in accordance with Section 7.2 (Additional Funding), City will compensate Non-Profit Entity as follows:
  - (1) subject to Sections 7.1(B)(2) and 7.1(B)(3) in the form of:
    - a. an adjustment to the Milestone Payment or Availability Payments over the Term;
    - b. a lump sum, unit price or force account payment as described in this Schedule;
    - c. progress or other periodic payments invoiced as Extra Work is completed or as other multiple payments over the Term; or

- d. any combination of the above,
    - in accordance with the payment arrangements set out in the Change Order or Unilateral Change Order or otherwise as determined by the City in its sole discretion;
  - (2) in respect of Extra Work Costs or Delay Costs, within 1 calendar month after the date of the receipt from Non-Profit Entity of the Change Order except to the extent that any Extra Work Costs or Delay Costs are disputed by City and referred for dispute resolution in accordance with Article 18 (Contract Dispute Procedures); and
  - (3) in respect of Financing Delay Costs, on the date which City would have paid the Milestone Payment or Availability Payment relating to those days of delay had Substantial Completion not been delayed by the relevant Compensable Delay Event; or
- (C) results in an amount owing from City to Non-Profit Entity that is financed by Non-Profit Entity in accordance with Section 7.2 (Additional Funding), City will pay such amount to Non-Profit Entity in the same manner as Section 7.1(B).

## 7.2 Additional Funding

Where City requests Non-Profit Entity obtain funding for a Delay Event or as required under Section 11.12.1 of the Agreement, Non-Profit Entity shall use all reasonable endeavors to obtain such funding, including by:

- (A) using any savings resulting from other Delay Events or reductions in other Allowance values (as applicable) which have resulted in amounts being available under the Financing Documents;
- (B) utilizing any standby facility that may be available to Non-Profit Entity;
- (C) arranging for additional funding under the Financing Documents and from other sources (if permitted under the Financing Documents); and
- (D) arranging other funding obtained on commercial terms for Non-Profit Entity by City (without any obligation on City to make any such arrangements).

To the extent Non-Profit Entity is able to obtain funding, the cost of the funding will be taken into consideration by the parties in the compensating Non-Profit Entity for (i) the Delay Event in accordance with Section 7.1 (Payments or Deductions of Extra Work Costs, Delay Costs and Financing Delay Costs); or (ii) increase in the cumulative total of the original Allowance values as set out in Section 11.12.1(g) of the Agreement. City shall pay Non-Profit Entity an amount equal to the reasonable out-of-pocket expenses incurred by Non-Profit Entity in seeking such financing, provided that City approved such expenses prior to Non-Profit Entity incurring them.

Where, having used all reasonable endeavors, Non-Profit Entity is unable to obtain funding or funding is on terms which are not satisfactory to City, City will, without limiting its rights under Exhibit 9 (Change Procedures), compensate Non-Profit Entity in accordance with Section 7.1(A)-(C).

**EXHIBIT 14**

**KEY CONTRACT PROVISIONS**

**I. Key Contracts**

Each Key Contract shall:

- (a) Include a covenant to maintain all licenses required by applicable Law;
- (b) Require the Key Contractor to carry out its scope of work in accordance with applicable requirements of the Contract Documents, the Regulatory Approvals, applicable Law, and plans, systems and manuals developed and used by Non-Profit Entity under the Contract Documents;
- (c) Set forth representations, warranties, guaranties and liability provisions of the Key Contractor appropriate for work of a similar scope and scale;
- (d) Expressly state that all warranties and guaranties remaining in effect upon the expiration of the Term or earlier termination of this Agreement, whether express or implied, shall inure to the benefit of City, its successors and assigns, and any Third Parties for whom Work is being performed;
- (e) Set forth a standard of professional responsibility or a standard for commercial practice (as applicable) equal to or better than the requirements of the Contract Documents and in accordance with Good Industry Practice for work of similar scope and scale;
- (f) To the extent applicable, if not obtained by Non-Profit Entity, require the Key Contractor to provide Payment Bond(s) and Performance Bond(s) as required under Section 10.2 (Performance Security) of this Agreement before commencement of any work by or on behalf of the Key Contractor, and expressly require such Key Contractor to provide any surety Notices of loss or potential loss to Non-Profit Entity and City;
- (g) Preclude suspension of performance or demobilization by the Key Contractor unless and until it delivers to City Notice of the other contracting party's breach or default under such Key Contract and allows City the reasonable opportunity to cure such breach or default;
- (h) Not be assignable by the Key Contractor without Non-Profit Entity's and City's prior consent, provided that this provision shall not prohibit subcontracting of portions of the Work to qualified Subcontractors;
- (i) Include the requirements and provisions in this Agreement applicable to Contractors regarding title to and other Intellectual Property rights and licenses;
- (j) Require the Key Contractor to participate in meetings between Non-Profit Entity and City concerning matters pertaining to such Key Contractor, its work or the coordination of its work with Other Contractors in accordance with direction to such Key Contractor provided by Non-Profit Entity or other party to the Key Contract, provided that City

retains authority to give such direction or take such action as in its opinion is necessary to remove an immediate and present threat to the safety of life or property;

- (k) Require the Key Contractor to participate in, be joined in, be subject to and bound by and give evidence in any dispute resolution proceeding under Article 18 (Contract Dispute Procedures) of this Agreement, if such participation is requested by either City or Non-Profit Entity;
- (l) Without cost to Non-Profit Entity or City, and subject to the rights of the Collateral Agent under any Direct Agreement, permit assignment to City or its successors, assigns or designees of all Non-Profit Entity's or other contracting party's rights under the Key Contract (with such assignment to include the benefit of all Key Contractor warranties, indemnities, guarantees and professional responsibility), contingent only upon delivery of Notice from City following the Termination Date, allowing City or its successor, assign or designee to obtain the benefit of Non-Profit Entity's or other contracting party's rights with liability only for those remaining obligations of Non-Profit Entity or the other contracting party accruing after the date of delivery of said Notice from City, without extinguishing existing claims of the Key Contractor against Non-Profit Entity or the corresponding Claims of Non-Profit Entity against City;
- (m) Expressly state that any acceptance of assignment of the Key Contract by City, the Collateral Agent or either or their respective successors, assigns or designees shall not operate to make the assignee responsible or liable for any breach of the Key Contract by Non-Profit Entity or for any amounts due and owing under the Key Contract for work or services rendered before acceptance of the assignment;
- (n) Expressly include the Indemnitees as indemnitees, with direct right of enforcement, in any indemnity given by the Key Contractor under the Key Contract;
- (o) Expressly include an acknowledgement that, except to the extent of stop notice rights under State law, the Key Contractor has no right or claim to any lien or encumbrance upon the Project and Project Site for failure of the other contracting party to pay amounts due the Key Contractor, and a waiver of any such right or claim that may exist at Law or in equity;
- (p) Expressly include the right of Non-Profit Entity to terminate the Key Contract in whole or in part upon any termination of this Agreement without liability of Non-Profit Entity or City for the Key Contractor's lost profits or business opportunity;
- (q) Not contain any terms that do not comply or are inconsistent with the terms of the Contract Documents;
- (r) Include:
  - (i) a covenant acknowledging that, subject to the rights of the Collateral Agent under any Direct Agreement, upon receipt of written Notice from City, City is entitled to exercise step-in rights with respect to the Key Contract (where City is also exercising its step-in rights under Section 16.2.5 (City Step-in Rights) of this Agreement), without any necessity for a consent or approval from Non-Profit Entity or the making of a determination whether City validly exercised its step-in rights; and

- (ii) a waiver and release by Non-Profit Entity of any claim or cause of action against the Key Contractor arising out of, relating to or resulting from its recognition of City's step-in rights in reliance on any such written Notice from City;
- (s) Include a covenant that will survive termination of the Key Contract obligating the Key Contractor to promptly execute and deliver to City or its successor, assign or designee a new contract between the Key Contractor and City or its successor, assign or designee on the same terms as the Key Contract, if (i) the Key Contract is rejected by Non-Profit Entity in bankruptcy or is wrongfully terminated by Non-Profit Entity and (ii) City delivers a request for such new contract within 60 days following termination or expiration of this Agreement;
- (t) Include a covenant that will survive termination of the Key Contract to the effect that if the Key Contractor was a party to an escrow agreement for an IP Escrow and Non-Profit Entity terminates such escrow agreement, then the Key Contractor also shall execute and deliver to City, concurrently with such new contract, a new escrow agreement on the same terms as the terminated escrow agreement, and shall concurrently make the same deposits to the new IP Escrow as made or provided under the terminated escrow agreement. The obligation to include the same terms in each such new contract (including new IP Escrows) is subject to the following exceptions: (i) terms of a Key Contract or IP Escrow agreement rendered moot or inapplicable solely due to change in the identity of the contracting party; and (ii) terms of a Key Contract that must be adjusted due to schedule delay caused solely by Non-Profit Entity's rejection in bankruptcy or wrongful termination;
- (u) Require the Key Contractor to (i) maintain usual and customary Books and Records for the type and scope of operations of business in which it is engaged and retain such Books and Records for the period stated in Section 21.1.1(e) of this Agreement or other applicable period specified in the Contract Documents, (ii) permit audit of Books and Records by City and (iii) provide progress reports to Non-Profit Entity appropriate for the type of work it is performing sufficient to enable Non-Profit Entity to furnish reports required under this Agreement;
- (v) Include a right of inspection for City, or City's designee(s), consistent with City's inspection rights under the Contract Documents; and
- (w) Intentionally Omitted.
- (x) Provide that any purported amendment contrary to the requirements of this Exhibit 14 (Key Contract Provisions), without the prior written consent of City, shall be null and void.

## II. D&C Contract

Each D&C Contract shall:

- (a) Ensure D&C Contractor participation in and compliance with commissioning tasks, including the requirements under Division 6 (Testing & Commissioning and Operational Readiness) of the Technical Requirements, to provide a properly functioning building that includes fundamental commissioning requirements; and

- (b) At a minimum, outlining the following commissioning requirements, in accordance with Division 6 (Testing & Commissioning and Operational Readiness) of the Technical Requirements:
- (i) Commissioning team roles and responsibilities;
  - (ii) Requirements for a communication protocol between and among Non-Profit Entity, Principal Project Company, D&C Contractor, and the Commissioning Provider;
  - (iii) Submittal requirements and review procedures;
  - (iv) Operation and maintenance documentation requirements;
  - (v) Meetings;
  - (vi) Construction verification procedures;
  - (vii) Cost of retesting;
  - (viii) Start-up, testing, adjusting and balancing documentation and verification;
  - (ix) Functional performance testing requirements;
  - (x) Systems Manual requirements;
  - (xi) Training of City personnel;
  - (xii) Schedule and contractual milestones;
  - (xiii) End of warranty site visit; and
  - (xiv) Commissioning specifications are to be provided to the D&C Contractor.

**EXHIBIT 15**

**CONDITIONS PRECEDENT**

Exhibit 15A: Conditions to NTP 1 - Commencement of Non-Construction Work

Exhibit 15B: Conditions to NTP 2 - Commencement of Construction Work

Exhibit 15C: Conditions to Substantial Completion

Exhibit 15D: Conditions to Final Acceptance

**EXHIBIT 15A**

**CONDITIONS TO NTP1 - COMMENCEMENT OF NON-CONSTRUCTION WORK**

The conditions to NTP 1 are:

- (a) Financial Close has occurred;
- (b) City has accepted the the Design Management Plan; (ii) the Project Design Quality Plan; and (iii) the Offsite Utility Reasonable Investigation Plan;
- (c) all Insurance Policies required to be in effect at NTP 1 pursuant to Exhibit 7 (Insurance Requirements) have been obtained and are in full force and effect and Non-Profit Entity has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement;
- (d) Non-Profit Entity has certified to City that all personnel who will perform D&C Work either hold all licenses, certifications, registrations, permits or approvals necessary for performance of the D&C Work or will obtain them before starting work as and to the extent required by the Contract Documents and applicable Law;
- (e) Non-Profit Entity is not then in receipt of any Notice of NPE Default from City unless any such default has been cured or waived in writing by City;
- (f) Non-Profit Entity is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Non-Profit Entity's costs of the Work; and
- (g) All representations and warranties of Non-Profit Entity in Section 19.1 (Non-Profit Entity Representations and Warranties) of this Agreement shall be and remain true and correct in all material respects, and Non-Profit Entity has delivered to City a certificate certifying to the same.

**EXHIBIT 15B**

**CONDITIONS TO NTP 2 - COMMENCEMENT OF CONSTRUCTION WORK**

The conditions to NTP 2 are:

- (a) City has issued NTP 1;
- (b) City has accepted the Project Schedule;
- (c) City has accepted the Project Management Plan, including the Construction Management Plan; and the Project Quality Program Plan, including the Project Construction Quality Plan;
- (d) City's has accepted the Health and Safety Plan required pursuant to Section 01 35 45 of Division 10 of the Technical Requirements;
- (e) all Insurance Policies required to be in effect at NTP 1 pursuant to Exhibit 7 (Insurance Requirements) remain in full force and effect, and Non-Profit Entity has delivered to City verification thereof as required under Section 10.1.2.4(a) of this Agreement;
- (f) all Regulatory Approvals necessary to begin the applicable portions of the Construction Work have been obtained and Non-Profit Entity has furnished to City fully executed copies of such Regulatory Approvals other than the CEQA Approval;
- (g) the Access Date has occurred and all rights of access necessary for commencement of Construction Work on the applicable portion of the Project Site have been obtained;
- (h) all applicable pre-construction requirements, as set forth in the final MMRP contained in Section 01 35 50 of Division 10 of the Technical Requirements and contained in Section 01 35 43, Section 01 35 50, Section 02 80 13, and Section 02 81 10 of Division 10 of the Technical Requirements, have been reviewed and confirmed to be completed by City in its regulatory capacity;
- (i) all applicable pre-construction requirements contained in any Regulatory Approvals, in each case for the applicable portion of the Construction Work, have been satisfied;
- (j) All Utility Adjustments have been completed and Non-Profit Entity certifies that, other than Utility Adjustments arising out of any Unidentified Utilities found after the Setting Date, no further Utility conflicts exist with respect to the Project;
- (k) Non-Profit Entity has obtained approvals from Authorities Having Jurisdiction required for, as well as City approval of, any proposed lane closures, and has taken other appropriate measures to ensure maintenance of traffic in the area affected by the Work;
- (l) Non-Profit Entity has delivered to City, and City has accepted or approved (as applicable), all Submittals relating to the applicable portion of the Construction Work required by the Project Management Plan and the Contract Documents to be accepted or approved, in the form and content required by the Project Management Plan or Contract Documents;

- (m) Non-Profit Entity has delivered to City, and City has approved, the Final Commissioning Plan;
- (n) Non-Profit Entity has obtained City approval of the Release for Construction Documents for the affected Construction Work in accordance with Section 1.8.6 of Division 1 of the Technical Requirements;
- (o) the guarantees in favor of City, if any, required under Section 10.5 (Guarantees) of this Agreement have been executed, obtained and delivered to, and received by, City and are in full force and effect;
- (p) Non-Profit Entity is not then in receipt of any Notice of NPE Default from City unless any such default has been cured or waived in writing by City;
- (q) Non-Profit Entity is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured, and no Lender has otherwise indicated that it is unwilling or unable to presently fund Non-Profit Entity's costs of the Work;
- (r) All representations and warranties of Non-Profit Entity in Section 19.1 (Non-Profit Entity Representations and Warranties) of this Agreement shall be and remain true and correct in all material respects, and Non-Profit Entity has delivered to City a certificate certifying to the same; and
- (s) With respect to the Offsite Utility Work only, Non-Profit Entity has completed all Offsite Utility Reasonable Investigation pursuant to the Offsite Utility Reasonable Investigation Plan and the Offsite Utility Information has been submitted to City; provided, however, that if, as part of the Offsite Utility Reasonable Investigation, Non-Profit Entity identifies a previously Unidentified Utility and requires additional time beyond 135 days in order to develop a plan to mitigate and minimize the impact of such Unidentified Utility, (i) this clause (s) shall be deemed satisfied for purposes of issuing NTP 2 for all Work other than the Offsite Utility Work actually or potentially impacted by or related to the Unidentified Utility; (ii) upon issuance of such NTP 2, Non-Profit Entity may commence all Work other than such Offsite Utility Work; and (iii) upon Notice from Non-Profit Entity to City that it has completed the Offsite Utility Reasonable Investigation and submittal of all Offsite Utility Information (including with respect to such Unidentified Utility), Non-Profit Entity may commence such Offsite Utility Work.

**EXHIBIT 15C**

**CONDITIONS TO SUBSTANTIAL COMPLETION**

The conditions to Substantial Completion are:

- (a) Non-Profit Entity has completed all D&C Work in accordance with the requirements of this Agreement and the Infrastructure Facility can be utilized safely for its intended purpose, including (i) full access to all points of entry and exit and (ii) completion of all Construction Work other than Punch List items approved by City;
- (b) each Authority Having Jurisdiction has issued a temporary certificate of occupancy for the Infrastructure Facility, to the extent such certificate is required by applicable Law, or has otherwise accepted the Infrastructure Facility, as applicable;
- (c) Intentionally Omitted;
- (d) Intentionally Omitted;
- (e) the Infrastructure Facility is in a condition of full operational functionality and operational readiness to allow the SFMTA's transit operations to relocate to the Infrastructure Facility as required in Division 10 and Division 6 of the Technical Requirements, respectively including with all emergency testing and commissioning activities successfully completed, and with the Help Desk established and operating, subject to the completion of Punch List items;
- (f) Intentionally Omitted;
- (g) Intentionally Omitted;
- (h) Non-Profit Entity has prepared and submitted a Punch List in accordance with the Contract Documents and City has accepted such list;
- (i) Non-Profit Entity is not then in receipt of any Default Notice from City unless any such default has been cured or waived in writing by City;
- (j) Non-Profit Entity is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured; and
- (k) Intentionally Omitted;
- (l) all Submittals required by the Project Management Plan or Contract Documents to be submitted, accepted and/or approved by City before Substantial Completion have been submitted to and accepted or approved by City, as applicable.

**EXHIBIT 15D**

**CONDITIONS TO FINAL ACCEPTANCE**

The conditions to Final Acceptance are:

- (a) Non-Profit Entity has completed all D&C Work in accordance with this Agreement;
- (b) City has issued a Certificate of Substantial Completion for the Infrastructure Facility;
- (c) all Punch List items have been completed to the reasonable satisfaction of City;
- (d) Non-Profit Entity has delivered to City a reasonable inventory of all spare parts, spare components, spare equipment, special tools, materials, expendables and consumables necessary for the operation and maintenance of the Infrastructure Facility;
- (e) all Submittals that Non-Profit Entity is required by the Contract Documents to submit upon Final Acceptance have been submitted to City;
- (f) each Authority Having Jurisdiction has issued a certificate of occupancy, to the extent such certificate is required by applicable Law, and/or has provided other approvals required for operation of the Infrastructure Facility, as applicable;
- (g) City has received a complete set of the As-Built Documents and documentation for the Infrastructure Facility;
- (h) Non-Profit Entity has, in accordance with Section 21.4 (Intellectual Property), granted to City all Base License Rights to NPE IP and Third Party IP, delivered to City all Developed IP, delivered to City all IP Materials, and made all deposits to the IP Escrow required at or prior to Final Acceptance;
- (i) If close of escrow for the HCC has not occurred by the date intended to be the Final Acceptance Date, NPE has left the parcel area anticipated for the HCC in a “no better, no worse” condition for drainage and vehicular access from Mariposa Street than that which existed as of the Effective Date.;
- (j) Non-Profit Entity has satisfactorily demonstrated integrated operational functionality through “live” coordinated responses (in conjunction with City staff including emergency response personnel) to failure management and other emergency events during the operations of the Infrastructure Facility in accordance with Division 6 of the Technical Requirements;
- (k) Non-Profit Entity has delivered to City (i) all manufacturers’ warranties required under, and in the form and content specified by the Technical Requirements (including Division 3 of the Technical Requirements and Division 10 of the Technical Requirements) and (ii) all documents and other evidence of warranties under Sections 7.9 (Final Acceptance) and 6.11 (Warranties) of this Agreement;
- (l) Non-Profit Entity has delivered to City, and City has approved, the Systems Manual;

- (m) Non-Profit Entity has completed the Move-In, in accordance with Section 7.13 (Move-In) of this Agreement;
- (n) Non-Profit Entity has:
  - (i) Intentionally Omitted;
  - (ii) completed training of City's operations and maintenance personnel in accordance with Section 1.7 of Division 1 of the Technical Requirements;
  - (iii) delivered to City a certificate, in form acceptable to City, executed by Non-Profit Entity that it and its Contractors are fully staffed with such trained personnel and are ready, willing and able to operate and maintain the Infrastructure Facility in accordance with the terms of the Contract Documents including the approved Project Management Plan;
  - (iv) delivered to City training records evidencing compliance with training requirements for City's operations and maintenance personnel, including copies of course completion certificates issued to each of the subject personnel, and including SFMTA O&M Services training manuals and video recordings of training sessions; and
- (o) completed and documented completion of all training required to allow full access to the Project Site to those individuals designated by City in accordance Section 1.7 of Division 1 of the Technical Requirements; the relevant systems and equipment have passed all required tests and Non-Profit Entity has delivered to City all reports, data, and documentation relating to such tests;
- (p) Non-Profit Entity is not then in receipt of any Notice of NPE Default from City unless any such default has been cured or waived in writing by City; and
- (q) Non-Profit Entity is not then in receipt of any Notice of default delivered pursuant to the Financing Documents unless any such default has been cured.

**EXHIBIT 16**

**FEDERAL, STATE AND CITY REQUIREMENTS**

- Exhibit 16A: Federal Requirements
- Exhibit 16B: State Requirements
- Exhibit 16C: City Requirements
- Exhibit 16D: SFMTA's Surveillance Technology Policy

**EXHIBIT 16A****FEDERAL REQUIREMENTS****1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES**

Non-Profit Entity and City acknowledge and agree that, notwithstanding any concurrence by the federal government in, or approval of, the solicitation or award of this Agreement, absent the express written consent by the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to City, Non-Profit Entity or any other party pertaining to any matter resulting from this Agreement. Non-Profit Entity agrees to include the above clause in each Contract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the Contractor who will be subject to its provisions.

**2. FALSE STATEMENTS OR CLAIMS – CIVIL OR CRIMINAL FRAUD**

49 U.S.C. § 5323(l)(1)  
 31 U.S.C. §§ 3801-3812  
 18 U.S.C. § 1001  
 49 C.F.R. part 31

Non-Profit Entity acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to the Project. Upon execution of this Agreement, Non-Profit Entity certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Agreement or the Project. In addition to other penalties that may be applicable, Non-Profit Entity further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Non-Profit Entity to the extent the federal government deems appropriate. Non-Profit Entity also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by FTA under authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on Non-Profit Entity, to the extent the federal government deems appropriate. Non-Profit Entity agrees to include the above two clauses in each Contract financed in whole or in part with federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Contractor who will be subject to the provisions.

**3. ACCESS TO THIRD PARTY CONTRACT RECORDS**

49 U.S.C. § 5325(g)  
 2 C.F.R. § 200.333  
 49 C.F.R. part 633

- (a) **Record Retention.** Non-Profit Entity will retain, and will require its Contractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third-party agreements of any type, and supporting materials related to those records.
- (b) **Retention Period.** Non-Profit Entity agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Non-Profit Entity shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.
- (c) **Access to Records.** Non-Profit Entity agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this Agreement, including such records and information as Non-Profit Entity may regard as confidential or proprietary, as reasonably may be required and to the U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g).
- (d) **Access to the Sites of Performance.** Non-Profit Entity agrees to permit FTA and its contractors access to the sites of performance under this Agreement as reasonably may be required.

#### 4. CHANGES TO FEDERAL REQUIREMENTS

- (a) Non-Profit Entity shall at all times comply with all applicable FTA regulations, policies, procedures and directives, as these regulations, policies, procedures, and directives may be amended from time to time, including those listed directly or by reference in any Master Agreement between City and FTA. Non-Profit Entity's failure to so comply shall constitute a material breach of this Agreement.
- (b) Federal requirements that apply to City or the award, this Agreement, and any amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the City's underlying agreement including any information incorporated by reference and made part of that underlying agreement.
- (c) Applicable changes to those federal requirements will apply to this Agreement and Parties thereto at any tier.

#### 5. TERMINATION

2 C.F.R. § 200.339  
2 C.F.R. App. II(B) to part 200

See Article 17 (Termination) of this Agreement.

## 6. CIVIL RIGHTS

Non-Profit Entity is an Equal Opportunity Employer. As such, Non-Profit Entity agrees to comply with all applicable federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by federal laws or regulations, Non-Profit Entity agrees to comply with the requirements of 49 U.S.C. § 5323(h)(3) by not using any federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. Under this Agreement, Non-Profit Entity shall at all times comply with the following requirements and shall include these requirements in each Contract entered into as part thereof.

- (a) **Nondiscrimination.** In accordance with federal transit law at 49 U.S.C. § 5332, Non-Profit Entity agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age; and that the Non-Profit Entity and each Contractor maintains no employee facilities segregated on the basis of race, color, religion or national origin. In addition, Non-Profit Entity agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.
- (b) **Nondiscrimination – Title VI of the Civil Rights Act.** Non-Profit Entity will:
  - (i) prohibit discrimination based on race, color, or national origin;
  - (ii) comply with: (A) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, et seq. and (B) Federal transit law, specifically 49 U.S.C. § 5332; and
  - (iii) follow: (A) The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; (B) U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and (C) All other applicable federal guidance that may be issued.

For more information on Title VI of the Civil Rights Act requirements, Non-Profit Entity shall review City’s Title VI Program developed for the Project to comply with Title VI of the Civil Rights Act of 1964.

- (c) **Age.** In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621- 634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, “Age Discrimination in Employment Act,” 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, Non-Profit Entity agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, Non-Profit Entity agrees to comply with any implementing requirements FTA may issue.
- (d) **Disabilities.** In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as

amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, Non-Profit Entity agrees that it will not discriminate against individuals on the basis of disability. In addition, Non-Profit Entity agrees to comply with any implementing requirements FTA may issue.

- (e) **Department of Transportation Funding Requirements.** To ensure compliance with requirements applicable to agreements funded in whole or in part by USDOT funds the following requirements shall apply to this Agreement:
- (i) Non-Profit Entity and each Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this Agreement.
  - (ii) Non-Profit Entity and each Contractor shall carry out applicable requirements of 49 C.F.R. Part 26, and shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted Contracts.
  - (iii) Failure by Non-Profit Entity and any of its Contractors to carry out the requirements of this Section 6(f) (Department of Transportation Funding Requirements) is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate, which may include but which are not limited to: withholding of monthly payments, assessment of sanctions, liquidated damages, and/or disqualifying Non-Profit Entity from future work as non-responsible.
- (f) **Federal Law and Public Policy Requirements.** The Non-Profit Entity shall ensure that federal funding is expended in full accordance with the U.S. Constitution, federal law, and statutory and public policy requirements including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; and the Non-Profit Entity will cooperate with federal officials in the enforcement of federal law, including cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE) and other federal offices and components of the Department of Homeland Security in the enforcement of federal immigration law.
- (g) **Federal Anti-Discrimination.**
- (i) Pursuant to section (3)(b)(iv)(A), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Non-Profit Entity agrees that its compliance in all respects with all applicable federal anti-discrimination laws is material to the government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code.
  - (ii) Pursuant to section (3)(b)(iv)(B), Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, by entering into this Contract, Non-Profit Entity certifies that it does not operate any programs promoting diversity, equity, and inclusion (DEI) initiatives that violate any applicable federal anti-discrimination laws.

**7. SMALL BUSINESS ENTERPRISE (SBE)/DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM REQUIREMENTS**

49 C.F.R. part 26

- (a) **SBE Goals.** City will establish a SBE/DBE Program and SBE goals for the Project, and will be required to report on SBE participation so that its attainment efforts may be evaluated. Such requirements are in addition to all other equal opportunity employment requirements of this Agreement. Non-Profit Entity shall comply with the SBE goals that City establishes for the Project and this Agreement.
- (b) **Post-Award Compliance Monitoring.** City will conduct post-award monitoring of Non-Profit Entity's compliance with the SBE/DBE provisions of this Agreement. Non-Profit Entity shall cooperate with City requests for assistance with post-award monitoring. Non-Profit Entity shall maintain records sufficient to document, on an ongoing basis, name of each SBE Contractor/Subcontractor, work assignment of each SBE Contractor/Subcontractor, SBE commitments, amounts paid to each SBE Contractor/Subcontractor during the reporting period, amounts paid to each SBE Contractor/Subcontractor as a percentage of the total commitment to each SBE Contractor/Subcontractor, etc., among other information. Non-Profit Entity will be required to submit updated Open Ended Performance Plans, supplemental reports and other information as required in the SBE/DBE Plan.
- (c) **SBE Certifications.**

In order to meet the 25% and 20% SBE Goals for Design and Professional Services and Construction, Small business firms must be certified in one of the following programs:

- California Department of General Services (SBEs) – State Program <https://www.caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>
- San Francisco Contract Monitoring Division (LBEs) – City Program [sfcitypartner.sfgov.org/pages/LBESearch/supplier-search.aspx](http://sfcitypartner.sfgov.org/pages/LBESearch/supplier-search.aspx)

OR

- Have its Small Business Verification Form approved by SFMTA CCO
- (d) **Listed SBEs.** Non-Profit Entity shall utilize the specific SBEs listed in this Agreement unless Non-Profit Entity obtains City's written consent to terminate or substitute a SBE Contractor. Unless City's consent is provided, Non-Profit Entity shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE.
- (e) **Access to Records.** City will require Non-Profit Entity and its Contractors to maintain records and documents of payments to SBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of City or the USDOT.

This reporting requirement also extends to any certified SBE Contractor/Subcontractor. The authorized representative(s) of City, the USDOT, the Comptroller General of the United States, shall have the right to inspect and audit all data and records of Non-Profit Entity relating to its performance under this Article 7 (Small Business Enterprise (SBE)/Disadvantaged Business Enterprise (DBE) Program Requirements).

- (f) **Special Requirements for a Transit Vehicle Manufacturer.** The transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 C.F.R. part 26.
- (g) **No Discrimination.** Non-Profit Entity and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Non-Profit Entity shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by Non-Profit Entity to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate, which may include, but is not limited to:
  - (i) Withholding monthly progress payments;
  - (ii) Assessing sanctions;
  - (iii) Liquidated damages; and/or
  - (iv) Disqualifying Non-Profit Entity from future bidding as non-responsible (49 C.F.R. § 26.13(b).

## 8. INCORPORATION OF FTA TERMS

This Agreement includes, in part, certain standard terms and conditions required by the USDOT and FTA, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the USDOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, as revised by Rev. 1, dated April 14, 2009, Rev. 2, dated July 1, 2010, Rev. 3, dated February 14, 2011, and Rev. 4, dated March 18, 2013, as may be amended, are hereby incorporated by reference. Non-Profit Entity shall comply with all applicable FTA regulations, policies, procedures and directives, including those listed directly in or referred to in the current FTA Master Agreement. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Non-Profit Entity shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of FTA terms and conditions. Non-Profit Entity will include these requirements in all Contracts issued pursuant to this Agreement.

## 9. DEBARMENT AND SUSPENSION

- 2 C.F.R. part 180
- 2 C.F.R. part 1200
- 2 C.F.R. § 200.213
- 2 C.F.R. part 200 Appendix II (I)

Executive Order 12549  
Executive Order 12689

Non-Profit Entity shall comply and facilitate compliance with USDOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, Non-Profit Entity shall verify that its principals, Affiliates, and Contractors are eligible to participate in this federally funded contract and are not presently declared by any federal department or agency to be:

- (i) debarred from participation in any federally assisted award;
- (ii) suspended from participation in any federally assisted award;
- (iii) proposed for debarment from participation in any federally assisted award;
- (iv) declared ineligible to participate in any federally assisted award;
- (v) voluntarily excluded from participation in any federally assisted award; or
- (vi) disqualified from participation in any federally assisted award.

The certification in this clause is a material representation of fact relied upon by City. If it is later determined by City that Non-Profit Entity knowingly rendered an erroneous certification, in addition to remedies available to City, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. Non-Profit Entity agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200 throughout the period of any contract that may arise from this Agreement or the Project. Non-Profit Entity further agrees to include a provision requiring such compliance in its lower tier covered transactions and agreements.

## **10. BUY AMERICA**

49 U.S.C. 5323(j)  
49 C.F.R. part 661  
Pub. L. No. 117-58, §§ 70901-17

Non-Profit Entity agrees to comply with 49 U.S.C. 5323(j), 49 C.F.R. part 661, Pub. L. No. 117-58, §§ 70901-27, and 2 C.F.R. part 184, which provide that federal funds may not be obligated unless all steel, iron, manufactured products, and construction materials used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

The Buy America requirements flow down from the City to Non-Profit Entity, which is responsible for ensuring that lower tier Contractors are in compliance.

***In accordance with 49 C.F.R. § 661.6, for the procurement of steel, iron, manufactured products or construction materials, use the certifications below.***

*Certificate of Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), the applicable regulations in 49 C.F.R. part 661, Pub. L. No. 117-58, §§ 70901-17 and 2 C.F.R. part 184.

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

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

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

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

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

*Certificate of Non-Compliance with Buy America Requirements*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, the applicable regulations in 49 C.F.R. § 661.7, Pub. L. No. 117-58, §§ 70901-17 and 2 C.F.R. part 184.

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

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

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

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

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

***In accordance with 49 C.F.R. § 661.12, for the procurement of rolling stock (including train control, communication, and traction power equipment), use the certifications below.***

*Certificate of Compliance with Buy America Rolling Stock Requirements*

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j), and the applicable regulations in 49 C.F.R. § 661.11.

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

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

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

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

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

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

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

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

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

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

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

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

**11. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION**

See Article 18 (Contract Dispute Procedures) of this Agreement.

**12. LOBBYING RESTRICTIONS**

- 31 U.S.C. § 1352
- 2 C.F.R. § 200.450
- 2 C.F.R. part 200 appendix II (J)
- 49 C.F.R. part 20

Non-Profit Entity certifies, to the best of its knowledge and belief, that:

- (a) no federally appropriated funds have been paid or will be paid, by or on behalf of Non-Profit Entity, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Non-Profit Entity shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (c) Non-Profit Entity shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including Contracts, sub-

grants, and Subcontracts under grants, loans, and cooperative agreements) and that all sub recipients shall certify and disclose accordingly.

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

### **13. CLEAN AIR ACT AND CLEAN WATER ACT**

42 U.S.C. §§ 7401 – 7671q

33 U.S.C. §§ 1251-1387

2 C.F.R. part 200, Appendix II (G)

The Clean Air and Federal Water Pollution Control Act requirements apply to each contract and subcontract exceeding \$150,000.

Non-Profit Entity agrees:

- (a) it will not use any violating facilities;
- (b) it will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities”;
- (c) it will report violations of use of prohibited facilities to the FTA; and
- (d) it will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §§ 1251-1387).

### **14. FLY AMERICA**

49 U.S.C. § 40118

41 C.F.R. part 301-10

48 C.F.R. part 47.4

- (a) As used in this clause “international air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States. “United States” means the 50 States, the District of Columbia, and outlying areas. “U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- (b) When federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires contractors, recipients, and others use U.S.-flag air carriers for U.S. government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow

expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- (c) if available, Non-Profit Entity, in performing work under this Agreement, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- (d) In the event that Non-Profit Entity selects a carrier other than a U.S.-flag air carrier for international air transportation, Non-Profit Entity shall include a statement on vouchers involving such transportation essentially as follows:

*Statement of Unavailability of U.S.-Flag Air Carriers*

*International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403.*

[State reasons]: \_\_\_\_\_

*(End of statement)*

- (e) Non-Profit Entity shall include the substance of this clause, including this paragraph (e), in each Contract or purchase under this Agreement that may involve international air transportation.

**15. EMPLOYEE PROTECTIONS**

- 49 U.S.C. § 5333(a)
- 40 U.S.C. §§ 3141-3148
- 29 C.F.R. part 5
- 18 U.S.C. § 847
- 29 C.F.R. part 3
- 40 U.S.C. §§ 3701-3708
- 29 C.F.R. part 1926

**15.1 PREVAILING WAGE AND COPELAND ANTI-KICKBACK ACT**

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, Non-Profit Entity shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. Non-Profit Entity will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, Non-Profit Entity shall pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Non-Profit Entity agrees to pay wages not less than once a week. Non-Profit Entity shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States.” Non-Profit Entity is prohibited from inducing, by any

means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

## **15.2 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, Non-Profit Entity shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, Non-Profit Entity shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 and DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 C.F.R. part 1904; "Occupational Safety and Health Standards," 29 C.F.R. part 1910; and "Safety and Health Regulations for Construction," 29 C.F.R. part 1926 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, Non-Profit Entity and any Contractor responsible therefor shall be liable for the unpaid wages. In addition, Non-Profit Entity and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by this clause.

The FTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by Non-Profit Entity or any Contractor under this Agreement or any Contract entered into in furtherance thereof or any other federal contract with Non-Profit Entity, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by Non-Profit Entity, such sums as may be determined to be necessary to satisfy any liabilities of Non-Profit Entity or any Contractor for unpaid wages and liquidated damages as provided in this section.

Non-Profit Entity or any Contractor shall insert in any Contracts the clauses set forth in this section and also a clause requiring the Contractors to include these clauses in any lower tier Contracts. Non-Profit Entity shall be responsible for compliance by any Contractor or lower tier Contractor with the clauses set forth in this Agreement.

## **15.3 CONTRACT WORK HOURS AND SAFETY STANDARDS FOR AWARDS NOT INVOLVING CONSTRUCTION**

Non-Profit Entity shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 *et seq.*, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts

Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act),” 29 C.F.R. part 5.

Non-Profit Entity shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of this Agreement for all laborers and mechanics, including guards and watchmen, working on this Agreement. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by Non-Profit Entity for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and Non-Profit Entity will permit such representatives to interview employees during working hours on the job.

Non-Profit Entity shall require the inclusion of the language of this clause within Contracts of all tiers.

#### **15.4 AWARDS INVOLVING COMMERCE**

Non-Profit Entity agrees to comply with the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.* to the extent that the FLSA applies to employees performing work involving commerce, and as the federal government otherwise determines applicable.

#### **16. BONDING REQUIREMENTS**

2 C.F.R. 200.326

See Section 10.2 (Performance Security) of this Agreement.

#### **17. SEISMIC SAFETY**

42 U.S.C. 7701 *et seq.*

49 C.F.R. part 41

Executive Order (E.O.) 12699

Non-Profit Entity agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for seismic safety required in Department of Transportation (DOT) seismic safety regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. Non-Profit Entity also agrees to ensure that all work performed under this Agreement, including work performed by a Contractor, is in compliance with the standards required by the seismic safety regulations and the certification of compliance issued on the project.

#### **18. ENERGY CONSERVATION**

42 U.S.C. 6321 *et seq.*

49 C.F.R. part 622, subpart C

These requirements apply to Non-Profit Entity and extend to all third-party contractors and their contracts at every tier and sub-recipients and their subcontracts at every tier.

Non-Profit Entity agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## 19. RECYCLED PRODUCTS

42 U.S.C. § 6962  
40 C.F.R. part 247  
2 C.F.R. part § 200.322

These requirements apply to Non-Profit Entity and extend to all third-party contractors and their contracts and subcontracts at every tier where the value of an EPA designated item exceeds \$10,000.

Non-Profit Entity agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

## 20. ADA ACCESS

Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Non-Profit Entity must comply with its responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.

## 21. SAFE OPERATION OF MOTOR VEHICLES

23 U.S.C. part 402  
Executive Order No. 13043  
Executive Order No. 13513  
U.S. DOT Order No. 3902.10

The Safe Operation of Motor Vehicles requirements shall apply to Non-Profit Entity and all Contractors at every tier.

- (a) **Seat Belt Use.** Non-Profit Entity is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles. The terms "company-owned" and "company-leased" refer to vehicles owned or leased either by Non-Profit Entity or City.

- (b) **Distracted Driving.** Non-Profit Entity agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Non-Profit Entity or Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this Agreement.

## 22. ENVIRONMENTAL PROTECTIONS

- (a) **General.** Non-Profit Entity will comply with all applicable environmental and resource use laws, regulations, and requirements, and follow applicable guidance, now in effect or that may become effective in the future, including state and local laws, ordinances, regulations, and requirements and follow applicable guidance.
- (b) **National Environmental Policy Act.** An award of federal assistance requires the full compliance with applicable environmental laws, regulations, and requirements. Accordingly, Non-Profit Entity shall:
- (i) comply and facilitate compliance with federal laws, regulations, and requirements, including, but not limited to: (A) federal transit laws, such as 49 U.S.C. § 5323(c)(2), and 23 U.S.C. § 139; (B) the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. §§ 4321, et seq., as limited by 42 U.S.C. § 5159, and CEQ's implementing regulations 40 C.F.R. Part 1500 – 1508; (C) Joint FHWA and FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771 and 49 C.F.R. Part 622; (D) Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," March 5, 1970, 42 U.S.C. § 4321 note (35 Fed. Reg. 4247); and (E) other federal environmental protection laws, regulations, and requirements applicable to City or the Project.
- (ii) follow the federal guidance identified herein to the extent that the guidance is consistent with applicable authorizing legislation: (A) Joint FHWA and FTA final guidance, "Interim Guidance on MAP-21 Section 1319, Accelerated Decision-making in Environmental Reviews," January 14, 2013; (B) Joint FHWA and FTA final guidance, "SAFETEA-LU Environmental Review Process (Public Law 109-59)," 71 Fed. Reg. 66576, November 15, 2006; and (C) other federal environmental guidance applicable to the Project.
- (c) **Other Environmental Federal Laws.** Non-Profit Entity will comply or facilitate compliance with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271-1287), Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."

- (d) **Use of Certain Public Lands.** Non-Profit Entity will comply with USDOT laws, specifically 49 U.S.C. § 303 (often referred to as “section 4(f)”), and joint FHWA and FTA regulations, “Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,” 23 C.F.R. Part 774, and referenced in 49 C.F.R. Part 622.
- (e) **Historic Preservation.** Non-Profit Entity will:
  - (i) comply with USDOT laws, including 49 U.S.C. § 303 (often referred to as “section 4(f)”), which requires certain findings be made before an award may be undertaken if it involves the use of any land from a historic site that is on or eligible for inclusion on the National Register of Historic Places;
  - (ii) encourage compliance with the federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 54 U.S.C. § 306108;
  - (iii) comply with the Archeological and Historic Preservation Act of 1974, as amended, 54 U.S.C. § 312501, et seq.;
  - (iv) comply with U.S. Advisory Council on Historic Preservation regulations, “Protection of Historic Properties,” 36 C.F.R. Part 800; and
  - (v) comply with federal requirements and follow federal guidance to avoid or mitigate adverse effects on historic properties.
- (f) **Indian Sacred Sites.** Non-Profit Entity will facilitate compliance with federal efforts to promote the preservation of places and objects of religious importance to American Indians, Eskimos, Aleuts, and Native Hawaiians, and facilitate compliance with the American Indian Religious Freedom Act, 42 U.S.C. § 1996, and Executive Order No. 13007, “Indian Sacred Sites,” May 24, 1996, 42 U.S.C. § 3161 note (61 Fed. Reg. 26771).
- (g) **Mitigation of Adverse Environmental Effects.** Non-Profit Entity agrees to comply with all environmental mitigation measures that may be identified as conditions that the federal government might impose in its finding of no significant impact or record of decision or commitments in the environmental documents that apply to the Contract, such as environmental assessments, environmental impact statements, categorical exclusions, memoranda of agreement, documents required under 49 U.S.C. § 303, and other environmental documents. Non-Profit Entity agrees that:
  - (i) Any mitigation measures agreed on will be incorporated by reference and made part of the Contract;
  - (ii) Any deferred mitigation measures will be incorporated by reference and made part of the Contract as soon as agreement with the federal government is reached; and
  - (iii) Any mitigation measures agreed on will not be modified or withdrawn without the written approval of the federal government.

**23. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS**

- (a) **Transactions Prohibited.** Non-Profit Entity must certify that it:
- (i) does not have any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with authority responsible for collecting the tax liability; and
  - (ii) was not convicted of the felony criminal violation under any federal law within the preceding 24 months from the Effective Date.

If Non-Profit Entity cannot so certify, City agrees to refer the matter to FTA and not to enter into any contract with Non-Profit Entity without FTA's written approval.

- (b) **Flow-Down.** Non-Profit Entity shall include this requirement in Contracts at all lower tiers, without regard to the value of such Contracts.

**24. NOTIFICATION TO FTA**

If a current or prospective legal matter that may affect the federal government emerges, Non-Profit Entity must notify City, who will promptly notify the FTA Chief Counsel, FTA Headquarters Manager that administers the underlying agreement or FTA Regional Counsel for the region in which City is located. Non-Profit Entity must include a similar notification requirement in its sub-agreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.

- (a) **Types.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming any federal government as a party to litigation or a legal disagreement in any forum for any reason.
- (b) **Matters.** Matters that may affect any federal government include, but are not limited to, the federal government's interests in the award, this Agreement, and any amendments thereto, or the any federal government's administration or enforcement of federal laws, regulations, and requirements.
- (c) **Additional Notice to U.S. DOT Inspector General.** Non-Profit Entity must notify City, who will promptly notify the USDOT Inspector General in addition to the FTA Chief Counsel, FTA Headquarters Manager that administers the underlying agreement or Regional Counsel for the Region in which City is located, if Non-Profit Entity has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to any agreement between City and FTA. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a federal, state, or local law enforcement or other investigative

agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of Non-Profit Entity. In this paragraph, “promptly” means to refer information without delay and without change.

## 25. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Pursuant to section 889 of the National Defense Authorization Act of 2019 (H.R. 5515 at pp. 282-284; Pub. L. 115-232) (NDAA), and as promulgated at 2 C.F.R. § 200.216, Non-Profit Entity and any Contractor at any tier shall not procure or obtain the Covered Equipment and Services in the performance of work for the Project or in connection with this Agreement.
- (b) “Covered Equipment and Services” is defined to include any telecommunication or video surveillance equipment, systems, or services produced or provided by any of the following entities, or any subsidiary or affiliate of the following entities:
  - (i) Huawei Technologies Company;
  - (ii) ZTE Corporation;
  - (iii) Hytera Communications Corporation;
  - (iv) Hangzhou Hikivision Digital Technology Company;
  - (v) Dahua Technology Company; and
  - (vi) any entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (c) The burden of proof for the origin or place of production of telecommunications or video surveillance equipment, systems, or services is the responsibility of Non-Profit Entity.
- (d) Prior to the use of any telecommunication or video surveillance equipment, systems, or services pursuant to this Agreement, Non-Profit Entity shall furnish a certification to City stating that the telecommunication or video surveillance equipment, systems, or services are not Covered Equipment and Services pursuant to this Article 26 (Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment), 2 C.F.R. § 200.216, and the NDAA.

## 26. SENSITIVE SECURITY INFORMATION

Non-Profit Entity must protect, and take measures to ensure that its Contractors at each tier protect “sensitive security information” made available during the administration of this Agreement or any Contract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing USDOT regulations, “Protection of Sensitive Security Information,” 49 C.F.R. Part

15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520.

## 27. FLOOD INSURANCE

Non-Profit Entity agree to comply with flood insurance laws and guidance as follows:

- (a) It will have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), for any building located in a special flood hazard area (100-year flood zone), before accessing federal assistance to acquire, construct, reconstruct, repair, or improve that building.
- (b) Each such building and its contents will be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, 42 U.S.C. § 4001, et seq., whichever is less.
- (c) It will follow FTA guidance, except to the extent FTA determines otherwise in writing.

## 28. PROMPT PAYMENT AND RETENTION

- (a) **Payment of Contractors.** Non-Profit Entity shall pay the PPC and any other Contractors with a direct contract with Non-Profit Entity within 30 days from receipt of each payment made to Non-Profit Entity by City or any Lender. The 30 days is applicable unless a shorter time period controls as provided in Section 9.4 (Prompt Payment to Contractors) of this Agreement. Any delay or postponement of payment over 30 days (or any controlling shorter period) may occur only for good cause and with the prior written approval of City.
- (b) **Retention of Funds.**
  - (i) No standard retention will be withheld by City from payments due to Non-Profit Entity.
  - (ii) Any retention withheld by Non-Profit Entity or Contractors from Progress Payments due applicable Contractors shall be promptly paid in full to Contractors within 30 days (or any shorter time period that controls as provided in Section 9.4 (Prompt Payment to Contractors) of this Agreement) after the Contractor's work is satisfactorily completed. Non-Profit Entity shall assure that each Contract contains a clause obligating Non-Profit Entity or the applicable Contractor to make prompt and full payment of any retention kept by Non-Profit Entity or the applicable Contractor to the Subcontractor within such time period. For this purpose, a Contractor's work is satisfactorily completed when all the tasks called for in the Contract have been accomplished and documented as required by City.
- (c) When City has made an incremental acceptance of a portion of the D&C Work, the Work of a Contractor covered by that acceptance is deemed to be satisfactorily

completed. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to Non-Profit Entity or Contractor in the event of a dispute involving late payment or nonpayment by Non-Profit Entity, deficient Contractor performance, or noncompliance by a Contractor.

- (d) This Section applies to both SBE and non-SBE Contractors.

## 29. TRAFFICKING IN PERSONS

### 29.1 LEGAL AUTHORITIES

Non-Profit Entity agrees to comply, and assures the compliance of each lower tier contractor and subcontractor, with federal requirements and guidance, including:

- (a) Section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended, 22 U.S.C. § 7104(g); and
- (b) The terms of this section 4(f), which have been derived from U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, per U.S. OMB's direction.

### 29.2 DEFINITIONS

Non-Profit Entity agrees that for purposes of this Section 30:

- (a) **Employee** means either an individual who is employed by Non-Profit Entity or any lower tier contractor or subcontractor, and is participating in the Project or related activities, including, but not limited to, a volunteer or an individual whose services are contributed by Non-Profit Entity or its lower tier contractor or subcontractor as an in-kind contribution toward the Project.
- (b) **Forced labor** means labor obtained by recruitment, harboring, transportation, provision, or other means of obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- (c) **Private entity** means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR § 175.25, and includes a for-profit organization, or a nonprofit organization, including any nonprofit organization of higher education, hospital, or tribal organization other than one included in the definition of Indian Tribe at 2 CFR § 175.25(b).
- (d) **Severe forms of trafficking in persons** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (e) **Commercial sex act** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.
- (f) **Coercion** has the meaning given at section 103 of the TVPA, as amended, 22 U.S.C. § 7102.

### 29.3 PROVISIONS APPLICABLE TO NON-PROFIT ENTITY

Non-Profit Entity agrees to, and assures that its Subrecipients will:

- (a) **Provide Information.** Inform City immediately of any information it receives from any source alleging a violation of the prohibitions listed in this Section 30; and
- (b) **Subagreement Provision.** Include the following provision in any lower tier contract or subcontract it enters into with a private entity as defined above in Section 30.2(c):

*[Lower tier contractor or subcontractor] agrees that it and its employees that participate in the Recipient's Award, may not:*

- *Engage in severe forms of trafficking in persons during the period of time that the Recipient's Award is in effect,*
  - *Procure a commercial sex act during the period of time that the Recipient's Award is in effect, or*
  - *Use forced labor in the performance of the Recipient's Award or subagreements thereunder.*
- (c) **Prohibitions.** It, its employees, its lower tier contractors and subcontractors, and its lower tier contractors' and subcontractors' employees that participate in the Contract or lower tier contract or subcontract, as applicable, will not:
    - (i) Engage in severe forms of trafficking in persons during the period of time that the Contract or lower tier contract or subcontract, as applicable, is in effect
    - (ii) Procure a commercial sex act during the period of time that the Contract or lower tier contract or subcontract, as applicable, is in effect; or
    - (iii) Use forced labor in the performance of the Contract or lower tier contract or subcontract, as applicable.
  - (d) **Termination.** In accordance with the FTA's right to unilaterally terminate the underlying agreement pursuant to Section 106(g) of the TVPA, as amended, 22 U.S.C. § 7104(g), and U.S. OMB regulatory guidance, "Award Term for Trafficking in Persons," 2 CFR Part 175, this Contract will be terminated if City determines that Non-Profit Entity or any lower tier contractor or subcontractor:
    - (i) Has violated a prohibition described above in Section 30.3(c); or
    - (ii) Has an employee whose conduct is determined to have violated a prohibition described above in Section 30.3(c) because that employee's conduct is either (A) associated with the performance of the Contract, or (B) imputed to the City using the standards of due process for conduct of an individual to an organization provided in (1) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR Part 1200, or (2)

U.S. OMB regulatory guidance, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR Part 180.

### 30. CARGO PREFERENCE

46 U.S.C. § 55305  
46 C.F.R. PART 381

Non-Profit Entity agrees:

- (a) To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- (b) To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to City (through Non-Profit Entity in the case of a lower tier contractor's or subcontractor's bill-of-lading.); and
- (c) To include these requirements in all lower tier contracts and subcontracts issued pursuant to this Contract when the lower tier contract or subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

### 31. VETERANS PREFERENCE

As provided in 49 U.S.C. § 5325(k), to the extent practicable, Non-Profit Entity agrees and assures that each of its lower tier contractors and subcontractors:

- (a) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under the Contract or a lower tier contract or subcontract in connection with the Project; and
- (b) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

### 32. MOTOR CARRIER SAFETY

- (a) **Financial Responsibility.** Non-Profit Entity agrees to comply, and assures that its lower tier contractors and subcontractors will comply with the economic and insurance registration requirements of the:
  - (i) U.S. Federal Motor Carrier Safety Administration (U.S. FMCSA) regulations, "Minimum Levels of Financial Responsibility for Motor

Carriers,” 49 CFR part 387, if it is engaged in operations requiring compliance with 49 CFR part 387, it is engaged in interstate commerce, and it is not within a defined commercial zone; and

- (ii) The provisions of 49 U.S.C. § 31138(e)(4), which supersede inconsistent provisions of 49 CFR part 387, and reduce the amount of insurance the Non-Profit Entity must obtain to the highest amount required by any state in which the public transportation provider operates, if it operates within a public transportation service area located in more than one state, and receives federal assistance under 49 U.S.C. §§ 5307, 5310, and 5311.

- (b) **U.S. FMCSA Requirements.** Non-Profit Entity agrees to comply, and assures that its lower tier contractors and subcontractors will comply with:

- (i) The safety requirements of U.S. FMCSA regulations, “Federal Motor Carrier Safety Regulations,” 49 CFR Parts 390 – 397, to the extent applicable; and
- (ii) The driver’s license requirements of U.S. FMCSA regulations, “Commercial Driver’s License Standards, Requirements, and Penalties,” 49 CFR Part 383, and “State Compliance with Commercial Driver’s License,” 49 CFR Part 384, to the extent applicable, with the substance abuse requirements and guidance of U.S. FMCSA’s regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382, and implementing federal guidance, to the extent applicable.

**EXHIBIT 16B****STATE REQUIREMENTS**

Non-Profit Entity shall perform its obligations under the Contract Documents in accordance with the following requirements.

**1. LABOR CODE REQUIREMENTS****1.1 Worker's Compensation**

Non-Profit Entity shall comply with the provisions of Section 3700 of the California 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 to secure the payment of compensation to his or her employees. Before commencing the Work, Non-Profit Entity and Contractors will sign and file a certification with City under Labor Code Section 1861 stating the following:

*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 any work or services under the Agreement, any contract or subcontract.*

**1.2 Prevailing Wages**

Pursuant to the provisions of Section 1773 of the State Labor Code, City has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of said Code, apprenticeship or other training programs authorized by Section 3093 of said Code, and similar purposes) applicable to the Work to be done, for straight time, overtime, Saturday, Sunday, and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of worker concerned. Said prevailing wage rates are incorporated herein by reference. These prevailing rates of wages will be furnished to Non-Profit Entity and other interested parties on request and are on file at City's offices. These wage rates are also available through the California State Department of Industrial Relations at <http://www.dir.ca.gov>. For crafts or classifications not shown on the prevailing wage determinations, Non-Profit Entity may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for the Work. Non-Profit Entity shall post a copy of the prevailing wage rates at the jobsite or material staging area. Workers employed in the Work must be paid at the rates at least equal to the prevailing wage rates as adopted. This Agreement is also subject to federal requirements for payment of prevailing wages as determined by the Secretary of Labor. Where there are differences in the rates, the higher shall apply.

**1.3 Hours of Work/Overtime Requirements**

Eight hours labor constitutes a legal day's work. Neither Non-Profit Entity nor any Contractor shall require or permit any worker to work in excess of eight hours in any one calendar day or in excess of 40 hours in any one calendar week (defined as seven sequential calendar days)

unless such worker receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any one calendar day or in excess of 40 hours in any one calendar week, whichever is greater. Failure to comply with the preceding requirements shall subject Non-Profit Entity to the penalties specified in Labor Code Section 1813.

#### 1.4 Payroll Records

- (a) Non-Profit Entity and each Contractor performing any portion of the Work under this Agreement shall keep an accurate payroll record as required by Law (California Labor Code Section 1776), including showing the name, address, social security number, work classification, straight time and overtime hours for each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, professional, salaried, or other employee employed by him or her in connection with the Work.
- (b) The payroll records of Non-Profit Entity and each Contractor (including payroll records for professional or salaried employees) shall be certified and shall be available for inspection at the principal office of Non-Profit Entity.
- (c) Non-Profit Entity shall file a certified copy of the payroll records (including those applicable to professional and salaried employees) with City within 10 days after receipt of a written request from City.
- (d) Non-Profit Entity shall inform City of the location of said payroll records, including the street address, city and county, and shall, within five days, provide a Notice of change of location and address of said payroll records.
- (e) It shall be the responsibility of Non-Profit Entity to ensure compliance for itself and the Contractors with the provisions of this section.
- (f) In the event of noncompliance with the requirements of this section, Non-Profit Entity shall have 10 days in which to comply subsequent to receipt of written Notice specifying in what respect it must comply. Should noncompliance exist after the said 10-day period, Non-Profit Entity shall be subject to a fee of \$50.00 for each day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Non-Profit Entity acknowledges that, without limitation as to other remedies of enforcement available to City, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from payments due Non-Profit Entity.
- (g) Certified payroll records shall be submitted to City by Non-Profit Entity and all Contractors performing work on the Project regardless of dollar amount or type of contract.
- (h) The period covered shall be from the time Work starts until all Work is completed on the Project. Failure to submit said certified payrolls on time may result in the withholding of payments to Non-Profit Entity and the assessment of penalties as set forth in the California Labor Code.

## 1.5 Specific Labor Code Provisions

Non-Profit Entity's attention is directed to the following requirements of the Labor Code. Non-Profit Entity shall cause Contractors to insert in any Contracts a copy of each such Code section and shall also cause Subcontractors to include these clauses in any lower tier Subcontracts. Non-Profit Entity shall be responsible for the compliance by any Contractor or Subcontractor with the clauses set forth in this Section 1.5 (Specific Labor Code Provisions), as may be amended and updated from time to time.

### Labor Code Section 1725.5

1725.5. A contractor shall be registered pursuant to this section to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract that is subject to the requirements of this chapter. For the purposes of this section, "contractor" includes a subcontractor as defined by Section 1722.1.

(a) To qualify for registration under this section, a contractor shall do all of the following:

(1) (A) Register with the Department of Industrial Relations in the manner prescribed by the department and pay an initial nonrefundable application fee of four hundred dollars (\$400) to qualify for registration under this section and an annual renewal fee on or before July 1 of each year thereafter. The annual renewal fee shall be in a uniform amount set by the Director of Industrial Relations, and the initial registration and renewal fees may be adjusted no more than annually by the director to support the costs specified in Section 1771.3.

(B) Beginning June 1, 2019, a contractor may register or renew according to this subdivision in annual increments up to three years from the date of registration. Contractors who wish to do so will be required to prepay the applicable nonrefundable application or renewal fees to qualify for the number of years for which they wish to preregister.

(2) Provide evidence, disclosures, or releases as are necessary to establish all of the following:

(A) Workers' compensation coverage that meets the requirements of Division 4 (commencing with Section 3200) and includes sufficient coverage for any worker whom the contractor employs to perform work that is subject to prevailing wage requirements other than a contractor who is separately registered under this section. Coverage may be evidenced by a current and valid certificate of workers' compensation insurance or certification of self-insurance required under Section 7125 of the Business and Professions Code.

(B) If applicable, the contractor is licensed in accordance with Chapter 9 (commencing with Section 7000) of the Business and Professions Code.

(C) The contractor does not have any delinquent liability to an employee or the state for any assessment of back wages or related damages, interest, fines, or penalties pursuant to any final judgment, order, or determination by a court or any federal, state, or local

administrative agency, including a confirmed arbitration award. However, for purposes of this paragraph, the contractor shall not be disqualified for any judgment, order, or determination that is under appeal, provided that the contractor has secured the payment of any amount eventually found due through a bond or other appropriate means.

(D) The contractor is not currently debarred under Section 1777.1 or under any other federal or state law providing for the debarment of contractors from public works.

(E) The contractor has not bid on a public works contract, been listed in a bid proposal, or engaged in the performance of a contract for public works without being lawfully registered in accordance with this section, within the preceding 12 months or since the effective date of the requirements set forth in subdivision (e), whichever is earlier. If a contractor is found to be in violation of the requirements of this paragraph, the period of disqualification shall be waived if both of the following are true:

(i) The contractor has not previously been found to be in violation of the requirements of this paragraph within the preceding 12 months.

(ii) The contractor pays an additional nonrefundable penalty registration fee of two thousand dollars (\$2,000).

(b) Fees received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(c) A contractor who fails to pay the renewal fee required under paragraph (1) of subdivision (a) on or before the expiration of any prior period of registration shall be prohibited from bidding on or engaging in the performance of any contract for public work until once again registered pursuant to this section. If the failure to pay the renewal fee was inadvertent, the contractor may renew its registration retroactively by paying an additional nonrefundable penalty renewal fee equal to the amount of the renewal fee within 90 days of the due date of the renewal fee.

(d) If, after a body awarding a contract accepts the contractor's bid or awards the contract, the work covered by the bid or contract is determined to be a public work to which Section 1771 applies, either as the result of a determination by the director pursuant to Section 1773.5 or a court decision, the requirements of this section shall not apply, subject to the following requirements:

(1) The body that awarded the contract failed, in the bid specification or in the contract documents, to identify as a public work that portion of the work that the determination or decision subsequently classifies as a public work.

(2) Within 20 days following service of notice on the awarding body of a determination by the Director of Industrial Relations pursuant to Section 1773.5 or a decision by a court that the contract was for public work as defined in this chapter, the contractor and any subcontractors are registered under this section or are replaced by a contractor or subcontractors who are registered under this section.

(3) The requirements of this section shall apply prospectively only to any subsequent bid, bid proposal, contract, or work performed after the awarding body is served with of the determination or decision referred to in paragraph (2).

(e) The requirements of this section shall apply to any bid proposal submitted on or after March 1, 2015, to any contract for public work, as defined in this chapter, executed on or after April 1, 2015, and to any work performed under a contract for public work on or after January 1, 2018, regardless of when the contract for public work was executed.

(f) This section does not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

### **Labor Code Section 1735**

1735. A contractor shall not discriminate in the employment of persons upon public works on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code. Every contractor for public works who violates this section is subject to all the penalties imposed for a violation of this chapter.

### **Labor Code Section 1771**

1771. Except for public works projects of one thousand dollars (\$1,000) or less, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in this chapter, shall be paid to all workers employed on public works.

This section is applicable only to work performed under contract, and is not applicable to work carried out by a public agency with its own forces. This section is applicable to contracts let for maintenance work.

### **Labor Code Section 1771.1**

1771.1 (a) A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

(b) Notice of the requirement described in subdivision (a) shall be included in all bid invitations and public works contracts, and a bid shall not be accepted nor any contract or subcontract entered into without proof of the contractor or subcontractor's current registration to perform public work pursuant to Section 1725.5.

(c) An inadvertent error in listing a subcontractor who is not registered pursuant to Section 1725.5 in a bid proposal shall not be grounds for filing a bid protest or grounds for considering the bid nonresponsive, provided that any of the following apply:

(1) The subcontractor is registered prior to the bid opening.

(2) Within 24 hours after the bid opening, the subcontractor is registered and has paid the penalty registration fee specified in subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(3) The subcontractor is replaced by another registered subcontractor pursuant to Section 4107 of the Public Contract Code.

(d) Failure by a subcontractor to be registered to perform public work as required by subdivision (a) shall be grounds under Section 4107 of the Public Contract Code for the contractor, with the consent of the awarding authority, to substitute a subcontractor who is registered to perform public work pursuant to Section 1725.5 in place of the unregistered subcontractor.

(e) The department shall maintain on its Internet Web site a list of contractors who are currently registered to perform public work pursuant to Section 1725.5.

(f) A contract entered into with any contractor or subcontractor in violation of subdivision (a) shall be subject to cancellation, provided that a contract for public work shall not be unlawful, void, or voidable solely due to the failure of the awarding body, contractor, or any subcontractor to comply with the requirements of Section 1725.5 or this section.

(g) If the Labor Commissioner or his or her designee determines that a contractor or subcontractor engaged in the performance of any public work contract without having been registered in accordance with this section, the contractor or subcontractor shall forfeit, as a civil penalty to the state, one hundred dollars (\$100) for each day of work performed in violation of the registration requirement, not to exceed an aggregate penalty of eight thousand dollars (\$8,000) in addition to any penalty registration fee assessed pursuant to clause (ii) of subparagraph (E) of paragraph (2) of subdivision (a) of Section 1725.5.

(h) (1) In addition to, or in lieu of, any other penalty or sanction authorized pursuant to this chapter, a higher tiered public works contractor or subcontractor who is found to have entered into a subcontract with an unregistered lower tier subcontractor to perform any public work in violation of the requirements of Section 1725.5 or this section shall be subject to forfeiture, as a civil penalty to the state, of one hundred dollars (\$100) for each day the unregistered lower tier subcontractor performs work in violation of the registration requirement, not to exceed an aggregate penalty of ten thousand dollars (\$10,000).

(2) The Labor Commissioner shall use the same standards specified in subparagraph (A) of paragraph (2) of subdivision (a) of Section 1775 when determining the severity of the violation and what penalty to assess, and may waive the penalty for a first time violation that was unintentional and did not hinder the Labor Commissioner's ability to monitor and enforce compliance with the requirements of this chapter.

(3) A higher tiered public works contractor or subcontractor shall not be liable for penalties assessed pursuant to paragraph (1) if the lower tier subcontractor's performance is in violation of the requirements of Section 1725.5 due to the revocation of a previously approved registration.

(4) A subcontractor shall not be liable for any penalties assessed against a higher tiered public works contractor or subcontractor pursuant to paragraph (1). A higher tiered public works contractor or subcontractor may not require a lower tiered subcontractor to indemnify or otherwise be liable for any penalties pursuant to paragraph (1).

(i) The Labor Commissioner or his or her designee shall issue a civil wage and penalty assessment, in accordance with the provisions of Section 1741, upon determination of penalties pursuant to subdivision (g) and subparagraph (B) of paragraph (1) of subdivision (h). Review of a civil wage and penalty assessment issued under this subdivision may be requested in accordance with the provisions of Section 1742. The regulations of the Director of Industrial Relations, which govern proceedings for review of civil wage and penalty assessments and the withholding of contract payments under Article 1 (commencing with Section 1720) and Article 2 (commencing with Section 1770), shall apply.

(j) (1) Where a contractor or subcontractor engages in the performance of any public work contract without having been registered in violation of the requirements of Section 1725.5 or this section, the Labor Commissioner shall issue and serve a stop order prohibiting the use of the unregistered contractor or the unregistered subcontractor on all public works until the unregistered contractor or unregistered subcontractor is registered. The stop order shall not apply to work by registered contractors or subcontractors on the public work.

(2) A stop order may be personally served upon the contractor or subcontractor by either of the following methods:

(A) Manual delivery of the order to the contractor or subcontractor personally.

(B) Leaving signed copies of the order with the person who is apparently in charge at the site of the public work and by thereafter mailing copies of the order by first class mail, postage prepaid to the contractor or subcontractor at one of the following:

(i) The address of the contractor or subcontractor on file with either the Secretary of State or the Contractors' State License Board.

(ii) If the contractor or subcontractor has no address on file with the Secretary of State or the Contractors' State License Board, the address of the site of the public work.

(3) The stop order shall be effective immediately upon service and shall be subject to appeal by the party contracting with the unregistered contractor or subcontractor, by the unregistered contractor or subcontractor, or both. The appeal, hearing, and any further review of the hearing decision shall be governed by the procedures, time limits, and other requirements specified in subdivision (a) of Section 238.1.

(4) Any employee of an unregistered contractor or subcontractor who is affected by a work stoppage ordered by the commissioner pursuant to this subdivision shall be paid at his or her regular hourly prevailing wage rate by that employer for any hours the employee would have worked but for the work stoppage, not to exceed 10 days.

(k) Failure of a contractor or subcontractor, owner, director, officer, or managing agent of the contractor or subcontractor to observe a stop order issued and served upon him or her pursuant to subdivision (j) is guilty of a misdemeanor punishable by imprisonment in county jail not exceeding 60 days or by a fine not exceeding ten thousand dollars (\$10,000), or both.

(l) This section shall apply to any bid proposal submitted on or after March 1, 2015, and any contract for public work entered into on or after April 1, 2015. This section shall also apply to the performance of any public work, as defined in this chapter, on or after January 1, 2018, regardless of when the contract for public work was entered.

(m) Penalties received pursuant to this section shall be deposited in the State Public Works Enforcement Fund established by Section 1771.3 and shall be used only for the purposes specified in that section.

(n) This section shall not apply to work performed on a public works project of twenty-five thousand dollars (\$25,000) or less when the project is for construction, alteration, demolition, installation, or repair work or to work performed on a public works project of fifteen thousand dollars (\$15,000) or less when the project is for maintenance work.

#### **Labor Code Section 1771.4**

1771.4 (a) All of the following are applicable to all public works projects that are otherwise subject to the requirements of this chapter:

(1) The call for bids and contract documents shall specify that the project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(2) The awarding body shall post or require the prime contractor to post job site notices, as prescribed by regulation.

(3) Each contractor and subcontractor shall furnish the records specified in Section 1776 directly to the Labor Commissioner, in the following manner:

(A) At least monthly or more frequently if specified in the contract with the awarding body.

(B) In a format prescribed by the Labor Commissioner.

(4) If the contractor or subcontractor is not registered pursuant to Section 1725.5 and is performing work on a project for which registration is not required because of subdivision (f) of Section 1725.5, the unregistered contractor or subcontractor is not required to furnish the records specified in Section 1776 directly to the Labor Commissioner but shall retain the records specified in Section 1776 for at least three years after completion of the work.

(5) The department shall undertake those activities it deems necessary to monitor and enforce compliance with prevailing wage requirements.

(b) The Labor Commissioner may exempt a public works project from compliance with all or part of the requirements of subdivision (a) if either of the following occurs:

(1) The awarding body has enforced an approved labor compliance program, as defined in Section 1771.5, on all public works projects under its authority, except those deemed exempt pursuant to subdivision (a) of Section 1771.5, continuously since December 31, 2011.

(2) The awarding body has entered into a collective bargaining agreement that binds all contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

(c) The requirements of paragraph (1) of subdivision (a) shall only apply to contracts for public works projects awarded on or after January 1, 2015.

(d) The requirements of paragraph (3) of subdivision (a) shall apply to all contracts for public work, whether new or ongoing, on or after January 1, 2016.

#### **Labor Code Section 1775**

1775. (a) (1) The contractor and any subcontractor under the contractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit not more than two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rates as determined by the director for the work or craft in which the worker is employed for any public work done under the contract by the contractor or, except as provided in subdivision (b), by any subcontractor under the contractor.

(2) (A) The amount of the penalty shall be determined by the Labor Commissioner based on consideration of both of the following:

(i) Whether the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations.

(B) (i) The penalty may not be less than forty dollars (\$40) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, unless the failure of the contractor or subcontractor to pay the correct rate of per diem wages was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the contractor or subcontractor.

(ii) The penalty may not be less than eighty dollars (\$80) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the contractor or subcontractor has been assessed penalties within the previous three years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.

(iii) The penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, for each worker paid less than the prevailing wage rate, if the Labor Commissioner determines that the violation was willful, as defined in subdivision (c) of Section 1777.1.

(C) If the amount due under this section is collected from the contractor or subcontractor, any outstanding wage claim under Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 against that contractor or subcontractor shall be satisfied before applying that amount to the penalty imposed on that contractor or subcontractor pursuant to this section.

(D) The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion.

(E) The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing rate of per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action

to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.

(4) Prior to making final payment to the subcontractor for work performed on the public works project, the contractor shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to his or her employees on the public works project and any amounts due pursuant to Section 1813.

(c) The Division of Labor Standards Enforcement shall notify the contractor on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages.

### **Labor Code Section 1777.5**

1777.5. (a) This chapter does not prevent the employment of properly registered apprentices upon public works.

(b) (1) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(2) Unless otherwise provided by a collective bargaining agreement, when a contractor requests the dispatch of an apprentice pursuant to this section to perform work on a public works project and requires the apprentice to fill out an application or undergo testing, training, an examination, or other preemployment process as a condition of employment, the apprentice shall be paid for the time spent on the required preemployment activity, including travel time to and from the required activity, if any, at the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered. Unless otherwise provided by a collective bargaining agreement, a contractor is not required to compensate an apprentice for the time spent on preemployment activities if the apprentice is required to take a preemployment drug or alcohol test and he or she fails to pass that test.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) If the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the

contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. "Apprenticeable craft or trade," as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, "contractor" includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Before commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body, if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program supplying apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates if the contractor agrees to be bound by those standards. However, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. When an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Administrator of Apprenticeship, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section who has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or who has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Administrator of Apprenticeship may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(l) If an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors shall not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2002-03 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Department of Industrial Relations

for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and county for which the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices from that county registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Department of Industrial Relations for the administration and enforcement of apprenticeship standards and requirements under this code.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which is hereby created in the State Treasury. Upon appropriation by the Legislature, all moneys in the Apprenticeship Training Contribution Fund shall be used for the purpose of carrying out this subdivision and to pay the expenses of the Department of Industrial Relations.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars (\$30,000).

(p) An awarding body that implements an approved labor compliance program in accordance with subdivision (b) of Section 1771.5 may, with the approval of the director, assist in the enforcement of this section under the terms and conditions prescribed by the director.

**Labor Code Section 1813**

1813. The contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract 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 this article. In awarding any contract for public work, the awarding body shall cause to be inserted in the contract a stipulation to this effect. The awarding body shall take cognizance of all violations of this article committed in the course of the execution of the contract, and shall report them to the Division of Labor Standards Enforcement.

**Labor Code Section 1815**

1815. Notwithstanding the provisions of Sections 1810 to 1814, inclusive, of this code, and notwithstanding any stipulation inserted in any contract pursuant to the requirements of said sections, work performed by employees of contractors in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon public work 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.

**1.6 Excavation Safety**

Non-Profit Entity shall comply with Labor Code Section 6705 while excavating. For an excavation five feet or more in depth, submit shop drawings for a protective system.

The drawings must show the design and details for providing worker protection from caving ground during excavation.

Shop drawings of protective systems for which the Construction Safety Orders issued by Cal/OSHA require design by a registered professional engineer must be sealed and signed by an engineer who is registered as a civil engineer in the State.

**2. PUBLIC CONTRACT CODE REQUIREMENTS****2.1 Ineligible Contractors**

Non-Profit Entity shall not enter into or permit entering into any Contract with a Contractor who is ineligible to perform work on the Project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

**2.2 Assignment of Causes of Action**

Non-Profit Entity's attention is directed to the following requirements in Public Contract Code Section 7103.5:

(b) In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the 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. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

## 2.3 [RESERVED]

## 2.4 Specifications by Brand or Trade Names

Non-Profit Entity's attention is directed to the following requirements in Public Contract Code Section 3400:

(b) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(c) Subdivision (b) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product's suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4)(A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.

(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

## 3. GOVERNMENT CODE REQUIREMENTS

### 3.1 Removal, Relocation or Protection of Existing Utilities

Non-Profit Entity acknowledges and agrees that the provisions of Article 14 (Compensation and Other Relief for Delay Events) of this Agreement satisfy City's obligations pursuant to Government Code Section 4215. Non-Profit Entity agrees that to the extent that Government

Code Section 4215 may be construed to the contrary, Non-Profit Entity hereby waives the benefit of such statute.

### **3.2 Nondiscrimination and Compliance Employment Programs**

Non-Profit Entity shall comply with, and shall require Contractors to comply with, the provisions of:

- (b) the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285 et seq.); and
- (c) the Fair Employment and Housing Commission regulations implementing Government Code section 12990 (a-f) set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations,

which are incorporated into, and made a part of this Agreement as if set forth in full. Non-Profit Entity shall require each Contractor to include the compliance requirements under this Section 3.2 (Nondiscrimination and Compliance Employment Programs) in its Contract, and give written Notice of such Contractor's obligations under this Section 3.2 (Nondiscrimination and Compliance Employment Programs) to labor organizations with which it has a collective bargaining or other agreement, as appropriate.

## **4. BUSINESS AND PROFESSIONS CODE**

Non-Profit Entity's attention is directed to the following requirements in Business and Professions Code Sections 7030(a) and 7108.5(a) through (d):

**7030.** (a) Except for contractors writing home improvement contracts pursuant to Section 7151.2 and contractors writing service and repair contracts pursuant to Section 7159.10, every person licensed pursuant to this chapter shall include the following statement in at least 10-point type on all written contracts with respect to which the person is a prime contractor:

"Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, CA 95826."

**7108.5** (a) A prime contractor or subcontractor shall pay to any subcontractor, not later than seven days after receipt of each progress payment, unless otherwise agreed to in writing, the respective amounts allowed the contractor on account of the work performed by the subcontractors, to the extent of each subcontractor's interest therein. In the event that there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

(b) Any violation of this section shall constitute a cause for disciplinary action and shall subject the licensee to a penalty, payable to the subcontractor, of 2 percent of the amount due per month for every month that payment is not made.

(c) In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to his or her attorney's fees and costs.

(d) The sanctions authorized under this section shall be separate from, and in addition to, all other remedies, either civil, administrative, or criminal.

**EXHIBIT 16C****CITY REQUIREMENTS**

Non-Profit Entity has reviewed, understands, and is ready, willing, and able to comply with the terms and conditions of this Exhibit 16C (City Requirements), which summarizes certain City requirements as of the Effective Date, each of which is fully incorporated by reference. Non-Profit Entity acknowledges that City requirements in effect when any Contract Documents are executed will be incorporated into the Contract Documents, as applicable, and will apply to all Contractors, Subcontractors, and any other NPE- Related Entities, as applicable. City requirements of general applicability will apply to the Project even if not summarized below.

The following summary is for Non-Profit Entity's convenience only; Non-Profit Entity is obligated to become familiar with all applicable requirements and to comply with them fully as they are amended from time to time. City ordinances are currently available on the web at [www.sfgov.org](http://www.sfgov.org) and at [www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca). References to specific laws in this Exhibit 16C (City Requirements) refer to the San Francisco Municipal Code unless specified otherwise. Capitalized terms used in this Exhibit 16C (City Requirements) and not defined in this Agreement will have the meanings assigned to them in the applicable Section of the San Francisco Municipal Code.

**1. Nondiscrimination in City Contracts and Benefits Ordinance.**

**(a) Non-Discrimination in Contracts.** Non-Profit Entity shall comply with the provisions of Chapters 12B and 12C of the Administrative Code, which are incorporated into this Agreement by this reference. Non-Profit Entity shall incorporate by reference in all Contractor Documents the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the Administrative Code and shall require all PPC-Related Entities to comply with such provisions. Non-Profit Entity is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**(b) Non-Discrimination in the Provision of Employee Benefits.** Non-Profit Entity does not as of Effective Date, and will not during the Term, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**2. Local Hire.**

**(a) Summary.** This Section 1.2 incorporates applicable requirements of the San Francisco Local Hiring Policy for Construction ("Policy") as set forth in Section 6.22(g) and Chapter 82 of the San Francisco Administrative Code. Non-Profit Entity agrees that (i) Non-Profit Entity shall comply with all applicable requirements of the Policy; (ii) the provisions of the Policy are reasonable and achievable by Non-Profit Entity and NPE-Related Entities; and (iii) they have had a full and fair opportunity to review and understand the terms of the Policy. Non-Profit Entity shall incorporate the requirements of the Policy in all Bid Packages<sup>1</sup> procured by Non-Profit Entity in accordance with the Contract Documents.

The Office of Economic and Workforce Development (OEWD) is responsible for administering the Policy. For more information on the Policy and its implementation, please visit the OEWD website at: [www.oewd.org](http://www.oewd.org).

Meeting the local hiring requirements of the Policy as set forth in this document will satisfy Non-Profit Entity's obligations under the City's First Source Hiring Program (San Francisco Administrative Code Chapter 83).

**(b)** Definitions. For the purposes of this Section only, the following definitions shall apply:

(i) "Apprentice" means any worker who is indentured in a construction apprenticeship program that maintains current registration with the State of California's Division of Apprenticeship Standards.

(ii) "Area Median Income (AMI)" means unadjusted median income levels derived from the Department of Housing and Urban Development ("HUD") on an annual basis for the San Francisco area, adjusted solely for household size, but not high housing cost area.

(iii) "Covered Project" means a public work or improvement or part thereof with estimated cost in excess of the Threshold Amount as set forth in Section 6.1 of the San Francisco Administrative Code.

(iv) "Non-covered Project" means any construction projects not covered by the San Francisco Local Hiring Policy.

(v) "Disadvantaged Worker" means a local resident, who (i) resides in a census tract within the City with a rate of unemployment in excess of 150% of the City unemployment rate; or (ii) at the time of commencing work on a covered project has a household income of less than 80% of the AMI, or (iii) faces or has multiple barriers to employment as set forth in Section 82.3 of the Administrative Code.

(vi) "Local Resident" means an individual who is domiciled, as defined by Section 349(b) of the California Election Code, within the City at least seven (7) days prior to commencing work on the project. For projects outside the jurisdictional boundaries of the City, "local resident" also applies to residents within the San Francisco Public Utilities Commission service territory, except where a reciprocity agreement exists with another local agency, in which case the reciprocity agreement controls.

(vii) "Project Work Hours" means the total work hours worked on a construction contract by all apprentices and journey-level workers, whether those workers are employed by the Contractor or any Subcontractor.

(viii) "Job Notification" means the written notice of any Hiring Opportunities from Contractor to CityBuild. Contractor shall provide Job Notifications to CityBuild with a minimum of three (3) business days' notice.

(ix) “Targeted Worker” means any Local Resident or Disadvantaged Worker

**(c) Local Hiring Requirements.**

(i) Total Project Work Hours by Trade: For all Covered Projects, the mandatory participation level in terms of Project Work Hours within each trade to be performed by Local Residents is 30%, with a goal of no less than 15% of Project Work Hours within each trade to be performed by Disadvantaged Workers.

(ii) Apprentices: For all Covered Projects, at least 50% of the Project Work Hours performed by apprentices within each trade shall be performed by Local Residents, with a goal of no less than 25% of Project Work Hours performed by apprentices within each trade to be performed by Disadvantaged Workers.

(iii) Out-of-State Workers: For all Covered Projects, Project Work Hours performed by residents of states other than California will not be considered in calculation of the number of Project Work Hours to which the local hiring requirements apply. Contractors and Subcontractors shall report to San Francisco Public Works and OEWD the number of Project Work Hours performed by residents of states other than California.

(iv) Pre-construction or other Local Hire Meeting: Prior to commencement of construction on Covered Projects, Contractor and its Subcontractors identified in the Local Hiring Forms as contributing toward the mandatory local hiring requirement shall attend a preconstruction or other Local Hire meeting(s) convened by awarding department or OEWD staff. Representatives from Contractor and the Subcontractor(s) who attend the pre-construction or other Local Hire meeting must have hiring authority.

(v) The Policy does not limit Contractor's or its Subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of the Policy shall be interpreted so as to require a Contractor or Subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

**(d) Citybuild Workforce Development Program; Employment Networking Services.** OEWD administers the CityBuild Program. CityBuild is a resource for Contractor and Subcontractors to use in meeting local hiring requirements under the Policy. CityBuild has two main goals:

(i) Assist with local hiring requirements under the Policy by connecting Contractor and Subcontractors with qualified journey-level, apprentice, and pre-apprentice local residents.

(ii) Promote training and employment opportunities for disadvantaged workers of all ethnic backgrounds and genders in the construction work force

Where Contractor's or its Subcontractors' preferred or preexisting hiring or staffing procedures for a Covered Project do not enable Contractor to satisfy the local hiring requirements of the Policy, the Contractor or Subcontractor shall use other procedures to identify and retain Targeted Workers, including the following:

- (i) Requesting to connect with workers through CityBuild, with qualifications described in the request limited to skills directly related to performance of job duties.
- (ii) Considering Targeted Workers networked through CityBuild within three business days of the request and who meet the qualifications described in the request. Such consideration may include in-person interviews. All workers networked through CityBuild will qualify as Disadvantaged Workers under the Policy. Neither Contractor nor its Subcontractors are required to make an independent determination of whether any worker is "disadvantaged" as defined in the Policy.

(e) Conditional Waiver from Local Hiring Requirements. Contractor or the Subcontractor may use one or more of the following pipeline and retention compliance mechanisms to receive a conditional waiver from the local hiring requirements on a project-specific basis. All requests for conditional waivers must be submitted to OEWD for approval.

(i) Specialized Trades: OEWD has published a list of trades designated as "Specialized Trades" for which the local hiring requirements of the Policy will not apply. The list is available on the OEWD website. Contractor and its Subcontractors shall report to OEWD the project work hours utilized in each designated Specialized Trade and in each OEWD-approved project-specific Specialized Trade

(ii) Credit for Hiring on Non-Covered Projects: Contractor and its Subcontractors may accumulate credit hours for hiring Targeted Workers on Non-Covered Projects in the nine-county San Francisco Bay Area and apply those credit hours to contracts for Covered Projects to meet the mandatory local hiring requirement. For hours performed by Targeted Workers on Non-Covered Projects, the hours shall be credited toward the local hiring requirement for this Contract provided that:

A. the Targeted Workers are paid the prevailing wages for work on the Non-Covered Projects; and

B. for Non-Covered Projects located in the City, the number of hours to be credited for the Non-Covered Project exceed one-half of the number of hours that would be required if the project were a Covered Project.

(iii) Sponsoring Apprentices: Contractor or a Subcontractor may agree to sponsor an OEWD-specified number of new apprentices in trades in which noncompliance is likely and retaining those apprentices for the period of Contractor's or a Subcontractor's work on the project. OEWD will verify with the California Department of Industrial Relations that the new apprentices are registered and active apprentices.

(iv) **Direct Entry Agreements:** OEWD is authorized to negotiate and enter into direct entry agreements with apprenticeship programs that are registered with the California Department of Industrial Relations' Division of Apprenticeship Standards. Contractor may avoid assessment of penalties for non-compliance with the Policy by Contractor or Subcontractor hiring and retaining apprentices who are enrolled through such direct entry agreements. Such exception from assessments of penalties is subject to review and approval by OEWD.

**(f) Local Hiring Forms.** Utilizing the City's online Project Reporting System ("PRS"), Contractors shall submit the following forms, as applicable, to the San Francisco Public Works and OEWD within ten (10) calendar days of notice of Award:

(i) **Form 1: Local Hiring Workforce Projection.** The City will not issue Notice to Proceed (NTP) until Contractor completes and submits a Local Hiring Workforce Projection.

(ii) **Form 2: Local Hiring Plan.** For Covered Projects estimated to cost more than \$1,000,000, Contractor shall prepare and submit to Contracting City Agency and OEWD for approval a Local Hiring Plan for the project using OEWD Form 2. The OEWD approved Local Hiring Plan will be incorporated into this Contract as a Contract Document, and will serve as the basis for determining Contractor's and its Subcontractors' compliance with local hiring requirements.

A. The City will not issue NTP until Contractor submits the Local Hiring Plan. Contractor shall be fully responsible for any delays to NTP and associated damages incurred by the City caused by Contractor's failure to timely submit a Local Hiring Plan.

B. The Local Hiring Plan must be reviewed and approved in writing by OEWD before any Application for Payment can be approved and progress payment paid to Contractor.

C. Upon commencement of work, Contractor and its Subcontractors may submit Job Notifications to CityBuild to connect with local trades workers.

(iii) **Form 4: Conditional Waivers.** To be completed by Contractor in the event that Contractor or a Subcontractor believes the local hiring requirements cannot be met. Refer to Articles 1.4 and 1.5 for more information regarding conditional waivers

**(g) Enforcement, Record Keeping, Noncompliance and Penalties.**

(i) **Subcontractor Compliance:** Contractor shall ensure that Subcontractors of all tiers comply with applicable requirements of the Policy. Refer to Administrative Code Section 82.7(d).

(ii) **Reporting:** Contractor shall submit certified payrolls to the City electronically using the Project Reporting System. OEWD and San

Francisco Public Works will monitor compliance with the Policy electronically.

(iii) Recordkeeping: Contractor and each Subcontractor shall keep, or cause to be kept, for a period of four years from the date of Substantial Completion of project work, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Project.

A. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident, and the referral source or method through which the contractor or subcontractor hired or retained that worker for work on the covered project (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method).

B. Contractor and Subcontractors may verify that a worker is a Local Resident by following OEWD's domicile policy.

C. All records described in this subsection shall at all times be open to inspection and examination by the duly authorized officers and agents of the City, including representatives of the awarding department and the OEWD.

(iv) Monitoring: From time to time and in its sole discretion, OEWD and/or the awarding department may monitor and investigate compliance of Contractor and Subcontractors working on the Project with requirements of this Policy. Contractor shall allow representatives of OEWD and the awarding department, in the performance of their duties, to engage in random inspections of the Site. Contractor and all Subcontractors shall also allow representatives of OEWD and the awarding department to have access to employees of Contractor and Subcontractors and the records required to be maintained under the Policy.

(v) Noncompliance and Penalties: Failure of Contractor and/or its Subcontractors to comply with the requirements of the Policy and the obligations set forth in the Local Hiring Plan may subject Contractor to the consequences of noncompliance specified in Section 82.8(f) of the Administrative Code, including but not limited to the penalties prescribed in Section 82.8(f)(2). The assessment of penalties for noncompliance shall not preclude the City from exercising any other rights or remedies to which it is entitled. Refer to Administrative Code Section 82.8(f)(4) for a description of the recourse procedure applicable to penalty assessments under the Policy.

**3. First Source Hiring Program for Design-Build Services.**

(a) Summary. This Section incorporates the requirements of the First Source Hiring Program pursuant to San Francisco Administrative Code, Chapter 83. Non-Profit Entity agrees to participate and comply with the provisions of the First Source Hiring Program for all D&C Work. Non-Profit Entity shall incorporate provisions of the First Source Hiring Program into any Joint Venture Partnership and shall require NPE-Related Entities to do the same.

The Office of Economic and Workforce Development (“OEWD”) is Non-Profit Entity’s main contact for the First Source hiring Program.

(b) Definitions. For the purposes of this Section only, the following definitions shall apply:

(i) Entry Level Position: Any non-managerial position that requires either: (i) no education above a high school diploma or certified equivalency; or (ii) less than two years training or specific preparation; and (iii) shall include temporary positions and paid internships.

(ii) Referral: An economically disadvantaged worker, identified by the First Source Hiring Program, that has either: (i) graduated from OEWD’s Entry Level Professional Services Training Program; or (ii) has the appropriate training, employment background, and skill set for any new and available Entry Level Position specified by Contractor

(c) First Source Hiring Goals. Over the life of the Contract:

(i) Contractor shall make good faith efforts to hire a minimum number of Referrals from the First Source Hiring Program to fulfill all new and available Entry Level Positions. Contractor may decline to hire a Referral if Contractor considers the Referral in good faith and deems the Referral is not qualified. The final decision to hire a Referral shall be made by Contractor. The number of Referrals to be hired is based on the Design Fee Schedule below:

Design-Build Services Fee Schedule	Number of Referrals to be Hired (over the life of the Contract)
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3

\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(≥ \$14 million, for each additional \$3 million in Design-Build Services Fees, add one additional Referral)	

(ii) Contractor shall hire a Referral on a full-time basis for at least 12 months or on part-time basis for 24 months.

(iii) Referrals must be obtained through the First Source Hiring Program and Contractor must consider all Referrals fairly and equally and comply with the non-discrimination provisions pursuant to local, state, and federal laws.

(d) Document Requirements. Contractor shall complete, sign, and submit a First Source Hiring Agreement within 30 days of notice of award of the Contract.

(e) Procedures.

(i) Within 30 days of Contract award, Contractor shall email the First Source Hiring Program and schedule to meet with staff from the First Source Hiring Program. At the meeting, Contractor will provide information on new and available Entry Level Positions, number of Referrals to be hired, job description, start date, and rate of pay. If Contractor cannot quantify the numbers of Referrals to be hired, Contractor must still meet with the First Source Hiring Program and present a workforce plan of good faith efforts towards the First Source Hiring goals.

(ii) Contractor is required to notify the First Source Hiring Program of all new and available Entry Level Positions.

(iii) Contractor shall designate a representative to monitor all employment related activity and be the main contact for the First Source Hiring Program.

(iv) Contractor shall maintain documentation and records supporting good faith efforts toward the First Source Hiring Program.

(f) Retention for Hired Referrals. Contractor must provide constructive feedback for all Referrals hired through the First Source Hiring Program. Contractor also agrees to provide an update on the Referral’s employment status within 30, 60, and 90 days of the

Referral's start date. Contractor will provide timely notification to the First Source Hiring Program on the termination of any hired Referral.

(g) **Noncompliance.** Failure to meet the criteria of the First Source Hiring Program does not impute bad faith but rather will trigger a review for compliance. If the City deems Contractor is noncompliant and acted in bad faith towards the First Source Hiring Program, then the City may withhold progress payments and assess liquidated damages as defined in San Francisco Administrative Code Chapter 83. **Requiring Health Benefits for Covered Employees.** All undefined, initially-capitalized terms used in this Section 1.2 (Requiring Health Benefits for Covered Employees) shall have the meanings given to them in Administrative Code Chapter 12Q (the "HCAO"). If the HCAO applies to this Agreement, Non-Profit Entity shall comply with the requirements of the HCAO. For each Covered Employee, Non-Profit Entity shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Non-Profit Entity chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the HCAO, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Non-Profit Entity is subject to the enforcement and penalty provisions in the HCAO. Any Contract entered into by Non-Profit Entity shall require any PPC-Related Entity with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section 1.2 (Requiring Health Benefits for Covered Employees).

**4. Minimum Compensation Ordinance.** If San Francisco Administrative Code Chapter 12P applies to this Agreement, Non-Profit Entity shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P ("**Chapter 12P**"), including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Non-Profit Entity is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Non-Profit Entity is required to comply with all of the applicable provisions of Chapter 12P, irrespective of the listing of obligations in this Section 1.3 (Minimum Compensation Ordinance). By signing and executing this Agreement, Non-Profit Entity certifies that it complies with Chapter 12P.

**5. Prevailing Rate of Wages and Working Conditions.**

(a) **Covered Services.** Non-Profit Entity agrees it will pay, and require the PPC-Related Entities to pay, the Prevailing Rate of Wages for any Work performed by Non-Profit Entity or the PPC-Related Entities ("**Covered Services**"), including any trade work for the Project performed by or for Non-Profit Entity during the Term. The provisions of Section 6.22(e) and 21C of the San Francisco Administrative Code are incorporated as provisions of this Agreement as if fully set forth herein and will apply to any Covered Services performed by Non-Profit Entity and the PPC-Related Entities.

(b) **Determining the Prevailing Rate of Wages.** The latest Prevailing Rate of Wages for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations, as such prevailing wage rates may be changed during the Term, are hereby incorporated as provisions of this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors are available from the Office of Labor Standards and Enforcement ("**OLSE**") and on the Internet at <http://www.dir.ca.gov/DLSR/PWD> and <http://sfgov.org/olse/prevailing-wage>. Non-Profit Entity agrees that it and the PPC-Related

Entities will pay no less than the Prevailing Rate of Wages, as fixed and determined by the Board of Supervisors, to all workers who perform Covered Services and are employed by Non-Profit Entity or the PPC-Related Entities.

(c) Subcontract Requirements. As required by Section 6.22(e)(5) of the San Francisco Administrative Code, Non-Profit Entity shall require each Contractor to insert in every Subcontract or other arrangement, which it may make for the performance of Covered Services under this Agreement, a provision that said Subcontractor shall pay to all Persons performing labor in connection with Covered Services under said Subcontract or other arrangement not less than the highest general the Prevailing Rate of Wages as fixed and determined by the Board of Supervisors for such labor or services.

(d) Posted Notices. As required by Section 1771.4 of the California Labor Code, Non-Profit Entity shall post job site notices prescribed by the California Department of Industrial Relations (“DIR”) at all job sites where Covered Services are to be performed.

(e) Payroll Records. As required by Section 6.22(e)(6) of the San Francisco Administrative Code and Section 1776 of the California Labor Code, Non-Profit Entity shall keep or cause to be kept complete and accurate payroll records for all trade workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services on the project, including apprentices, his or her classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every Contractor and Subcontractor who shall undertake the performance of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the Contract or Subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives and the DIR.

(f) Certified Payrolls. Certified payrolls shall be prepared pursuant to San Francisco Administrative Code Section 6.22(e)(6) and California Labor Code Section 1776 for the period involved for all employees, including those of Subcontractors, who performed labor in connection with Covered Services. Non-Profit Entity and each Subcontractor performing Covered Services shall submit certified payrolls to City and to the DIR electronically. Non-Profit Entity shall submit payrolls to City via the reporting system selected by City. The DIR will specify how to submit certified payrolls to it. City will provide basic training in the use of the reporting system at a scheduled training session. Non-Profit Entity, all Contractors and all Subcontractors that will perform Covered Services must attend the training session. Non-Profit Entity, Contractors, and Subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

(g) Compliance Monitoring. Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and/or the OLSE. Non-Profit Entity, Contractors and Subcontractors performing Covered Services will cooperate fully with the DIR and/or the OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements, and agrees to take the specific steps and actions as required by Section 6.22(e)(7) of the San Francisco Administrative Code. Steps and actions include but are not limited to requirements that: (i) Non-Profit Entity will cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the Prevailing Wage requirements and other labor standards

imposed on Non-Profit Entity by the Charter and Chapter 6 of the San Francisco Administrative Code; (ii) Non-Profit Entity agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of Non-Profit Entity, employee time sheets, inspection logs, payroll records and employee paychecks; (iii) Contractors and Subcontractors shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iv) Non-Profit Entity shall prominently post at each job-site a sign informing employees that the project is subject to the City's Prevailing Wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer; and (v) that the Labor Standards Enforcement Officer may audit such records of Non-Profit Entity as he or she reasonably deems necessary to determine compliance with the Prevailing Wage and other labor standards imposed by the Charter and this Chapter and applicable to this Agreement. Failure to comply with these requirements may result in penalties and forfeitures consistent with analogous provisions of the California Labor Code, including Section 1776(g), as amended from time to time.

**(h) Remedies.** Should Non-Profit Entity, Contractors or Subcontractors who shall undertake the performance of any Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement, Contracts or Subcontracts or other arrangement for the Covered Services, the general prevailing rate of wages as herein specified, Non-Profit Entity shall forfeit, and in the case of any Subcontractor so failing or neglecting to pay said wage, Non-Profit Entity and the Subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in San Francisco Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. City, when certifying any payment, which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

**6. Prohibition on Use of Public Funds for Political Activity.** In performing the Work, Non-Profit Entity shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Non-Profit Entity is subject to the enforcement and penalty provisions in Chapter 12G.

**7. Consideration of Salary History.** Non-Profit Entity shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Non-Profit Entity is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Non-Profit Entity is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Non-Profit Entity is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section 1.6 (Consideration of Salary History).

**8. Consideration of Criminal History in Hiring and Employment Decisions.**

(a) Non-Profit Entity agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“**Chapter 12T**”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Non-Profit Entity is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section 1.7 (Consideration of Criminal History in Hiring and Employment Decisions). Capitalized terms used in this Section 1.7 (Consideration of Criminal History in Hiring and Employment Decisions.) and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to a Non-Profit Entity’s or its Agent’s operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**9. Resource Efficiency Requirements.** The Project will be subject to Chapter 7 of the San Francisco Environment Code. Accordingly, the Project must meet certain resource efficient requirements. Non-Profit Entity agrees that it will design the Project to comply with Chapter 7 of the San Francisco Environment Code, as may be amended from time to time, or any similar law.

**10. MacBride Principles Northern Ireland.** City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**11. Notification of Limitations on Contributions.** Non-Profit Entity acknowledges its obligations under Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date City approves the contract. The prohibition on contributions applies to (a) each prospective party to the contract, (b) each member of the contractor’s board of directors, the contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer, (c) any person with an ownership interest of more than ten percent (10%) in the contractor, (d) any Subcontractor listed in the bid or contract, and (e) any committee that is sponsored or controlled by the contractor. Non-Profit Entity certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted the Implementation Proposal, and has provided the names of the persons required to be informed to City.

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

**13. Conflicts of Interest.** Non-Profit Entity acknowledges that it is familiar with the provisions of San Francisco Charter, Article III, Chapter 2, Section 15.103 of the City's Campaign and Governmental Conduct Code, and California Government Code Sections 87100 et seq. and Sections 1090 et seq., certifies that it does not know of any facts that would constitute a violation of these provisions, and agrees that if Non-Profit Entity becomes aware of any such fact during the Term, Non-Profit Entity will provide Notice to City immediately.

**14. Certification of Funds.** This Agreement is subject to the fiscal provisions of the City's Charter and the budget decisions of its Mayor and Board of Supervisors, each acting in its sole discretion. No funds will be available hereunder until prior written authorization certified by the City's Controller. The City's Controller cannot authorize payments unless funds have been certified as available in the budget or in a supplemental appropriation. City's obligations hereunder shall never exceed the amount certified by the City's Controller for the purpose and period stated in such certification. City, its employees and officers are not authorized to offer or promise any additional funding without City's Controller certification of such additional funding. Without such lawful approval and certification, City shall not be required to provide such additional funding.

**15. Art Commission Design Review; Art Enrichment Allocation.** The Facility will be subject to the requirements of San Francisco Charter Section 5.103 and Administrative Code Section 3.19. Non-Profit Entity must work with the San Francisco Arts Commission, in consultation with the City, to design and build the Facility in compliance with those requirements.

**16. Tropical Hardwoods and Virgin Redwood Ban.** City urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product, except as expressly permitted by the application of San Francisco Environment Code sections 802(b) and 803(b). Non-Profit Entity will not, except as permitted by the application of sections 802(b) and 803(b), use or incorporate any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product in the performance of this Agreement.

**17. City Business and Tax Regulations Code.** Non-Profit Entity acknowledges that under Section 6.10-2 of the San Francisco Business and Tax Regulations Code, the City Treasurer and Tax Collector may require the withholding of payments to any vendor that is delinquent in the payment of any amounts that the vendor is required to pay the City under the San Francisco Business and Tax Regulations Code. If, under that authority, any payment City is required to make to Non-Profit Entity under this Agreement is withheld, then City will not be in breach or default under this Agreement, and the Treasurer and Tax Collector will authorize release of any payments withheld under this paragraph to Non-Profit Entity, without interest, late fees, penalties, or other charges, upon Non-Profit Entity coming back into compliance with its San Francisco Business and Tax Regulations Code obligations.

**18. Contracting Requirements.** The following City requirements are incorporated into this Agreement and apply to the Non-Profit Entity, Contractors and Subcontractors, together with any other applicable City contract requirements that are in effect on the Effective Date.

(a) Tobacco and Alcohol Products Advertising Ban. Non-Profit Entity acknowledges and agrees that no advertising of cigarettes, tobacco products, or alcoholic beverages is allowed on any real property owned by or under the control of City. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes, tobacco products, or alcoholic beverages or the name of any cigarette, tobacco product, or alcoholic beverages in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local, nonprofit, or other entity designed to: (a) communicate the health hazards of cigarettes and tobacco products or alcoholic beverages; (b) encourage people not to smoke or to stop smoking, or not to drink alcohol or to stop drinking alcohol; or (c) provide or publicize drug or alcohol treatment or rehabilitation services.

(b) Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Non-Profit Entity to remove any PPC-Related Entities from City facilities if City has reasonable grounds to believe that person has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any that person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the person lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

(c) Drug-Free Workplace. Non-Profit Entity acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. §§ 8101 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City property.

(d) Food Service Waste Reduction Ordinance. Non-Profit Entity agrees to comply fully with and be bound by the Food Service Waste Reduction Ordinance (San Francisco Environment Code Chapter 16), including but not limited to the remedies for noncompliance provided therein.

(e) Sugar Sweetened Beverages and Packaged Water. Non-Profit Entity agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement. Non-Profit Entity agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

**19. Preservative Treated Wood Products.** Non-Profit Entity shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that anyone purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

**20. SFMTA Surveillance Technology Policy.** Non-Profit Entity must comply with the SFMTA's Surveillance Technology Policy, adopted under San Francisco Administrative Code Chapter 19B. A copy of the SFMTA's Surveillance Technology Policy is attached as Exhibit 16D (SFMTA's Surveillance Technology Policy).

**21. SFMTA Training Programs.**

(a) Large Vehicle Driver Safety Training. Non-Profit Entity agrees that, before any NPE-Related Entities drive large vehicles within the City of San Francisco, those NPE-Related Entities will successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety will be posted and made available for download at [www.SFMTA.com/largevehicledrivingstandards](http://www.SFMTA.com/largevehicledrivingstandards). This requirement does not apply to drivers providing delivery services who are not NPE-Related Entities. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 lbs or more, or a van designed to carry 10 or more people.

By entering into this Agreement, Non-Profit Entity agrees that in the event the Non-Profit Entity fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Non-Profit Entity agrees that the sum of up to \$1,000 per employee or NPE-Related Entity who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Non-Profit Entity's failure to comply with this requirement, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Non-Profit Entity. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Non-Profit Entity's failure to comply.

(b) CITYBUILD Referral. In the employment of CITYBUILD referrals who are or who become registered apprentices, Non-Profit Entity must maintain the proper ratio of apprentices to journeymen for each trade on the job site. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, Non-Profit Entity must employ such apprentices and trainees during the training period, and Non-Profit Entity must commit to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Unless otherwise permitted by law, trainees must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or the California Department of Industrial Relations, Division of Apprenticeship Standards. Courses offered by City College of San Francisco and other community college districts or comparable institutions will also be considered.

(c) Design Professional Services. Non-Profit Entity shall require its Design Professional(s) to be responsible without limitation for assisting the City in training staff and developing systems and procedures for operation and maintenance and record keeping for equipment or system designed by the Design Professional for incorporation into the Project.

(d) SFMTA Safety Program. Non-Profit Entity shall be familiar with and shall ensure that NPE-Related Entities are trained in applicable SFMTA safety orders and standard operating procedures, including but not limited to the SFMTA Safety Program and the SFMTA RWP Program. Non-Profit Entity shall be familiar with and shall ensure that applicable NPE-

Related Entities have required safety certificates, including but not limited to certification of safety training provided by the SFMTA's Safety and/or Training Division. Non-Profit Entity shall hold regular "tailgate" safety sessions and other trainings to refresh applicable NPE-Related Entities' knowledge of Site safety. Where Work is to be performed within six feet of all SFMTA rail line segments, 10 feet from high voltage overhead traction power lines, including support/span infrastructure, or in SFMTA tunnels, tunnel portals, station platforms, and vehicle yards and maintenance facilities, Non-Profit Entity shall provide a full safety briefing consistent with the SFMTA RWP program each day prior to the commencement of any Work activity.

(e) Partnering Training. In accordance with the Citywide partnering program, at least one member of the City staff team and Non-Profit Entity shall attend the City Partnering Fundamentals Training and have received a Certificate of Completion from the training session. It is recommended that the key members of the project delivery team (i.e., Non-Profit Entity project executive, project manager and superintendent, and the City project manager and construction manager) be trained. It is recommended that the prime contractor have at least two members of the team trained so that one is available on the project at all times. Training is free to participants and is offered regularly by the City. Attendance can be coordinated through the Partnering Coordinator and [www.sfpartnering.com](http://www.sfpartnering.com). Evidence of training (i.e. the Certificate of Completion) must be provided to the City project manager no later than 90 days after Notice of Award.

(f) Contractor Computer Software Training. Non-Profit Entity shall use the latest version of Primavera (P6) software or equivalent for all computer generated tabular reports and logic network graphics. Non-Profit Entity shall furnish schedule software and all original software instruction manuals to the city for the City's exclusive possession and use with submittal of the baseline schedule. Non-Profit Entity shall also furnish the latest schedule-comparing software, which is compatible for use with the schedule software to the City.

Non-Profit Entity shall instruct the Engineer in the use of the software and provide software support until the acceptance of contract. Within 20 working days of contract approval, Non-Profit Entity shall provide a commercial 8-hour training session for 2 City employees in the use of the software at a location acceptable to the City.

(g) Project Controls System (PCS) Training from SFMTA to Non-Profit Entity. SFMTA will provide a onetime training session of up to 2 hours to train Non-Profit Entity's designated NPE-Related Entities on SFMTA's forms and procedures, general requirements of the PCS.

- (i) Non-Profit Entity is responsible for training all PCS staff and any replacement personnel.
- (ii) Engineer will communicate the location, date, and time of training to Non-Profit Entity during the time period between the Contract Award and the Notice to Proceed.
- (iii) A complete training manual and guide to procedures for the PCS System will be distributed for informational purposes to illustrate how Engineer's process complements Non-Profit Entity's process.

Non-Profit Entity shall be required to train Contractor's PCS participants on the principles and operation of PCS and Adobe Acrobat Professional prior to Notice to Proceed.

(h) RTU Training from Contractor to City Staff. Training for RTU operation and maintenance for ten (10) people in two (2) sessions, one day shift and one swing shift shall be provided to MUNI personnel by the equipment manufacturer.

MUNI shall provide facilities for training; manufacturer shall provide all training material and equipment.

All travel and living expenses for the trainer shall be included in the bid.

**22. Clean Construction.** Non-Profit Entity agrees to comply fully with and be bound by the Clean Construction requirements set forth in Section 6.25 of the San Francisco Administrative Code and Chapter 25 of the Environment Code. The provisions of Section 6.25 and Chapter 25 are incorporated into this Agreement by reference. Non-Profit Entity may seek waivers from the Clean Construction requirements as set forth in Chapter 25 of the Environment Code. By entering into this Agreement, Non-Profit Entity and City agree that if Non-Profit Entity uses off-road equipment and/or off-road engines in violation of the Clean Construction requirements set forth in Section 6.25 of the Administrative Code and Chapter 25 of the Environment Code, the City will suffer actual damages that will be impractical or extremely difficult to determine. Accordingly, Non-Profit Entity and the City agree that Non-Profit Entity shall pay the City the amount of \$100 per day per each piece of off-road equipment and each off-road engine used to complete work on the Project in violation of the Clean Construction requirements. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Non-Profit Entity's failure to comply with the Clean Construction requirements.

**23. Compliance with Americans with Disabilities Act.** Non-Profit Entity shall provide the Work in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**24. Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**25. Restrictions on Use of Pesticides.** Chapter 3 of the San Francisco Environment Code (the Integrated Pest Management Program Ordinance or "IPM Ordinance") describes an integrated pest management ("IPM") policy to be implemented by all City departments. PCC-Related Entities shall not use or apply or allow the use or application of any pesticides on the Project Site or contract with any party to provide pest abatement or control services to the Project Site without first receiving City's written approval of an IPM plan. PCC-Related Entities will comply, and will require all of PCC-Related Entities' contractors to comply, with any IPM plan approved by the City and will comply with the requirements of sections 300(d), 302, 304, 305(f), 305(g), and 306 of the IPM Ordinance, as if PCC-Related Entities were a City department.

**26. All-Gender Toilet Facilities.** If applicable, PCC-Related Entities will comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility in any new building constructed on City-owned land or that is constructed by or for the City where toilet

facilities are required or provided. An “all-gender toilet facility” means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures.

**EXHIBIT 16D**

**SFMTA'S SURVEILLANCE TECHNOLOGY POLICY**

See the SFMTA policy at the attached link:

[https://sf.gov/sites/default/files/2022-03/MTA\\_Security%20Camera%20Policy%20Final%20Draft%202-25-21.pdf](https://sf.gov/sites/default/files/2022-03/MTA_Security%20Camera%20Policy%20Final%20Draft%202-25-21.pdf)

**EXHIBIT 17**

**SECTION 3.6 INVOICE**

Reference is made to that certain Design-Build-Finance Agreement dated as of [\_\_\_\_\_] , 2026 (the “**Agreement**”), by and between the City and County of San Francisco (“**City**”), a municipal corporation acting by and through the San Francisco Municipal Transportation Agency (“**SFMTA**”), and PRG – Potrero Properties LLC (“**Non-Profit Entity**”).

Capitalized terms used but not defined herein have the meaning given to them in this Agreement.

Pursuant to Section 3.6 of this Agreement, Non-Profit Entity hereby requests payment of [\_\_\_\_\_] U.S. dollars (\$[\_\_\_\_\_] ), based on the following: (a) this Agreement has been terminated under Section 3.6.1 or Section 3.6.2 of this Agreement; (b) this invoice is submitted within 30 days of the termination; and (c) Non-Profit Entity has submitted to City all work product produced by Non-Profit Entity related to the Project, as required in Section 3.6.5 of this Agreement.

Non-Profit Entity represents and warrants to City that: (a) Non-Profit Entity is eligible for payment pursuant to Section 3.6 of this Agreement; and (b) Non-Profit Entity has attached documentation reasonably required by City sufficient to support such statement.

Non-Profit Entity acknowledges that: (a) such payment is the exclusive compensation payable by City to Non-Profit Entity under this Agreement for a termination under Section 3.6.1 or Section 3.6.2 of this Agreement; and (b) submission of this invoice, and payment by City of any amount in response to this invoice, is in all respects subject to the terms and conditions of this Agreement.

**EXHIBIT 18**

**TECHNICAL REQUIREMENTS**

**[SEE ATTACHED]**

**EXHIBIT 19**

**INITIAL SCHEDULE**

**[See attached]**

**EXHIBIT 20**

**LIST OF KEY PERSONNEL**

1. Project Director
2. Project Manager
3. Deputy Project Manager
4. Equity Member's Project Principal
5. Engineer(s) of Record
6. Architect(s) of Record
7. Design Manager
8. Construction Manager
9. Quality Program Manager
10. Third Party and Utility Coordination Manager
11. Project Safety Representative

**EXHIBIT 21**

**MAJOR APPROVALS AND MAJOR APPROVAL DEADLINES**

MAJOR APPROVAL	MAJOR APPROVAL DEADLINE
DBI Site Permit	The later of (i) 270 calendar days after Financial Close; and (ii) the date for approval of the Major Approval included in the approved Project Schedule.
DBI Demolition Permit	The later of (i) 270 days after the last to occur of (x) Non-Profit Entity has submitted a fully compliant and complete request and application to DBI in accordance with applicable Law and the policies and procedures of DBI; (y) Non-Profit Entity has paid in full all fees and charges required for the review, consultation and issuance of the Major Approval by DBI; and (z) Non-Profit Entity has satisfied all other conditions to the commencement and continuation of review by DBI in accordance with applicable Law and the policies and procedures of DBI, including any requirements of the CEQA MMRP; and (ii) the date for approval of the Major Approval included in the approved Project Schedule.
DBI Shoring Permit	The later of (i) 270 days after the last to occur of (x) Non-Profit Entity has submitted a fully compliant and complete request and application to DBI in accordance with applicable Law and the policies and procedures of DBI; (y) Non-Profit Entity has paid in full all fees and charges required for the review, consultation and issuance of the Major Approval by DBI; and (z) Non-Profit Entity has satisfied all other conditions to the commencement and continuation of review by DBI in accordance with applicable Law and the policies and procedures of DBI, including any requirements of the CEQA MMRP; and (ii) the date for approval of the

	Major Approval included in the approved Project Schedule.
DBI Foundations and Superstructure Permit	The later of (i) 210 days after the last to occur of (x) Non-Profit Entity has submitted a fully compliant and complete request and application to DBI in accordance with applicable Law and the policies and procedures of DBI, including any requirements of the CEQA MMRP; (y) Non-Profit Entity has paid in full all fees and charges required for the review, consultation and issuance of the Major Approval by DBI; and (z) Non-Profit Entity has satisfied all other conditions to the commencement and continuation of review by DBI in accordance with applicable Law and the policies and procedures of DBI; and (ii) the date for approval of the Major Approval included in the approved Project Schedule.