
**Marina Lagoon Spot Dredging Project
City Project No. 46C006**

CITY OF SAN MATEO, CALIFORNIA



For

CITY OF SAN MATEO, CALIFORNIA

January 2026

TABLE OF CONTENTS

| | |
|--|-----------|
| Notice Inviting Bids | 1 |
| Instructions to Bidders | 4 |
| Bid Proposal..... | 10 |
| Bid Schedule..... | 12 |
| Subcontractor List..... | 13 |
| Noncollusion Declaration | 14 |
| Bid Bond..... | 15 |
| Bidder's Questionnaire | 17 |
| Contract | 20 |
| Payment Bond..... | 25 |
| Performance Bond | 27 |
| General Conditions | 29 |
| Article 1 - Definitions..... | 29 |
| Definitions..... | 29 |
| Article 2 - Roles and Responsibilities | 31 |
| 2.1 City | 31 |
| 2.2 Contractor..... | 32 |
| 2.3 Subcontractors | 35 |
| 2.4 Coordination of Work..... | 35 |
| 2.5 Submittals..... | 36 |
| 2.6 Shop Drawings | 37 |
| Article 3 - Contract Documents..... | 37 |
| 3.1 Interpretation of Contract Documents | 37 |
| 3.2 Order of Precedence | 38 |
| 3.3 Caltrans Standard Specifications | 39 |
| 3.4 For Reference Only | 39 |
| 3.5 Current Versions | 39 |
| 3.6 Conformed Copies | 39 |
| Article 4 - Bonds, Indemnity, and Insurance | 40 |
| 4.1 Payment and Performance Bonds | 40 |
| 4.2 Indemnity | 40 |
| 4.3 Insurance..... | 40 |
| Article 5 - Contract Time | 42 |
| 5.1 Time is of the Essence | 42 |
| 5.2 Schedule Requirements | 43 |
| 5.3 Delay and Extensions of Contract Time..... | 45 |
| 5.4 Liquidated Damages | 48 |
| Article 6 - Contract Modification | 48 |
| 6.1 Contract Modification..... | 48 |
| 6.2 Contractor Change Order Requests | 50 |
| 6.3 Adjustments to Contract Price..... | 50 |
| 6.4 Unilateral Change Order | 51 |
| 6.5 Non-Compliance Deemed Waiver..... | 51 |
| Article 7 - General Construction Provisions..... | 51 |
| 7.1 Permits, Fees, Business License, and Taxes | 51 |
| 7.2 Temporary Facilities | 52 |
| 7.3 Noninterference and Site Management | 52 |
| 7.4 Signs..... | 52 |
| 7.5 Project Site and Nearby Property Protections..... | 53 |
| 7.6 Materials and Equipment..... | 54 |
| 7.7 Substitutions | 55 |
| 7.8 Testing and Inspection | 55 |

| | | |
|--|---|-----------|
| 7.9 | Project Site Conditions and Maintenance | 56 |
| 7.10 | Instructions and Manuals | 58 |
| 7.11 | As-built Drawings | 58 |
| 7.12 | Existing Utilities | 58 |
| 7.13 | Notice of Excavation..... | 59 |
| 7.14 | Trenching and Excavations of Four Feet or More..... | 59 |
| 7.15 | Trenching of Five Feet or More..... | 59 |
| 7.16 | New Utility Connections | 60 |
| 7.17 | Lines and Grades..... | 60 |
| 7.18 | Historic or Archeological Items..... | 60 |
| 7.19 | Environmental Control..... | 60 |
| 7.20 | Noise Control..... | 61 |
| 7.21 | Mined Materials..... | 61 |
| Article 8 - Payment | | 61 |
| 8.1 | Schedule of Values | 61 |
| 8.2 | Progress Payments | 61 |
| 8.3 | Adjustment of Payment Application | 62 |
| 8.4 | Early Occupancy | 62 |
| 8.5 | Retention | 63 |
| 8.6 | Payment to Subcontractors and Suppliers..... | 63 |
| 8.7 | Final Payment | 64 |
| 8.8 | Release of Claims | 64 |
| 8.9 | Warranty of Title | 64 |
| Article 9 - Labor Provisions | | 64 |
| 9.1 | Discrimination Prohibited..... | 64 |
| 9.2 | Labor Code Requirements | 64 |
| 9.3 | Prevailing Wages | 65 |
| 9.4 | Payroll Records | 65 |
| 9.5 | Labor Compliance | 66 |
| Article 10 - Safety Provisions | | 66 |
| 10.1 | Safety Precautions and Programs | 66 |
| 10.2 | Hazardous Materials | 66 |
| 10.3 | Material Safety | 66 |
| 10.4 | Hazardous Condition..... | 67 |
| 10.5 | Emergencies | 67 |
| Article 11 - Completion and Warranty Provisions | | 67 |
| 11.1 | Final Completion | 67 |
| 11.2 | Warranty | 68 |
| 11.3 | Use Prior to Final Completion | 69 |
| 11.4 | Substantial Completion | 69 |
| Article 12 - Dispute Resolution | | 69 |
| 12.1 | Claims..... | 69 |
| 12.2 | Claims Submission | 70 |
| 12.3 | City's Response | 72 |
| 12.4 | Meet and Confer..... | 72 |
| 12.5 | Mediation and Government Code Claims | 72 |
| 12.6 | Tort Claims | 73 |
| 12.7 | Arbitration | 73 |
| 12.8 | Burden of Proof and Limitations | 73 |
| 12.9 | Legal Proceedings..... | 73 |
| 12.10 | Other Disputes | 73 |
| Article 13 - Suspension and Termination..... | | 74 |
| 13.1 | Suspension for Cause | 74 |
| 13.2 | Suspension for Convenience | 74 |
| 13.3 | Termination for Default..... | 74 |
| 13.4 | Termination for Convenience | 76 |

| | |
|--|-----------|
| 13.5 Actions Upon Termination for Default or Convenience | 76 |
| Article 14 - Miscellaneous Provisions | 77 |
| 14.1 Assignment of Unfair Business Practice Claims | 77 |
| 14.2 Provisions Deemed Inserted | 77 |
| 14.3 Waiver | 77 |
| 14.4 Titles, Headings, and Groupings | 78 |
| 14.5 Statutory and Regulatory References | 78 |
| 14.6 Survival..... | 78 |
| Special Conditions | 79 |
| Attachment A – Technical Specifications | 81 |

Notice Inviting Bids

1. **Bid Submission.** The City of San Mateo ("City") will accept sealed bids for its Marina Lagoon Spot Dredging Project ("Project"), by or before February 17th, 2026, at 2:00 p.m., at City Hall, located at 330 W. 20th Avenue, San Mateo, California, at which time the bids will be publicly opened and read aloud.
2. **Project Information.**
 - 2.1 **Location and Description.** The Project is located at the mouth of the Leslie Creek and Borel Creek at Marina Lagoon and is described as follows: The dredge, staging, and disposal of up to 2,000 cubic yards of sediment as described in the document titled, "Sediment Characterization Sampling and Analysis Plan (SAP) for the Dredging of Sediment from the Marina Lagoon in San Mateo, CA", dated January 22, 2025, and as shown on the plans.
 - 2.2 **Time for Final Completion.** The Project must be fully completed within 80 calendar days from the start date set forth in the Notice to Proceed.
 - 2.3 **Estimated Cost.** The estimated construction cost is \$1,150,000.00.
3. **License and Registration Requirements.**
 - 3.1 **License.** This Project requires a valid California contractor's license for the following classification(s): Class A.
 - 3.2 **DIR Registration.** City may not accept a Bid Proposal from or enter into the Contract with a bidder, without proof that the bidder is registered with the California Department of Industrial Relations ("DIR") to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
4. **Contract Documents.** Proposers shall purchase a complete set of plans and specifications and provide contact information through Barker Blue in order to be eligible to bid on this project. The plans, specifications, bid forms and contract documents for the Project, and any addenda thereto ("Contract Documents") are available at the City of San Mateo – Public Works Bidding Web Portal. Contractors can also email Barker Blue's Customer Support Team at plans@barkerblue.com or call 650-696-2100 for assistance. Any questions regarding the contract documents should be directed to James Yang, Senior Engineer, at (650) 522-7300, or in writing at publicworks@cityofsanmateo.org.
5. **Bid Security.** The Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's or certified check made payable to City, or a bid bond executed by a surety licensed to do business in the State of California on the Bid Bond form included with the Contract Documents. The bid security must guarantee that within ten days after City issues the Notice of Potential Award, the successful bidder will execute the Contract and submit the payment and performance bonds, insurance certificates and endorsements, valid Certificates of Reported Compliance as required under the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), if applicable, and any other submittals required by the Contract Documents and as specified in the Notice of Potential Award.

6. Prevailing Wage Requirements.

6.1 General. Pursuant to California Labor Code § 1720 et seq., this Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes.

6.2 Rates. The prevailing rates are on file with the City and are available online at <http://www.dir.ca.gov/DLSR>. Each Contractor and Subcontractor must pay no less than the specified rates to all workers employed to work on the Project. The schedule of per diem wages is based upon a working day of eight hours. The rate for holiday and overtime work must be at least time and one-half.

6.3 Compliance. The Contract will be subject to compliance monitoring and enforcement by the DIR, under Labor Code § 1771.4.

6.4 Minimum Wage. Bidder agrees to comply with the City's minimum wage ordinance as codified in San Mateo Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator. Bidder and its Subcontractors are required to pay the higher of the currently applicable state prevailing wage rates or City minimum wage.

7. Performance and Payment Bonds. The successful bidder will be required to provide performance and payment bonds, each for 100% of the Contract Price, as further specified in the Contract Documents.

8. Substitution of Securities. Substitution of appropriate securities in lieu of retention amounts from progress payments is permitted under Public Contract Code § 22300.

9. Subcontractor List. Each Subcontractor must be registered with the DIR to perform work on public projects. Each bidder must submit a completed Subcontractor List form with its Bid Proposal, including the name, location of the place of business, California contractor license number, DIR registration number, and percentage of the Work to be performed (based on the base bid price) for each Subcontractor that will perform Work or service or fabricate or install Work for the prime contractor in excess of one-half of 1% of the bid price, using the Subcontractor List form included with the Contract Documents.

10. Instructions to Bidders. All bidders should carefully review the Instructions to Bidders for more detailed information before submitting a Bid Proposal. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, as defined therein, including this Notice Inviting Bids.

11. Bidders' Conference. A bidders' conference will be held on January 22, 2026 at 11:00 a.m., at the following location: 2111 Kehoe Avenue, San Mateo, CA 94403 to acquaint all prospective bidders with the Contract Documents and the Worksite. **The bidders' conference is mandatory.** A bidder who fails to attend a mandatory bidders' conference may be disqualified from bidding.

By: _____ Date: _____

Martin McTaggart, City Clerk

Publication Date: January 15, 2026

END OF NOTICE INVITING BIDS

Instructions to Bidders

Each Bid Proposal submitted to the City of San Mateo (“City”) for its Marina Lagoon Spot Dredging Project (“Project”) must be submitted in accordance with the following instructions and requirements:

1. Bid Submission.

- 1.1 **General.** Each Bid Proposal must be completed, using the form provided in the Contract Documents, signed, and submitted to City in a sealed envelope, with all required forms and attachments, by or before the date and time set forth in Section 1 of the Notice Inviting Bids, or as amended by subsequent addendum. Faxed or emailed Bid Proposals will not be accepted, unless otherwise specified. Late submissions will be returned unopened. City reserves the right to postpone the date or time for receiving or opening bids. Each bidder is solely responsible for all of its costs to prepare and submit its bid and by submitting a bid waives any right to recover those costs from City. The bid price(s) must include all costs to perform the Work as specified, including all labor, material, supplies, and equipment and all other direct or indirect costs such as applicable taxes, insurance and overhead.
- 1.2 **Bid Envelope.** The sealed envelope containing the Bid Proposal and all required forms and attachments must be clearly labeled and addressed as follows:

BID PROPOSAL:

Marina Lagoon Spot Dredging Project
Contract No. 46C006

City Clerk
330 W. 20th Avenue
San Mateo, CA 94403
Attn: Martin McTaggart

The envelope must also be clearly labeled, as follows, with the bidder's name, address, and its registration number with the California Department of Industrial Relations (“DIR”) for bidding on public works contracts (Labor Code §§ 1725.5 and 1771.1):

*[Contractor company name]
[street address]
[city, state, zip code]
DIR Registration No: _____*

- 1.3 **DIR Registration.** Subject to limited legal exceptions for joint venture bids and federally-funded projects, City may not accept a Bid Proposal from a bidder without proof that the bidder is registered with the DIR to perform public work under Labor Code § 1725.5. If City is unable to confirm that the bidder is currently registered with the DIR, City may disqualify the bidder and return its bid unopened. (Labor Code §§ 1725.5 and 1771.1(a).)
2. **Bid Proposal Form and Enclosures.** Each Bid Proposal must be completed in ink using the Bid Proposal form included with the Contract Documents. The Bid Proposal form must be fully completed without interlineations, alterations, or erasures. Any necessary corrections must be clear and legible, and must be initialed by the bidder's authorized representative. A Bid Proposal submitted with exceptions or terms such as “negotiable,”

“will negotiate,” or similar, will be considered nonresponsive. Each Bid Proposal must be accompanied by bid security, as set forth in Section 4 below, and by a completed Subcontractor List and Non-Collusion Declaration using the forms included with the Contract Documents, and any other required enclosures, as applicable.

3. **Authorization and Execution.** Each Bid Proposal must be signed by the bidder's authorized representative. A Bid Proposal submitted by a partnership must be signed in the partnership name by a general partner with authority to bind the partnership. A Bid Proposal submitted by a corporation must be signed with the legal name of the corporation, followed by the signature and title of two officers of the corporation with full authority to bind the corporation to the terms of the Bid Proposal, under California Corporations Code § 313.
4. **Bid Security.** Each Bid Proposal must be accompanied by bid security of ten percent of the maximum bid amount, in the form of a cashier's check or certified check, made payable to the City, or bid bond using the form included in the Contract Documents and executed by a surety licensed to do business in the State of California. The bid security must guarantee that, within ten days after issuance of the Notice of Potential Award, the bidder will: execute and submit the enclosed Contract for the bid price; submit payment and performance bonds for 100% of the maximum Contract Price; submit the insurance certificates and endorsements; and submit valid Certificates of Reported Compliance as required by the Off-Road Regulation, if applicable, and any other submittals, if any, required by the Contract Documents or the Notice of Potential Award. A Bid Proposal may not be withdrawn for a period of 60 days after the bid opening without forfeiture of the bid security, except as authorized for material error under Public Contract Code § 5100 et seq.
5. **Requests for Information.** Questions or requests for clarifications regarding the Project, the bid procedures, or any of the Contract Documents must be submitted in writing to James Yang, Senior Engineer, at publicworks@cityofsanmateo.org. Oral responses are not authorized and are not binding on the City. Bidders should submit any such written inquiries at least five Working Days before the scheduled bid opening. Questions received any later might not be addressed before the bid deadline. An interpretation or clarification by City in response to a written inquiry will be issued in an addendum.
6. **Pre-Bid Investigation.**
 - 6.1 **General.** Each bidder is solely responsible at its sole expense for diligent and thorough review of the Contract Documents, examination of the Project site, and reasonable and prudent inquiry concerning known and potential site and area conditions prior to submitting a Bid Proposal. Each bidder is responsible for knowledge of conditions and requirements which reasonable review and investigation would have disclosed. However, except for any areas that are open to the public at large, bidders may not enter property owned or leased by the City or the Project site without prior written authorization from City.
 - 6.2 **Document Review.** Each bidder is responsible for review of the Contract Documents and any informational documents provided “For Reference Only,” e.g., as-builts, technical reports, test data, and the like. A bidder is responsible for notifying City of any errors, omissions, inconsistencies, or conflicts it discovers in the Contract Documents, acting solely in its capacity as a contractor and subject to the limitations of Public Contract Code § 1104. Notification of any such errors, omissions, inconsistencies, or conflicts must be submitted in writing to the City no later than five Working Days before the scheduled bid opening. (See Section 5, above.) City expressly disclaims responsibility for assumptions a bidder might draw from the presence or absence of information provided by City.

6.3 Project Site. Questions regarding the availability of soil test data, water table elevations, and the like should be submitted to the City in writing, as specified in Section 5, above. Any subsurface exploration at the Project site must be done at the bidder's expense, but only with prior written authorization from City. All soil data and analyses available for inspection or provided in the Contract Documents apply only to the test hole locations. Any water table elevation indicated by a soil test report existed on the date the test hole was drilled. The bidder is responsible for determining and allowing for any differing soil or water table conditions during construction. Because groundwater levels may fluctuate, difference(s) in elevation between ground water shown in soil boring logs and ground water actually encountered during construction will not be considered changed Project site conditions. Actual locations and depths must be determined by bidder's field investigation. The bidder may request access to underlying or background information on the Project site in City's possession that is necessary for the bidder to form its own conclusions, including, if available, record drawings or other documents indicating the location of subsurface lines, utilities, or other structures.

6.4 Utility Company Standards. The Project must be completed in a manner that satisfies the standards and requirements of any affected utility companies or agencies (collectively, "utility owners"). The successful bidder may be required by the third party utility owners to provide detailed plans prepared by a California registered civil engineer showing the necessary temporary support of the utilities during coordinated construction work. Bidders are directed to contact the affected third party utility owners about their requirements before submitting a Bid Proposal.

7. Bidders Interested in More Than One Bid. No person, firm, or corporation may submit or be a party to more than one Bid Proposal unless alternate bids are specifically called for. However, a person, firm, or corporation that has submitted a subcontract proposal or quote to a bidder may submit subcontract proposals or quotes to other bidders.

8. Addenda. Subject to the limitations of Public Contract Code § 4104.5, City reserves the right to issue addenda prior to bid time. Any addenda issued prior to the bid opening are part of the Contract Documents. Each bidder is solely responsible for ensuring it has received and reviewed all addenda prior to submitting its bid. Bidders should check City's website periodically for any addenda or updates on the Project at:
<https://www.cityofsanmateo.org/Bids.aspx>,

9. Brand Designations and "Or Equal" Substitutions. Any specification designating a material, product, thing, or service by specific brand or trade name, followed by the words "or equal," is intended only to indicate quality and type of item desired, and bidders may request use of any equal material, product, thing, or service. All data substantiating the proposed substitute as an equal item must be submitted with the written request for substitution. A request for substitution must be submitted within 35 days after Notice of Potential Award unless otherwise provided in the Contract Documents. This provision does not apply to materials, products, things, or services that may lawfully be designated by a specific brand or trade name under Public Contract Code § 3400(c).

10. Bid Protest. Any bid protest against another bidder must be submitted in writing and received by City at 330 W. 20th Avenue, San Mateo, CA 94403 before 5:00 p.m. no later than two Working Days following bid opening ("Bid Protest Deadline") and must comply with the following requirements:

10.1 General. Only a bidder who has actually submitted a Bid Proposal is eligible to submit a bid protest against another bidder. Subcontractors are not eligible to submit bid protests. A bidder may not rely on the bid protest submitted by another

bidder, but must timely pursue its own protest. For purposes of this Section 10, a “Working Day” means a day that City is open for normal business, and excludes weekends and holidays observed by City. Pursuant to Public Contract Code § 4104, inadvertent omission of a Subcontractor’s DIR registration number on the Subcontractor List form is not grounds for a bid protest, provided it is corrected within 24 hours of the bid opening or as otherwise provided under Labor Code § 1771.1(b).

- 10.2 Protest Contents.** The bid protest must contain a complete statement of the basis for the protest and must include all supporting documentation. Material submitted after the Bid Protest Deadline will not be considered. The protest must refer to the *specific* portion or portions of the Contract Documents upon which the protest is based. The protest must include the name, address, email address, and telephone number of the protesting bidder and any person submitting the protest on behalf of or as an authorized representative of the protesting bidder.
- 10.3 Copy to Protested Bidder.** Upon submission of its bid protest to City, the protesting bidder must also concurrently transmit the protest and all supporting documents to the protested bidder, and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest, by email or hand delivery to ensure delivery before the Bid Protest Deadline.
- 10.4 Response to Protest.** The protested bidder may submit a written response to the protest, provided the response is received by City before 5:00 p.m., within two Working Days after the Bid Protest Deadline or after actual receipt of the bid protest, whichever is sooner (the “Response Deadline”). The response must attach all supporting documentation. Material submitted after the Response Deadline will not be considered. The response must include the name, address, email address, and telephone number of the person responding on behalf of or representing the protested bidder if different from the protested bidder.
- 10.5 Copy to Protesting Bidder.** Upon submission of its response to the bid protest to the City, the protested bidder must also concurrently transmit by email or hand delivery, by or before the Response Deadline, a copy of its response and all supporting documents to the protesting bidder and to any other bidder who has a reasonable prospect of receiving an award depending upon the outcome of the protest.
- 10.6 Exclusive Remedy.** The procedure and time limits set forth in this Section are mandatory and are the bidder’s sole and exclusive remedy in the event of a bid protest. A bidder’s failure to comply with these procedures will constitute a waiver of any right to further pursue a bid protest, including filing a Government Code Claim or initiation of legal proceedings.
- 10.7 Right to Award.** City reserves the right, acting in its sole discretion, to reject any bid protest that it determines lacks merit, to award the Contract to the bidder it has determined to be the responsible bidder submitting the lowest responsive bid, and to issue a Notice to Proceed with the Work notwithstanding any pending or continuing challenge to its determination.

- 11. Reservation of Rights.** City reserves the unfettered right, acting in its sole discretion, to waive or to decline to waive any immaterial bid irregularities; to accept or reject any or all bids; to cancel or reschedule the bid; to postpone or abandon the Project entirely; or to perform all or part of the Work with its own forces. The Contract will be awarded, if at all, within 60 days after opening of bids or as otherwise specified in the Special Conditions, to

the responsible bidder that submitted the lowest responsive bid. Any planned start date for the Project represents the City's expectations at the time the Notice Inviting Bids was first issued. City is not bound to issue a Notice to Proceed by or before such planned start date, and it reserves the right to issue the Notice to Proceed when the City determines, in its sole discretion, the appropriate time for commencing the Work. The City expressly disclaims responsibility for any assumptions a bidder might draw from the presence or absence of information provided by the City in any form. Each bidder is solely responsible for its costs to prepare and submit a bid, including site investigation costs.

12. **Bonds.** Within ten calendar days following City's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit payment and performance bonds to City as specified in the Contract Documents using the bond forms included in the Contract Documents. All required bonds must be calculated on the maximum total Contract Price as awarded, including additive alternates, if applicable.
13. **License(s).** The successful bidder and its Subcontractor(s) must possess the California contractor's license(s) in the classification(s) required by law to perform the Work. The successful bidder must also obtain a City business tax certificate within 10 days following City's issuance of the Notice of Potential Award. Subcontractors must also obtain a City business license before performing any Work.
14. **Ineligible Subcontractor.** Any Subcontractor who is ineligible to perform work on a public works project under Labor Code §§ 1777.1 or 1777.7 is prohibited from performing work on the Project.
15. **Safety Orders.** If the Project includes construction of a pipeline, sewer, sewage disposal system, boring and jacking pits, or similar trenches or open excavations, which are five feet or deeper, each bid must include a bid item for adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life or limb, which comply with safety orders as required by Labor Code § 6707.
16. **In-Use Off-Road Diesel-Fueled Fleets.** If the Project involves the use of vehicles subject to the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), then within ten calendar days following City's issuance of the Notice of Potential Award to the successful bidder, the bidder must submit to City valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, in accordance with the Off-Road Regulation, unless exempt under the Off-Road Regulation.
17. **Subcontractor Work Limits.** The prime contractor must perform at least 50% of the Work on the Project related to the Bid Item listed as "Dredging". The remaining Work may be performed by qualified Subcontractor(s).
18. **Bid Schedule.** Each bidder must complete the Bid Schedule form with unit prices as indicated, and submit the completed Bid Schedule with its Bid Proposal.
 - 18.1 **Incorrect Totals.** In the event a computational error for any bid item (base bid or alternate) results in an incorrect extended total for that item, the submitted base bid or bid alternate total will be adjusted to reflect the corrected amount as the product of the estimated quantity and the unit cost. In the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid, and the amount entered as the base bid on the Bid Proposal form, the actual total of the itemized or unit prices shown on the Bid Schedule for the base bid will be deemed the base bid price. Likewise, in the event of a discrepancy between the actual total of the itemized or unit prices shown on the Bid Schedule

for any bid alternate, and the amount entered for the alternate on the Bid Proposal form, the actual total of the itemized prices shown on the Bid Schedule for that alternate will be deemed the alternate price. Nothing in this provision is intended to prevent a bidder from requesting to withdraw its bid for material error under Public Contract Code § 5100 et seq.

18.2 Estimated Quantities. Unless identified as a “Final Pay Quantity,” the quantities shown on the Bid Schedule are estimated and the actual quantities required to perform the Work may be greater or less than the estimated amount. The Contract Price will be adjusted to reflect the actual quantities required for the Work based on the itemized or unit prices provided in the Bid Schedule, with no allowance for anticipated profit for quantities that are deleted or decreased, and no increase in the unit price, and without regard to the percentage increase or decrease of the estimated quantity and the actual quantity.

19. Bidder's Questionnaire. A completed, signed Bidder's Questionnaire using the form provided with the Contract Documents and including all required attachments must be submitted within 48 hours following a request by City. A bid that does not fully comply with this requirement may be rejected as nonresponsive. A bidder who submits a Bidder's Questionnaire which is subsequently determined to contain false or misleading information, or material omissions, may be disqualified as non-responsible.

20. For Reference Only. The following documents are provided “For Reference Only,” as defined in Section 3.4 of the General Conditions. These materials will be available for download via the City of San Mateo Public Works Bidding Portal (Barker Blue):

- Moffat & Nichol; Marina Lagoon Dredging Assessment; dated May 3, 2018.
- U.S. Army Corps of Engineers; Regional General Permit; dated July 29, 2022.
- California Department of Fish and Wildlife; Final Lake or Streambed Alteration Agreement, Notification No. 1600-2013-0268-R3, Marina Lagoon General Maintenance Project; dated January 17, 2017.
- Pacific EcoRisk; Sediment Characterization Sampling and Analysis Plan (SAP) for the Dredging of Sediment from Marina Lagoon in San Mateo, CA; dated January 22, 2025.
- Pacific EcoRisk; Characterization of the Sediment from the Marina Lagoon in San Mateo, CA: Results of Sediment Sampling and Analysis; dated May 28, 2025.

END OF INSTRUCTIONS TO BIDDERS

Bid Proposal

Marina Lagoon Spot Dredging Project

____ ("Bidder") hereby submits this Bid Proposal to the City of San Mateo ("City") for the above-referenced project ("Project") in response to the Notice Inviting Bids and in accordance with the Contract Documents referenced in the Notice.

1. **Base Bid.** Bidder proposes to perform and fully complete the Work for the Project as specified in the Contract Documents, within the time required for full completion of the Work, including all labor, materials, supplies, and equipment and all other direct or indirect costs including, but not limited to, taxes, insurance and all overhead, for the following price ("Base Bid"):
\$_____.
2. **Addenda.** Bidder agrees that it has confirmed receipt of or access to, and reviewed, all addenda issued for this bid. Bidder waives any claims it might have against the City based on its failure to receive, access, or review any addenda for any reason. Bidder specifically acknowledges receipt of the following addenda:

| Addendum: | Date Received: | Addendum: | Date Received: |
|-----------|----------------|-----------|----------------|
| #01 | _____ | #05 | _____ |
| #02 | _____ | #06 | _____ |
| #03 | _____ | #07 | _____ |
| #04 | _____ | #08 | _____ |

3. **Bidder's Certifications and Warranties.** By signing and submitting this Bid Proposal, Bidder certifies and warrants the following:
 - 3.1 **Examination of Contract Documents.** Bidder has thoroughly examined the Contract Documents and represents that, to the best of Bidder's knowledge, there are no errors, omissions, or discrepancies in the Contract Documents, subject to the limitations of Public Contract Code § 1104.
 - 3.2 **Examination of Worksite.** Bidder has had the opportunity to examine the Worksite and local conditions at the Project location.
 - 3.3 **Bidder Responsibility.** Bidder is a responsible bidder, with the necessary ability, capacity, experience, skill, qualifications, workforce, equipment, and resources to perform or cause the Work to be performed in accordance with the Contract Documents and within the Contract Time.
 - 3.4 **Responsibility for Bid.** Bidder has carefully reviewed this Bid Proposal and is solely responsible for any errors or omissions contained in its completed bid. All statements and information provided in this Bid Proposal and enclosures are true and correct to the best of Bidder's knowledge.
 - 3.5 **Nondiscrimination.** In preparing this bid, the Bidder has not engaged in discrimination against any prospective or present employee or Subcontractor on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status.
 - 3.6 **Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Bidder is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act").

as a person engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

4. **Award of Contract.** By signing and submitting this Bid Proposal, Bidder agrees that, if City issues the Notice of Potential Award to Bidder, then within ten days following issuance of the Notice of Potential Award to Bidder, Bidder will do all of the following:
 - 4.1 **Execute Contract.** Enter into the Contract with City in accordance with the terms of this Bid Proposal, by signing and submitting to City the Contract prepared by City using the form included with the Contract Documents;
 - 4.2 **Submit Required Bonds.** Submit to City a payment bond and a performance bond, each for 100% of the Contract Price, using the bond forms provided and in accordance with the requirements of the Contract Documents;
 - 4.3 **Insurance Requirements.** Submit to City the insurance certificate(s) and endorsement(s) as required by the Contract Documents; and
 - 4.4 **Certificates of Reported Compliance.** Submit to City valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, if the Project involves the use of vehicles subject to the Off-Road Regulation. (See Section 16 of the Instructions to Bidders.)
5. **Bid Security.** As a guarantee that, if awarded the Contract, Bidder will perform its obligations under Section 4 above, Bidder is enclosing bid security in the amount of ten percent of its maximum bid amount in one of the following forms (check one):

A cashier's check or certified check payable to City and issued by _____ [Bank name] in the amount of \$_____.

A bid bond, using the Bid Bond form included with the Contract Documents, payable to City and executed by a surety licensed to do business in the State of California.

This Bid Proposal is hereby submitted on _____, 20__.

s/ _____

Name and Title

s/ _____
[See Section 3 of Instructions to Bidders]

Name and Title

Company Name

License #, Expiration Date, and Classification

Address

DIR Registration #

City, State, Zip

Phone

Contact Name

Contact Email

END OF BID PROPOSAL

Bid Schedule

This Bid Schedule must be completed in ink and included with the sealed Bid Proposal. Pricing must be provided for each Bid Item as indicated. Items marked "(SW)" are Specialty Work that must be performed by a qualified Subcontractor. The lump sum or unit cost for each item must be inclusive of all costs, whether direct or indirect, including profit and overhead. The sum of all amounts entered in the "Extended Total Amount" column must be identical to the Base Bid price entered in Section 1 of the Bid Proposal form.

AL = Allowance
LF = Linear Foot

CF = Cubic Feet
LS = Lump Sum

CY = Cubic Yard
SF = Square Feet

EA = Each
TON = Ton (2000 lbs)
LB = Pounds

| BID ITEM NO. | ITEM DESCRIPTION | EST. QTY. | UNIT | UNIT COST | EXTENDED TOTAL AMOUNT |
|--------------|--|-----------|------|-----------|-----------------------|
| 1 | Mobilization and Demobilization | 1 | LS | \$ | \$ |
| 2 | Maintenance Dredging and Disposal | 2,000 | CY | \$ | \$ |
| 3 | Hydrographic Surveying | 1 | LS | \$ | \$ |
| 4 | Biological Monitoring and Oversight | 1 | LS | \$ | \$ |
| 5 | | | | \$ | \$ |
| 6 | | | | \$ | \$ |
| 7 | | | | \$ | \$ |
| 8 | | | | \$ | \$ |
| 9 | | | | \$ | \$ |
| 10 | | | | \$ | \$ |
| 11 | | | | \$ | \$ |
| 12 | | | | \$ | \$ |
| 13 | | | | \$ | \$ |
| 14 | | | | \$ | \$ |
| 15 | | | | \$ | \$ |

* Final Pay Quantity

TOTAL BASE BID: Items 1 through 4 inclusive: \$ _____

Note: The amount entered as the "Total Base Bid" should be identical to the Base Bid amount entered in Section 1 of the Bid Proposal form.

BIDDER NAME: _____

END OF BID SCHEDULE

Subcontractor List

For each Subcontractor that will perform a portion of the Work in an amount in excess of one-half of 1% of the Bidder's total Base Bid,¹ the bidder must list a description of the Work, the name of the Subcontractor, its California contractor license number, the location of its place of business, its DIR registration number, and the portion of the Work that the Subcontractor is performing based on a percentage of the Base Bid price.

END OF SUBCONTRACTOR LIST

¹ For street or highway construction, this requirement applies to any subcontract of \$10,000 or more.

Noncollusion Declaration

TO BE EXECUTED BY BIDDER AND SUBMITTED WITH BID

The undersigned declares:

I am the _____ [title] of _____
[business name], the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham. The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

This declaration is intended to comply with California Public Contract Code § 7106 and Title 23 U.S.C § 112.

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

s/ _____

Name [print]

END OF NONCOLLUSION DECLARATION

Bid Bond

_____ ("Bidder") has submitted a bid, dated _____, 20____ ("Bid"), to the City of San Mateo ("City") for work on the Marina Lagoon Spot Dredging Project ("Project"). Under this duly executed bid bond ("Bid Bond"), Bidder as Principal and _____, its surety ("Surety"), are bound to City as obligee in the penal sum of ten percent of the maximum amount of the Bid (the "Bond Sum"). Bidder and Surety bind themselves and their respective heirs, executors, administrators, successors and assigns, jointly and severally, as follows:

1. **General.** If Bidder is awarded the Contract for the Project, Bidder will enter into the Contract with City in accordance with the terms of the Bid.
2. **Submittals.** Within ten days following issuance of the Notice of Potential Award to Bidder, Bidder must submit to City the following:
 - 2.1 **Contract.** The executed Contract, using the form provided by City in the Project contract documents ("Contract Documents");
 - 2.2 **Payment Bond.** A payment bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Payment Bond form included with the Contract Documents;
 - 2.3 **Performance Bond.** A performance bond for 100% of the maximum Contract Price, executed by a surety licensed to do business in the State of California using the Performance Bond form included with the Contract Documents;
 - 2.4 **Insurance.** The insurance certificate(s) and endorsement(s) required by the Contract Documents;
 - 2.5 **Certificates of Reported Compliance.** Valid Certificates of Reported Compliance for its fleet and its listed Subcontractors, if applicable, in accordance with the In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.) ("Off-Road Regulation"), if the Project involves the use of vehicles subject to the Off-Road Regulation; and any other documents required by the Instructions to Bidders or Notice of Potential Award.
3. **Enforcement.** If Bidder fails to execute the Contract or to submit the bonds, insurance certificates, and valid Certificates of Reported Compliance as required by the Contract Documents, Surety guarantees that Bidder forfeits the Bond Sum to City. Any notice to Surety may be given in the manner specified in the Contract and delivered or transmitted to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

4. **Duration and Waiver.** If Bidder fulfills its obligations under Section 2, above, then this obligation will be null and void; otherwise, it will remain in full force and effect for 60 days following the bid opening or until this Bid Bond is returned to Bidder, whichever occurs first. Surety waives the provisions of Civil Code §§ 2819 and 2845.

This Bid Bond is entered into and effective on _____, 20_____.

SURETY:

Business Name _____

s/ _____

Date

Name, Title _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

BIDDER:

Business Name _____

s/ _____

Date

Name, Title _____

END OF BID BOND

Bidder's Questionnaire

MARINA LAGOON SPOT DREDGING PROJECT

Within 48 hours following a request by City, a bidder must submit to City a completed, signed Bidder's Questionnaire using this form and all required attachments, including clearly labeled additional sheets as needed. City may request the Questionnaire from one or more of the apparent low bidders following the bid opening, and may use the completed Questionnaire as part of its investigation to evaluate a bidder's qualifications for this Project. The Questionnaire must be filled out completely, accurately, and legibly. Any errors, omissions, or misrepresentations in completion of the Questionnaire may be grounds for rejection of the bid or termination of a Contract awarded pursuant to the bid.

Part A: General Information

Bidder Business Name: _____ ("Bidder")

Check One: Corporation (State of incorporation: _____)
 Partnership
 Sole Proprietorship
 Joint Venture of: _____
 Other: _____

Main Office Address and Phone: _____

Local Office Address and Phone: _____

Website Address: _____

Owner of Business: _____

Contact Name and Title: _____

Contact Phone and Email: _____

Bidder's California Contractor's License Number(s): _____

Bidder's DIR Registration Number: _____

Part B: Bidder Experience

1. How many years has Bidder been in business under its present business name? _____ years
2. Has Bidder completed projects similar in type and size to this Project as a general contractor?
____ Yes ____ No
3. Has Bidder ever been disqualified from a bid on grounds that it is not responsible, or otherwise disqualified or debarred from bidding under state or federal law?
____ Yes ____ No

If yes, provide additional information on a separate sheet regarding the disqualification or debarment, including the name and address of the agency or owner of the project, the type and size of the project, the reasons that Bidder was disqualified or debarred, and the month and year in which the disqualification or debarment occurred.

4. Has Bidder ever been terminated for cause, alleged default, or legal violation from a construction project, either as a general contractor or as a subcontractor?

Yes No

If yes, provide additional information on a separate sheet regarding the termination, including the name and address of the agency or owner of the subject project, the type and size of the project, whether Bidder was under contract as a general contractor or a subcontractor, the reasons that Bidder was terminated, and the month and year in which the termination occurred.

5. Provide information about Bidder's past projects performed as general contractor as follows:

- 5.1 Six most recently completed public works projects within the last three years;
- 5.2 Three largest completed projects within the last three years; and
- 5.3 Any project which is similar to this Project including scope and character of the work.

6. Use separate sheets to provide all of the following information for each project identified in response to the above three categories:

- 6.1 Project name, location, and description;
- 6.2 Owner (name, address, email, and phone number);
- 6.3 Prime contractor, if applicable (name, address, email, and phone number);
- 6.4 Architect or engineer (name, email, and phone number);
- 6.5 Project and/or construction manager (name, email, and phone number);
- 6.6 Scope of work performed (as general contractor or as subcontractor);
- 6.7 Initial contract price and final contract price (including change orders);
- 6.8 Original scheduled completion date and actual date of completion;
- 6.9 Time extensions granted (number of days);
- 6.10 Number and amount of stop notices or mechanic's liens filed;
- 6.11 Amount of any liquidated damages assessed against Bidder; and
- 6.12 Nature and resolution of any project-related claim, lawsuit, mediation, or arbitration involving Bidder.

Part C: Safety

1. Provide Bidder's Experience Modification Rate (EMR) for the last three years:

| Year | EMR |
|------|-----|
| | |
| | |
| | |

2. Complete the following, based on information provided in Bidder's CalOSHA Form 300 or Form 300A, Annual Summary of Work-Related Illnesses and Injuries, from the most recent past calendar year:

- 2.1 Number of lost workday cases: _____
- 2.2 Number of medical treatment cases: _____
- 2.3 Number of deaths: _____

3. Has Bidder ever been cited, fined, or prosecuted by any local, state, or federal agency, including OSHA, CalOSHA, or EPA, for violation of any law, regulation, or requirements pertaining to health and safety?

_____ Yes _____ No

If yes, provide additional information on a separate sheet regarding each such citation, fine, or prosecution, including the name and address of the agency or owner of the project, the type and size of the project, the reasons for and nature of the citation, fine, or prosecution, and the month and year in which the incident giving rise to the citation, fine, or prosecution occurred.

4. Name, title, and email for person responsible for Bidder's safety program:

| | | |
|------|-------|-------|
| Name | Title | Email |
|------|-------|-------|

Part D: Verification

In signing this document, I, the undersigned, declare that I am duly authorized to sign and submit this Bidder's Questionnaire on behalf of the named Bidder, and that all responses and information set forth in this Bidder's Questionnaire and accompanying attachments are, to the best of my knowledge, true, accurate and complete as of the date of submission. **I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

Signature: _____ Date: _____

By: _____
Name and Title

END OF BIDDER'S QUESTIONNAIRE

Contract

This public works contract ("Contract") is entered into by and between the City of San Mateo ("City") and _____ ("Contractor"), for work on the Marina Lagoon Spot Dredging Project ("Project").

The parties agree as follows:

1. **Award of Contract.** In response to the Notice Inviting Bids, Contractor has submitted a Bid Proposal to perform the Work to construct the Project. On _____, 20____, City authorized award of this Contract to Contractor for the amount set forth in Section 4, below.
2. **Contract Documents.** The Contract Documents incorporated into this Contract include and are comprised of all of the documents listed below. The definitions provided in Article 1 of the General Conditions apply to all of the Contract Documents, including this Contract.
 - 2.1 Notice Inviting Bids;
 - 2.2 Instructions to Bidders;
 - 2.3 Addenda, if any;
 - 2.4 Bid Proposal and attachments thereto;
 - 2.5 Contract;
 - 2.6 Payment and Performance Bonds;
 - 2.7 General Conditions;
 - 2.8 Special Conditions;
 - 2.9 Project Plans and Specifications;
 - 2.10 Change Orders, if any;
 - 2.11 Notice of Potential Award; and
 - 2.12 Notice to Proceed.
3. **Contractor's Obligations.** Contractor will perform all of the Work required for the Project, as specified in the Contract Documents. Contractor must provide, furnish, and supply all things necessary and incidental for the timely performance and completion of the Work, including all necessary labor, materials, supplies, tools, equipment, transportation, onsite facilities, and utilities, unless otherwise specified in the Contract Documents. Contractor must use its best efforts to diligently prosecute and complete the Work in a professional and expeditious manner and to meet or exceed the performance standards required by the Contract Documents.
4. **Payment.** As full and complete compensation for Contractor's timely performance and completion of the Work in strict accordance with the terms and conditions of the Contract Documents, City will pay Contractor \$_____ ("Contract Price") for all of Contractor's direct and indirect costs to perform the Work, including all labor, materials, supplies, equipment, taxes, insurance, bonds and all overhead costs, in accordance with the payment provisions in the General Conditions.
5. **Time for Completion.** Contractor will fully complete the Work for the Project, meeting all requirements for Final Completion, within 80 calendar days from the start date set forth in the Notice to Proceed ("Contract Time"). By signing below, Contractor expressly waives any claim for delayed early completion.
6. **Liquidated Damages.** As further specified in Section 5.4 of the General Conditions, if Contractor fails to complete the Work within the Contract Time, City will assess liquidated damages in the amount of \$1,200 per day for each day of unexcused delay in achieving

Final Completion, and such liquidated damages may be deducted from City's payments due or to become due to Contractor under this Contract.

If by fault of the Contractor, the Contractor must shut down operations at the end of the Work Window as stated in the technical specifications and in the permits and resume the following work window, the Contractor will be subject to the same daily rate for Liquidated Damages

7. Labor Code Compliance.

- 7.1 General.** This Contract is subject to all applicable requirements of Chapter 1 of Part 7 of Division 2 of the Labor Code, including requirements pertaining to wages, working hours and workers' compensation insurance, as further specified in Article 9 of the General Conditions.
- 7.2 Prevailing Wages.** This Project is subject to the prevailing wage requirements applicable to the locality in which the Work is to be performed for each craft, classification or type of worker needed to perform the Work, including employer payments for health and welfare, pension, vacation, apprenticeship and similar purposes. Copies of these prevailing rates are available online at <http://www.dir.ca.gov/DLSR>.
- 7.3 DIR Registration.** City may not enter into the Contract with a bidder without proof that the bidder and its Subcontractors are registered with the California Department of Industrial Relations to perform public work pursuant to Labor Code § 1725.5, subject to limited legal exceptions.
- 7.4 Minimum Wage.** Contractor agrees to comply with the City's minimum wage ordinance as codified in San Mateo Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator. Contractor and its Subcontractors are required to pay the higher of the currently applicable state prevailing wage rates or City minimum wage.

8. Workers' Compensation Certification. Pursuant to Labor Code § 1861, by signing this Contract, Contractor certifies as follows: "I am aware of the provisions of Labor Code § 3700 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 I will comply with such provisions before commencing the performance of the Work on this Contract."

9. Conflicts of Interest. Contractor, its employees, Subcontractors, and agents may not have, maintain, or acquire a conflict of interest in relation to this Contract in violation of any City ordinance or requirement, or in violation of any California law, including Government Code § 1090 et seq., or the Political Reform Act, as set forth in Government Code § 81000 et seq. and its accompanying regulations. Any violation of this Section constitutes a material breach of the Contract.

10. Independent Contractor. Contractor is an independent contractor under this Contract and will have control of the Work and the means and methods by which it is performed. Contractor and its Subcontractors are not employees of City and are not entitled to participate in any health, retirement, or any other employee benefits from City.

11. Notice. Any notice, billing, or payment required by or pursuant to the Contract Documents must be made in writing, signed, dated, and sent to the other party by personal delivery, U.S. Mail, a reliable overnight delivery service, or by email as a PDF file. Notice is deemed

effective upon delivery, except that service by U.S. Mail is deemed effective on the second working day after deposit for delivery. Notice for each party must be given as follows:

City:

Department of Public Works
330 W. 20th Avenue
San Mateo, CA 94403
Attn: James Yang, Senior Engineer
jyang@cityofsanmateo.org

Copy to: Jimmy Vo, Engineering Manager
jvo@cityofsanmateo.org

Contractor:

Name: _____
Address: _____
City/State/Zip: _____
Phone: _____
Attn: _____
Email: _____
Copy to: _____

12. General Provisions.

- 12.1 Assignment and Successors.** Contractor may not assign its rights or obligations under this Contract, in part or in whole, without City's written consent. This Contract is binding on Contractor's and City's lawful heirs, successors and permitted assigns.
- 12.2 Third Party Beneficiaries.** There are no intended third party beneficiaries to this Contract.
- 12.3 Governing Law and Venue.** This Contract will be governed by California law and venue will be in the San Mateo County Superior Court, and no other place. Contractor waives any right it may have pursuant to Code of Civil Procedure § 394, to file a motion to transfer any action arising from or relating to this Contract to a venue outside of San Mateo County, California.
- 12.4 Amendment.** No amendment or modification of this Contract will be binding unless it is in a writing duly authorized and signed by the parties to this Contract.
- 12.5 Integration.** This Contract and the Contract Documents incorporated herein, including authorized amendments or Change Orders thereto, constitute the final, complete, and exclusive terms of the agreement between City and Contractor.
- 12.6 Severability.** If any provision of the Contract Documents is determined to be illegal, invalid, or unenforceable, in whole or in part, the remaining provisions of the Contract Documents will remain in full force and effect.
- 12.7 Iran Contracting Act.** If the Contract Price exceeds \$1,000,000, Contractor certifies, by signing below, that it is not identified on a list created under the Iran Contracting Act, Public Contract Code § 2200 et seq. (the "Act"), as a person

engaging in investment activities in Iran, as defined in the Act, or is otherwise expressly exempt under the Act.

12.8 Authorization. Each individual signing below warrants that he or she is authorized to do so by the party that he or she represents, and that this Contract is legally binding on that party. If Contractor is a corporation, signatures from two officers of the corporation are required pursuant to California Corporations Code § 313.

[Signatures are on the following page.]

The parties agree to this Contract as witnessed by the signatures below:

CITY:

s/ _____

Approved as to form:

s/ _____

Name, Title _____

Name, Title _____

Date: _____

Date: _____

Attest:

s/ _____

Name, Title _____

Date: _____

CONTRACTOR: _____

Business Name _____

s/ _____

Seal: _____

Name, Title _____

Date: _____

Second Signature (See Section 12.8):

s/ _____

Name, Title _____

Date: _____

Contractor's California License Number(s) and Expiration Date(s) _____

END OF CONTRACT

Payment Bond

The City of San Mateo ("City") and _____ ("Contractor") have entered into a contract for work on the Marina Lagoon Spot Dredging Project ("Project"). The Contract is incorporated by reference into this Payment Bond ("Bond").

- 1. General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee in an amount not less than \$ _____, under California Civil Code § 9550 et seq., to ensure payment to authorized claimants. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
- 2. Surety's Obligation.** If Contractor or any of its Subcontractors fails to pay a person authorized in California Civil Code § 9100 to assert a claim against a payment bond, any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the Contract, or any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of Contractor and its Subcontractors under California Unemployment Insurance Code § 13020 with respect to the work and labor, then Surety will pay the obligation.
- 3. Beneficiaries.** This Bond inures to the benefit of any of the persons named in California Civil Code § 9100, so as to give a right of action to those persons or their assigns in any suit brought upon this Bond. Contractor must promptly provide a copy of this Bond upon request by any person with legal rights under this Bond.
- 4. Duration.** If Contractor promptly makes payment of all sums for all labor, materials, and equipment furnished for use in the performance of the Work required by the Contract, in conformance with the time requirements set forth in the Contract and as required by California law, Surety's obligations under this Bond will be null and void. Otherwise, Surety's obligations will remain in full force and effect.
- 5. Waivers.** Surety waives any requirement to be notified of alterations to the Contract or extensions of time for performance of the Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845. City waives the requirement of a new bond for any supplemental contract under Civil Code § 9550. Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Email: _____

- 6. Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the San Mateo County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

[Signatures are on the following page.]

7. **Effective Date; Execution.** This Bond is entered into and is effective on _____, 20___.

SURETY:

Business Name _____

s/ _____

Date

Name, Title _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name _____

s/ _____

Date

Name, Title _____

APPROVED BY CITY:

s/ _____

Date

Name, Title _____

END OF PAYMENT BOND

Performance Bond

The City of San Mateo ("City") and _____ ("Contractor") have entered into a contract for work on the Marina Lagoon Spot Dredging Project ("Project"). The Contract is incorporated by reference into this Performance Bond ("Bond").

1. **General.** Under this Bond, Contractor as principal and _____, its surety ("Surety"), are bound to City as obligee for an amount not less than \$ _____ to ensure Contractor's faithful performance of its obligations under the Contract. This Bond is binding on the respective successors, assigns, owners, heirs, or executors of Surety and Contractor.
2. **Surety's Obligations.** Surety's obligations are co-extensive with Contractor's obligations under the Contract. If Contractor fully performs its obligations under the Contract, including its warranty obligations under the Contract, Surety's obligations under this Bond will become null and void. Otherwise, Surety's obligations will remain in full force and effect.
3. **Waiver.** Surety waives any requirement to be notified of and further consents to any alterations to the Contract made under the applicable provisions of the Contract Documents, including changes to the scope of Work or extensions of time for performance of Work under the Contract. Surety waives the provisions of Civil Code §§ 2819 and 2845.
4. **Application of Contract Balance.** Upon making a demand on this Bond for completion of the Work prior to acceptance of the Project, City will make the Contract Balance available to Surety for completion of the Work under the Contract. For purposes of this provision, the Contract Balance is defined as the total amount payable by City to Contractor as the Contract Price minus amounts already paid to Contractor, and minus any liquidated damages, credits, or backcharges to which City is entitled under the terms of the Contract.
5. **Contractor Default.** Upon written notification from City of Contractor's termination for default under Article 13 of the Contract General Conditions, time being of the essence, Surety must act within the time specified in Article 13 to remedy the default through one of the following courses of action:
 - 5.1 Arrange for completion of the Work under the Contract by Contractor, with City's consent, but only if Contractor is in default solely due to its financial inability to complete the Work;
 - 5.2 Arrange for completion of the Work under the Contract by a qualified contractor acceptable to City, and secured by performance and payment bonds issued by an admitted surety as required by the Contract Documents, at Surety's expense; or
 - 5.3 Waive its right to complete the Work under the Contract and reimburse City the amount of City's costs to have the remaining Work completed.
6. **Surety Default.** If Surety defaults on its obligations under the Bond, City will be entitled to recover all costs it incurs due to Surety's default, including legal, design professional, or delay costs.

7. **Notice.** Any notice to Surety may be given in the manner specified in the Contract and sent to Surety as follows:

Attn: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
Email: _____

8. **Law and Venue.** This Bond will be governed by California law, and venue for any dispute pursuant to this Bond will be in the San Mateo County Superior Court, and no other place. Surety will be responsible for City's attorneys' fees and costs in any action to enforce the provisions of this Bond.

9. **Effective Date; Execution.** This Bond is entered into and effective on _____, 20____.

SURETY:

Business Name _____

s/ _____ Date _____

Name, Title _____

(Attach Acknowledgment with Notary Seal and Power of Attorney)

CONTRACTOR:

Business Name _____

s/ _____ Date _____

Name, Title _____

APPROVED BY CITY:

s/ _____ Date _____

Name, Title _____

END OF PERFORMANCE BOND

General Conditions

Article 1 - Definitions

Definitions. The following definitions apply to all of the Contract Documents unless otherwise indicated, e.g., additional definitions that apply solely to the Specifications or other technical documents. Defined terms and titles of documents are capitalized in the Contract Documents, with the exception of the following (in any tense or form): "day," "furnish," "including," "install," "work day," or "working day."

Allowance means a specific amount that must be included in the Bid Proposal for a specified purpose.

Article, as used in these General Conditions, means a numbered Article of the General Conditions, unless otherwise indicated by the context.

Change Order means a written document duly approved and executed by City, which changes the scope of Work, the Contract Price, or the Contract Time.

City means the municipality which has entered into the Contract with Contractor for performance of the Work, acting through its City Council, officers, employees, City Engineer, and any other authorized representatives.

City Engineer means the City Engineer for City and his or her authorized delegate(s).

Claim means a separate demand by Contractor for a change in the Contract Time or Contract Price, that has previously been submitted to City in accordance with the requirements of the Contract Documents, and which has been rejected by City, in whole or in part; a written demand by Contractor disputing a unilateral Change Order or a portion thereof; or a written demand by Contractor objecting to the amount of Final Payment.

Contract means the signed agreement between City and Contractor for performing the Work required for the Project, and all documents expressly incorporated therein.

Contract Documents means, collectively, all of the documents listed as such in Section 2 of the Contract, including the Notice Inviting Bids; the Instructions to Bidders; addenda, if any; the Bid Proposal and attachments thereto; the Contract; the Notice of Potential Award and Notice to Proceed; the payment and performance bonds; the General Conditions; the Special Conditions; the Project Plans and Specifications; any Change Orders; and any other documents which are clearly and unambiguously made part of the Contract Documents. The Contract Documents do not include documents provided "For Reference Only," or documents that are intended solely to provide information regarding existing conditions.

Contract Price means the total compensation to be paid to Contractor for performance of the Work, as set forth in the Contract and as may be amended by Change Order or adjusted for an Allowance. The Contract Price is not subject to adjustment due to inflation or due to the increased cost of labor, material, supplies, or equipment following submission of the Bid Proposal.

Contract Time means the time specified for complete performance of the Work, as set forth in the Contract and as may be amended by Change Order.

Contractor means the individual, partnership, corporation, or joint venture that has signed the Contract with City to perform the Work.

Day means a calendar day unless otherwise specified.

Design Professional means the licensed individual(s) or firm(s) retained by City to provide architectural, engineering, or other design professional services for the Project. If no Design Professional has been retained for this Project, any reference to Design Professional is deemed to refer to the Engineer.

DIR means the California Department of Industrial Relations.

Drawings has the same meaning as Plans.

Engineer means the City Engineer for the City of San Mateo and his or her authorized delegates.

Excusable Delay is defined in Section 5.3(B), Excusable Delay.

Extra Work means new or unforeseen work added to the Project, as determined by the Engineer in his or her sole discretion, including Work that was not part of or incidental to the scope of the Work when the Contractor's bid was submitted; Work that is substantially different from the Work as described in the Contract Documents at bid time; or Work that results from a substantially differing and unforeseeable condition.

Final Completion means Contractor has fully completed all of the Work required by the Contract Documents to the City's satisfaction, including all punch list items and any required commissioning or training, and has provided the City with all required submittals, including the instructions and manuals, product warranties, and as-built drawings.

Final Payment means payment to Contractor of the unpaid Contract Price, including release of undisputed retention, less amounts withheld or deducted pursuant to the Contract Documents.

Furnish means to purchase and deliver for the Project.

Government Code Claim means a claim submitted pursuant to California Government Code § 900 et seq.

Hazardous Materials means any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material that may be considered hazardous or otherwise subject to Laws governing handling, disposal, or cleanup.

Including, whether or not capitalized, means "including, but not limited to," unless the context clearly requires otherwise.

Inspector means the individual(s) or firm(s) retained or employed by City to inspect the workmanship, materials, and manner of construction of the Project and its components to ensure compliance with the Contract Documents and all Laws.

Install means to fix in place for materials, and to fix in place and connect for equipment.

Laws means all applicable local, state, and federal laws, regulations, rules, codes, ordinances, permits, orders, and the like enacted or imposed by or under the auspices of any governmental entity with jurisdiction over any of the Work or any performance of the Work, including health and safety requirements.

Non-Excusable Delay is defined in Section 5.3(D), Non-Excusable Delay.

Plans means the City-provided plans, drawings, details, or graphical depictions of the Project requirements, but does not include Shop Drawings.

Project means the public works project referenced in the Contract, as modified by any Project alternates elected by City, if any.

Project Manager means the individual designated by City to oversee and manage the Project on City's behalf and may include his or her authorized delegate(s) when the Project Manager is unavailable. If no Project Manager has been designated for this Project, any reference to Project Manager is deemed to refer to the Engineer.

Recoverable Costs is defined in Section 5.3(F), Recoverable Costs.

Request for Information or **RFI** means Contractor's written request for information about the Contract Documents, the Work or the Project, submitted to City in the manner and format specified by City.

Section, when capitalized in these General Conditions, means a numbered section or subsection of the General Conditions, unless the context clearly indicates otherwise.

Shop Drawings means drawings, plan details or other graphical depictions prepared by or on behalf of Contractor, and subject to City acceptance, which are intended to provide details for fabrication, installation, and the like, of items required by or shown in the Plans or Specifications.

Specialty Work means Work that must be performed by a specialized Subcontractor with the specified license or other special certification, and that the Contractor is not qualified to self-perform.

Specifications means the technical, text specifications describing the Project requirements, which are prepared for and incorporated into the Contract by or on behalf of City, and does not include the Contract, General Conditions or Special Conditions.

Subcontractor means an individual, partnership, corporation, or joint venture retained by Contractor directly or indirectly through a subcontract to perform a specific portion of the Work. The term Subcontractor applies to subcontractors of all tiers, unless otherwise indicated by the context. A third party such as a utility performing related work on the Project is not a Subcontractor, even if Contractor must coordinate its Work with the third party.

Technical Specifications has the same meaning as Specifications.

Work means all of the construction and services necessary for or incidental to completing the Project in conformance with the requirements of the Contract Documents.

Work Day or Working Day, whether or not capitalized, means a weekday when the City is open for business, and does not include holidays observed by the City.

Worksite means the place or places where the Work is performed, which includes, but may extend beyond the Project site, including separate locations for staging, storage, or fabrication.

Article 2 - Roles and Responsibilities

2.1 City.

(A) **City Council.** The City Council has final authority in all matters affecting the Project, except to the extent it has delegated authority to the Engineer.

(B) **Engineer.** The Engineer, acting within the authority conferred by the City Council, is responsible for administration of the Project on behalf of City, including

authority to provide directions to the Design Professional and to Contractor to ensure proper and timely completion of the Project. The Engineer's decisions are final and conclusive within the scope of his or her authority, including interpretation of the Contract Documents.

(C) **Project Manager.** The Project Manager assigned to the Project will be the primary point of contact for the Contractor and will serve as City's representative for daily administration of the Project on behalf of City. Unless otherwise specified, all of Contractor's communications to City (in any form) will go to or through the Project Manager. City reserves the right to reassign the Project Manager role at any time or to delegate duties to additional City representatives, without prior notice to or consent of Contractor.

(D) **Design Professional.** The Design Professional is responsible for the overall design of the Project and, to the extent authorized by City, may act on City's behalf to ensure performance of the Work in compliance with the Plans and Specifications, including any design changes authorized by Change Order. The Design Professional's duties may include review of Contractor's submittals, visits to any Worksite, inspecting the Work, evaluating test and inspection results, and participation in Project-related meetings, including any pre-construction conference, weekly meetings, and coordination meetings. The Design Professional's interpretation of the Plans or Specifications is final and conclusive.

2.2 Contractor.

(A) **General.** Contractor must provide all labor, materials, supplies, equipment, services, and incidentals necessary to perform and timely complete the Work in strict accordance with the Contract Documents, and in an economical and efficient manner in the best interests of City, and with minimal inconvenience to the public.

(B) **Responsibility for the Work and Risk of Loss.** Contractor is responsible for supervising and directing all aspects of the Work to facilitate the efficient and timely completion of the Work. Contractor is solely responsible for and required to exercise full control over the Work, including the construction means, methods, techniques, sequences, procedures, safety precautions and programs, and coordination of all portions of the Work with that of all other contractors and Subcontractors, except to the extent that the Contract Documents provide other specific instructions. Contractor's responsibilities extend to any plan, method or sequence suggested, but not required by City or specified in the Contract Documents. From the date of commencement of the Work until either the date on which City formally accepts the Project or the effective date of termination of the Contract, whichever is later, Contractor bears all risks of injury or damage to the Work and the materials and equipment delivered to any Worksite, by any cause including fire, earthquake, wind, weather, vandalism, or theft, subject to the limitations of Laws, including Public Contract Code § 7105.

(C) **Project Administration.** Contractor must provide sufficient and competent administration, staff, and skilled workforce necessary to perform and timely complete the Work in accordance with the Contract Documents. Before starting the Work, Contractor must designate in writing and provide complete contact information, including telephone numbers and email address, for the officer or employee in Contractor's organization who is to serve as Contractor's primary representative for the Project, and who has authority to act on Contractor's behalf. A Subcontractor may not serve as Contractor's primary representative.

(D) **On-Site Superintendent.** Contractor must, at all times during performance of the Work, provide a qualified and competent full-time superintendent acceptable to City,

and assistants as necessary, who must be physically present at the Project site while any aspect of the Work is being performed. The superintendent must have full authority to act and communicate on behalf of Contractor, and Contractor will be bound by the superintendent's communications to City. City's approval of the superintendent is required before the Work commences. If City is not satisfied with the superintendent's performance, City may request a qualified replacement of the superintendent. Failure to comply may result in temporary suspension of the Work, at Contractor's sole expense and with no extension of Contract Time, until an approved superintendent is physically present to supervise the Work. Contractor must provide written notice to City, as soon as practicable, before replacing the superintendent.

(E) **Standards.** Contractor must, at all times, ensure that the Work is performed in an efficient, skillful manner following best practices and in full compliance with the Contract Documents, Laws, and applicable manufacturer's recommendations. Contractor has a material and ongoing obligation to provide true and complete information, to the best of its knowledge, with respect to all records, documents, or communications pertaining to the Project, including oral or written reports, statements, certifications, Change Order requests, or Claims.

(F) **Meetings.** Contractor, its project manager, superintendent and any primary Subcontractors requested by City, must attend a pre-construction conference, if requested by City, as well as weekly Project progress meetings scheduled with City. If applicable, Contractor may also be required to participate in coordination meetings with other parties relating to other work being performed on or near the Project site or in relation to the Project, including work or activities performed by City, other contractors, or other utility owners.

(G) **Construction Records.** Contractor will maintain up-to-date, thorough, legible, and dated daily job reports, which document all significant activity on the Project for each day that Work is performed on the Project. The daily report for each day must include the number of workers at the Project site; primary Work activities; major deliveries; problems encountered, including injuries, if any; weather and site conditions; and delays, if any. Contractor will take date and time-stamped photographs to document general progress of the Project, including site conditions prior to construction activities, before and after photographs at offset trench laterals, existing improvements and utilities, damage and restoration. Contractor will maintain copies of all subcontracts, Project-related correspondence with Subcontractors, and records of meetings with Subcontractors. Upon request by the City, Contractor will permit review of and/or provide copies of any of these construction records.

(H) **Responsible Party.** Contractor is solely responsible to City for the acts or omissions of any Subcontractors, or any other party or parties performing portions of the Work or providing equipment, materials or services for or on behalf of Contractor or the Subcontractors. Upon City's written request, Contractor must promptly and permanently remove from the Project, at no cost to City, any employee or Subcontractor or employee of a Subcontractor who the Engineer has determined to be incompetent, intemperate or disorderly, or who has failed or refused to perform the Work as required under the Contract Documents.

(I) **Correction of Defects.** Contractor must promptly correct, at Contractor's sole expense, any Work that is determined by City to be deficient or defective in any way, including workmanship, materials, parts, or equipment. Workmanship, materials, parts, or equipment that do not conform to the requirements under the Contract Documents, as determined by City, will be considered defective and subject to rejection. Contractor must also promptly correct, at Contractor's sole expense, any Work performed beyond the lines and grades shown on the Plans or established by City, and any Extra Work

performed without City's prior written approval. If Contractor fails to correct or to take reasonable steps toward correcting defective Work within five days following notice from City, or within the time specified in City's notice to correct, City may elect to have the defective Work corrected by its own forces or by a third party, in which case the cost of correction will be deducted from the Contract Price. If City elects to correct defective Work due to Contractor's failure or refusal to do so, City or its agents will have the right to take possession of and use any equipment, supplies, or materials available at the Project site or any Worksite on City property, in order to effectuate the correction, at no extra cost to City. Contractor's warranty obligations under Section 11.2, Warranty, will not be waived nor limited by City's actions to correct defective Work under these circumstances. Alternatively, City may elect to retain defective Work, and deduct the difference in value, as determined by the Engineer, from payments otherwise due to Contractor. This paragraph applies to any defective Work performed by Contractor during the one-year warranty period under Section 11.2.

(J) **Contractor's Records.** Contractor must maintain all of its records relating to the Project in any form, including paper documents, photos, videos, electronic records, approved samples, and the construction records required pursuant to paragraph (G), above. Project records subject to this provision include complete Project cost records and records relating to preparation of Contractor's bid, including estimates, take-offs, and price quotes or bids.

(1) Contractor's cost records must include all supporting documentation, including original receipts, invoices, and payroll records, evidencing its direct costs to perform the Work, including, but not limited to, costs for labor, materials, and equipment. Each cost record should include, at a minimum, a description of the expenditure with references to the applicable requirements of the Contract Documents, the amount actually paid, the date of payment, and whether the expenditure is part of the original Contract Price, related to an executed Change Order, or otherwise categorized by Contractor as Extra Work. Contractor's failure to comply with this provision as to any claimed cost operates as a waiver of any rights to recover the claimed cost.

(2) Contractor must continue to maintain its Project-related records in an organized manner for a period of five years after City's acceptance of the Project or following Contract termination, whichever occurs first. Subject to prior notice to Contractor, City is entitled to inspect or audit any of Contractor's records relating to the Project during Contractor's normal business hours. Contractor's records may also be subject to examination and audit by the California State Auditor, pursuant to Government Code § 8546.7. The record-keeping requirements set forth in this subsection 2.2(J) will survive expiration or termination of the Contract.

(K) **Copies of Project Documents.** Contractor and its Subcontractors must keep copies, at the Project site, of all Work-related documents, including the Contract, permit(s), Plans, Specifications, addenda, Contract amendments, Change Orders, RFIs and RFI responses, Shop Drawings, as-built drawings, schedules, daily records, testing and inspection reports or results, and any related written interpretations. These documents must be available to City for reference at all times during construction of the Project.

2.3 Subcontractors.

(A) **General.** All Work which is not performed by Contractor with its own forces must be performed by Subcontractors. City reserves the right to approve or reject any and all Subcontractors proposed to perform the Work, for reasons including the Subcontractor's poor reputation, lack of relevant experience, financial instability, and lack of technical ability or adequate trained workforce. Each Subcontractor must obtain a City business license before performing any Work.

(B) **Contractual Obligations.** Contractor must require each Subcontractor to comply with the provisions of the Contract Documents as they apply to the Subcontractor's portion(s) of the Work, including the generally applicable terms of the Contract Documents, and to likewise bind their subcontractors. Contractor will provide that the rights that each Subcontractor may have against any manufacturer or supplier for breach of warranty or guarantee relating to items provided by the Subcontractor for the Project, will be assigned to City. Nothing in these Contract Documents creates a contractual relationship between a Subcontractor and City, but City is deemed to be a third-party beneficiary of the contract between Contractor and each Subcontractor.

(C) **Termination.** If the Contract is terminated, each Subcontractor's agreement must be assigned by Contractor to City, subject to the prior rights of any surety, but only if and to the extent that City accepts, in writing, the assignment by written notification, and assumes all rights and obligations of Contractor pursuant to each such subcontract agreement.

(D) **Substitution of Subcontractor.** If Contractor requests substitution of a listed Subcontractor under Public Contract Code § 4107, Contractor is solely responsible for all costs City incurs in responding to the request, including legal fees and costs to conduct a hearing, and any increased subcontract cost to perform the Work that was to be performed by the listed Subcontractor. If City determines that a Subcontractor is unacceptable to City based on the Subcontractor's failure to satisfactorily perform its Work, or for any of the grounds for substitution listed in Public Contract Code § 4107(a), City may request removal of the Subcontractor from the Project. Upon receipt of a written request from City to remove a Subcontractor pursuant to this paragraph, Contractor will immediately remove the Subcontractor from the Project and, at no further cost to City, will either (1) self-perform the remaining Work to the extent that Contractor is duly licensed and qualified to do so, or (2) substitute a Subcontractor that is acceptable to City, in compliance with Public Contract Code § 4107, as applicable.

2.4 Coordination of Work.

(A) **Concurrent Work.** City reserves the right to perform, have performed, or permit performance of other work on or adjacent to the Project site while the Work is being performed for the Project. Contractor is responsible for coordinating its Work with other work being performed on or adjacent to the Project site, including by any utility companies or agencies, and must avoid hindering, delaying, or interfering with the work of other contractors, individuals, or entities, and must ensure safe and reasonable site access and use as required or authorized by City. To the full extent permitted by law, Contractor must hold harmless and indemnify City against any and all claims arising from or related to Contractor's avoidable, negligent, or willful hindrance of, delay to, or interference with the work of any utility company or agency or another contractor or subcontractor.

(B) **Coordination.** If Contractor's Work will connect or interface with work performed by others, Contractor is responsible for independently measuring and visually inspecting such work to ensure a correct connection and interface. Contractor is responsible for any

failure by Contractor or its Subcontractors to confirm measurements before proceeding with connecting Work. Before proceeding with any portion of the Work affected by the construction or operations of others, Contractor must give the Project Manager prompt written notification of any defects Contractor discovers which will prevent the proper execution of the Work. Failure to give notice of any known or reasonably discoverable defects will be deemed acknowledgement by Contractor that the work of others is not defective and will not prevent the proper execution of the Work. Contractor must also promptly notify City if work performed by others, including work or activities performed by City's own forces, is operating to hinder, delay, or interfere with Contractor's timely performance of the Work. City reserves the right to backcharge Contractor for any additional costs incurred due to Contractor's failure to comply with the requirements in this Section 2.4.

2.5 Submittals. Unless otherwise specified, Contractor must submit to the Engineer for review and acceptance, all schedules, Shop Drawings, samples, product data, and similar submittals required by the Contract Documents, or upon request by the Engineer. Unless otherwise specified, all submittals, including Requests for Information, are subject to the general provisions of this Section, as well as specific submittal requirements that may be included elsewhere in the Contract Documents, including the Special Conditions or Specifications. The Engineer may require submission of a submittal schedule at or before a pre-construction conference, as may be specified in the Notice to Proceed.

(A) **General.** Contractor is responsible for ensuring that its submittals are accurate and conform to the Contract Documents.

(B) **Time and Manner of Submission.** Contractor must ensure that its submittals are prepared and delivered in a manner consistent with the current City-accepted schedule for the Work and within the applicable time specified in the Contract Documents, or if no time is specified, in such time and sequence so as not to delay the performance of the Work or completion of the Project.

(C) **Required Contents.** Each submittal must include the Project name and contract number, Contractor's name and address, the name and address of any Subcontractor or supplier involved with the submittal, the date, and references to applicable Specification section(s) and/or drawing and detail number(s).

(D) **Required Corrections.** If corrections are required, Contractor must promptly make and submit any required corrections as specified in full conformance with the requirements of this Section, or other requirements that apply to that submittal.

(E) **Effect of Review and Acceptance.** Review and acceptance of a submittal by City will not relieve Contractor from complying with the requirements of the Contract Documents. Contractor is responsible for any errors in any submittal, and review or acceptance of a submittal by City is not an assumption of risk or liability by City.

(F) **Enforcement.** Any Work performed or any material furnished, installed, fabricated or used without City's prior acceptance of a required submittal is performed or provided at Contractor's risk, and Contractor may be required to bear the costs incident thereto, including the cost of removing and replacing such Work, repairs to other affected portions of the Work or material, and the cost of additional time or services required of City, including costs for the Design Professional, Project Manager, or Inspector.

(G) **Excessive RFIs.** A RFI will be considered excessive or unnecessary if City determines that the explanation or response to the RFI is clearly and unambiguously discernable from the Contract Documents. City's costs to review and respond to

excessive or unnecessary RFIs may be deducted from payments otherwise due to Contractor.

2.6 Shop Drawings. When Shop Drawings are required by the Specifications or requested by the Engineer, they must be prepared according to best practices at Contractor's expense. The Shop Drawings must be of a size and scale to clearly show all necessary details. Unless otherwise specified by City, Shop Drawings must be provided to the Engineer for review and acceptance at least 30 days before the Work will be performed. If City requires changes, the corrected Shop Drawings must be resubmitted to the Engineer for review within the time specified by the Engineer. For all Project components requiring Shop Drawings, Contractor will not furnish materials or perform any Work until the Shop Drawings for those components are accepted by City. Contractor is responsible for any errors or omissions in the Shop Drawings, shop fits and field corrections; any deviations from the Contract Documents; and for the results obtained by the use of Shop Drawings. Acceptance of Shop Drawings by City does not relieve Contractor of Contractor's responsibility.

2.7 Access to Work. Contractor must afford prompt and safe access to any Worksite by City and its employees, agents, or consultants authorized by City; and upon request by City, Contractor must promptly arrange for City representatives to visit or inspect manufacturing sites or fabrication facilities for items to be incorporated into the Work.

2.8 Personnel. Contractor and its Subcontractors must employ only competent and skillful personnel to perform the Work. Contractor and its Subcontractor's supervisors, security or safety personnel, and employees who have unescorted access to the Project site must possess proficiency in English sufficient to read, understand, receive, and implement oral or written communications or instructions relating to their respective job functions, including safety and security requirements. Upon written notification from the Engineer, Contractor and its Subcontractors must immediately discharge any personnel who are incompetent, disorderly, disruptive, threatening, abusive, or profane, or otherwise refuse or fail to comply with the requirements of the Contract Documents or Laws, including Laws pertaining to health and safety. Any such discharged personnel may not be re-employed or permitted on the Project in any capacity without City's prior written consent.

Article 3 - Contract Documents

3.1 Interpretation of Contract Documents.

(A) **Plans and Specifications.** The Plans and Specifications included in the Contract Documents are complementary. If Work is shown on one but not on the other, Contractor must perform the Work as though fully described on both, consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Plans and Specifications are deemed to include and require everything necessary and reasonably incidental to completion of the Work, whether or not particularly mentioned or shown. Contractor must perform all Work and services and supply all things reasonably related to and inferable from the Contract Documents. In the event of a conflict between the Plans and Specifications, the Specifications will control, unless the drawing(s) at issue are dated later than the Specification(s) at issue. Detailed drawings take precedence over general drawings, and large-scale drawings take precedence over smaller scale drawings. Any arrangement or division of the Plans and Specifications into sections is for convenience and is not intended to limit the Work required by separate trades. A conclusion presented in the Plans or Specifications is only a recommendation. Actual locations and depths must be determined by Contractor's field investigation. Contractor may request access to underlying or background information in City's possession that is necessary for Contractor to form its own conclusions.

(B) **Duty to Notify and Seek Direction.** If Contractor becomes aware of a changed condition in the Project, or of any ambiguity, conflict, inconsistency, discrepancy, omission, or error in the Contract Documents, including the Plans or Specifications, Contractor must promptly submit a Request for Information to the Engineer and wait for a response from City before proceeding further with the related Work. The RFI must notify City of the issue and request clarification, interpretation or direction. The Engineer's clarification, interpretation or direction will be final and binding on Contractor. If Contractor proceeds with the related Work before obtaining City's response, Contractor will be responsible for any resulting costs, including the cost of correcting any incorrect or defective Work that results. Timely submission of a clear and complete RFI is essential to avoiding delay. Delay resulting from Contractor's failure to submit a timely and complete RFI to the Engineer is Non-Excusable Delay. If Contractor believes that City's response to an RFI justifies a change to the Contract Price or Contract Time, Contractor must perform the Work as directed, but may submit a timely Change Order request in accordance with the Contract Documents. (See Articles 5 and 6.)

(C) **Figures and Dimensions.** Figures control over scaled dimensions.

(D) **Technical or Trade Terms.** Any terms that have well-known technical or trade meanings will be interpreted in accordance with those meanings, unless otherwise specifically defined in the Contract Documents.

(E) **Measurements.** Contractor must verify all relevant measurements in the Contract Documents and at the Project site before ordering any material or performing any Work, and will be responsible for the correctness of those measurements or for costs that could have been avoided by independently verifying measurements.

(F) **Compliance with Laws.** The Contract Documents are intended to comply with Laws and will be interpreted to comply with Laws.

3.2 Order of Precedence. Information included in one Contract Document but not in another will not be considered a conflict or inconsistency. Unless otherwise specified in the Special Conditions, in case of any conflict or inconsistency among the Contract Documents, the following order of precedence will apply, beginning from highest to lowest, with the most recent version taking precedent over an earlier version:

- (A) Change Orders;
- (B) Addenda;
- (C) Contract;
- (D) Notice to Proceed;
- (E) Special Conditions;
- (F) General Conditions;
- (G) Payment and Performance Bonds;
- (H) Specifications;
- (I) Plans;
- (J) Notice of Potential Award;
- (K) Notice Inviting Bids;
- (L) Instructions to Bidders;
- (M) Contractor's Bid Proposal and attachments;
- (N) the City's standard specifications, as applicable; and
- (O) Any generic documents prepared by and on behalf of a third party, that were not prepared specifically for this Project, such as the Caltrans Standard Specifications or Caltrans Special Provisions.

3.3 Caltrans Standard Specifications. Any reference to or incorporation of the Standard Specifications of the State of California, Department of Transportation (“Caltrans”), including “Standard Specifications,” “Caltrans Specifications,” “State Specifications,” or “CSS,” means the most current edition of Caltrans’ Standard Specifications, unless otherwise specified (“Caltrans Standard Specifications”), including the most current amendments as of the date that Contractor’s bid was submitted for this Project. The following provisions apply to use of or reference to the Caltrans Standard Specifications or Special Provisions:

(A) **Limitations.** The “General Provisions” of the Caltrans Standard Specifications, i.e., sections 1 through 9, do not apply to these Contract Documents with the exception of any specific provisions, if any, which are expressly stated to apply to these Contract Documents.

(B) **Conflicts or Inconsistencies.** If there is a conflict or inconsistency between any provision in the Caltrans Standard Specifications or Special Provisions and a provision of these Contract Documents, as determined by City, the provision in the Contract Documents will govern.

(C) **Meanings.** Terms used in the Caltrans Standard Specifications or Special Provisions are to be interpreted as follows:

(1) Any reference to the “Engineer” is deemed to mean the City Engineer.

(2) Any reference to the “Special Provisions” is deemed to mean the Special Conditions, unless the Caltrans Special Provisions are expressly included in the Contract Documents listed in Section 2 of the Contract.

(3) Any reference to the “Department” or “State” is deemed to mean City.

3.4 For Reference Only. Contractor is responsible for the careful review of any document, study, or report provided by City or appended to the Contract Documents solely for informational purposes and identified as “For Reference Only.” Nothing in any document, study, or report so appended and identified is intended to supplement, alter, or void any provision of the Contract Documents. Contractor is advised that City or its representatives may be guided by information or recommendations included in such reference documents, particularly when making determinations as to the acceptability of proposed materials, methods, or changes in the Work. Any record drawings or similar final or accepted drawings or maps that are not part of the Contract Documents are deemed to be For Reference Only. The provisions of the Contract Documents are not modified by any perceived or actual conflict with provisions in any document that is provided For Reference Only.

3.5 Current Versions. Unless otherwise specified by City, any reference to standard specifications, technical specifications, or any City or state codes or regulations means the latest specification, code, or regulation in effect on the date that bids were due.

3.6 Conformed Copies. If City prepares a conformed set of the Contract Documents following award of the Contract, it will provide Contractor with two hard copy (paper) sets and one copy of the electronic file in PDF format. It is Contractor’s responsibility to ensure that all Subcontractors, including fabricators, are provided with the conformed set of the Contract Documents at Contractor’s sole expense.

3.7 Ownership. No portion of the Contract Documents may be used for any purpose other than construction of the Project, without prior written consent from City. Contractor is deemed to have conveyed the copyright in any designs, drawings, specifications, Shop

Drawings, or other documents (in paper or electronic form) developed by Contractor for the Project, and City will retain all rights to such works, including the right to possession.

Article 4 - Bonds, Indemnity, and Insurance

4.1 Payment and Performance Bonds. Within ten days following issuance of the Notice of Potential Award, Contractor is required to provide a payment bond and a performance bond, each in the penal sum of not less than 100% of the Contract Price, and each executed by Contractor and its surety using the bond forms included with the Contract Documents.

(A) **Surety.** Each bond must be issued and executed by a surety admitted in California. If an issuing surety cancels the bond or becomes insolvent, within seven days following written notice from City, Contractor must substitute a surety acceptable to City. If Contractor fails to substitute an acceptable surety within the specified time, City may, at its sole discretion, withhold payment from Contractor until the surety is replaced to City's satisfaction, or terminate the Contract for default.

(B) **Supplemental Bonds for Increase in Contract Price.** If the Contract Price increases during construction by five percent or more over the original Contract Price, Contractor must provide supplemental or replacement bonds within ten days of written notice from City pursuant to this Section, covering 100% of the increased Contract Price and using the bond forms included with the Contract Documents.

4.2 Indemnity. To the fullest extent permitted by law, Contractor must indemnify, defend, and hold harmless City, its Council, officers, officials, employees, agents, volunteers, and consultants (individually, an "Indemnitee," and collectively the "Indemnitees") from and against any and all liability, loss, damage, claims, causes of action, demands, charges, fines, costs, and expenses (including, without limitation, attorney fees, expert witness fees, paralegal fees, and fees and costs of litigation or arbitration) (collectively, "Liability") of every nature arising out of or in connection with the acts or omissions of Contractor, its employees, Subcontractors, representatives, or agents, in bidding or performing the Work or in failing to comply with any obligation of Contractor under the Contract, except such Liability caused by the active negligence, sole negligence, or willful misconduct of an Indemnitee. This indemnity requirement applies to any Liability arising from alleged defects in the content or manner of submission of Contractor's bid for the Contract. Contractor's failure or refusal to timely accept a tender of defense pursuant to this Contract will be deemed a material breach of the Contract. City will timely notify Contractor upon receipt of any third-party claim relating to the Contract, as required by Public Contract Code § 9201. Contractor waives any right to express or implied indemnity against any Indemnitee. Contractor's indemnity obligations under this Contract will survive the expiration or any early termination of the Contract.

4.3 Insurance. No later than ten days following issuance of the Notice of Potential Award, Contractor must procure and provide proof of the insurance coverage required by this Section in the form of certificates and endorsements acceptable to City. The required insurance must cover the activities of Contractor and its Subcontractors relating to or arising from the performance of the Work, and must remain in full force and effect at all times during the period covered by the Contract, through the date of City's acceptance of the Project. All required insurance must be issued by a company licensed to do business in the State of California, and each such insurer must have an A.M. Best's financial strength rating of "A" or better and a financial size rating of "VIII" or better. If Contractor fails to provide any of the required coverage in full compliance with the requirements of the Contract Documents, City may, at its sole discretion, purchase such coverage at Contractor's expense and deduct the cost from payments due to Contractor, or terminate

the Contract for default. The procurement of the required insurance will not be construed to limit Contractor's liability under this Contract or to fulfill Contractor's indemnification obligations under this Contract.

(A) **Policies and Limits.** The following insurance policies and limits are required for this Contract, unless otherwise specified in the Special Conditions:

(1) *Commercial General Liability ("CGL") Insurance:* The CGL insurance policy must be issued on an occurrence basis, written on a comprehensive general liability form, and must include coverage for liability arising from Contractor's or its Subcontractor's acts or omissions in the performance of the Work, including contractor's protective coverage, contractual liability, products and completed operations, and broad form property damage, with limits of at least \$2,000,000 per occurrence and at least \$4,000,000 general aggregate. The CGL insurance coverage may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by excess or umbrella policies, provided each such policy complies with the requirements set forth in this Section, including required endorsements.

(2) *Automobile Liability Insurance:* The automobile liability insurance policy must provide coverage of at least \$2,000,000 combined single-limit per accident for bodily injury, death, or property damage, including hired and non-owned auto liability.

(3) *Workers' Compensation Insurance and Employer's Liability:* The workers' compensation and employer's liability insurance policy must comply with the requirements of the California Labor Code, providing coverage of at least \$1,000,000 or as otherwise required by the statute. If Contractor is self-insured, Contractor must provide its Certificate of Permission to Self-Insure, duly authorized by the DIR.

(4) *Pollution Liability Insurance:* The pollution liability insurance policy must be issued on an occurrence basis, providing coverage of at least \$2,000,000 for all loss arising out of claims for bodily injury, death, property damage, or environmental damage caused by pollution conditions resulting from the Work.

(5) *Builder's Risk Insurance:* The builder's risk insurance policy must be issued on an occurrence basis, for all-risk or "all perils" coverage on a 100% completed value basis on the insurable portion of the Project for the benefit of City.

(B) **Notice.** Each certificate of insurance must state that the coverage afforded by the policy or policies will not be reduced, cancelled or allowed to expire without at least 30 days advance written notice to City, unless due to non-payment of premiums, in which case ten days advance written notice must be made to City.

(C) **Waiver of Subrogation.** Each required policy must include an endorsement providing that the carrier will waive any right of subrogation it may have against City.

(D) **Required Endorsements.** The CGL policy, automobile liability policy, pollution liability policy, and builder's risk policy must include the following specific endorsements:

(1) The City, including its Council, officials, officers, employees, agents, volunteers and consultants (collectively, "Additional Insured") must be named as an additional insured for all liability arising out of the operations by or on behalf of the named insured, and the policy must protect the Additional Insured against any and all liability for personal injury, death or property damage or destruction

arising directly or indirectly in the performance of the Contract. The additional insured endorsement must be provided using ISO form CG 20 10 11 85 or equivalent form(s) approved by the City.

- (2) The inclusion of more than one insured will not operate to impair the rights of one insured against another, and the coverages afforded will apply as though separate policies have been issued to each insured.
- (3) The insurance provided by Contractor is primary and no insurance held or owned by any Additional Insured may be called upon to contribute to a loss.
- (4) This policy does not exclude explosion, collapse, underground excavation hazard, or removal of lateral support.

(E) **Contractor's Responsibilities.** This Section 4.3 establishes the minimum requirements for Contractor's insurance coverage in relation to this Project, but is not intended to limit Contractor's ability to procure additional or greater coverage. Contractor is responsible for its own risk assessment and needs and is encouraged to consult its insurance provider to determine what coverage it may wish to carry beyond the minimum requirements of this Section. Contractor is solely responsible for the cost of its insurance coverage, including premium payments, deductibles, or self-insured retentions, and no Additional Insured will be responsible or liable for any of the cost of Contractor's insurance coverage.

(F) **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions that apply to the required insurance (collectively, "deductibles") in excess of \$100,000 are subject to approval by the City's Risk Manager, acting in his or her sole discretion, and must be declared by Contractor when it submits its certificates of insurance and endorsements pursuant to this Section 4.3. If the City's Risk Manager determines that the deductibles are unacceptably high, at City's option, Contractor must either reduce or eliminate the deductibles as they apply to City and all required Additional Insured; or must provide a financial guarantee, to City's satisfaction, guaranteeing payment of losses and related investigation, claim administration, and legal expenses.

(G) **Subcontractors.** Contractor must ensure that each Subcontractor is required to maintain the same insurance coverage required under this Section 4.3, with respect to its performance of Work on the Project, including those requirements related to the Additional Insureds and waiver of subrogation, but excluding pollution liability or builder's risk insurance unless otherwise specified in the Special Conditions. A Subcontractor may be eligible for reduced insurance coverage or limits, but only to the extent approved in writing in advance by the City's Risk Manager. Contractor must confirm that each Subcontractor has complied with these insurance requirements before the Subcontractor is permitted to begin Work on the Project. Upon request by the City, Contractor must provide certificates and endorsements submitted by each Subcontractor to prove compliance with this requirement. The insurance requirements for Subcontractors do not replace or limit the Contractor's insurance obligations.

Article 5 - Contract Time

5.1 **Time is of the Essence.** Time is of the essence in Contractor's performance and completion of the Work, and Contractor must diligently prosecute the Work and complete it within the Contract Time.

(A) **General.** Contractor must commence the Work on the date indicated in the Notice to Proceed and must fully complete the Work in strict compliance with all

requirements of the Contract Documents and within the Contract Time. Contractor may not begin performing the Work before the date specified in the Notice to Proceed.

(B) **Authorization.** Contractor is not entitled to compensation or credit for any Work performed before the date specified in the Notice to Proceed, with the exception of any schedules, submittals, or other requirements, if any, that must be provided or performed before issuance of the Notice to Proceed.

(C) **Rate of Progress.** Contractor and its Subcontractors must, at all times, provide workers, materials, and equipment sufficient to maintain the rate of progress necessary to ensure full completion of the Work within the Contract Time. If City determines that Contractor is failing to prosecute the Work at a sufficient rate of progress, City may, in its sole discretion, direct Contractor to provide additional workers, materials, or equipment, or to work additional hours or days without additional cost to City, in order to achieve a rate of progress satisfactory to City. If Contractor fails to comply with City's directive in this regard, City may, at Contractor's expense, separately contract for additional workers, materials, or equipment or use City's own forces to achieve the necessary rate of progress. Alternatively, City may terminate the Contract based on Contractor's default.

5.2 Schedule Requirements. Contractor must prepare all schedules using standard, commercial scheduling software acceptable to the Engineer, and must provide the schedules in electronic and paper form as requested by the Engineer. In addition to the general scheduling requirements set forth below, Contractor must also comply with any scheduling requirements included in the Special Conditions or in the Technical Specifications.

(A) **Baseline (As-Planned) Schedule.** Within ten calendar days following City's issuance of the Notice to Proceed (or as otherwise specified in the Notice to Proceed), Contractor must submit to City for review and acceptance a baseline (as-planned) schedule using critical path methodology showing in detail how Contractor plans to perform and fully complete the Work within the Contract Time, including labor, equipment, materials, and fabricated items. The baseline schedule must show the order of the major items of Work and the dates of start and completion of each item, including when the materials and equipment will be procured. The schedule must also include the work of all trades, reflecting anticipated labor or crew hours and equipment loading for the construction activities, and must be sufficiently comprehensive and detailed to enable progress to be monitored on a day-by-day basis. For each activity, the baseline schedule must be dated, provided in the format specified in the Contract Documents or as required by City, and must include, at a minimum, a description of the activity, the start and completion dates of the activity, and the duration of the activity.

(1) **Specialized Materials Ordering.** Within five calendar days following issuance of the Notice to Proceed, Contractor must order any specialized material or equipment for the Work that is not readily available from material suppliers. Contractor must also retain documentation of the purchase order date(s).

(B) **City's Review of Schedules.** City will review and may note exceptions to the baseline schedule, and to the progress schedules submitted as required below, to assure completion of the Work within the Contract Time. Contractor is solely responsible for resolving any exceptions noted in a schedule and, within seven days, must correct the schedule to address the exceptions. City's review or acceptance of Contractor's schedules will not operate to waive or limit Contractor's duty to complete the Project within the Contract Time, nor to waive or limit City's right to assess liquidated damages for Contractor's unexcused failure to do so.

(C) **Progress Schedules.** After City accepts the final baseline schedule with no exceptions, Contractor must submit an updated progress schedule and three-week look-ahead schedule, in the format specified by City, for review and acceptance with each application for a progress payment, or when otherwise specified by City, until completion of the Work. The updated progress schedule must: show how the actual progress of the Work as constructed to date compares to the baseline schedule; reflect any proposed changes in the construction schedule or method of operations, including to achieve Project milestones within the Contract Time; and identify any actual or potential impacts to the critical path. Contractor must also submit periodic reports to City of any changes in the projected material or equipment delivery dates for the Project.

(1) *Float.* The progress schedule must show early and late completion dates for each task. The number of days between those dates will be designated as the "float." Any float belongs to the Project and may be allocated by the Engineer to best serve timely completion of the Project.

(2) *Failure to Submit Schedule.* Reliable, up-to-date schedules are essential to efficient and cost-effective administration of the Project and timely completion. If Contractor fails to submit a schedule within the time periods specified in this Section, or submits a schedule to which City has noted exceptions that are not corrected, City may withhold up to five percent from payment(s) otherwise due to Contractor until the exceptions are resolved, the schedule is corrected and resubmitted, and City has accepted the schedule. In addition, Contractor's failure to comply with the schedule requirements in this Section 5.2 will be deemed a material default and a waiver of any claims for Excusable Delay or loss of productivity arising during any period when Contractor is out of compliance, subject only to the limits of Public Contract Code § 7102.

(D) **Recovery Schedule.** If City determines that the Work is more than one week behind schedule, within seven days following written notice of such determination, Contractor must submit a recovery schedule, showing how Contractor intends to perform and complete the Work within the Contract Time, based on actual progress to date.

(E) **Effect of Acceptance.** Contractor and its Subcontractors must perform the Work in accordance with the most current City-accepted schedule unless otherwise directed by City. City's acceptance of a schedule does not operate to extend the time for completion of the Work or any component of the Work, and will not affect City's right to assess liquidated damages for Contractor's unexcused delay in completing the Work within the Contract Time.

(F) **Posting.** Contractor must at all times prominently post a copy of the most current City-accepted progress or recovery schedule in its on-site office.

(G) **Reservation of Rights.** City reserves the right to direct the sequence in which the Work must be performed or to make changes in the sequence of the Work in order to facilitate the performance of work by City or others, or to facilitate City's use of its property. The Contract Time or Contract Price may be adjusted to the extent such changes in sequence actually increase or decrease Contractor's time or cost to perform the Work.

(H) **Authorized Working Days and Times.** Contractor is limited to working Monday through Friday, excluding holidays, during City's normal business hours, except as provided in the Special Conditions or as authorized in writing by City. City reserves the right to charge Contractor for additional costs incurred by City due to Work performed on days or during hours not expressly authorized in the Contract Documents, including

reimbursement of costs incurred for inspection, testing, and construction management services.

5.3 Delay and Extensions of Contract Time.

(A) **Notice of Delay.** If Contractor becomes aware of any actual or potential delay affecting the critical path, Contractor must promptly notify the Engineer in writing, regardless of the nature or cause of the delay, so that City has a reasonable opportunity to mitigate or avoid the delay.

(B) **Excusable Delay.** The Contract Time may be extended if Contractor encounters "Excusable Delay," which is an unavoidable delay in completing the Work within the Contract Time due to causes completely beyond Contractor's control, and which Contractor could not have avoided or mitigated through reasonable care, planning, foresight, or diligence, provided that Contractor is otherwise fully performing its obligations under the Contract Documents. Grounds for Excusable Delay may include fire, natural disasters including earthquake or unusually severe weather, acts of terror or vandalism, epidemic, unforeseeable adverse government actions, unforeseeable actions of third parties, encountering unforeseeable hazardous materials, unforeseeable site conditions, or suspension for convenience under Article 13. The Contract Time will not be extended based on circumstances which will not unavoidably delay completing the Work within the Contract Time based on critical path analysis.

(C) **Weather Delays.** A "Weather Delay Day" is a Working Day during which Contractor and its forces, including Subcontractors, are unable to perform more than 40% of the critical path Work scheduled for that day due to adverse weather conditions which impair the ability to safely or effectively perform the scheduled critical path Work that day. Adverse weather conditions may include rain, saturated soil, and Project site clean-up required due to adverse weather. Determination of what constitutes critical path Work scheduled for that day will be based on the most current, City-approved schedule. Contractor will be entitled to a non-compensable extension of the Contract Time for each Weather Delay Day in excess of the normal Weather Delay Days within a given month as determined by reliable records, including monthly rainfall averages, for the preceding ten years (or as otherwise specified in the Special Conditions or Specifications).

(1) Contractor must fully comply with the applicable procedures in Articles 5 and 6 of the General Conditions regarding requests to modify the Contract Time.

(2) Contractor will not be entitled to an extension of time for a Weather Delay Day to the extent Contractor is responsible for concurrent delay on that day.

(3) Contractor must take reasonable steps to mitigate the consequences of Weather Delay Days, including prudent workforce management and protecting the Work, Project Site, materials, and equipment.

(D) **Non-Excusable Delay.** Delay which Contractor could have avoided or mitigated through reasonable care, planning, foresight, or diligence is "Non-Excusable Delay." Contractor is not entitled to an extension of Contract Time or any compensation for Non-Excusable Delay, or for Excusable Delay that is concurrent with Non-Excusable Delay. Non-Excusable Delay includes delay caused by:

(1) weather conditions which are normal for the location of the Project, as determined by reliable records, including monthly rainfall averages, for the preceding ten years;

- (2) Contractor's failure to order equipment and materials sufficiently in advance of the time needed for completion of the Work within the Contract Time;
- (3) Contractor's failure to provide adequate notification to utility companies or agencies for connections or services necessary for completion of the Work within the Contract Time;
- (4) foreseeable conditions which Contractor could have ascertained from reasonably diligent inspection of the Project site or review of the Contract Documents or other information provided or available to Contractor;
- (5) Contractor's failure, refusal, or financial inability to perform the Work within the Contract Time, including insufficient funds to pay its Subcontractors or suppliers;
- (6) performance or non-performance by Contractor's Subcontractors or suppliers;
- (7) the time required to respond to excessive RFIs (see Section 2.5(G));
- (8) delayed submission of required submittals, or the time required for correction and resubmission of defective submittals;
- (9) time required for repair of, re-testing, or re-inspection of defective Work;
- (10) enforcement of Laws by City, or outside agencies with jurisdiction over the Work; or
- (11) City's exercise or enforcement of any of its rights or Contractor's duties pursuant to the Contract Documents, including correction of defective Work, extra inspections or testing due to non-compliance with Contract requirements, safety compliance, environmental compliance, or rejection and return of defective or deficient submittals.

(E) **Compensable Delay.** Pursuant to Public Contract Code § 7102, in addition to entitlement to an extension of Contract Time, Contractor is entitled to compensation for costs incurred due to delay caused solely by City, when that delay is unreasonable under the circumstances involved and not within the contemplation of the parties ("Compensable Delay"). Contractor is not entitled to an extension of Contract Time or recovery of costs for Compensable Delay that is concurrent with Non-Excusable Delay. Delay due to Weather Delay Days in excess of normal for a given month, as set forth in Section 5.3(C), is not Compensable Delay, and will only entitle Contractor to an extension of time commensurate with the time lost due to such delay.

(F) **Recoverable Costs.** Contractor is not entitled to compensation for Excusable Delay unless it is Compensable Delay, as defined above. Contractor is entitled to recover only the actual, direct, reasonable, and substantiated costs ("Recoverable Costs") for each working day that the Compensable Delay prevents Contractor from proceeding with more than 50% of the critical path Work scheduled for that day, based on the most recent progress schedule accepted by City. Recoverable Costs will not include home office overhead or lost profit.

(G) **Request for Extension of Contract Time or Recoverable Costs.** A request for an extension of Contract Time or any associated Recoverable Costs must be submitted in writing to City within 14 calendar days of the date the delay is first encountered, even if the duration of the delay is not yet known at that time, or any entitlement to the Contract

Time extension or to the Recoverable Costs will be deemed waived. In addition to complying with the requirements of this Article 5, the request must be submitted in compliance with the Change Order request procedures in Article 6 below. Strict compliance with these requirements is necessary to ensure that any delay or consequences of delay may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project and timely performance of the Work. Any request for an extension of Contract Time or Recoverable Costs that does not strictly comply with all of the requirements of Article 5 and Article 6 will be deemed waived.

(1) *Required Contents.* The request must include a detailed description of the cause(s) of the delay and must also describe the measures that Contractor has taken to mitigate the delay and/or its effects, including efforts to mitigate the cost impact of the delay, such as by workforce management or by a change in sequencing. If the delay is still ongoing at the time the request is submitted, the request should also include Contractor's plan for continued mitigation of the delay or its effects.

(2) *Delay Days and Costs.* The request must specify the number of days of Excusable Delay claimed or provide a realistic estimate if the duration of the delay is not yet known. If Contractor believes it is entitled to Recoverable Costs for Compensable Delay, the request must specify the amount and basis for the Recoverable Costs that are claimed or provide a realistic estimate if the amount is not yet known. Any estimate of delay duration or cost must be updated in writing and submitted with all required supporting documentation as soon as the actual time and cost is known. The maximum extension of Contract Time will be the number of days, if any, by which an Excusable Delay or a Compensable Delay exceeds any concurrent Non-Excusable Delay. Contractor is entitled to an extension of Contract Time, or compensation for Recoverable Costs, only if, and only to the extent that, such delay will unavoidably delay Final Completion.

(3) *Supporting Documentation.* The request must also include any and all supporting documentation necessary to evidence the delay and its actual impacts, including scheduling and cost impacts with a time impact analysis using critical path methodology and demonstrating the unavoidable delay to Final Completion. The time impact analysis must be submitted in a form or format acceptable to City.

(4) *Burden of Proof.* Contractor has the burden of proving that: the delay was an Excusable Delay or Compensable Delay, as defined above; Contractor has fully complied with its scheduling obligations in Section 5.2, Schedule Requirements; Contractor has made reasonable efforts to mitigate the delay and its schedule and cost impacts; the delay will unavoidably result in delaying Final Completion; and any Recoverable Costs claimed by Contractor were actually incurred and were reasonable under the circumstances.

(5) *Legal Compliance.* Nothing in this Section 5.3 is intended to require the waiver, alteration, or limitation of the applicability of Public Contract Code § 7102.

(6) *No Waiver.* Any grant of an extension of Contract Time, or compensation for Recoverable Costs due to Compensable Delay, will not operate as a waiver of City's right to assess liquidated damages for Non-Excusable Delay.

(7) *Dispute Resolution.* In the event of a dispute over entitlement to an extension of Contract Time or compensation for Recoverable Costs, Contractor may not stop Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely

completion of the Work. Contractor's sole recourse for an unresolved dispute based on City's rejection of a Change Order request for an extension of Contract Time or compensation for Recoverable Costs is to comply with the dispute resolution provisions set forth in Article 12 below.

5.4 Liquidated Damages. It is expressly understood that if Final Completion is not achieved within the Contract Time, City will suffer damages from the delay that are difficult to determine and accurately specify. Pursuant to Public Contract Code § 7203, if Contractor fails to achieve Final Completion within the Contract Time due to Contractor's Non-Excusable Delay, City will charge Contractor in the amount specified in the Contract for each calendar day that Final Completion is delayed beyond the Contract Time, as liquidated damages and not as a penalty. Any waiver of accrued liquidated damages, in whole or in part, is subject to approval of the City Council or its authorized delegate.

(A) **Liquidated Damages.** Liquidated damages will not be assessed for any Excusable Delay or Compensable Delay, as set forth above.

(B) **Milestones.** Liquidated damages may also be separately assessed for failure to meet milestones specified elsewhere in the Contract Documents.

(C) **Setoff.** City is entitled to deduct the amount of liquidated damages assessed against any payments otherwise due to Contractor, including progress payments, Final Payment, or unreleased retention. If there are insufficient Contract funds remaining to cover the full amount of liquidated damages assessed, City is entitled to recover the balance from Contractor or its performance bond surety.

(D) **Occupancy or Use.** Occupancy or use of the Project in whole or in part prior to Final Completion does not constitute City's acceptance of the Project and will not operate as a waiver of City's right to assess liquidated damages for Contractor's Non-Excusable Delay in achieving Final Completion.

(E) **Other Remedies.** City's right to liquidated damages under this Section applies only to damages arising from Contractor's Non-Excusable Delay or failure to complete the Work within the Contract Time. City retains its right to pursue all other remedies under the Contract for other types of damage, including damage to property or persons, costs or diminution in value from defective materials or workmanship, costs to repair or complete the Work, or other liability caused by Contractor.

Article 6 - Contract Modification

6.1 Contract Modification. Subject to the limited exception set forth in subsection (D) below, any change in the Work or the Contract Documents, including the Contract Price or Contract Time, will not be a valid and binding change to the Contract unless it is formalized in a Change Order, including a "no-cost" Change Order or a unilateral Change Order. Changes in the Work pursuant to this Article 6 will not operate to release, limit, or abridge Contractor's warranty obligations pursuant to Article 11 or any obligations of Contractor's bond sureties.

(A) **City-Directed Changes.** City may direct changes in the scope or sequence of Work or the requirements of the Contract Documents, without invalidating the Contract. Such changes may include Extra Work as set forth in subsection (C) below, or deletion or modification of portions of the Work. Contractor must promptly comply with City-directed changes in the Work in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement as to adjustments to the Contract Price or Contract Time for the change in the Work or for the Extra Work. Contractor is not

entitled to extra compensation for cost savings resulting from “value engineering” pursuant to Public Contract Code § 7101, except to the extent authorized in advance by City in writing, and subject to any applicable procedural requirements for submitting a proposal for value engineering cost savings.

(B) **Disputes.** In the event of a dispute over entitlement to or the amount of a change in Contract Time or a change in Contract Price related to a City-directed change in the Work, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute. Likewise, in the event that City and Contractor dispute whether a portion or portions of the Work are already required by the Contract Documents or constitute Extra Work, or otherwise dispute the interpretation of any portion(s) of the Contract Documents, Contractor must perform the Work as directed and may not delay its Work or cease Work pending resolution of the dispute, but must continue to comply with its duty to diligently prosecute the performance and timely completion of the Work, including the Work in dispute, as directed by City. If Contractor refuses to perform the Work in dispute, City may, acting in its sole discretion, elect to delete the Work from the Contract and reduce the Contract Price accordingly, and self-perform the Work or direct that the Work be performed by others. Alternatively, City may elect to terminate the Contract for convenience or for cause. Contractor’s sole recourse for an unresolved dispute related to changes in the Work or performance of any Extra Work is to comply with the dispute resolution provisions set forth in Article 12, below.

(C) **Extra Work.** City may direct Contractor to perform Extra Work related to the Project. Contractor must promptly perform any Extra Work as directed or authorized by City in accordance with the original Contract Documents, even if Contractor and City have not yet reached agreement on adjustments to the Contract Price or Contract Time for such Extra Work. If Contractor believes it is necessary to perform Extra Work due to changed conditions, Contractor must promptly notify the Engineer in writing, specifically identifying the Extra Work and the reason(s) the Contractor believes it is Extra Work. This notification requirement does not constitute a Change Order request pursuant to Section 6.2, below. Contractor must maintain detailed daily records that itemize the cost of each element of Extra Work, and sufficiently distinguish the direct cost of the Extra Work from the cost of other Work performed. For each day that Contractor performs Extra Work, or Work that Contractor contends is Extra Work, Contractor must submit no later than the following Working Day, a daily report of the Extra Work performed that day and the related costs, together with copies of certified payroll, invoices, and other documentation substantiating the costs (“Extra Work Report”). The Engineer will make any adjustments to Contractor’s Extra Work Report(s) based on the Engineer’s records of the Work. When an Extra Work Report(s) is agreed on and signed by both City and Contractor, the Extra Work Report(s) will become the basis for payment under a duly authorized and signed Change Order. Failure to submit the required documentation by close of business on the next Working Day is deemed a full and complete waiver for any change in the Contract Price or Contract Time for any Extra Work performed that day.

(D) **Minor Changes and RFIs.** Minor field changes, including RFI replies from City, that do not affect the Contract Price or Contract Time and that are approved by the Engineer acting within his or her scope of authority, do not require a Change Order. By executing an RFI reply from City, Contractor agrees that it will perform the Work as clarified therein, with no change to the Contract Price or Contract Time.

(E) **Remedy for Non-Compliance.** Contractor’s failure to promptly comply with a City-directed change is deemed a material breach of the Contract, and in addition to all other remedies available to it, City may, at its sole discretion, hire another contractor or

use its own forces to complete the disputed Work at Contractor's sole expense, and may deduct the cost from the Contract Price.

6.2 Contractor Change Order Requests. Contractor must submit a request or proposal for a change in the Work, compensation for Extra Work, or a change in the Contract Price or Contract Time as a written Change Order request or proposal.

(A) **Time for Submission.** Any request for a change in the Contract Price or the Contract Time must be submitted in writing to the Engineer within 14 calendar days of the date that Contractor first encounters the circumstances, information or conditions giving rise to the Change Order request, even if the total amount of the requested change in the Contract Price or impact on the Contract Time is not yet known at that time. If City requests that Contractor propose the terms of a Change Order, unless otherwise specified in City's request, Contractor must provide the Engineer with a written proposal for the change in the Contract Price or Contract Time within five working days of receiving City's request, in a form satisfactory to the Engineer.

(B) **Required Contents.** Any Change Order request or proposal submitted by Contractor must include a complete breakdown of actual or estimated costs and credits, and must itemize labor, materials, equipment, taxes, insurance, subcontract amounts, and, if applicable, Extra Work Reports. Any estimated cost must be updated in writing as soon as the actual amount is known.

(C) **Required Documentation.** All claimed costs must be fully documented, and any related request for an extension of time or delay-related costs must be included at that time and in compliance with the requirements of Article 5 of the General Conditions. Upon request, Contractor must permit City to inspect its original and unaltered bidding records, subcontract agreements, subcontract change orders, purchase orders, invoices, or receipts associated with the claimed costs.

(D) **Required Form.** Contractor must use City's form(s) for submitting all Change Order requests or proposals, unless otherwise specified by City.

(E) **Certification.** All Change Order requests must be signed by Contractor and must include the following certification:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Change Order request are true and correct. Contractor warrants that this Change Order request is comprehensive and complete as to the Work or changes referenced herein, and agrees that any known or foreseeable costs, expenses, or time extension requests not included herein, are deemed waived."

6.3 Adjustments to Contract Price. The amount of any increase or decrease in the Contract Price will be determined based on one of the following methods listed below, in the order listed with unit pricing taking precedence over the other methods. Markup applies only to City-authorized time and material Work, and does not apply to any other payments to Contractor. For Work items or components that are deleted in their entirety, Contractor will only be entitled to compensation for those direct, actual, and documented costs (including restocking fees), reasonably incurred before Contractor was notified of the City's intent to delete the Work, with no markup for overhead, profit, or other indirect costs.

(A) **Unit Pricing.** Amounts previously provided by Contractor in the form of unit prices, either in a bid schedule or in a post-award schedule of values pursuant to Section 8.1, Schedule of Values, will apply to determine the price for the affected Work, to the

extent applicable unit prices have been provided for that type of Work. No additional markup for overhead, profit, or other indirect costs will be added to the calculation.

(B) **Lump Sum.** A mutually agreed upon, all-inclusive lump sum price for the affected Work with no additional markup for overhead, profit, or other indirect costs.

(C) **Time and Materials.** On a time and materials basis, if and only to the extent compensation on a time and materials basis is expressly authorized by City in advance of Contractor's performance of the Work and subject to any not-to-exceed limit. Time and materials compensation for increased costs or Extra Work (but not decreased costs or deleted Work) will include allowed markup for overhead, profit, and other indirect costs, calculated as the total of the following sums, the cumulative total of which may not exceed the maximum markup rate of 15%:

- (1) All direct labor costs provided by the Contractor, excluding superintendence, project management, or administrative costs, plus 15% markup;
- (2) All direct material costs provided by the Contractor, including sales tax, plus 15% markup;
- (3) All direct plant and equipment rental costs provided by the Contractor, plus 15% markup;
- (4) All direct additional subcontract costs plus 10% markup for Work performed by Subcontractors; and
- (5) Increased bond or insurance premium costs computed at 1.5% of the total of the previous four sums.

6.4 Unilateral Change Order. If the parties dispute the terms of a proposed Change Order, including disputes over the amount of compensation or extension of time that Contractor has requested, the value of deleted or changed Work, what constitutes Extra Work, or quantities used, City may elect to issue a unilateral Change Order, directing performance of the Work, and authorizing a change in the Contract Price or Contract Time for the adjustment to compensation or time that the City believes is merited. Contractor's sole recourse to dispute the terms of a unilateral Change Order is to submit a timely Claim pursuant to Article 12, below.

6.5 Non-Compliance Deemed Waiver. Contractor waives its entitlement to any increase in the Contract Price or Contract Time if Contractor fails to fully comply with the provisions of this Article. Contractor will not be paid for unauthorized Extra Work.

Article 7 - General Construction Provisions

7.1 Permits, Fees, Business License, and Taxes.

(A) **Permits, Fees, and City Business License.** Contractor must obtain and pay for all permits, fees, and licenses required to perform the Work, including a City business license. Contractor must cooperate with and provide notifications to all government agencies with jurisdiction over the Project, as may be required. Contractor must provide City with copies of all records of permits and permit applications, payment of required fees, and any licenses required for the Work.

(B) **Taxes.** Contractor must pay for all taxes on labor, material, and equipment, except Federal Excise Tax to the extent that City is exempt from Federal Excise Tax.

7.2 **Temporary Facilities.** Contractor must provide, at Contractor's sole expense, any and all temporary facilities for the Project, including an onsite staging area for materials and equipment, a field office, sanitary facilities, utilities, storage, scaffolds, barricades, walkways, and any other temporary structure required to safely perform the Work along with any incidental utility services. The location of all temporary facilities must be approved by the City prior to installation. Temporary facilities must be safe and adequate for the intended use and installed and maintained in accordance with Laws and the Contract Documents. Contractor must fence and screen the Project site and, if applicable, any separate Worksites, including the staging area, and its operation must minimize inconvenience to neighboring properties. Additional provisions pertaining to temporary facilities may be included in the Specifications or Special Conditions.

(A) **Utilities.** Contractor must install and maintain the power, water, sewer, and all other utilities required for the Project site, including the piping, wiring, internet and wifi connections, and any related equipment necessary to maintain the temporary facilities.

(B) **Removal and Repair.** Contractor must promptly remove all such temporary facilities when they are no longer needed or upon completion of the Work, whichever comes first. Contractor must promptly repair any damage to City's property or to other property caused by the installation, use, or removal of the temporary facilities, and must promptly restore the property to its original or intended condition.

7.3 **Noninterference and Site Management.** Contractor must avoid interfering with City's use of its property at or adjacent to the Project site, including use of roadways, entrances, parking areas, walkways, and structures. Contractor must also minimize disruption of access to private property in the Project vicinity. Contractor must coordinate with affected property owners, tenants, and businesses, and maintain some vehicle and pedestrian access to their residences or properties at all times. Temporary access ramps, fencing or other measures must be provided as needed. Before blocking access to a private driveway or parking lot, Contractor must provide effective notice to the affected parties at least 48 hours in advance of the pending closure and allow them to remove vehicles. Private driveways, residences and parking lots must have access to a roadway during non-Work hours.

(A) **Offsite Acquisition.** Unless otherwise provided by City, Contractor must acquire, use, and dispose of, at its sole expense, any Worksites, licenses, easements, and temporary facilities necessary to access and perform the Work.

(B) **Offsite Staging Area and Field Office.** If additional space beyond the Project site is needed, such as for the staging area or the field office, Contractor may need to make arrangements with the nearby property owner(s) to secure the space. Before using or occupying any property owned by a third party, Contractor must provide City with a copy of the necessary license agreement, easement, or other written authorization from the property owner, together with a written release from the property owner holding City harmless from any related liability, in a form acceptable to the City Attorney.

(C) **Traffic Management.** Contractor must provide traffic management and traffic controls as specified in the Contract Documents, as required by Laws, and as otherwise required to ensure public and worker safety, and to avoid interference with public or private operations or the normal flow of vehicular, bicycle, or pedestrian traffic.

7.4 **Signs.** No signs may be displayed on or about City's property, except signage which is required by Laws or by the Contract Documents, without City's prior written approval as to size, design, and location.

7.5 Project Site and Nearby Property Protections.

(A) **General.** Contractor is responsible at all times, on a 24-hour basis and at its sole cost, for protecting the Work, the Project site, and the materials and equipment to be incorporated into the Work, until the City has accepted the Project, excluding any exceptions to acceptance, if any. Except as specifically authorized by City, Contractor must confine its operations to the area of the Project site indicated in the Plans and Specifications. Contractor is liable for any damage caused by Contractor or its Subcontractors to the Work, City's property, the property of adjacent or nearby property owners and the work or personal property of other contractors working for City, including damage related to Contractor's failure to adequately secure the Work or any Worksite.

(1) Subject to City's approval, Contractor will provide and install safeguards to protect the Work; any Worksite, including the Project site; City's real or personal property and the real or personal property of adjacent or nearby property owners, including plant and tree protections.

(2) City wastewater systems may not be interrupted. If the Work disrupts existing sewer facilities, Contractor must immediately notify City and establish a plan, subject to City's approval, to convey the sewage in closed conduits back into the sanitary sewer system. Sewage must not be permitted to flow in trenches or be covered by backfill.

(3) Contractor must remove with due care, and store at City's request, any objects or material from the Project site that City will salvage or reuse at another location.

(4) If directed by Engineer, Contractor must promptly repair or replace any property damage, as specified by the Engineer. However, acting in its sole discretion, City may elect to have the property damage remedied otherwise, and may deduct the cost to repair or replace the damaged property from payment otherwise due to Contractor.

(5) Contractor will not permit any structure or infrastructure to be loaded in a manner that will damage or endanger the integrity of the structure or infrastructure.

(B) **Securing Project Site.** After completion of Work each day, Contractor must secure the Project site and, to the extent feasible, make the area reasonably accessible to the public unless City approves otherwise. All excess materials and equipment not protected by approved traffic control devices must be relocated to the staging area or demobilized. Trench spoils must be hauled off the Project site daily and open excavations must be protected with steel plates. Contractor and Subcontractor personnel may not occupy or use the Project site for any purpose during non-Work hours, except as may be provided in the Contract Documents or pursuant to prior written authorization from City.

(C) **Unforeseen Conditions.** If Contractor encounters facilities, utilities, or other unknown conditions not shown on or reasonably inferable from the Plans or apparent from inspection of the Project site, Contractor must immediately notify the City and promptly submit a Request for Information to obtain further directions from the Engineer. Contractor must avoid taking any action which could cause damage to the facilities or utilities pending further direction from the Engineer. The Engineer's written response will be final and binding on Contractor. If the Engineer's subsequent direction to Contractor affects Contractor's cost or time to perform the Work, Contractor may submit a Change Order request as set forth in Article 6 above.

(D) ***Support; Adjacent Properties.*** Contractor must provide, install, and maintain all shoring, bracing, and underpinning necessary to provide support to City's property and adjacent properties and improvements thereon. Contractor must provide notifications to adjacent property owners as may be required by Laws. See also, Section 7.15, Trenching of Five Feet or More.

(E) ***Notification of Property Damage.*** Contractor must immediately notify the City of damage to any real or personal property resulting from Work on the Project. Contractor must immediately provide a written report to City of any such property damage in excess of \$500 (based on estimated cost to repair or replace) within 24 hours of the occurrence. The written report must include: (1) the location and nature of the damage, and the owner of the property, if known; (2) the name and address of each employee of Contractor or any Subcontractor involved in the damage; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with another government agency, Contractor will provide a copy of the report to City.

7.6 Materials and Equipment.

(A) ***General.*** Unless otherwise specified, all materials and equipment required for the Work must be new, free from defects, and of the best grade for the intended purpose, and furnished in sufficient quantities to ensure the proper and expeditious performance of the Work. Contractor must employ measures to preserve the specified quality and fitness of the materials and equipment. Unless otherwise specified, all materials and equipment required for the Work are deemed to include all components required for complete installation and intended operation and must be installed in accordance with the manufacturer's recommendations or instructions. Contractor is responsible for all shipping, handling, and storage costs associated with the materials and equipment required for the Work. Contractor is responsible for providing security and protecting the Work and all of the required materials, supplies, tools and equipment at Contractor's sole cost until City has formally accepted the Project as set forth in Section 11.1, Final Completion. Contractor will not assign, sell, mortgage, or hypothecate any materials or equipment for the Project, or remove any materials or equipment that have been installed or delivered.

(B) ***City-Provided.*** If the Work includes installation of materials or equipment to be provided by City, Contractor is solely responsible for the proper examination, handling, storage, and installation in accordance with the Contract Documents. Contractor must notify City of any defects discovered in City-provided materials or equipment, sufficiently in advance of scheduled use or installation to afford adequate time to procure replacement materials or equipment as needed. Contractor is solely responsible for any loss of or damage to such items which occurs while the items are in Contractor's custody and control, the cost of which may be offset from the Contract Price and deducted from any payment(s) due to Contractor.

(C) ***Intellectual Property Rights.*** Contractor must, at its sole expense, obtain any authorization or license required for use of patented or copyright-protected materials, equipment, devices, or processes that are incorporated into the Work. Contractor's indemnity obligations in Article 4 apply to any claimed violation of intellectual property rights.

7.7 Substitutions.

(A) **“Or Equal.”** Any Specification designating a material, product, or thing (collectively, “item”) or service by specific brand or trade name, followed by the words “or equal,” is intended only to indicate the quality and type of item or service desired, and Contractor may request use of any equal item or service. Unless otherwise stated in the Specifications, any reference to a specific brand or trade name for an item or service that is used solely for the purpose of describing the type of item or service desired, will be deemed to be followed by the words “or equal.” A substitution will only be approved if it is a true “equal” item or service in every aspect of design, function, and quality, as determined by City, including dimensions, weight, maintenance requirements, durability, fit with other elements, and schedule impacts.

(B) **Request for Substitution.** A post-award request for substitution of an item or service must be submitted in writing to the Engineer for approval in advance, within the applicable time period provided in the Contract Documents. If no time period is specified, the substitution request may be submitted any time within 35 days after the date of award of the Contract, or sufficiently in advance of the time needed to avoid delay of the Work, whichever is earlier.

(C) **Substantiation.** Any available data substantiating the proposed substitute as an equal item or service must be submitted with the written request for substitution. Contractor’s failure to timely provide all necessary substantiation, including any required test results as soon as they are available, is grounds for rejection of the proposed substitution, without further review.

(D) **Burden of Proving Equality.** Contractor has the burden of proving the equality of the proposed substitution at Contractor’s sole cost. City has sole discretion to determine whether a proposed substitution is equal, and City’s determination is final.

(E) **Approval or Rejection.** If the proposed substitution is approved, Contractor is solely responsible for any additional costs or time associated with the substituted item or service. If the proposed substitution is rejected, Contractor must, without delay, install the item or use the service as specified by City.

(F) **Contractor’s Obligations.** City’s approval of a proposed substitution will not relieve Contractor from any of its obligations under the Contract Documents. In the event Contractor makes an unauthorized substitution, Contractor will be solely responsible for all resulting cost impacts, including the cost of removal and replacement and the impact to other design elements.

7.8 Testing and Inspection.

(A) **General.** All materials, equipment, and workmanship used in the Work are subject to inspection and testing by City at all times and at all locations during construction and/or fabrication, including at any Worksite, shops, and yards. All manufacturers’ application or installation instructions must be provided to the Inspector at least ten days prior to the first such application or installation. Contractor must, at all times, make the Work available for testing or inspection. Neither City’s inspection or testing of Work, nor its failure to do so, operate to waive or limit Contractor’s duty to complete the Work in accordance with the Contract Documents.

(B) **Scheduling and Notification.** Contractor must cooperate with City in coordinating the inspections and testing. Contractor must submit samples of materials, at Contractor’s expense, and schedule all tests required by the Contract Documents in time to avoid any delay to the progress of the Work. Contractor must notify the Engineer no

later than noon of the Working Day before any inspection or testing and must provide timely notice to the other necessary parties as specified in the Contract Documents. If Contractor schedules an inspection or test beyond regular Work hours, or on a Saturday, Sunday, or recognized City holiday, Contractor must notify the Engineer at least two Working Days in advance for approval. If approved, Contractor must reimburse City for the cost of the overtime inspection or testing. Such costs, including the City's hourly costs for required personnel, may be deducted from payments otherwise due to Contractor.

(C) **Responsibility for Costs.** City will bear the initial cost of inspection and testing to be performed by independent consultants retained by City, subject to the following exceptions:

- (1) Contractor will be responsible for the costs of any subsequent inspections or tests which are required to substantiate compliance with the Contract Documents, and any associated remediation costs.
- (2) Contractor will be responsible for inspection costs, at City's hourly rates, for inspection time lost because the Work is not ready, or Contractor fails to appear for a scheduled inspection.
- (3) If any portion of the Work that is subject to inspection or testing is covered or concealed by Contractor prior to the inspection or testing, Contractor will bear the cost of making that portion of the Work available for the inspection or testing required by the Contract Documents, and any associated repair or remediation costs.
- (4) Contractor is responsible for properly shoring all compaction test sites deeper than five feet below grade, as required under Section 7.15 below.
- (5) Any Work or material that is defective or fails to comply with the requirements of the Contract Documents must be promptly repaired, removed, replaced, or corrected by Contractor, at Contractor's sole expense, even if that Work or material was previously inspected or included in a progress payment.

(D) **Contractor's Obligations.** Contractor is solely responsible for any delay occasioned by remediation of defective or noncompliant Work or material. Inspection or testing of the Work does not in any way relieve Contractor of its obligations to perform the Work as specified. Any Work done without the inspection(s) or testing required by the Contract Documents will be subject to rejection by City.

(E) **Distant Locations.** If required off-site testing or inspection must be conducted at a location more than 100 miles from the Project site, Contractor is solely responsible for the additional travel costs required for testing and/or inspection at such locations.

(F) **Final Inspection.** The provisions of this Section 7.8 also apply to final inspection under Article 11, Completion and Warranty Provisions.

7.9 Project Site Conditions and Maintenance. Contractor must at all times, on a 24-hour basis and at its sole cost, maintain the Project site and staging and storage areas in clean, neat, and sanitary condition and in compliance with all Laws pertaining to safety, air quality, and dust control. Adequate toilets must be provided, and properly maintained and serviced for all workers on the Project site, located in a suitably secluded area, subject to City's prior approval. Contractor must also, on a daily basis and at its sole cost, remove and properly dispose of the debris and waste materials from the Project site.

(A) **Air Emissions Control.** Contractor must not discharge smoke or other air contaminants into the atmosphere in violation of any Laws. Contractor must comply with all Laws, including the California Air Resources Board's In-Use Off-Road Diesel-Fueled Fleets Regulation (13 CCR § 2449 et seq.).

(B) **Dust and Debris.** Contractor must minimize and confine dust and debris resulting from the Work. Contractor must abate dust nuisance by cleaning, sweeping, and immediately sprinkling with water excavated areas of dirt or other materials prone to cause dust, and within one hour after the Engineer notifies Contractor that an airborne nuisance exists. The Engineer may direct that Contractor provide an approved water-spraying truck for this purpose. If water is used for dust control, Contractor will only use the minimum necessary. Contractor must take all necessary steps to keep waste water out of streets, gutters, or storm drains. See Section 7.19, Environmental Control. If City determines that the dust control is not adequate, City may have the work done by others and deduct the cost from the Contract Price. Contractor will immediately remove any excess excavated material from the Project site and any dirt deposited on public streets.

(C) **Clean up.** Before discontinuing Work in an area, Contractor must clean the area and remove all debris and waste along with the construction equipment, tools, machinery, and surplus materials.

(1) Except as otherwise specified, all excess Project materials, and the materials removed from existing improvements on the Project site with no salvage value or intended reuse by City, will be Contractor's property.

(2) Hauling trucks and other vehicles leaving the Project site must be cleaned of exterior mud or dirt before traveling on City streets. Materials and loose debris must be delivered and loaded to prevent dropping materials or debris. Contractor must immediately remove spillage from hauling on any publicly traveled way. Streets affected by Work on the Project must be kept clean by street sweeping.

(D) **Disposal.** Contractor must dispose of all Project debris and waste materials in a safe and legal manner. Contractor may not burn or bury waste materials on the Project site. Contractor will not allow any dirt, refuse, excavated material, surplus concrete or mortar, or any associated washings, to be disposed of onto streets, into manholes or into the storm drain system.

(E) **Completion.** At the completion of the Work, Contractor must remove from the Project site all of its equipment, tools, surplus materials, waste materials and debris, presenting a clean and neat appearance. Before demobilizing from the Project site, Contractor must ensure that all surfaces are cleaned, sealed, waxed, or finished as applicable, and that all marks, stains, paint splatters, and the like have been properly removed from the completed Work and the surrounding areas. Contractor must ensure that all parts of the construction are properly joined with the previously existing and adjacent improvements and conditions. Contractor must provide all cutting, fitting and patching needed to accomplish that requirement. Contractor must also repair or replace all existing improvements that are damaged or removed during the Work, both on and off the Project site, including curbs, sidewalks, driveways, fences, signs, landscaping, utilities, street surfaces and structures. Repairs and replacements must be at least equal to the previously existing improvements, and the condition, finish and dimensions must match the previously existing improvements. Contractor must restore to original condition all property or items that are not designated for alteration under the Contract Documents and leave each Worksite clean and ready for occupancy or use by City.

(F) **Non-Compliance.** If Contractor fails to comply with its maintenance and cleanup obligations or any City clean up order, City may, acting in its sole discretion, elect to

suspend the Work until the condition(s) is corrected with no increase in the Contract Time or Contract Price, or undertake appropriate cleanup measures without further notice and deduct the cost from any amounts due or to become due to Contractor.

7.10 Instructions and Manuals. Contractor must provide to City three copies each of all instructions and manuals required by the Contract Documents, unless otherwise specified. These must be complete as to drawings, details, parts lists, performance data, and other information that may be required for City to easily maintain and service the materials and equipment installed for this Project.

(A) **Submittal Requirements.** The instructions and manuals, along with any required guarantees, must be delivered to City for review prior to requesting final inspection pursuant to Section 11.1(A), unless otherwise specified.

(B) **Training.** Contractor or its Subcontractors must train City's personnel in the operation and maintenance of any complex equipment or systems as a condition precedent to Final Completion, if required in the Contract Documents.

7.11 As-built Drawings. Contractor and its Subcontractors must prepare and maintain at the Project site a detailed, complete and accurate as-built set of the Plans which will be used solely for the purpose of recording changes made in any portion of the original Plans in order to create accurate record drawings at the end of the Project.

(A) **Duty to Update.** The as-built drawings must be updated as changes occur, on a daily basis if necessary. City may withhold the estimated cost for City to have the as-built drawings prepared from payments otherwise due to Contractor, until the as-built drawings are brought up to date to the satisfaction of City. Actual locations to scale must be identified on the as-built drawings for all runs of mechanical and electrical work, including all site utilities installed underground, in walls, floors, or otherwise concealed. Deviations from the original Plans must be shown in detail. The exact location of all main runs, whether piping, conduit, ductwork or drain lines, must be shown by dimension and elevation. The location of all buried pipelines, appurtenances, or other improvements must be represented by coordinates and by the horizontal distance from visible above-ground improvements.

(B) **Final Completion.** Contractor must verify that all changes in the Work are depicted in the as-built drawings and must deliver the complete set of as-built drawings to the Engineer for review and acceptance as a condition precedent to Final Completion and Final Payment.

7.12 Existing Utilities.

(A) **General.** The Work may be performed in developed, urban areas with existing utilities, both above and below ground, including utilities identified in the Contract Documents or in other informational documents or records. Contractor must take due care to locate identified or reasonably identifiable utilities before proceeding with trenching, excavation, or any other activity that could damage or disrupt existing utilities. This may include excavation with small equipment, potholing, or hand excavation, and, if practical, using white paint or other suitable markings to delineate the area to be excavated. Except as otherwise provided herein, Contractor will be responsible for costs resulting from damage to identified or reasonably identifiable utilities due to Contractor's negligence or failure to comply with the Contract Documents, including the requirements in this Article 7.

(B) **Unidentified Utilities.** Pursuant to Government Code § 4215, if, during the performance of the Work, Contractor discovers utility facilities not identified by City in the

Contract Documents, Contractor must immediately provide written notice to City and the utility. City assumes responsibility for the timely removal, relocation, or protection of existing main or trunkline utility facilities located on the Project site if those utilities are not identified in the Contract Documents. Contractor will be compensated in accordance with the provisions of the Contract Documents for the costs of locating, repairing damage not due to Contractor's failure to exercise reasonable care, and removing or relocating utility facilities not indicated in the Plans or Specifications with reasonable accuracy, and for equipment on the Project necessarily idled during such work. Contractor will not be assessed liquidated damages for delay in completion of the Work, to the extent the delay was caused by City's failure to provide for removal or relocation of the utility facilities.

7.13 Notice of Excavation. Contractor must comply with all applicable requirements in Government Code § 4216 et seq., which are incorporated by reference herein.

7.14 Trenching and Excavations of Four Feet or More. As required by Public Contract Code § 7104, if the Work includes digging trenches or other excavations that extend deeper than four feet below the surface, the provisions in this Section apply to the Work and the Project.

(A) **Duty to Notify.** Contractor must promptly, and before the following conditions are disturbed, provide written notice to City if Contractor finds any of the following conditions:

- (1) Material that Contractor believes may be a hazardous waste, as defined in § 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with the provisions of existing Laws;
- (2) Subsurface or latent physical conditions at the Project site differing from those indicated by information about the Project site made available to bidders prior to the deadline for submitting bids; or
- (3) Unknown physical conditions at the Project site of any unusual nature, materially different from those ordinarily encountered and generally recognized as inherent in work of the character required by the Contract Documents.

(B) **City Investigation.** City will promptly investigate the conditions and if City finds that the conditions materially differ from those indicated, apparent, or reasonably inferred from information about the Project site made available to bidders, or involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the Work, City will issue a Change Order.

(C) **Disputes.** In the event that a dispute arises between City and Contractor regarding any of the conditions specified in subsection (B) above, or the terms of a Change Order issued by City, Contractor will not be excused from completing the Work within the Contract Time, but must proceed with all Work to be performed under the Contract. Contractor will retain any and all rights provided either by the Contract or by Laws which pertain to the resolution of disputes between Contractor and City.

7.15 Trenching of Five Feet or More. As required by Labor Code § 6705, if the Contract Price exceeds \$25,000 and the Work includes the excavation of any trench or trenches of five feet or more in depth, a detailed plan must be submitted to City for acceptance in advance of the excavation. The detailed plan must show the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation. If the plan varies from the shoring system standards, it

must be prepared by a California registered civil or structural engineer. Use of a shoring, sloping, or protective system less effective than that required by the Construction Safety Orders is prohibited.

7.16 **New Utility Connections.** Except as otherwise specified, City will pay connection charges and meter costs for new permanent utilities required by the Contract Documents, if any. Contractor must notify City sufficiently in advance of the time needed to request service from each utility provider so that connections and services are initiated in accordance with the Project schedule.

7.17 **Lines and Grades.** Contractor is required to use any benchmark provided by the Engineer. Unless otherwise specified in the Contract Documents, Contractor must provide all lines and grades required to execute the Work. Contractor must also provide, preserve, and replace if necessary, all construction stakes required for the Project. All stakes or marks must be set by a California licensed surveyor or a California registered civil engineer. Contractor must notify the Engineer of any discrepancies found between Contractor's staking and grading and information provided by the Contract Documents. Upon completion, all Work must conform to the lines, elevations, and grades shown in the Plans, including any changes directed by a Change Order.

7.18 **Historic or Archeological Items.**

(A) **Contractor's Obligations.** Contractor must ensure that all persons performing Work at the Project site are required to immediately notify the Project Manager, upon discovery of any potential historic or archeological items, including historic or prehistoric ruins, a burial ground, archaeological or vertebrate paleontological site, including fossilized footprints or other archeological, paleontological or historical feature on the Project site (collectively, "Historic or Archeological Items").

(B) **Discovery; Cessation of Work.** Upon discovery of any potential Historic or Archeological Items, Work must be stopped within an 85-foot radius of the find and may not resume until authorized in writing by City. If required by City, Contractor must assist in protecting or recovering the Historic or Archeological Items, with any such assistance to be compensated as Extra Work on a time and materials basis under Article 6, Contract Modification. At City's discretion, a suspension of Work required due to discovery of Historic or Archeological Items may be treated as Excusable Delay pursuant to Article 5, or as a suspension for convenience under Article 13.

7.19 **Environmental Control.** Contractor must not pollute any drainage course or its tributary inlets with fuels, oils, bitumens, acids, insecticides, herbicides or other harmful materials. Contractor must prevent the release of any hazardous material or hazardous waste into the soil or groundwater, and prevent the unlawful discharge of pollutants into City's storm drain system and watercourses as required below. Contractor and its Subcontractors must at all times in the performance of the Work comply with all Laws concerning pollution of waterways.

(A) **Stormwater Permit.** Contractor must comply with all applicable conditions of the State Water Resources Control Board National Pollutant Discharge Elimination System General Permit for Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activity ("Stormwater Permit").

(B) **Contractor's Obligations.** If required for the Work, a copy of the Stormwater Permit is on file in City's principal administrative offices, and Contractor must comply with it without adjustment of the Contract Price or the Contract Time. Contractor must timely and completely submit required reports and monitoring information required by the conditions of the Stormwater Permit. Contractor also must comply with all other Laws

governing discharge of stormwater, including applicable municipal stormwater management programs.

7.20 Noise Control. Contractor must comply with all applicable noise control Laws. Noise control requirements apply to all equipment used for the Work or related to the Work, including trucks, transit mixers or transient equipment that may or may not be owned by Contractor.

7.21 Mined Materials. Pursuant to Public Contract Code § 20676, Contractor will not purchase any sand, gravel, or other minerals for the Work from an operation subject to the Surface Mining and Reclamation Act of 1975 (Public Resources Code § 2710 et seq.) unless the Contractor certifies, under penalty of perjury, that the minerals are from a mining operation included on the AB 3098 List, which may be accessed online at: <https://www.conservation.ca.gov/smgb/Pages/AB-3098-List.aspx>.

Article 8 - Payment

8.1 Schedule of Values. Prior to submitting its first application for payment, Contractor must prepare and submit to the Project Manager a schedule of values apportioned to the various divisions and phases of the Work, including mobilization and demobilization. If a Bid Schedule was submitted with Contractor's bid, the amounts in the schedule of values must be consistent with the Bid Schedule. Each line item contained in the schedule of values must be assigned a value such that the total of all items equals the Contract Price. The items must be sufficiently detailed to enable accurate evaluation of the percentage of completion claimed in each application for payment, and the assigned value consistent with any itemized or unit pricing submitted with Contractor's bid.

(A) **Measurements for Unit Price Work.** Materials and items of Work to be paid for on the basis of unit pricing will be measured according to the methods specified in the Contract Documents.

(B) **Deleted or Reduced Work.** Contractor will not be compensated for Work that City has deleted or reduced in scope, except for any labor, material, or equipment costs for such Work that Contractor reasonably incurred before Contractor learned that the Work could be deleted or reduced. Contractor will only be compensated for those actual, direct and documented costs incurred, and will not be entitled to any mark up for overhead or lost profits.

8.2 Progress Payments. Following the last day of each month, or as otherwise required by the Special Conditions or Specifications, Contractor will submit to the Project Manager a monthly application for payment for Work performed during the preceding month based on the estimated value of the Work performed during that preceding month.

(A) **Application for Payment.** Each application for payment must be itemized to include labor, materials, and equipment incorporated into the Work, and materials and equipment delivered to the Project site, as well as authorized and approved Change Orders. Each payment application must be supported by the unit prices submitted with Contractor's Bid Schedule and/or schedule of values and any other substantiating data required by the Contract Documents.

(B) **Payment of Undisputed Amounts.** City will pay the undisputed amount due within 30 days after Contractor has submitted a complete and accurate payment application, subject to Public Contract Code § 20104.50. City will deduct a percentage from each progress payment as retention, as set forth in Section 8.5, below, and may deduct or withhold additional amounts as set forth in Section 8.3, below.

8.3 Adjustment of Payment Application. City may adjust or reject the amount requested in a payment application, including application for Final Payment, in whole or in part, if the amount requested is disputed or unsubstantiated. Contractor will be notified in writing of the basis for the modification to the amount requested. City may also deduct or withhold from payment otherwise due based upon any of the circumstances and amounts listed below. Sums withheld from payment otherwise due will be released when the basis for that withholding has been remedied and no longer exists.

- (A) For Contractor's unexcused failure to perform the Work as required by the Contract Documents, including correction or completion of punch list items, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.
- (B) For loss or damage caused by Contractor or its Subcontractors arising out of or relating to performance of the Work or any failure to protect the Project site, City may deduct an amount based on the estimated cost to repair or replace.
- (C) For Contractor's failure to pay its Subcontractors and suppliers when payment is due, City may withhold an amount equal to the total of past due payments and may opt to pay that amount separately via joint check pursuant to Section 8.6(B), Joint Checks.
- (D) For Contractor's failure to timely correct rejected, nonconforming, or defective Work, City may withhold or deduct an amount based on the City's estimated cost to correct or complete the Work.
- (E) For any unreleased stop notice, City may withhold 125% of the amount claimed.
- (F) For Contractor's failure to submit any required schedule or schedule update in the manner specified or within the time specified in the Contract Documents, City may withhold an amount equal to five percent of the total amount requested until Contractor complies with its schedule submittal obligations.
- (G) For Contractor's failure to maintain or submit as-built documents in the manner specified or within the time specified in the Contract Documents, City may withhold or deduct an amount based on the City's cost to prepare the as-builts.
- (H) For Work performed without Shop Drawings that have been accepted by City, when accepted Shop Drawings are required before proceeding with the Work, City may deduct an amount based on the estimated cost to correct unsatisfactory Work or diminution in value.
- (I) For fines, payments, or penalties assessed under the Labor Code, City may deduct from payments due to Contractor as required by Laws and as directed by the Division of Labor Standards Enforcement.
- (J) For any other fines, payments, or penalties assessed against the City relating to Contractor's acts or omissions, including violations of Laws, City may withhold or deduct such amounts from payment otherwise due to Contractor.
- (K) For any other costs or charges that may be withheld or deducted from payments to Contractor, as provided in the Contract Documents, including liquidated damages, City may withhold or deduct such amounts from payment otherwise due to Contractor.

8.4 Early Occupancy. Neither City's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of any part of the Work.

8.5 **Retention.** City will retain five percent of the full amount due on each progress payment (i.e., the amount due before any withholding or deductions pursuant to Section 8.3, Adjustment of Payment Application), or the percentage stated in the Notice Inviting Bids, whichever is greater, as retention to ensure full and satisfactory performance of the Work. Contractor is not entitled to any reduction in the rate of withholding at any time, nor to release of any retention before 35 days following City's recordation of the Notice of Completion, subject to the terms of Public Contract Code § 7107.

(A) **Substitution of Securities.** As provided by Public Contract Code § 22300, Contractor may request in writing that it be allowed, at its sole expense, to substitute securities for the retention withheld by City. Any escrow agreement entered into pursuant to this provision must fully comply with Public Contract Code § 22300 and will be subject to approval as to form by City's legal counsel. If City exercises its right to draw upon such securities in the event of default pursuant to section (7) of the statutory Escrow Agreement for Security Deposits in Lieu of Retention, pursuant to subdivision (g) of Public Contract Code § 22300 ("Escrow Agreement"), and if Contractor disputes that it is in default, its sole remedy is to comply with the dispute resolution procedures in Article 12 and the provisions therein. It is agreed that for purposes of this paragraph, an event of default includes City's rights pursuant to these Contract Documents to withhold or deduct sums from retention, including withholding or deduction for liquidated damages, incomplete or defective Work, stop payment notices, or backcharges. It is further agreed that if any individual authorized to give or receive written notice on behalf of a party pursuant to section (10) of the Escrow Agreement are unavailable to give or receive notice on behalf of that party due to separation from employment, retirement, death, or other circumstances, the successor or delegatee of the named individual is deemed to be the individual authorized to give or receive notice pursuant to section (10) of the Escrow Agreement.

(B) **Release of Undisputed Retention.** All undisputed retention, less any amounts that may be assessed as liquidated damages, retained for stop notices, or otherwise withheld pursuant to Section 8.3, Adjustment of Payment Application, will be released as Final Payment to Contractor no sooner than 35 days following recordation of the notice of completion, and no later than 60 days following acceptance of the Project by City's governing body or authorized designee pursuant to Section 11.1(C), Acceptance, or, if the Project has not been accepted, no later than 60 days after the Project is otherwise considered complete pursuant to Public Contract Code § 7107(c).

8.6 **Payment to Subcontractors and Suppliers.** Each month, Contractor must promptly pay each Subcontractor and supplier the value of the portion of labor, materials, and equipment incorporated into the Work or delivered to the Project site by the Subcontractor or supplier during the preceding month. Such payments must be made in accordance with the requirements of Laws pertaining to such payments, and those of the Contract Documents and applicable subcontract or supplier contract.

(A) **Withholding for Stop Notice.** Pursuant to Civil Code § 9358, City will withhold 125% of the amount claimed by an unreleased stop notice, a portion of which may be retained by City for the costs incurred in handling the stop notice claim, including attorneys' fees and costs, as authorized by law.

(B) **Joint Checks.** City reserves the right, acting in its sole discretion, to issue joint checks made payable to Contractor and a Subcontractor or supplier, if City determines this is necessary to ensure fair and timely payment for a Subcontractor or supplier who has provided services or goods for the Project. As a condition to release of payment by a joint check, the joint check payees may be required to execute a joint check agreement in a form provided or approved by the City Attorney's Office. The joint check payees will be

jointly and severally responsible for the allocation and disbursement of funds paid by joint check. Payment by joint check will not be construed to create a contractual relationship between City and a Subcontractor or supplier of any tier beyond the scope of the joint check agreement.

8.7 Final Payment. Contractor's application for Final Payment must comply with the requirements for submitting an application for a progress payment as stated in Section 8.2, above. Corrections to previous progress payments, including adjustments to estimated quantities for unit priced items, may be included in the Final Payment. If Contractor fails to submit a timely application for Final Payment, City reserves the right to unilaterally process and issue Final Payment without an application from Contractor in order to close out the Project. For the purposes of determining the deadline for Claim submission pursuant to Article 12, the date of Final Payment is deemed to be the date that City acts to release undisputed retention as final payment to Contractor, or otherwise provides written notice to Contractor of Final Payment or that no undisputed funds remain available for Final Payment due to offsetting withholdings or deductions pursuant to Section 8.3, Adjustment of Payment Application. If the amount due from Contractor to City exceeds the amount of Final Payment, City retains the right to recover the balance from Contractor or its sureties.

8.8 Release of Claims. City may, at any time, require that payment of the undisputed portion of any progress payment or Final Payment be contingent upon Contractor furnishing City with a written waiver and release of all claims against City arising from or related to the portion of Work covered by those undisputed amounts subject to the limitations of Public Contract Code § 7100. Any disputed amounts may be specifically excluded from the release.

8.9 Warranty of Title. Contractor warrants that title to all work, materials, or equipment incorporated into the Work and included in a request for payment will pass over to City free of any claims, liens, or encumbrances upon payment to Contractor.

Article 9 - Labor Provisions

9.1 Discrimination Prohibited. Discrimination against any prospective or present employee engaged in the Work on grounds of race, color, ancestry, national origin, ethnicity, religion, sex, sexual orientation, age, disability, or marital status is strictly prohibited. Contractor and its Subcontractors are required to comply with all applicable Laws prohibiting discrimination, including the California Fair Employment and Housing Act (Govt. Code § 12900 et seq.), Government Code § 11135, and Labor Code §§ 1735, 1777.5, 1777.6, and 3077.5.

9.2 Labor Code Requirements.

(A) **Eight Hour Day.** Pursuant to Labor Code § 1810, eight hours of labor constitute a legal day's work under this Contract.

(B) **Penalty.** Pursuant to Labor Code § 1813, Contractor will forfeit to City as a penalty, the sum of \$25.00 for each day during which a worker employed by Contractor or any Subcontractor is required or permitted to work more than eight hours in any one calendar day or more than 40 hours per calendar week, except if such workers are paid overtime under Labor Code § 1815.

(C) **Apprentices.** Contractor is responsible for compliance with the requirements governing employment and payment of apprentices, as set forth in Labor Code § 1777.5, which is fully incorporated by reference.

(D) **Notices.** Pursuant to Labor Code § 1771.4, Contractor is required to post all job site notices prescribed by Laws.

9.3 Prevailing Wages. Each worker performing Work under this Contract that is covered under Labor Code §§ 1720, 1720.3, or 1720.9, including cleanup at the Project site, must be paid at a rate not less than the prevailing wage as defined in §§ 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the City and available online at <http://www.dir.ca.gov/dlsr>. Contractor must post a copy of the applicable prevailing rates at the Project site.

(A) **Penalties.** Pursuant to Labor Code § 1775, Contractor and any Subcontractor will forfeit to City as a penalty up to \$200.00 for each calendar day, or portion thereof, for each worker paid less than the applicable prevailing wage rate. Contractor must also pay each worker the difference between the applicable prevailing wage rate and the amount actually paid to that worker.

(B) **Federal Requirements.** If this Project is subject to federal prevailing wage requirements in addition to California prevailing wage requirements, Contractor and its Subcontractors are required to pay the higher of the currently applicable state or federal prevailing wage rates.

9.4 Payroll Records. Contractor must comply with the provisions of Labor Code §§ 1771.4, 1776, and 1812 and all implementing regulations, which are fully incorporated by this reference, including requirements for monthly electronic submission of payroll records to the DIR.

(A) **Contractor and Subcontractor Obligations.** Contractor and each Subcontractor must keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in connection with the Work. Each payroll record must contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- (1) The information contained in the payroll record is true and correct; and
- (2) Contractor or the Subcontractor has complied with the requirements of Labor Code §§ 1771, 1811, and 1815 for any Work performed by its employees on the Project.

(B) **Certified Record.** A certified copy of an employee's payroll record must be made available for inspection or furnished to the employee or his or her authorized representative on request, to City, to the Division of Labor Standards Enforcement, to the Division of Apprenticeship Standards of the DIR, and as further required by the Labor Code.

(C) **Enforcement.** Upon notice of noncompliance with Labor Code § 1776, Contractor or Subcontractor has ten days in which to comply with the requirements of this section. If Contractor or Subcontractor fails to do so within the ten-day period, Contractor or Subcontractor will forfeit a penalty of \$100.00 per day, or portion thereof, for each worker for whom compliance is required, until strict compliance is achieved. Upon request by the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement, these penalties will be withheld from payments then due to Contractor.

9.5 Labor Compliance. Pursuant to Labor Code § 1771.4, the Contract for this Project is subject to compliance monitoring and enforcement by the DIR.

Article 10 - Safety Provisions

10.1 Safety Precautions and Programs. Contractor and its Subcontractors are fully responsible for safety precautions and programs, and for the safety of persons and property in the performance of the Work. Contractor and its Subcontractors must at all times comply with all applicable health and safety Laws and seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect its employees and other persons at any Worksite, materials and equipment stored on or off site, and property at or adjacent to any Worksite.

(A) **Reporting Requirements.** Contractor must immediately notify the City of any death, serious injury or illness resulting from Work on the Project. Contractor must immediately provide a written report to City of each recordable accident or injury occurring at any Worksite within 24 hours of the occurrence. The written report must include: (1) the name and address of the injured or deceased person; (2) the name and address of each employee of Contractor or of any Subcontractor involved in the incident; (3) a detailed description of the incident, including precise location, time, and names and contact information for known witnesses; and (4) a police or first responder report, if applicable. If Contractor is required to file an accident report with a government agency, Contractor will provide a copy of the report to City.

(B) **Legal Compliance.** Contractor's safety program must comply with the applicable legal and regulatory requirements. Contractor must provide City with copies of all notices required by Laws.

(C) **Contractor's Obligations.** Any damage or loss caused by Contractor arising from the Work which is not insured under property insurance must be promptly remedied by Contractor.

(D) **Remedies.** If City determines, in its sole discretion, that any part of the Work or Project site is unsafe, City may, without assuming responsibility for Contractor's safety program, require Contractor or its Subcontractor to cease performance of the Work or to take corrective measures to City's satisfaction. If Contractor fails to promptly take the required corrective measures, City may perform them and deduct the cost from the Contract Price. Contractor agrees it is not entitled to submit a Claim for damages, for an increase in Contract Price, or for a change in Contract Time based on Contractor's compliance with City's request for corrective measures pursuant to this provision.

10.2 Hazardous Materials. Unless otherwise specified in the Contract Documents, this Contract does not include the removal, handling, or disturbance of any asbestos or other Hazardous Materials. If Contractor encounters materials on the Project site that Contractor reasonably believes to be asbestos or other Hazardous Materials, and the asbestos or other Hazardous Materials have not been rendered harmless, Contractor may continue Work in unaffected areas reasonably believed to be safe, but must immediately cease work on the area affected and report the condition to City. No asbestos, asbestos-containing products or other Hazardous Materials may be used in performance of the Work.

10.3 Material Safety. Contractor is solely responsible for complying with § 5194 of Title 8 of the California Code of Regulations, including by providing information to Contractor's employees about any hazardous chemicals to which they may be exposed in the course of the Work. A hazard communication program and other forms of warning and training

about such exposure must be used. Contractor must also maintain Safety Data Sheets ("SDS") at the Project site, as required by Laws, for materials or substances used or consumed in the performance of the Work. The SDS will be accessible and available to Contractor's employees, Subcontractors, and City.

- (A) **Contractor Obligations.** Contractor is solely responsible for the proper delivery, handling, use, storage, removal, and disposal of all materials brought to the Project site and/or used in the performance of the Work. Contractor must notify the Engineer if a specified product or material cannot be used safely.
- (B) **Labeling.** Contractor must ensure proper labeling on any material brought onto the Project site so that any persons working with or in the vicinity of the material may be informed as to the identity of the material, any potential hazards, and requirements for proper handling, protections, and disposal.

10.4 Hazardous Condition. Contractor is solely responsible for determining whether a hazardous condition exists or is created during the course of the Work, involving a risk of bodily harm to any person or risk of damage to any property. If a hazardous condition exists or is created, Contractor must take all precautions necessary to address the condition and ensure that the Work progresses safely under the circumstances. Hazardous conditions may result from, but are not limited to, use of specified materials or equipment, the Work location, the Project site condition, the method of construction, or the way any Work must be performed.

10.5 Emergencies. In an emergency affecting the safety or protection of persons, Work, or property at or adjacent to any Worksite, Contractor must take reasonable and prompt actions to prevent damage, injury, or loss, without prior authorization from the City if, under the circumstances, there is inadequate time to seek prior authorization from the City.

Article 11 - Completion and Warranty Provisions

11.1 Final Completion.

(A) **Final Inspection and Punch List.** When the Work required by this Contract is fully performed, Contractor must provide written notification to City requesting final inspection. The Engineer will schedule the date and time for final inspection, which must include Contractor's primary representative for this Project and its superintendent. Based on that inspection, City will prepare a punch list of any items that are incomplete, missing, defective, incorrectly installed, or otherwise not compliant with the Contract Documents. The punch list to Contractor will specify the time by which all of the punch list items must be completed or corrected. The punch list may include City's estimated cost to complete each punch list item if Contractor fails to do so within the specified time. The omission of any non-compliant item from a punch list will not relieve Contractor from fulfilling all requirements of the Contract Documents. Contractor's failure to complete any punch list item within the time specified in the punch list will not waive or abridge its warranty obligations for any such items that must be completed by the City or by a third party retained by the City due to Contractor's failure to timely complete any such outstanding item.

(B) **Requirements for Final Completion.** Final Completion will be achieved upon completion or correction of all punch list items, as verified by City's further inspection, and upon satisfaction of all other Contract requirements, including any commissioning required under the Contract Documents and submission of all final submittals, including

instructions and manuals as required under Section 7.10, and complete, final as-built drawings as required under Section 7.11, all to City's satisfaction.

(C) **Acceptance.** The Project will be considered accepted upon City Council action during a public meeting to accept the Project, unless the Engineer is authorized to accept the Project, in which case the Project will be considered accepted upon the date of the Engineer's issuance of a written notice of acceptance. In order to avoid delay of Project close out, the City may elect, acting in its sole discretion, to accept the Project as complete subject to exceptions for punch list items that are not completed within the time specified in the punch list.

(D) **Final Payment and Release of Retention.** Final Payment and release of retention, less any sums withheld pursuant to the provisions of the Contract Documents, will not be made sooner than 35 days after recordation of the notice of completion. If Contractor fails to complete all of the punch list items within the specified time, City may withhold up to 150% of City's estimated cost to complete each of the remaining items from Final Payment and may use the withheld retention to pay for the costs to self-perform the outstanding items or to retain a third party to complete any such outstanding punch list item.

11.2 **Warranty.**

(A) **General.** Contractor warrants that all materials and equipment will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Contractor further warrants that the Work will be free from material defects not intrinsic in the design or materials required in the Contract Documents. Contractor warrants that materials or items incorporated into the Work comply with the requirements and standards in the Contract Documents, including compliance with Laws, and that any Hazardous Materials encountered or used were handled as required by Laws. At City's request, Contractor must furnish satisfactory evidence of the quality and type of materials and equipment furnished. Contractor's warranty does not extend to damage caused by normal wear and tear, or improper use or maintenance.

(B) **Warranty Period.** Contractor's warranty must guarantee its Work for a period of one year from the date of Project acceptance (the "Warranty Period"), except when a longer guarantee is provided by a supplier or manufacturer or is required by the Specifications or Special Conditions. Contractor must obtain from its Subcontractors, suppliers and manufacturers any special or extended warranties required by the Contract Documents.

(C) **Warranty Documents.** As a condition precedent to Final Completion, Contractor must supply City with all warranty and guarantee documents relevant to equipment and materials incorporated into the Work and guaranteed by their suppliers or manufacturers.

(D) **Subcontractors.** The warranty obligations in the Contract Documents apply to Work performed by Contractor and its Subcontractors, and Contractor agrees to be co-guarantor of such Work.

(E) **Contractor's Obligations.** Upon written notice from City to Contractor of any defect in the Work discovered during the Warranty Period, Contractor or its responsible Subcontractor must promptly correct the defective Work at its own cost. Contractor's obligation to correct defects discovered during the Warranty Period will continue past the expiration of the Warranty Period as to any defects in Work for which Contractor was notified prior to expiration of the Warranty Period. Work performed during the Warranty

Period ("Warranty Work") will be subject to the warranty provisions in this Section 11.2 for a one-year period that begins upon completion of such Warranty Work to City's satisfaction.

(F) ***City's Remedies.*** If Contractor or its responsible Subcontractor fails to correct defective Work within ten days following notice by City, or sooner if required by the circumstances, City may correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor must reimburse City for its costs in accordance with subsection (H), below.

(G) ***Emergency Repairs.*** In cases of emergency where any delay in correcting defective Work could cause harm, loss or damage, City may immediately correct the defects to conform with the Contract Documents at Contractor's sole expense. Contractor or its surety must reimburse City for its costs in accordance with subsection (H), below.

(H) ***Reimbursement.*** Contractor must reimburse City for its costs to repair under subsections (F) or (G), above, within 30 days following City's submission of a demand for payment pursuant to this provision. If City is required to initiate legal action to compel Contractor's compliance with this provision, and City is the prevailing party in such action, Contractor and its surety are solely responsible for all of City's attorney's fees and legal costs expended to enforce Contractor's warranty obligations herein, in addition to any and all costs City incurs to correct the defective Work.

11.3 Use Prior to Final Completion. City reserves the right to occupy or make use of the Project, or any portions of the Project, prior to Final Completion if City has determined that the Project or portion of it is in a condition suitable for the proposed occupation or use, and that it is in its best interest to occupy or make use of the Project, or any portions of it, prior to Final Completion.

(A) ***Non-Waiver.*** Occupation or use of the Project, in whole or in part, prior to Final Completion will not operate as acceptance of the Work or any portion of it, nor will it operate as a waiver of any of City's rights or Contractor's duties pursuant to these Contract Documents, and will not affect nor bear on the determination of the time of substantial completion with respect to any statute of repose pertaining to the time for filing an action for construction defect.

(B) ***City's Responsibility.*** City will be responsible for the cost of maintenance and repairs due to normal wear and tear with respect to those portions of the Project that are being occupied or used before Final Completion. The Contract Price or the Contract Time may be adjusted pursuant to the applicable provisions of these Contract Documents if, and only to the extent that, any occupation or use under this Section actually adds to Contractor's cost or time to complete the Work within the Contract Time.

11.4 Substantial Completion. For purposes of determining "substantial completion" with respect to any statute of repose pertaining to the time for filing an action for construction defect, "substantial completion" is deemed to mean the last date that Contractor or any Subcontractor performs Work on the Project prior to City acceptance of the Project, except for warranty work performed under this Article.

Article 12 - Dispute Resolution

12.1 Claims. This Article applies to and provides the exclusive procedures for any Claim arising from or related to the Contract or performance of the Work.

(A) ***Limitations.*** A Claim may only include the portion of a previously rejected demand that remains in dispute between Contractor and City. With the exception of any dispute regarding the amount of money actually paid to Contractor as Final Payment, Contractor is not entitled to submit a Claim demanding a change in the Contract Time or the Contract Price, which has not previously been submitted to City in full compliance with Article 5 and Article 6, and subsequently rejected in whole or in part by City.

(B) ***Scope of Article.*** This Article is intended to provide the exclusive procedures for submission and resolution of Claims of any amount and applies in addition to the provisions of Public Contract Code § 9204 and § 20104 et seq., which are incorporated by reference herein.

(C) ***No Work Delay.*** Notwithstanding the submission of a Claim or any other dispute between the parties related to the Project or the Contract Documents, Contractor must perform the Work and may not delay or cease Work pending resolution of a Claim or other dispute, but must continue to diligently prosecute the performance and timely completion of the Work, including the Work pertaining to the Claim or other dispute.

(D) ***Informal Resolution.*** Contractor will make a good faith effort to informally resolve a dispute before initiating a Claim, preferably by face-to-face meeting between authorized representatives of Contractor and City.

12.2 Claims Submission. The following requirements apply to any Claim subject to this Article:

(A) ***Substantiation.*** The Claim must be submitted to City in writing by registered or certified mail with return receipt requested and clearly identified as a "Claim" submitted pursuant to this Article 12. The Claim must include all of the documents necessary to substantiate the Claim including the Change Order request that was rejected in whole or in part, and a copy of City's written rejection that is in dispute. The Claim must clearly identify and describe the dispute, including relevant references to applicable portions of the Contract Documents, and a chronology of relevant events. Any Claim for additional payment must include a complete, itemized breakdown of all known or estimated labor, materials, taxes, insurance, and subcontract, or other costs. Substantiating documentation such as payroll records, receipts, invoices, or the like, must be submitted in support of each component of claimed cost. Any Claim for an extension of time or delay costs must be substantiated with a schedule analysis and narrative depicting and explaining claimed time impacts.

(B) ***Claim Format and Content.*** A Claim must be submitted in the following format:

- (1) Provide a cover letter, specifically identifying the submission as a "Claim" submitted under this Article 12 and specifying the requested remedy (e.g., amount of proposed change to Contract Price and/or change to Contract Time).
- (2) Provide a summary of each Claim, including underlying facts and the basis for entitlement, and identify each specific demand at issue, including the specific Change Order request (by number and submittal date), and the date of City's rejection of that demand, in whole or in part.
- (3) Provide a detailed explanation of each issue in dispute. For multiple issues included within a single Claim or for multiple Claims submitted concurrently, separately number and identify each individual issue or Claim, and include the following for each separate issue or Claim:

- a. A succinct statement of the matter in dispute, including Contractor's position and the basis for that position;
- b. Identify and attach all documents that substantiate the Claim, including relevant provisions of the Contract Documents, RFIs, calculations, and schedule analysis (see subsection (A), Substantiation, above);
- c. A chronology of relevant events; and
- d. Analysis and basis for claimed changes to Contract Price, Contract Time, or any other remedy requested.

(4) Provide a summary of issues and corresponding claimed damages. If, by the time of the Claim submission deadline (below), the precise amount of the requested change in the Contract Price or Contract Time is not yet known, Contractor must provide a good faith estimate, including the basis for that estimate, and must identify the date by which it is anticipated that the Claim will be updated to provide final amounts.

(5) Include the following certification, executed by Contractor's authorized representative:

"The undersigned Contractor certifies under penalty of perjury that its statements and representations in this Claim submittal are true and correct. Contractor warrants that this Claim submittal is comprehensive and complete as to the matters in dispute, and agrees that any costs, expenses, or delay not included herein are deemed waived."

(C) ***Submission Deadlines.***

- (1) A Claim disputing rejection of a request for a change in the Contract Time or Contract Price must be submitted within 21 days following the date that City notified Contractor in writing that a request for a change in the Contract Time or Contract Price, duly submitted in compliance with Article 5 and Article 6, has been rejected in whole or in part. A Claim disputing the terms of a unilateral Change Order must be submitted within 21 days following the date of issuance of the unilateral Change Order. These Claim deadlines apply even if Contractor cannot yet quantify the total amount of any requested change in the Contract Time or Contract Price. If the Contractor cannot quantify those amounts, it must submit an estimate of the amounts claimed pending final determination of the requested remedy by Contractor.
- (2) With the exception of any dispute regarding the amount of Final Payment, any Claim must be filed on or before the date of Final Payment or will be deemed waived.
- (3) A Claim disputing the amount of Final Payment must be submitted within 21 days of the effective date of Final Payment, under Section 8.7, Final Payment.
- (4) Strict compliance with these Claim submission deadlines is necessary to ensure that any dispute may be mitigated as soon as possible, and to facilitate cost-efficient administration of the Project. ***Any Claim that is not submitted within the specified deadlines will be deemed waived by Contractor.***

12.3 City's Response. City will respond within 45 days of receipt of the Claim with a written statement identifying which portion(s) of the Claim are disputed, unless the 45-day period is extended by mutual agreement of City and Contractor or as otherwise allowed under Public Contract Code § 9204. However, if City determines that the Claim is not adequately substantiated pursuant to Section 12.2(A), Substantiation, City may first request in writing, within 30 days of receipt of the Claim, any additional documentation supporting the Claim or relating to defenses to the Claim that City may have against the Claim.

(A) **Additional Information.** If additional information is thereafter required, it may be requested and provided upon mutual agreement of City and Contractor. If Contractor's Claim is based on estimated amounts, Contractor has a continuing duty to update its Claim as soon as possible with information on actual amounts in order to facilitate prompt and fair resolution of the Claim.

(B) **Non-Waiver.** Any failure by City to respond within the times specified above will not be construed as acceptance of the Claim, in whole or in part, or as a waiver of any provision of these Contract Documents.

12.4 Meet and Confer. If Contractor disputes City's written response, or City fails to respond within the specified time, within 15 days of receipt of City's response or within 15 days of City's failure to respond within the applicable 45-day time period under Section 12.3, respectively, Contractor may notify City of the dispute in writing sent by registered or certified mail, return receipt requested, and demand an informal conference to meet and confer for settlement of the issues in dispute. If Contractor fails to notify City of the dispute and demand an informal conference to meet and confer in writing within the specified time, Contractor's Claim will be deemed waived.

(A) **Schedule Meet and Confer.** Upon receipt of the demand to meet and confer, City will schedule the meet and confer conference to be held within 30 days, or later if needed to ensure the mutual availability of each of the individuals that each party requires to represent its interests at the meet and confer conference.

(B) **Location for Meet and Confer.** The meet and confer conference will be scheduled at a location at or near City's principal office.

(C) **Written Statement After Meet and Confer.** Within ten working days after the meet and confer has concluded, City will issue a written statement identifying which portion(s) of the Claim remain in dispute, if any.

(D) **Submission to Mediation.** If the Claim or any portion remains in dispute following the meet and confer conference, within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute, the Contractor may identify in writing disputed portion(s) of the Claim, which will be submitted for mediation, as set forth below.

12.5 Mediation and Government Code Claims.

(A) **Mediation.** Within ten working days after the City issues the written statement identifying any portion(s) of the Claim remaining in dispute following the meet and confer, City and Contractor will mutually agree to a mediator, as provided under Public Contract Code § 9204. Mediation will be scheduled to ensure the mutual availability of the selected mediator and all of the individuals that each party requires to represent its interests. If there are multiple Claims in dispute, the parties may agree to schedule the mediation to address all outstanding Claims at the same time. The parties will share the costs of the mediator and mediation fees equally, but each party is otherwise solely and separately

responsible for its own costs to prepare for and participate in the mediation, including costs for its legal counsel or any other consultants.

(B) **Government Code Claims.**

(1) Timely presentation of a Government Code Claim is a condition precedent to filing any legal action based on or arising from the Contract. Compliance with the Claim submission requirements in this Article 12 is a condition precedent to filing a Government Code Claim.

(2) The time for filing a Government Code Claim will be tolled from the time Contractor submits its written Claim pursuant to Section 12.2, above, until the time that Claim is denied in whole or in part at the conclusion of the meet and confer process, including any period of time used by the meet and confer process. However, if the Claim is submitted to mediation, the time for filing a Government Code Claim will be tolled until conclusion of the mediation, including any continuations, if the Claim is not fully resolved by mutual agreement of the parties during the mediation or any continuation of the mediation.

12.6 Tort Claims. This Article does not apply to tort claims and nothing in this Article is intended nor will be construed to change the time periods for filing tort-based Government Code Claims.

12.7 Arbitration. It is expressly agreed, under Code of Civil Procedure § 1296, that in any arbitration to resolve a dispute relating to this Contract, the arbitrator's award must be supported by law and substantial evidence.

12.8 Burden of Proof and Limitations. Contractor bears the burden of proving entitlement to and the amount of any claimed damages. Contractor is not entitled to damages calculated on a total cost basis, but must prove actual damages. Contractor is not entitled to speculative, special, or consequential damages, including home office overhead or any form of overhead not directly incurred at the Project site or any other Worksite; lost profits; loss of productivity; lost opportunity to work on other projects; diminished bonding capacity; increased cost of financing for the Project; extended capital costs; non-availability of labor, material or equipment due to delays; or any other indirect loss arising from the Contract. The Eichleay Formula or similar formula will not be used for any recovery under the Contract. The City will not be directly liable to any Subcontractor or supplier.

12.9 Legal Proceedings. In any legal proceeding that involves enforcement of any requirements of the Contract Documents, the finder of fact will receive detailed instructions on the meaning and operation of the Contract Documents, including conditions, limitations of liability, remedies, claim procedures, and other provisions bearing on the defenses and theories of liability. Detailed findings of fact will be requested to verify enforcement of the Contract Documents. All of the City's remedies under the Contract Documents will be construed as cumulative, and not exclusive, and the City reserves all rights to all remedies available under law or equity as to any dispute arising from or relating to the Contract Documents or performance of the Work.

12.10 Other Disputes. The procedures in this Article 12 will apply to any and all disputes or legal actions, in addition to Claims, arising from or related to this Contract, including disputes regarding suspension or early termination of the Contract, unless and only to the extent that compliance with a procedural requirement is expressly and specifically waived by City. Nothing in this Article is intended to delay suspension or termination under Article 13.

Article 13 - Suspension and Termination

13.1 Suspension for Cause. In addition to all other remedies available to City, if Contractor fails to perform or correct Work in accordance with the Contract Documents, including non-compliance with applicable environmental or health and safety Laws, City may immediately order the Work, or any portion of it, suspended until the circumstances giving rise to the suspension have been eliminated to City's satisfaction.

(A) **Notice of Suspension.** Upon receipt of City's written notice to suspend the Work, in whole or in part, except as otherwise specified in the notice of suspension, Contractor and its Subcontractors must promptly stop Work as specified in the notice of suspension; comply with directions for cleaning and securing the Worksite; and protect the completed and in-progress Work and materials. Contractor is solely responsible for any damages or loss resulting from its failure to adequately secure and protect the Project.

(B) **Resumption of Work.** Upon receipt of the City's written notice to resume the suspended Work, in whole or in part, except as otherwise specified in the notice to resume, Contractor and its Subcontractors must promptly re-mobilize and resume the Work as specified; and within ten days from the date of the notice to resume, Contractor must submit a recovery schedule, prepared in accordance with the Contract Documents, showing how Contractor will complete the Work within the Contract Time.

(C) **Failure to Comply.** Contractor will not be entitled to an increase in the Contract Time or Contract Price for a suspension occasioned by Contractor's failure to comply with the Contract Documents.

(D) **No Duty to Suspend.** City's right to suspend the Work will not give rise to a duty to suspend the Work, and City's failure to suspend the Work will not constitute a defense to Contractor's failure to comply with the requirements of the Contract Documents.

13.2 Suspension for Convenience. City reserves the right to suspend, delay, or interrupt the performance of the Work in whole or in part, for a period of time determined to be appropriate for City's convenience. Upon notice by City pursuant to this provision, Contractor must immediately suspend, delay, or interrupt the Work and secure the Project site as directed by City except for taking measures to protect completed or in-progress Work as directed in the suspension notice, and subject to the provisions of Section 13.1(A) and (B), above. If Contractor submits a timely request for a Change Order in compliance with Articles 5 and 6, the Contract Price and the Contract Time will be equitably adjusted by Change Order pursuant to the terms of Articles 5 and 6 to reflect the cost and delay impact occasioned by such suspension for convenience, except to the extent that any such impacts were caused by Contractor's failure to comply with the Contract Documents or the terms of the suspension notice or notice to resume. However, the Contract Time will only be extended if the suspension causes or will cause unavoidable delay in Final Completion. If Contractor disputes the terms of a Change Order issued for such equitable adjustment due to suspension for convenience, its sole recourse is to comply with the Claim procedures in Article 12.

13.3 Termination for Default. City may declare that Contractor is in default of the Contract for a material breach of or inability to fully, promptly, or satisfactorily perform its obligations under the Contract.

(A) **Default.** Events giving rise to a declaration of default include Contractor's refusal or failure to supply sufficient skilled workers, proper materials, or equipment to perform the Work within the Contract Time; Contractor's refusal or failure to make prompt

payment to its employees, Subcontractors, or suppliers or to correct defective Work or damage; Contractor's failure to comply with Laws, or orders of any public agency with jurisdiction over the Project; evidence of Contractor's bankruptcy, insolvency, or lack of financial capacity to complete the Work as required within the Contract Time; suspension, revocation, or expiration and nonrenewal of Contractor's license or DIR registration; dissolution, liquidation, reorganization, or other major change in Contractor's organization, ownership, structure, or existence as a business entity; unauthorized assignment of Contractor's rights or duties under the Contract; or any material breach of the Contract requirements.

(B) **Notice of Default and Opportunity to Cure.** Upon City's declaration that Contractor is in default due to a material breach of the Contract Documents, if City determines that the default is curable, City will afford Contractor the opportunity to cure the default within ten days of City's notice of default, or within a period of time reasonably necessary for such cure, including a shorter period of time if applicable.

(C) **Termination.** If Contractor fails to cure the default or fails to expediently take steps reasonably calculated to cure the default within the time period specified in the notice of default, City may issue written notice to Contractor and its performance bond surety of City's termination of the Contract for default.

(D) **Waiver.** Time being of the essence in the performance of the Work, if Contractor's surety fails to arrange for completion of the Work in accordance with the Performance Bond within seven calendar days from the date of the notice of termination pursuant to paragraph (C), City may immediately make arrangements for the completion of the Work through use of its own forces, by hiring a replacement contractor, or by any other means that City determines advisable under the circumstances. Contractor and its surety will be jointly and severally liable for any additional cost incurred by City to complete the Work following termination, where "additional cost" means all cost in excess of the cost City would have incurred if Contractor had timely completed Work without the default and termination. In addition, City will have the right to immediate possession and use of any materials, supplies, and equipment procured for the Project and located at the Project site or any Worksite on City property for the purposes of completing the remaining Work.

(E) **Compensation.** Within 30 days of receipt of updated as-builts, all warranties, manuals, instructions, or other required documents for Work installed to date, and delivery to City of all equipment and materials for the Project for which Contractor has already been compensated, Contractor will be compensated for the Work satisfactorily performed in compliance with the Contract Documents up to the effective date of the termination pursuant to the terms of Article 8, Payment, subject to City's rights to withhold or deduct sums from payment otherwise due pursuant to Section 8.3, and excluding any costs Contractor incurs as a result of the termination, including any cancellation or restocking charges or fees due to third parties. If Contractor disputes the amount of compensation determined by City, its sole recourse is to comply with the Claim Procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of the total compensation to be paid by City.

(F) **Wrongful Termination.** If Contractor disputes the termination, its sole recourse is to comply with the Claim procedures in Article 12. If a court of competent jurisdiction or an arbitrator later determines that the termination for default was wrongful, the termination will be deemed to be a termination for convenience, and Contractor's damages will be strictly limited to the compensation provided for termination for convenience under Section 13.4, below. Contractor waives any claim for any other damages for wrongful termination including special or consequential damages, lost

opportunity costs, or lost profits, and any award of damages is subject to Section 12.8, Burden of Proof and Limitations.

13.4 Termination for Convenience. City reserves the right, acting in its sole discretion, to terminate all or part of the Contract for convenience upon written notice to Contractor.

(A) **Compensation to Contractor.** In the event of City's termination for convenience, Contractor waives any claim for damages, including for loss of anticipated profits from the Project. The following will constitute full and fair compensation to Contractor, and Contractor will not be entitled to any additional claim or compensation:

(1) *Completed Work.* The value of its Work satisfactorily performed as of the date notice of termination is received, based on Contractor's schedule of values and unpaid costs for items delivered to the Project site that were fabricated for incorporation in the Work;

(2) *Demobilization.* Demobilization costs specified in the schedule of values, or if demobilization costs were not provided in a schedule of values pursuant to Section 8.1, then based on actual, reasonable, and fully documented demobilization costs; and

(3) *Termination Markup.* Five percent of the total value of the Work performed as of the date of notice of termination, including reasonable, actual, and documented costs to comply with the direction in the notice of termination for convenience, and demobilization costs, which is deemed to cover all overhead and profit to date.

(B) **Disputes.** If Contractor disputes the amount of compensation determined by City pursuant to paragraph (A), above, its sole recourse is to comply with the Claim procedures in Article 12, by submitting a Claim no later than 30 days following notice from City of total compensation to be paid by City.

13.5 Actions Upon Termination for Default or Convenience. The following provisions apply to any termination under this Article, whether for default or convenience, and whether in whole or in part.

(A) **General.** Upon termination, City may immediately enter upon and take possession of the Project and the Work and all tools, equipment, appliances, materials, and supplies procured or fabricated for the Project. Contractor will transfer title to and deliver all completed Work and all Work in progress to City.

(B) **Submittals.** Unless otherwise specified in the notice of termination, Contractor must immediately submit to City all designs, drawings, as-built drawings, Project records, contracts with vendors and Subcontractors, manufacturer warranties, manuals, and other such submittals or Work-related documents required under the terms of the Contract Documents, including incomplete documents or drafts.

(C) **Close Out Requirements.** Except as otherwise specified in the notice of termination, Contractor must comply with all of the following:

(1) Immediately stop the Work, except for any Work that must be completed pursuant to the notice of termination and comply with City's instructions for cessation of labor and securing the Project and any other Worksite(s).

(2) Comply with City's instructions to protect the completed Work and materials, using best efforts to minimize further costs.

(3) Contractor must not place further orders or enter into new subcontracts for materials, equipment, services or facilities, except as may be necessary to complete any portion of the Work that is not terminated.

(4) As directed in the notice, Contractor must assign to City or cancel existing subcontracts that relate to performance of the terminated Work, subject to any prior rights, if any, of the surety for Contractor's performance bond, and settle all outstanding liabilities and claims, subject to City's approval.

(5) As directed in the notice, Contractor must use its best efforts to sell any materials, supplies, or equipment intended solely for the terminated Work in a manner and at market rate prices acceptable to City.

(D) **Payment Upon Termination.** Upon completion of all termination obligations, as specified herein and in the notice of termination, Contractor will submit its request for Final Payment, including any amounts due following termination pursuant to this Article 13. Payment will be made in accordance with the provisions of Article 8, based on the portion of the Work satisfactorily completed, including the close out requirements, and consistent with the previously submitted schedule of values and unit pricing, including demobilization costs. Adjustments to Final Payment may include deductions for the cost of materials, supplies, or equipment retained by Contractor; payments received for sale of any such materials, supplies, or equipment, less re-stocking fees charged; and as otherwise specified in Section 8.3, Adjustment of Payment Application.

(E) **Continuing Obligations.** Regardless of any Contract termination, Contractor's obligations for portions of the Work already performed will continue and the provisions of the Contract Documents will remain in effect as to any claim, indemnity obligation, warranties, guarantees, submittals of as-built drawings, instructions, or manuals, record maintenance, or other such rights and obligations arising prior to the termination date.

Article 14 - Miscellaneous Provisions

14.1 Assignment of Unfair Business Practice Claims. Under Public Contract Code § 7103.5, Contractor and its Subcontractors agree to assign to City all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2 (commencing with § 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Contract or any subcontract. This assignment will be effective at the time City tenders Final Payment to Contractor, without further acknowledgement by the parties.

14.2 Provisions Deemed Inserted. Every provision of law required to be inserted in the Contract Documents is deemed to be inserted, and the Contract Documents will be construed and enforced as though such provision has been included. If it is discovered that through mistake or otherwise that any required provision was not inserted, or not correctly inserted, the Contract Documents will be deemed amended accordingly.

14.3 Waiver. City's waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the Contract Documents will not be effective unless it is in writing and signed by City. City's waiver of any breach, failure, right, or remedy will not be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor will any waiver constitute a continuing waiver unless specified in writing by City.

14.4 Titles, Headings, and Groupings. The titles and headings used and the groupings of provisions in the Contract Documents are for convenience only and may not be used in the construction or interpretation of the Contract Documents or relied upon for any other purpose.

14.5 Statutory and Regulatory References. With respect to any amendments to any statutes or regulations referenced in these Contract Documents, the reference is deemed to be the version in effect on the date that bids were due.

14.6 Survival. The provisions that survive termination or expiration of this Contract include Contract Section 11, Notice, and subsections 12.1, 12.2, 12.3, 12.4, 12.5, and 12.6 of Section 12, General Provisions; and the following provisions in these General Conditions: Section 2.2(J), Contractor's Records, Section 2.3(C), Termination, Section 3.7, Ownership, Section 4.2, Indemnity, Article 12, Dispute Resolution, and Section 11.2, Warranty.

END OF GENERAL CONDITIONS

Special Conditions

1.0 **Authorized Work Days and Hours.**

1.1 Authorized Work Days. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project on the following days of the week, excluding holidays observed by City:

Between the dates of April 15 and October 31, as listed on the approved permits. Work may occur Monday through Sunday.

1.2 Authorized Work Hours. Except as expressly authorized in writing by City, Contractor is limited to performing Work on the Project during the following hours:

Typical Hours:

- Monday through Friday: 7:00 AM to 7:00 PM unless,
- No earlier than 1 hour after sunrise and no later than sunset (per CDFW permit)
- No earlier than 8 am at the North Launch Rehandling Site.

2.0 **Pre-Construction Conference.** City will designate a date and time for a pre-construction conference with Contractor following Contract execution. Project administration procedures and coordination between City and Contractor will be discussed, and Contractor must present City with the following information or documents at the meeting for City's review and acceptance before the Work commences:

- 2.1** Name, 24-hour contact information, and qualifications of the proposed on-site superintendent;
- 2.2** List of all key Project personnel and their complete contact information, including email addresses and telephone numbers during regular hours and after hours;
- 2.3** Staging plans that identify the sequence of the Work, including any phases and alternative sequences or phases, with the goal of minimizing the impacts on residents, businesses and other operations in the Project vicinity;
- 2.4** If required, traffic control plans associated with the staging plans that are signed and stamped by a licensed traffic engineer;
- 2.5** Draft baseline schedule for the Work as required under Section 5.2 of the General Conditions, to be finalized within ten days after City issues the Notice to Proceed;
- 2.6** Breakdown of lump sum bid items, to be used for determining the value of Work completed for future progress payments to Contractor;
- 2.7** Schedule with list of Project submittals that require City review, and list of the proposed material suppliers;
- 2.8** Plan for coordination with affected utility owner(s) and compliance with any related permit requirements;

- 2.9** Videotape and photographs recording the conditions throughout the pre-construction Project site, showing the existing improvements and current condition of the curbs, gutters, sidewalks, signs, landscaping, streetlights, structures near the Project such as building faces, canopies, shades and fences, and any other features within the Project area limits;
- 2.10** If requested by City, Contractor's cash flow projections; and
- 2.11** Any other documents specified in the Special Conditions or Notice of Potential Award.

END OF SPECIAL CONDITIONS

Attachment A – Technical Specifications

CITY OF SAN MATEO PUBLIC WORKS DEPARTMENT

MARINA LAGOON SEDIMENT REMOVAL PROJECT

TECHNICAL SPECIFICATIONS

TABLE OF CONTENTS

TECHNICAL SPECIFICATIONS

Section 1 – Summary of Work

Section 2 – Mobilization and Demobilization

Section 3 – Maintenance Dredging and Disposal

Section 4 – Hydrographic Surveying

Section 5 – Biological Surveying and Oversight

PROJECT DRAWINGS

APPENDIX A

Regulatory Permits

APPENDIX B

Grain Size Information

Technical Specifications prepared by Moffatt & Nichol, under the direction of the following design professional, licensed by the State of California:

Jaclyn Gnusti

Jaclyn Gnusti, PE, Civil Engineer
California Reg. No. 62446



SECTION 1

SUMMARY OF WORK

PART 1 – GENERAL

1.01 WORK COVERED BY CONTRACT DOCUMENTS

- A. The project owner is the Department of Public Works, City of San Mateo (City). The City may designate additional representatives or agents. Within these technical specifications, the term "City" includes all such representatives or agents.
- B. The Dredge Areas at Leslie Creek, Borel Creek, and the North Launch Rehandling Site may be individually or collectively referred to as the Site.
- C. The objective of this project is to perform maintenance dredging in Marina Lagoon within the designated Dredge Areas at the Leslie Creek and Borel Creek confluences, with transport and placement of sediment to a Contractor provided, permitted landfill facility. The Contractor is required to meet minimum dredging elevations (Required Dredge Elevation) as described in the Contract Documents and as shown on the Construction Drawings (Drawings) for the purpose improving hydraulic flow in Marina Lagoon. However, the City may accept work as complete if, in the opinion of the City, the dredging work has sufficiently achieved the project objective. The City has provided all available information to inform the Contractor of Site conditions so that the Contractor can plan for the appropriate schedule and equipment to meet the project objective.
- D. Contract Documents for this project include Instructions to Bidders, Bidding Documents, Proposal with Bid Schedule, General Provisions, Technical Specifications and Appendices, Drawings, any Addenda that may be issued during the bidding period, City and Contractor Agreement, and any Agreement Modifications issued during construction.
- E. The work includes providing all labor, materials, equipment, insurance, licenses, and any related services required for the dredging and proper disposal of dredged sediment.
- F. The project horizontal datum is California State Plane Coordinates, Zone III, North American Datum of 1983 (NAD 83), U.S. Survey Foot. The project vertical datum is North American Vertical Datum of 1988 (NAVD88) in U.S. Survey Foot.
- G. This Contract includes work covered by lump sum and unit prices.
- H. The Award of work is subject to permitting, funding, operations, and other priority decisions made at the sole discretion of the City. If awarded, all Bid Items will be included in the contract.

- I. The Contractor and City will jointly conduct a pre-construction Site walk-through prior to start of dredging activities to observe and document the existing Site conditions and confirm and clarify extents of the required Dredge Areas and the North Launch Rehandling Site.
- J. The work is scheduled to be completed in 2025. If the City does not provide final acceptance because the Contractor has not met the project objective by the end of the Work Window (as defined in this specification Section, Part 1.03), then the Contractor will be required to remobilize in 2026 during the approved Work Window and continue dredging to the City's satisfaction. If this occurs, all costs for additional mobilization, demobilization and surveying will be the Contractor's responsibility. The Contractor will be paid at the Contract unit rate for sediment dredged in 2026. See Contract for Liquidated Damages terms.

1.02 DEFINITIONS

- A. Allowable Overdredge Elevation: A maximum lowest dredging elevation that will be allowed to account for equipment tolerance.
- B. Biological Monitor: A third-party biologist hired by the Contractor to perform tasks under the direction of the Qualified Biologist. The Biological Monitor qualifications and responsibilities are listed in the California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) included in Appendix A.
- C. Dredge Area: Designated area within the Lagoon from which sediment is to be removed. The Dredge Area includes the horizontal and vertical extents of allowable dredging, which include the Dredge Footprint down to the Allowable Overdredge and Side Slopes. There are two Dredge Areas in this project: Leslie Creek Dredge Area and Borel Creek Dredge Area.
- D. Dredge Footprint: The horizontal extents from which the Contractor is responsible for removing all sediment to the Required Dredge Elevation. The Dredge Footprint does not include the Side Slopes.
- E. Excessive Dredging: Sediment outside of the Dredge Area (with the exception of Slough Material). The Contractor may not perform Excessive Dredging. The Contractor will not be paid for Excessive Dredging.
- F. Incidental Debris: Debris excavated as part of the dredging process, including any solid waste materials, other than sediment, such as logs, wire, cable, steel, anchors, lumber, trash, concrete, and so on. No additional compensation will be allowed for the removal and disposal or recycling of Incidental Debris encountered during dredging operations. All Incidental Debris must be disposed of at a City-approved upland landfill or recycling facility and in accordance with applicable local, state, and/or federal regulations.
- G. Independent Surveyor: A third-party hydrographic surveyor procured by the Contractor that meets the qualifications listed in technical specification Section 4, Part 1.03.

- H. Qualified Biologist: A third-party biologist hired by the Contractor to perform biological surveys at the Site and biological training for the Contractor's crew prior to initiation of work. The Qualified Biologist qualifications and responsibilities are listed in the CDFW SAA.
- I. North Launch Rehandling Site: The upland location where dredged sediment is to be placed for dewatering and stockpiling prior to trucking to a landfill, as well as Contractor laydown and truck routing, as shown in the Drawings.
- J. Required Dredge Elevation: The elevation above which the Contractor is required to remove all sediment within the Dredge Footprint, as indicated in the Drawings.
- K. Side Slope: The plane between the Dredge Area boundary at the Required Dredge Elevation (toe of cut) and the intersect point at existing grade where Slough Material is expected to be generated. The limit of Side Slope payment is shown in the Drawings. Side Slopes in this project are defined for Slough Material measurement and payment purposes only and are not necessarily the final angle of repose of the sediment.
- L. Site: The designated Dredge Area(s), as well as the marina facilities, open water, and upland facilities and structures in the immediate vicinity of the dredging work.
- M. Slough Material: Sediment or other material from the Side Slope that sloughs into the Dredge Footprint as a result of dredging a vertical cut to grade. The Contractor must remove such Slough Material from the Dredge Footprint until the Required Dredge Elevation is achieved. The estimated volume of Slough Material is calculated assuming the Side Slope grade shown on the Drawings from the toe of the Required Dredge Elevation cut. The Contractor will not be paid for sloughing beyond the indicated design Side Slope. Slough Material above the design Side Slope is included as part of the contracted payable volume.

1.03 WORK RESTRICTIONS

- A. Equipment: Dredging must be performed using mechanical dredging equipment; Hydraulic cutter suction dredging is prohibited.
- B. Allowable Work Periods:
 1. Work Window: All dredging and placement activities must occur between April 15 and October 31 to avoid or minimize adverse impacts to fish and wildlife and their habitats. See USACE and CDFW SAA permits in Appendix A.
 2. Allowable Work-Days: Seven days a week (Monday through Sunday).
 3. Work Hours:
 - a. In-water work must be performed no earlier than 1 hour after sunrise and no later than sunset, per the California Department of Fish and Wildlife requirements. Working hours are subject to change by the City.

- b. Work in the upland North Launch Rehandling Site and trucking must be performed no earlier than 8:00 a.m. and no later than sunset.
- 4. Holidays: Work may be permitted on City Holidays with advanced written permission by the City. See City Supplementary General Conditions, Article 1 – General.
- C. Vessel Mooring: At the end of each working day, the Contractor must position its equipment and scows as directed by the City to avoid or minimize interference with vessel traffic.
- D. Access and Parking: Contractor access and parking will be established in a pre-construction walk-through with the City.

1.04 SUBMITTALS

- A. The Contractor is required to submit the items listed in Table 1-1 prior to construction.

| Table 1-1: Pre-Construction Submittals | | | |
|--|--|--|---|
| | Submittal | Required Date | Specification Reference |
| 1 | Notice of Commencement | 3 days prior to initiating in-water work | Section 3, Part 1.02 D |
| 2 | Pre-Dredge Survey | At least 4 weeks prior to dredging start date | Section 4, Part 1.02 A |
| 3 | Dredging and Disposal Operations Plan and Solid Debris Management Plan | At least 15 days prior to dredging | Section 3, Part 1.02 A |
| 4 | Health and Safety Plan | At least 10 calendar days prior to Site mobilization | Section 2, Part 1.02 A |
| 5 | Photo documentation at Dredge Areas | Prior to construction | Section 3 Part 1.02 C (WQC in Appendix A) |
| 6 | Independent Surveyor Qualifications | 1 week prior to Pre-Dredge Survey | Section 4, Part 1.03 |
| 7 | Qualified Biologist/Biological Monitor Qualifications | 45 days prior to the Special Status Survey | Section 5, Part 1.01 (SSA in Appendix A) |
| 8 | Sensitive Plant and Nesting Bird Surveys | As required by the CDFW SAA | Section 5, Part 3.01 A |

B. The Contractor is required to submit the items listed in Table 1-2 during to construction.

| Table 1-2: Construction Submittals | | | |
|------------------------------------|-------------------------------|-----------------------------------|-------------------------|
| | Submittal | Required Date | Specification Reference |
| 1 | Quality Control (QC) Reports | Noon on the following working day | Section 3, Part 1.02, E |
| 2 | Truck Tags (Tipping Receipts) | Once a week | Section 3, Part 1.02, F |

C. The Contractor is required to submit the items listed in Table 1-3 following the completion of construction.

| Table 1-3: Post-Construction Submittals | | | |
|---|----------------------|---|-------------------------|
| | Submittal | Required Date | Specification Reference |
| 1 | Notice of Completion | Within 1 day after the end of work | Section 3, Part 1.02 D |
| 2 | Post-Dredge Survey | No later than (2) weeks after construction completion | Section 4, Part 1.02 A |
| 3 | As-built Report | No later than 30 days after completion of the project | Section 3, Part 1.02 G |

1.05 INHERENT DELAYS

- A. The Contractor should anticipate inherent delays while conducting dredging and disposal operations. Examples include but are not limited to repositioning of dredging equipment, delays caused by surveying, traffic enroute to landfill, and weather delays. No additional compensation will be provided for inherent delays.
- B. The City will require recreational vessels to maintain a 60-foot minimum clearance from dredging equipment, or to communicate directly with the dredge crew and obtain permission before passing within 60 feet of dredge equipment.

1.06 PERMITS, APPROVALS, AND NOTIFICATIONS

- A. The City has applied for the permits listed from the agencies listed in Table 1-4 for dredging.. Final permits are contained in Appendix A. The Contractor must comply with all conditions of the project permits.

| Table 1-4: Project Dredging Permits | |
|--|---------------------------------------|
| Regulatory Agency | Permit, Approval or Notification Type |
| U.S. Army Corps of Engineers (USACE) | Regional General Permit (RGP7) |
| Regional Water Quality Control Board (RWQCB) | Water Quality Certification |
| California Department of Fish and Wildlife (CDFW)* | Streambed Alteration Agreement (SAA)* |

*Original SAA and Amendment 1 are included in Appendix A and Amendment 2 is anticipated in June 2025

- B. The Contractor will be responsible for securing and paying for all additional permits and licenses required for operation of equipment, floating or otherwise. This includes all trucking and landfill approvals.
- C. State and local code requirements shall control the disposal of debris.
- D. The Contractor shall be prepared and allow the U.S. Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (CDFW), and/or other regulatory agencies to inspect the work at any time during operations.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

PART 4 – MEASUREMENT AND PAYMENT (NOT USED)

END OF SECTION

SECTION 2

MOBILIZATION AND DEMOBILIZATION

PART 1 – GENERAL

1.01 WORK INCLUDED

- A. The work in this section specifically consists of the following Bid Item:

Bid item 01: Mobilization and Demobilization
- B. The City will pay for one (1) mobilization and one (1) demobilization.
- C. Mobilization consists of all preparatory work including, but not limited to, work necessary for the mobilizing and furnishing equipment at the Site; pre-construction site preparations at the North Launch Rehandling Site; equipment, materials, supplies, and incidentals necessary for the work to be performed; cost for pre-paid bonds and insurances; preparation and submission of all required pre-construction documentation; full-time provision of the Contractor's superintendent at the Site; verification of the existing conditions before starting work at the Site; and posting of all Occupational Safety and Health Administration-required notices and establishment of safety programs.
- D. Demobilization consists of all work required to prepare the Contractor's dredging plant and equipment for transfer and removing all dredging plant, equipment, associated labor, and unused supplies, including project signs, and incidentals from the Site at the completion of work, including the cleanup and, if applicable, restoration of all land-based staging areas used in the execution of the work.

1.02 REQUIREMENTS

- A. The Contractor is responsible for health and safety at the Site. The Contractor must submit a site-specific Health and Safety Plan (HASP) no less than ten (10) calendar days prior to mobilization at the Site. The plan must detail the Contractor's means and methods to provide for the health and safety of the Contractor's employees, the City's representatives and agents, and the public. The intent of the HASP is to reduce the exposure of workers and the public to hazards that could be encountered or present during project activities (as required in relevant regulations and statutes, including, but not limited to, those of the Occupational Safety and Health Administration and the U.S. Coast Guard [USCG]). The City will review the Contractor's HASP, but the City's review neither alleviates the Contractor's responsibility to comply with all relevant health and safety laws and regulations nor indicates the City's acceptance of the HASP. The HASP must be kept in the Site at all times during active work.
- B. The Contractor's dredging and upland processing plant and equipment to be used in performing the work must be of sufficient size and efficiency to achieve the project

objectives and is subject to acceptance by the City. Equipment efficiency must take into account the provided sediment types within the Dredge Area (see Appendix B regarding grain size information). All floating equipment and vessels must be in good working order.

- C. The Contractor's dredging plant, equipment, labor, and materials may not be removed from the Site prior to completion of the work without the written permission from the City.
- D. The Contractor must establish a temporary pedestrian detour at the North Launch Rehandling Site prior to the start of construction. The final temporary pedestrian trail layout must be coordinated with and approved by the City. The detour must meet the following requirements:
 - 1. Be outside of the chain link fencing and follow the general layout shown in the Drawings. Generally, the detour must connect the existing path originating from E 3rd Ave (J. Hart Clinton Drive) and extend along the Southwest perimeter of the temporary chain link fencing around the North Launch Rehandling site to connect with the existing waterfront trail. See Drawings for approximate location.
 - 2. Be constructed over the existing Decomposed Granite (DG).
 - 3. Be a minimum of 36 inches wide.
 - 4. Have edge protection.
 - 5. Shall not exceed a 5% slope for any portion of the detour not utilizing a ramp.
- E. At the end of each work shift, the Contractor shall make all portions of the existing trail blocked by the North Launch Rehandling Site activities accessible to the public during non-working hours.
- F. The Contractor must place signage indicating that the public must not enter the North Launch Rehandling Site.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION (NOT USED)

PART 4 – MEASUREMENT AND PAYMENT

4.01 MEASUREMENT

- A. Mobilization will be deemed complete after confirmation that all labor, plant, materials, and equipment necessary for work have been mobilized to the Site and all pre-construction submittals have been received and approved by the City.
- B. Demobilization will be deemed complete after all labor, plant, materials, and equipment have been removed from the Site, including the upland North Launch Rehandling Site, restoration

of site to pre-bid conditions or better, and upon final receipt and acceptance of all construction and post-construction submittals.

4.02 PAYMENT

- A. Payment will be made at the Contract lump sum price, in accordance with the following breakdown:
 1. Sixty (60) percent of the lump sum price will be paid upon completion of mobilization at the Site and the start of dredging work, as approved by the City.
 2. The remaining (40) percent will be paid upon completion of demobilization, as approved by the City.
- B. The lump sum price will be considered full compensation for mobilization, demobilization, final cleanup of the Site after completion and acceptance of all work, and other items relevant to this project and not specifically included in the other Bid Items.

END OF SECTION

SECTION 3

MAINTENANCE DREDGING AND DISPOSAL

PART 1 – GENERAL

1.01 WORK INCLUDED

A. The work in this section specifically consists of the following Bid Items:

Bid Item 02: Maintenance Dredging and Disposal

B. The work in this section consists of providing all labor, plant, equipment, supplies, and materials necessary to dredge, transport, and dispose of all dredged sediment and materials from the Marina Lagoon to the location and elevations shown on the Contract Drawings.

C. The Contractor must perform all dredging and disposal work in accordance with the health and safety requirements and environmental protection and monitoring requirements described in the Contract Documents, and regulatory permits.

D. The bathymetry shown on the Drawings is based on a survey performed from July 23, 2024 to July 25, 2024; however, the Contractor must dredge and remove sediment to achieve the project objective (as defined in Section 1, Part 1.01, C of these technical specifications) if conditions at time of dredging have changed.

1.02 DREDGING AND DISPOSAL SUBMITTALS

A. Dredging and Disposal Operations Plan (DDOP): The Contractor must submit a DDOP for City no less than fifteen (15) days prior to dredging. Unless directed otherwise by the City, the Contractor must handle all dredged sediment as described in the approved DDOP. Any deviation from this plan must be approved by the City in advance. The DDOP must include, but not be limited to, the following items:

1. The Contractor's business name, telephone number, dredging site representatives, and emergency contact phone numbers.
2. Anticipated dredging and disposal schedule. A construction schedule must be prepared in Gantt chart format, identifying all major milestones and completion date.
3. Proposed equipment and method of dredging. The equipment description must contain, at a minimum, the type, name or number, capacity, overall dimensions, radio call signs, and other relevant technical specifications. The anticipated average daily dredging and hauling production rate must be described.
4. The method and equipment used to transport and offload the dredged sediment to the North Launch Rehandling Site, and the method for containing and managing the placed sediment.

5. Security and safety methods to keep the public away from and clear of all dredging and disposal activities, including compliance with any applicable USCG rules.
6. Location of all buoys and lights to be used by the Contractor.
7. Trucking routes from the North Launch Rehandling Site to the landfill.

B. Solid Debris Management Plan (SDMP): This plan must be submitted to the City with the DDOP. The SDMP must include, but is not limited to, the following items:

1. Source and expected type of debris, including anticipated Incidental Debris associated with dredging activities.
2. Debris disposal method and the name, location, permit status, hauling and offloading plan describing how debris will be transported from the Site to the Contractor provided, permitted landfill facility. Debris from the Dredge Area(s) must be stockpiled, offloaded, and trucked to a Contractor provided, permitted landfill facility.
3. Debris containment method to be used, if floatable debris is involved, including containment boom design, installation, maintenance, and operations.

C. Photo Documentation Points: Prior to the start of construction, the Contractor shall establish a minimum of 4 photo-documentation points at each Dredge Area where work related impacts to water of the State occur. See Water Quality Certification in Appendix A for more information.

D. Notices of Commencement and Completion of Work: The Contractor must submit a Notice of Commencement of Work to the City three (3) days prior to the start of work, and a Notice Completion of Work to the City within one (1) day after the end of work.

E. Quality Control (QC) Reports: During construction, the Contractor must submit QC reports daily to the City no later than noon on the following working day for the day of work reported. Each QC report must include the following information regarding the work performed that day (12:00 a.m. to 11:59 p.m.), at a minimum:

1. Start time and end time of daily shift.
2. The names and titles of all crew and visitors in the Site during the shift.
3. The dimensions of the area dredged that day (and to date), including a reference map (hatched, shaded, or similar).
4. The elevation of dredging achieved.
5. The number of scows offloaded to the North Launch Rehandling Site including an estimate of the total volume dredged that day and total project volume dredged to date.
6. The number of trucks transporting sediment to the landfill, and approximate time of departure from the North Launch Rehandling Site.

7. A summary of other significant details of the work, including, but not limited to, weather, health and safety incidents, notable spills, equipment maintenance, notable debris, and scheduled down-time.
- F. Truck Tags (Tipping Receipts): Once a week on a day determined between the City and the Contractor, the Contractor must submit all truck tags (or landfill tipping receipts) for each truckload taken from the lagoon and disposed at the landfill. The Contractor must submit their estimated conversion from cubic yards of dredged sediment to tons for verification of volume trucked and disposed in comparison to the volume of cubic yards removed based on the Pre- and Post-Dredge Surveys.
- G. As-Built Report: An as-built report shall be submitted to the City no later than 30 days after completion of the project. The report shall include a description of the areas of actual disturbance during project construction and the 100 percent construction plans marked with the Contractor's field notes that clearly depict any deviations made during construction from the designs reviewed by the Water Board.
- H. Additional construction records: The City will submit a post-dredging report to the permitting agencies that includes general construction information and final dredged volumes, as well as the Post-Dredge Survey. The Contractor will be responsible for providing any additional information that the agencies may require specific to the Contractor's construction activities.

1.03 EXISTING SITE CONDITIONS

- A. The Contractor must satisfy itself as to the character, quality, and quantity of surface and subsurface sediment to be encountered, based on inspection of the Site, any exploratory work done by the City, and information presented by the Contract Documents including reference documents and appendices. Any failure by the Contractor to acquaint itself with all the available information will not relieve the Contractor from responsibility for properly estimating the difficulty or cost of successfully performing the work.
- B. The Contractor must perform a walk-through of the Site prior to commencement of any construction activities.
- C. The Contractor is responsible for contacting all agencies and utility companies having jurisdiction or services in the Site for additional information.
- D. The Contractor is responsible for confirming the restrictions to equipment by existing overhead obstructions, including the J. Arthur Younger Freeway and overhead power lines north of the Borel Creek Dredge Area (see Drawings), along the barge transport route and at all other areas of dredging and offloading.
- E. Although not anticipated within the Dredge Areas, the Contractor may encounter underground obstructions such as utility lines, concrete foundations, pilings, misplaced rock,

and/or debris. No extra payment will be allowed for removal, replacement, repair, or possible increased cost caused by such underground obstructions generally considered inherent to maintenance dredging. Any such lines or obstructions indicated on the Drawings show only the approximate location and must be verified in the field by the Contractor. The City will endeavor to familiarize the Contractor with all known underground obstructions, but this will not relieve the Contractor from full responsibility to anticipate and locate all underground obstructions.

- F. Although not anticipated, rock may have migrated from the adjacent shoreline rock revetment into the Dredge Footprint. If rocks are encountered during dredging, the City must be notified by the end of that day's shift. Rocks that can be removed using the Contractor's dredging equipment are considered incidental to the work and do not constitute a change in character of the work. If rocks or other hard materials are encountered that cannot be removed by the Contractor's dredging equipment, the City will determine if removal is required and if so, the City will make any equitable adjustment in Contractor time and price in accordance with the General Conditions or the City will take measures to remove on their own.
- G. Available grain size information from dredged sediment samples are included in Appendix B. Results of these investigations may be used as a general guide for classifying sediment and determining necessary equipment type for penetrating to the Required Dredge Elevation for the intended purposes but should not be relied upon to provide a complete and total representation of the subsurface conditions. The Contractor must make its own interpretation and conclusions on the information presented in the investigation.
- H. The Contractor must promptly (by the end of the day's shift) notify the City in writing of subsurface conditions at the Site that materially differ from those ordinarily encountered during maintenance dredging work, or as presented in the Contract Documents. The City will promptly investigate the conditions. If the City determines that the subsurface conditions do materially differ and cause an increase or decrease in the cost or time required for performance of the work, an equitable adjustment will be made, and the Contract Documents will be modified by a Change Order. Any Contractor claims will only be considered if the Contractor has given the required written notice, and if the City determines the Contractor has provided sufficient facts to justify the claims. No claims will be considered after final payment is made.

1.04 CONTRACTOR'S USE OF PREMISES

- A. Contractor shall not close or obstruct any lagoon channels, roadways, bridges, common areas, or sidewalks without proper permits. Contractor shall not interfere with the use of or access to adjacent buildings, property or other tenants throughout the progress of the work.
- B. Contractor shall, as necessary, coordinate with any other Contractors working on other projects within the vicinity of the Site.

- C. Contractor shall be responsible for locating and preventing damage to utilities. If damage occurs, the Contractor shall be held responsible for repair of the utility at no additional expense to the City.
- D. Contractor shall be responsible for coordinating with the City to establish construction access to the North Launch Rehandling Site.
- E. The Contractor must protect all facilities from damage during completion of any work. The Contractor must notify the City of any damage that occurs due to the Contractor's actions or negligence, and repair or replace damaged items to the satisfaction of the City at no additional expense to City. All repairs must be made prior to completion of the Contract.
- F. If the Contractor discovers any previously unknown historic or archeological remains while performing the work, they must notify the USACE immediately of what has been found. The USACE will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the Site is eligible for listing in the National Register of Historic Places. See USACE RGP7 in Appendix A for more information.
- G. The Contractor is responsible for restoring the North Launch Rehandling Site and adjacent pedestrian trail and launch ramp to equal or better than preconstruction conditions.

1.05 QUALITY CONTROL

- A. The City will provide periodic inspection of all work, unless noted otherwise. The Contractor shall, without additional compensation, provide complete cooperation and unrestricted access for City inspection including transport to the dredge via the Contractor's skiff.
- B. The City's inspector will review dredging operations to verify that the dredging, stockpiling, and disposal of dredged material comply with the Contract Documents and permit conditions. However, it is the Contractor's responsibility to comply with all requirements, and inspector review does not denote acceptance.
- C. The Contractor shall make their daily reports, dredge logs, soundings and other records available to the City's Inspector when requested.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION

3.01 GENERAL

- A. The Contractor must remove sediment within the required Dredge Areas described in the Contract Documents.
- B. Dredging outside of the Dredge Areas is considered Excessive Dredging and may not be paid for and may require corrective action as directed by the City. All Corrective actions or fines

mandated by the regulatory agencies as a result of the Contractor's Excessive Dredging will be at the Contractor's sole expense.

- C. The Contractor becomes the owner of, and is responsible for, dredged sediment and debris once it is dredged to be loaded on a scow for transport.
- D. Should the Contractor, during the progress of the work, lose, dump, throw overboard, sink, or misplace any materials, machinery, or appliances that are declared by the USCG, USACE, and/or any other permitting agencies to be dangerous to or obstruct navigation, the Contractor must immediately recover and remove same, without expense to the City. The Contractor must give immediate notice with a description and location of such obstructions to the City. To avoid or minimize adverse impacts to fish and wildlife and their habitats, the work shall be limited to the Work Windows listed in Section 1, Part 1.03.
- E. All in-water and upland work shall comply with the precipitation considerations listed in the permits (see CDFW SAA with Amendments 1 and 2 and RWQCB permit, Appendix A)
 - 1. Work within the Lagoon shall be restricted to periods of low rainfall (less than ¼ inch of rain in a 24-hour period) and dry weather as allowed during the work periods specified above. In addition, no work shall occur during a dry out period of 24 hours after the above references wet weather.
 - 2. Precipitation forecasts shall be considered when planning maintenance activities. The Contractor shall monitor the 72-hour forecast from the National Weather Service. When there is a forecast of more than 40% chance of rain or at the onset of any unanticipated precipitation, the Contractor shall remove all equipment and shall implement erosion and sediment control measures and all routine maintenance activities shall cease.

3.02 DREDGING AREA

- A. Dredging shall be carried to lines, depths, and tolerances indicated on the Contract Drawings and as directed by the City. The City may change the lines and depths shown in the Contract Drawings. If such changes increase or decrease the quantity of dredging, the revised quantity will be used as basis for payment under unit price for dredging element involved.
- B. Dredge Volumes: The maximum cumulative dredging volume approved by the regulatory permits for the Leslie Creek Dredge Area and the Borel Creek Dredge Area are 2,000 cubic yards in total, including Allowable Overdredge.
 - 1. It is anticipated that 30% of the volume will be dredged from the Lelise Creek Dredge Area and 70% of the volume will be dredged from the Borel Creek Dredge Area. Contractor to confirm with Pre-Dredge Survey.
 - 2. See Instructions to Bidders for terms related to variation in Estimated Quantities.

- C. Dredge Area: The Contractor must complete a pre-dredging site walk-through with the City to confirm dredging extents in the event that the electronic file does not align with existing structures. See Part 1.03 B of this Specification.
- D. Offsets: A 40-foot dredging offset is required from the existing top of rock revetment to avoid damage or slope failure.
- E. Side Slopes: Side slope dredging is not required under this contract. However, sediment that sloughs into the Dredge Footprint from the Side-Slopes must be removed and will be payable. The slope shown limit in the drawings is for pay purposes only and is not necessarily the angle of repose of the soil. Sloughing side slopes shall not be the basis for claims against the City.
- F. Allowable Overdredge Elevation: The Contractor may dredge and up to one-half (0.5) foot below the Required Dredge Elevation within the Dredge Footprint. The Contractor is not required to remove the Allowable Overdredge Elevation and will not be permitted to dig below the Allowable Overdredge Elevation. Dredging to the Allowable Overdredge Elevation will be permitted only in areas where material is currently above the Required Dredge Elevation. Volume dredged from above the Allowable Overdredge Elevation will be measured and paid for at the Contract unit price. The Allowable Overdredge volume is included in the Bid Item volumes on the Bid Schedule

3.03 DREDGING OPERATIONS

- A. Any dredged sediment that spills, sloughs, or is lost from the scow at any time while loading, transporting, or offloading may be subject to corrective action as directed by the City and/or the regulatory agencies, at the Contractor's sole expense.
- B. Dredging Equipment
 - 1. Dredging and upland placement at the North Launch Rehandling Site must be performed using mechanical equipment.
 - 2. The Contractor must use spuds to anchor and control the position of its equipment during dredging. Anchors, chains, lines, cables, and similar equipment are not permitted because they have the potential to interfere with or cause damage to passing vessels and existing structures.
 - 3. The Contractor's floating equipment must be maintained in working order during the project.
 - 4. The Contractor must furnish, maintain, and operate all dredging and sediment management equipment of sufficient size and type to efficiently remove the dredged sediment to achieve the project objectives and complete work by the end of the environmental work windows in a lawful manner.

5. The dredging and upland management equipment, labor, and materials must not be removed from the Site prior to completion and acceptance of the Contract work without written permission from the City.
6. The Contractor must provide a positioning system for horizontal and vertical control capable of functioning during all waterborne activity hours. The Contractor must establish and maintain all survey monuments, shore stations, equipment sensors, and control points necessary to operate a waterborne positioning system.
7. All equipment will be subject to the acceptance of the City.
8. The Contractor must observe all applicable State of California standards and regulations regarding air quality emissions and fueling of the dredge and attendant plant.

3.04 NORTH LAUNCH REHANDLING SITE FOR DRYING AND STOCKPILING DREDGED SEDIMENT

- A. The Contractor shall provide and maintain as necessary chain link fencing, temporary pedestrian detour, and other safety barriers to keep the public from entering the North Launch Rehandling Site (and associated laydown areas) during the course of the Contract. See Section 2 Mobilization and Demobilization and Drawings for more information.
- B. The portion of the North Launch Rehandling Site used for dredged sediment placement and stockpiling must provide containment of dredge sediment and effluent from discharging back into the lagoon and stormwater drains. This containment must include a vertical barrier, such as K-rail, straw waddles, or other containment and erosion control devices in compliance with the CDFW SAA. The Contractor is responsible for implementing means of drying the sediment (for example placing in thin lifts, working/rotating the sediment, etc.). Additionally, a ground liner must cover areas of dirt or grass to avoid ground infiltration of water.
- C. All rubbish, garbage, and other discarded materials resulting from dredging and placement operations must be retained in containers until removed by the Contractor for proper upland placement. All chemical waste, such as oil and grease, must be retained by the Contractor in special tanks until properly disposed of at a permitted upland placement facility that can accept such waste, at no additional cost to the City. Handling, transport, and placement of all non-sediment materials are incidental to the work for dredging and placement.

3.05 LANDFILL DISPOSAL

- A. Unless specified otherwise, all dredge material shall be transported from the Site and disposed of at the Contractor provided, permitted landfill facility. Contractor shall provide for safe transportation and disposal of dredged materials to the designated disposal location. The deposit of dredged materials in unauthorized locations is not allowed.
- B. Disposal requirements

1. It is anticipated that the dredged sediment will be suitable for a Class II or Class III landfill (pending sediment testing results). Sediment testing results will be provided prior to bidding.
2. The Contractor shall coordinate the selection of a permitted landfill, suitable to receive the dredged material from the Site. Approval by the City is required prior to Disposal.
 - a. All wastes must be transported in accordance with federal, state, and local transportation requirements, including driver training, placarding, and use of shipping papers or waste manifests.
3. The Contractor must coordinate directly with the landfill operator on the number of truckloads or tons allowed per day as well as the landfill acceptance hours. Any cost impacts due to landfill acceptance restrictions will be borne solely by the Contractor.

C. Hauling requirements:

1. The Contractor must identify a temporary truck staging areas for the North Launch Rehandling Site where trucks can await notification of filling time. Use of a temporary truck staging area will allow a consistent flow of trucks while loading sediment for transport. Approval of truck staging area is required by City.
2. The Contractor is advised that soils may generate free liquid during haul due to separation and settling, and the Contractor's hauling methods must address this possibility. No water, dredged material, or other objects shall be allowed to leak or spill from the trucks during transport to the landfill. If a leak or spill occurs during transport, the Contractor shall immediately remove any material and clean the affected roadway to the satisfaction of the City. In the event that these requirements are violated and no action is taken by the Contractor after notification of infraction by the City, the City reserves the right to have the streets, roadways, and other paved surfaces in question cleaned by others at the expense of the Contractor.
3. Trucks and containers must not be overloaded, must meet applicable weight restrictions, must have adequate free-board so as to prevent spillage during transit, and must be covered in accordance with applicable regulations.
4. The Contractor must prepare a bill of lading (or truck tag) for each shipment of Municipal Solid Waste which fulfills the shipping paper requirements. The bill of lading must satisfy any applicable state or local law or regulation and must be submitted to the City for review and approval.
5. The Contractor must provide proper driver training and enforce safe driving procedures at all times.

3.06 ENVIRONMENTAL IMPACT AVOIDANCE MEASURES

- A. The Contractor shall deploy silt curtains around the active dredge area to prevent heavily silted water from flowing into the Lagoon or outfall pumps. The silt curtain shall be long

enough to maintain contact with the bed of the Lagoon at all times. The silt boom shall be maintained throughout all phases of the excavation activities, monitored for effectiveness and repaired or replaced as needed. See CDFW permit and Amendments 1 and 2, Appendix A.

- B. The contractor shall establish a containment area around the perimeter of the barge, as feasible, to prevent sediment or water discharging back into the lagoon. See CDFW permit and Amendments 1 and 2, Appendix A.
- C. No coastal salt marsh vegetation shall be removed from the project Site and access areas without the prior approval from the CDFW. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete activities. No vegetation exists within the Dredge Footprints.
- D. The Contractor must abide by all applicable permit requirements. Examples of applicable equipment requirements include, but are not limited to, the following:
 - 1. No fueling, cleaning, or maintenance of vehicles or equipment within the waters of the State, or within any areas where an accidental discharge to waters of the State may occur.
 - 2. Staging and storage areas for equipment and materials, fuels.
 - 3. Spill containment and cleanup.
 - 4. Equipment washing and decontamination.

PART 4 – MEASUREMENT AND PAYMENT

4.01 GENERAL

- A. Payment for dredging and placement will be at the Contract unit rate. Work includes all related and incidental work to complete required dredging and disposal, including, but not limited to, quality control, environmental protection, debris management, and health and safety.
- B. It is the Contractor's responsibility to determine the bulking rate and conversion of cubic yardage to tons for trucking and landfill disposal purposes.
- C. All dredging must be compliant with the Contract requirements and permits to be eligible for progress payment and final payment.

4.02 MEASUREMENT AND PAYMENT

- A. Progress Payments
 - 1. Measurement for progress payment will be made after confirmation by the City that all Contractor submittals related to the area in question have been received and approved

by the City. All payment requests must include truck tags and/or landfill receipts, as well as the Contractor's estimated conversion of in-situ sediment to tonnage for the City to confirm estimated volumes.

2. Progress payment for dredging work performed, where a Post-Dredge Survey has not yet been completed, may be invoiced for up to seventy-five (75) percent of the total dredge volume available, as estimated from the Pre-Dredge Survey.

B. Final Payment

1. Measurement for the final total payable volume will be made by comparing the Dredge Area of the Pre- and Post- Dredge Surveys. Measurement for final payment will be made only after the City's verification that all required dredging for the contracted Dredge Area(s) is complete, at the City's discretion for acceptance, by review of the Pre- and Post- Dredge Surveys. If the work has not been satisfactorily completed, the Contractor must resume dredging to correct the condition, and another Post-Dredge Survey will be performed by the third-party surveyor. The costs of additional Post-Dredge Surveys resulting from the Contractor's failure to properly complete the Work will be the responsibility of the Contractor.
2. To achieve Final Completion, all Contractor submittals must be received and approved by the City, and all demobilization work must be completed and accepted by the City. Once Final Completion is achieved, final payment will be made to the Contractor, and will include the unit rate payment for remainder of volume that has not been paid for in progress payments, final lump sum payment for demobilization, and all retained funds.

END OF SECTION

SECTION 4

HYDROGRAPHIC SURVEYING

PART 1 – GENERAL

1.01 WORK INCLUDED

- A. Work in this section specifically consists of the following Bid Items:
 - Bid Item 03: Hydrographic Surveying
- B. The work in this section includes furnishing all labor, materials, tools, equipment, and incidentals required for hydrographic surveying in support of the overall project as described in the Contract Documents and in these technical specifications.

1.02 DESCRIPTION

- A. The Contractor is required to perform the following surveys as part of this work for each awarded Bid Item for surveying:
 - 1. Pre-Dredge Survey: Bathymetric survey performed prior to dredging commencement. This survey must encompass the entirety of each Dredge Area including the projected top of side-slopes (daylight). This survey will be used as the basis for calculating available dredging volumes. This survey must be submitted to the City no less than four (4) weeks prior to the proposed dredging commencement date.
 - 2. Post-Dredge Survey: Bathymetric survey conducted by an Independent Surveyor after the completion of dredging at each Dredge Area (total two Post-Dredge Surveys). These surveys must encompass all Contract Dredge Areas. The Post-Dredge Surveys will be used to determine if the Required Dredge Elevation (or project objective, in the opinion of the City) was achieved, and as the basis for calculating the volume dredged from within the Dredge Areas by comparing it to the Pre-Dredge Survey. This survey will be submitted to the agencies. This survey must be submitted to the City no more than two (2) weeks following completion of dredging operations. No additional compensation will be provided for additional Post-Dredge Surveys.
- B. The Contractor must identify the local survey control and upland benchmark locations used for the surveys. The Contractor must refer to the provided benchmark location information to help establish survey control for the Contract work.

1.03 QUALIFICATIONS

- A. The Contractor must submit the name of the Independent Surveyor and applicable license or certification numbers one week prior to performance of the Pre-Dredge Survey. The

Independent Surveyor is required to document and certify in writing to the City that they have at least five (5) years of experience in hydrographic surveying of navigable waters.

- B. The Independent Surveyor must be licensed by the State of California as a Professional Land Surveyor or must be certified by The American Congress on Surveying and Mapping/The Hydrographic Society of America (ACSM/THSOA) as a Certified Hydrographer.
- C. The Independent Surveyor must provide documentation indicating that modern electronic horizontal positioning and depth finding equipment are available for the surveys to be performed. The equipment must have Differential Global Positioning System (DGPS) capacity. The documentation of the equipment must include, at a minimum, the name, model, and year of manufacture of the electronic equipment; the electronic mode and the year of manufacture of the electronic equipment; the electronic frequencies of the horizontal positioning equipment and the depth finding equipment; and the manufacturer's stated positioning accuracy and capacity of the equipment proposed for use.
- D. The Independent Surveyor must provide a statement that a safe and suitable vessel is available for operation in the water where the surveys are to be performed, and that experienced staff are available for the operation of the vessel, as well as the electronic positioning and depth finding equipment calibration. Accuracy and other standards outlined in the USACE Hydrographic Surveying manual (EM 1110-2-1003; 30 November 2013) must be followed when performing any survey for payment.

1.04 SUBMITTALS

- A. The City will pay for:
 - 1. One Pre-Dredge Survey that must include both Dredge Areas and the proposed transport route of the material barges from the Dredge Areas to the North Launch Rehandling Site.
 - 2. Up to Two Post-Dredge Surveys, with one at each of the two Dredge Areas.
- B. Pre- and Post-Dredge Survey submittals must include the following:
 - 1. Plan View: One (1) full-size PDF figure showing the bottom elevation of the dredging area. The plan must include, at a minimum, the following:
 - a. Project name.
 - b. The date the survey was performed.
 - c. The horizontal and vertical datums of the survey data.
 - d. Soundings with an accuracy of 0.1-foot; soundings must be legible, but spaced close enough to provide an accurate representation of the existing bathymetry.
 - e. Scale bar.
 - f. North arrow.

- g. Signature and/or stamp of the Independent Surveyor.
2. Quantity Computations: One (1) PDF file of quantity computations must accompany each Pre- and Post-Dredge Survey. The quantity computations can be included on the Survey plan view, or on a separate sheet.
3. Field Notes: One (1) set of notes in a PDF document. Field notes must include all equipment used to perform the survey, survey control, weather and water level during the period the survey was performed, and calibration notes.
4. Electronic File: ASCII file of corrected survey data, corrected to mean lower low water (MLLW) datum at the locality. Data must be in XYZ spot elevation format. The recording distance between the survey points must be five (5) feet or less. The Contractor must provide raw electronic data upon request of the City.

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION

3.01 SURVEY EQUIPMENT AND METHODS

- A. The Contractor's survey team and the Independent Surveyor must use equipment suited for shallow water depths, which may be a combination of single-beam and lead-line.
- B. Hydrographic survey procedures must conform to Class 1 criteria as set forth in the USACE *Hydrographic Surveying* manual. Data recording, annotation, and processing procedures must be in accordance with the hydrographic survey manual specified above and these technical specifications. In the event of a conflict between these technical specifications and the USACE Class 1 criteria, the Contractor must present such conflicts to the City for resolution. Failure to perform and process such surveys in accordance with the USACE *Hydrographic Surveying* manual and these technical specifications will result in a rejection and nonpayment for Work performed.
- C. Horizontal position of soundings must be stated in California State Plane Coordinates, Zone III, North American Datum of 1983 (NAD 83), U.S. Survey Foot. Elevations must be stated in terms of NAVD88 datum.
- D. The Contractor must conduct surveys using an electronic system positioning method approved by the City. The Contractor must use an echo sounder to obtain soundings. The analog recording of soundings must indicate a calibration check (bar check) of the echo sounding at the beginning and end of each analog paper change and at such times as necessary to ensure sounding accuracy. The Echo sounder must have a frequency of 200 to 210 kHz. The top of the return signal trace must be the point of interpretation of sounding. The bar check must be taken at identical locations.
- E. The Contractor must verify the operating water level with the City each morning.

3.02 CONDUCT OF WORK

A. Layout of Work

1. The Contractor must establish an accurate method of horizontal and vertical control before the work begins. The Contractor shall determine their own benchmarks, temporary benchmarks, and location of all control.
2. The proposed method and maintenance of the horizontal control system is subject to the acceptance of the City and if, at any time, the method fails to provide accurate location of the work, the Contractor may be required to suspend its operations until such time that accurate control is established.
3. The Contractor must lay out its work using control points provided by the City.
4. The Contractor must furnish, at its own expense, all stakes, templates, platforms, equipment, range markers, transponder stations, and labor as may be required to lay out the work shown on the Drawings.
5. The Contractor must maintain all points established for the work until authorized to remove them. If such points are destroyed by the Contractor or disturbed through its negligence prior to an authorized removal, they must be replaced by the Contractor at no additional expense to the City.

B. Performance of Work

1. The Pre- and Post-Dredge Surveys must cover all areas of work (Dredge Areas) as shown on the Drawings and as established by survey results (such as slope daylights, offsets, etc.).
2. The Pre-Dredge Survey must cover the area between each Dredge Area and associated Rehandling Area to confirm adequate draft for proposed barges or sediment transport vessel.
3. Sounding line station intervals shall not be greater than 10 feet apart or as approved by the Engineer. Interval between soundings on each line shall not exceed five (5) feet left or right from the station survey line, nor shall they exceed five (5) feet from the adjacent sounding on the same station survey line. In addition, three longitudinal sounding lines shall be run, one along the Dredge Area centerline and one at each Dredge Area boundary.
4. Survey coverage must extend at least twenty (20) feet beyond the Dredge Area boundary where possible. Missing data must be explained.
5. Contractor must not begin dredging work at any area prior to City and Contractor mutual acceptance of Pre-Dredge Survey.

3.03 QUANTITY COMPUTATIONS

- A. The payable volume quantities must be computed to the nearest cubic yard based by comparing the Pre-Dredge and the Post-Dredge Surveys.
- B. The following quantities must be reported for the Pre- and Post-Dredge Survey:
 1. Volume available within the Dredge Footprint to the Required Dredge Elevation plus Side Slope volume.
 2. Volume available within the Dredge Footprint between the Required Dredge Elevation and the Allowable Overdredge Elevation.
 3. Total volume within the allowable Dredge Area.
- C. The following quantities must be reported for the Post-Dredge Survey:
 1. Volume removed from the Dredge Footprint to the Required Dredge Elevation plus removed Side Slope volume.
 2. Volume removed from the Dredge Footprint between the Required Dredge Elevation and the Allowable Overdredge Elevation.
 3. Total volume within the allowable Dredge Area.

PART 4 – MEASUREMENT AND PAYMENT

4.01 MEASUREMENT

- A. Each Pre- or Post-Dredge Survey will be measured as complete upon confirmation from the City that the survey has been received within the timeframe as specified and conforms to the requirements within this technical specification.
- B. If review of the Post-Dredge Survey indicates that the work is not complete, the Contractor may be required by the City to resume work until a subsequent Post-Dredge Survey indicates that the Work is complete, to the City's satisfaction, and within the requirements of Contract Document. Costs to perform additional Post-Dredge Surveys will be the responsibility of the Contractor.

4.02 PAYMENT

- A. Payment will be made at the Contract lump sum price awarded for each awarded Bid Item in accordance with the following breakdown:
 1. Forty (40) percent of the lump sum price will be paid upon completion and submittal of the Pre-Dredge Survey, as approved by the City.
 2. Thirty (30) percent of the lump sum price will be paid upon completion and submittal of each of the two Post-Dredge Surveys, as approved by the City, for a total of sixty (60) percent of the lump sum. If additional Post-Dredge Surveys are required due to findings,

in the opinion of the City, that the work is not complete, the Contractor will not be paid until a Post-Dredge Survey has been accepted by the City showing the work as complete for the relevant Dredge Area(s).

- B. The lump sum price will be full compensation for all labor, material, transportation, tools, equipment, and incidentals required to complete one Pre-Dredge Survey and two Post-Dredge Surveys, including survey submittals.

END OF SECTION

SECTION 5

BIOLOGICAL SURVEYING AND OVERSIGHT

PART 1 – GENERAL

1.01 WORK INCLUDED

A. Work in this section specifically consists of the following Bid Items:

Bid Item 04: Biological Surveying

B. The work in this section includes all procedures required for biological surveying in support of the overall project as described in the Contract Documents and in these technical specifications. See the CDFW SAA in Appendix A for more information on the procedures and requirements outlined in this Specification.

C. The Contractor must provide a third-party Qualified Biologist (and if desired, a Biological Monitor) to comply with the CDFW SAA (as defined by the CDFW SAA, Appendix A). The Contractor must submit resumes for the Qualified Biologist (and Biological Monitor, if desired) to the City forty-five (45) days prior to initiating special status-surveys within the Site. The City will then submit to CDFW no less than 30 days prior to the start of project activities.

D. Prior to commencement of project activities, the Permittee shall submit to CDFW a report containing the species survey methods and results of the survey(s).

PART 2 – PRODUCTS (NOT USED)

PART 3 – EXECUTION

3.01 GENERAL

A. Pre-Construction Responsibilities and Deliverables

1. Within 48 hours prior to work commencement, the Qualified Biologist must conduct a pre-construction sensitive plant survey.
2. If construction activities occur during the nesting season of raptors and migratory birds, the Qualified Biologist must conduct a focused survey for active nests of such birds within 15 days prior to the beginning of Construction. If active nests are found, the Contractor shall consult with the CDFW and the USFWS regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the FGC of California.
3. Prior to the commencement of work (or first morning of work): The Qualified Biologist or Biological Monitor must conduct an education session on species that may be present within the Site to all Contractor crew members.

B. During Construction Responsibilities

1. If during the course of the work, the Contractor injures or kills a special-status species, or finds any such animal injured or dead, all activities in the Site shall immediately cease, and CDFW and USFWS shall be notified by telephone within 30 minutes of the discovery. See the SAA in Appendix A for reporting requirements. Work may not resume until approved by the Biological Monitor.
2. The Qualified Biologist shall have the responsibility and authority of stopping the project if any crews or personnel are not complying with the provisions outlined in the SAA.
3. The Qualified Biologist (or Biological Monitor) must perform weekly site visits to oversee the following:
 - a. No trees, shrubs or wetland and marsh habitat are disturbed that contain active bird nests until all eggs have hatched, and young have fully fledged.
 - b. If there are any sightings of special-status plant and wildlife species, all project activities shall cease and CDFW shall be contacted within 24 hours of the sighting.

PART 4 – MEASUREMENT AND PAYMENT**4.01 MEASUREMENT**

- A. Measurement of work complete will be based on final completion of the pre-construction sensitive plan survey, focused survey for active nests of raptors and migratory birds, and education session for Contractor crew, as well as any duties associated with construction oversight.

4.02 PAYMENT

- A. Payment will be made at the Contract lump sum price awarded for this Bid Item in accordance with the following breakdown:
 1. Seventy (70) percent of the lump sum price will be paid upon completion and submittal of the pre-construction sensitive plan survey, focused survey for active nests of raptors and migratory birds, and education session for Contractor crew.
 2. The remaining Thirty (30) percent of the lump sum price will be paid upon completion of construction and final reporting, if any, to CDFW.
- B. The lump sum price will be full compensation for all labor, material, transportation, tools, equipment, and incidentals required to complete the biological surveying and oversight.

End of Section

MARINA LAGOON SEDIMENT REMOVAL PROJECT

APPENDIX A

REGULATORY DREDGING PERMITS

| Regulatory Agency | Permit, Approval or Notification Type |
|---|---------------------------------------|
| U.S. Army Corps of Engineers (USACE) | Regional General Permit (RGP7) |
| Regional Water Quality Control Board (RWQCB) | Water Quality Certification |
| California Department of Fish and Wildlife (CDFW) | Streambed Alteration Agreement (SAA)* |

* Permit Amendment in Process. Anticipated issue date June 2025.



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Ms. Sarah Scheidt, City of San Mateo

PERMIT NO.: 2000-257530S, RGP7

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: This Department the Army permit authorizes the City of San Mateo to conduct routine maintenance activities resulting in the placement of fill and work within Marina Lagoon in the City of San Mateo, San Mateo County, California.

Following are the activities authorized by this permit:

- 1) Construction, maintenance, and improvement of public and private individual boat docks and ramps and pile supported boardwalks on both banks of Marina Lagoon within the City limits of San Mateo. There will be up to 5 newly constructed docks per year, for a total of 25 new docks over the span of the 5-year permit. A typical dock on the lagoon is approximately 25 feet in width, occupying the full extent of the parcel, and up to the maximum allowable length of 25 feet from the shoreline, requiring at least 6-8 support piles having a typical pile diameter of 12 inches, and therefore, the total amount of new dock structures will be approximately 34.90 cubic yards of fill within less than 0.01 acre of Corps jurisdiction over 5 years.
- 2) Maintenance and improvement of existing stormwater outfalls and the O'Neill Slough tide gate inlet, and activities related to the construction of storm water outfalls. This will include yearly sediment and debris removal to maintain lagoon flows and inlet capacity. Accumulated and captured material will be removed with mechanical equipment and hand labor from O'Neill Slough tide gate inlet, stormwater outfalls (59 total), and at the southern litter boom as needed. Up to 250 cubic yards of sediment will be removed over the span of the 5-year permit. This permit does not authorize the expansion of hardscape associated with outfall improvement or maintenance within waters of the U.S.
- 3) Construction, maintenance, and improvement of bank protection including riprap, bulkheads, paving on banks, and cuts and fills. To the maximum extent practicable, any new or additional bank stabilization shall incorporate structures or modifications beneficial to fish and wildlife. Each year, up to 200 linear feet of bank slope repair and 50 linear feet of new bank protection may be permitted under this RGP (10 feet maximum width and 250 feet maximum length). Bank protection work would be limited to 0.06 acre of disturbance in any given year. Bank and Shoreline protection shall occur as needed at any time of year. The total amount of fill permitted below the summer high water line over the course of 5 years is 116 cubic yards.
- 4) Construction, maintenance, and installation of new fences along established property lines will occur on an annual basis. Several private shoreline parcels have fences protruding into the Lagoon below the summer high water level. Fence repair and installation will occur as needed at any time of year. Up to 40 linear feet of new fencing will be constructed per year. Existing fences shall not extend more than 6 feet into the Lagoon beyond the summer high water level. No new fences shall be constructed below the point on the shoreline intersected by

the plane of the summer high water level. The total amount of fill associated with fence structures placed within Corps jurisdiction will be less than 1 cubic yard over the course of 5 years.

- 5) Maintenance, including sand replenishment, at the existing beaches at Lakeshore Park and Aquatic Park. Sand replenishment is estimated to occur once per year. Sand replenishment at both park locations will result in less than 0.001 acre of temporary impacts above the water line in each year. Up to 100 cubic yards in total of sand sourced from a local provider will be replenished annually at the Lagoon beaches.
- 6) Sediment Removal/Dredging: Operation of the Marina Lagoon will require periodic maintenance dredging to sustain the desired depth of sediment and flow in front of the 19th Avenue Creek, 16th Avenue Channel, and Laurel Creek inlets. The proposed dredging activities will result in the short-term disturbance of localized sediment. Up to 2,000 cubic yards of sediment will be dredged over the span of the 5-year permit.
- 7) Removal of nuisance aquatic vegetation. Mechanical harvesters will be used intermittently in the Lagoon throughout the late spring and summer (June through August), to control excessive growth of widgeon grass and filamentous algae to provide safe boating conditions and to maintain water quality and water flow.

All work shall be completed in accordance with the plans and drawings titled “USACE File #2000-257530S, Regional General Permit (RG 7) for Marina Lagoon, July 1, 2022, 12 Sheets,” provided as enclosure 1.

PROJECT LOCATION: Marina Lagoon in the City of San Mateo, San Mateo County, California (Lat: 37.568611, Long: 122.292222).

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on June 1, 2027. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary

to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. By letter dated, February 25, 2022, the U.S. Fish and Wildlife Service (USFWS) concurred with the determination that the project may affect but is not likely to adversely affect California Ridgway's rail (*Rallus obsoletus obsoletus*) and Salt marsh harvest mouse (*Reithrodontomys raviventris*) and their critical habitat. This concurrence was premised, in part, on the description of the proposed action and conservation measures discussed in enclosure 3. These measures are incorporated as special conditions to this Regional General Permit to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
2. By letter dated, February 7, 2022, the National Marine Fisheries Service (NMFS) concurred with the determination that the project is not likely to adversely affect North American green sturgeon southern DPS (*Acipenser medirostris*) Central California Coast steelhead DPS (*Oncorhynchus mykiss*) and their critical habitat. This concurrence was premised, in part, on the description of the proposed action and conservation measures discussed in enclosure 4. These measures are incorporated as special conditions to this Regional General Permit to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
3. Construction in waters of the U.S. is restricted to the California Department of Fish and Wildlife (CDFW) dry season, or the end of any extension granted by CDFW, the Water Board, and the Corps. The seasonal work period for new dock installation using poured concrete and beach sand replenishment shall be restricted to April 15 to October 31. The seasonal work period for dock repair, bank stabilization, and fence repair and installation shall be restricted to the annual drawdown period from January 15 to February 15, otherwise the work period will be restricted to April 15 to October 31. New dock installation using precast concrete may occur at any time provided that the homeowners follow the requirements of the standard Dock Specification Packet issued by the Applicant. Minor debris removal that does not require excavation, and that is immediately necessary to prevent blocking the inlets, may be conducted at any time. Any work conducted within 700 feet of Joinville Park shall be conducted from September 1 to October 15.
4. The permittee shall fully implement the avoidance and minimization measures as described in enclosure 5 during construction.
5. Prior to the start of each construction season, the permittee shall submit a pre-construction proposal for the year's projects for Corps' approval and authorization under this RGP. At a minimum, the pre-construction proposal shall include:
 - a. a list of the activities and their locations;
 - b. the volume, area, and type of temporary fill proposed to be discharged within waters of the U.S.;
 - c. the volume, area, and type of permanent fill proposed to be discharged within waters of the U.S.;
 - d. the volume and area of sediment proposed to be dredged from within waters of the U.S.;
 - e. the amount of new hardscape proposed within waters of the U.S. (as opposed to replacement hardscape); and
 - f. whether special aquatic sites (e.g., wetlands or eelgrass) would be impacted.
6. The permittee must submit an annual report in accordance with the following procedures: Within sixty days after the conclusion of the construction season, you shall submit an annual report documenting the activities

that occurred. This report shall include a description of the work performed, specifically noting any changes to proposed projects from what was outlined in the pre-construction proposal. The annual report may be submitted as an excel spreadsheet. At a minimum, the annual report shall include the following information for that year:

- A description of activities completed and their location;
- Conservation measures implemented that year;
- The impacts associated with each project category for the preceding year; and
- The total impacts associated with each project category over the life of the RGP.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

- 6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

James Mazza
Chief, Regulatory Division
San Francisco District

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)

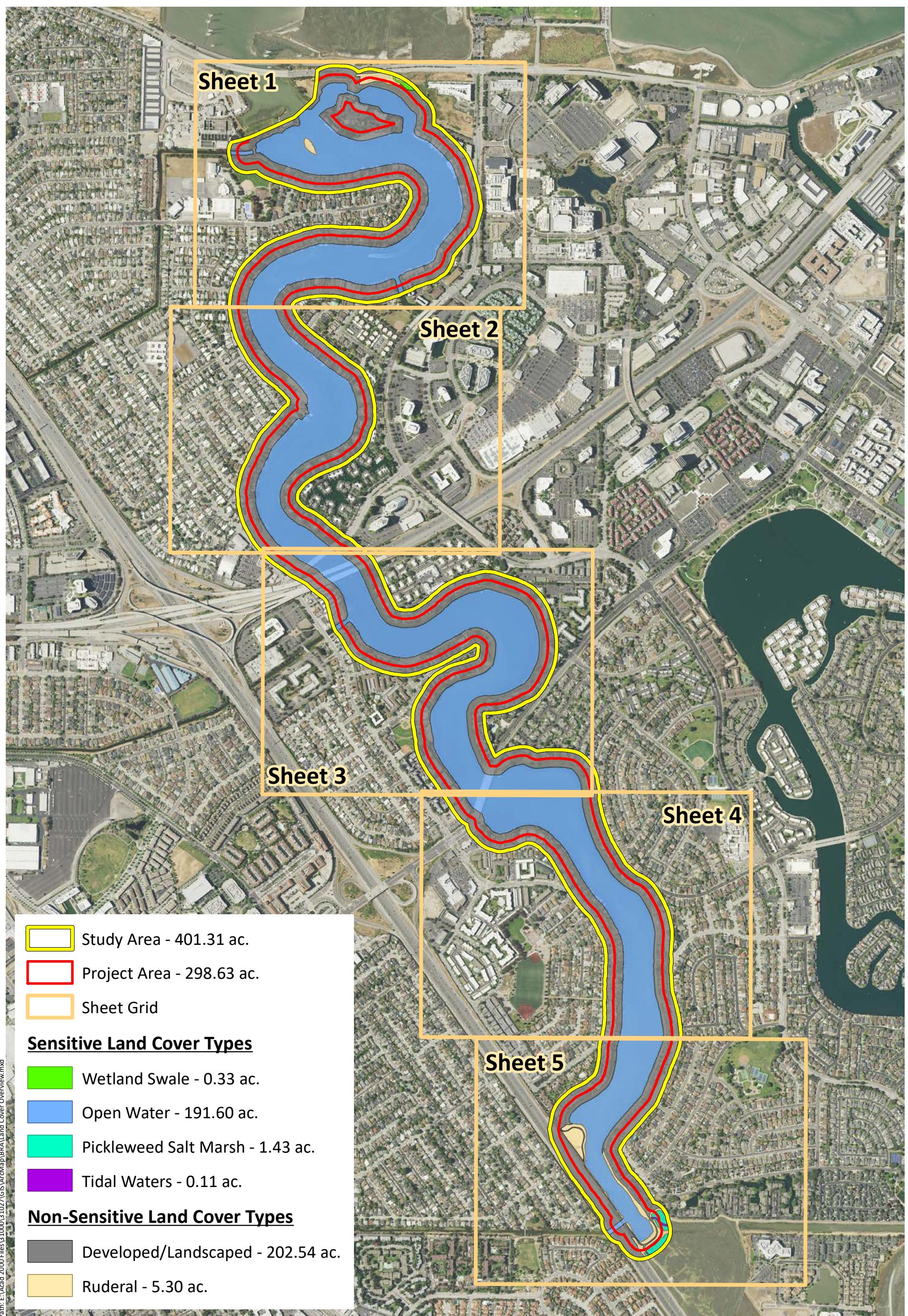


Figure 4-1. Natural Communities and Land Cover within the Study Area (Overview)



Figure 4-2.
Natural Communities and
Land Cover within the Study Area
(Sheet 1)

San Mateo Marina Lagoon
 San Mateo County, California

 Study Area - 401.31 ac.
 Project Area - 298.63 ac.

Sensitive Land Cover Types

Wetland Swale - 0.33 ac.
 Open Water - 191.60 ac.
 Pickleweed Salt Marsh - 1.43 ac.
 Tidal Waters - 0.11 ac.

Non-Sensitive Land Cover Types

Developed/Landscaped - 202.54 ac.
 Ruderal - 5.30 ac.

N
 0 200 400
 Feet



Figure 4-3.
Natural Communities and
Land Cover within the Study Area
(Sheet 2)

San Mateo Marina Lagoon
 San Mateo County, California

Study Area - 401.31 ac.

Project Area - 298.63 ac.

Sensitive Land Cover Types

Wetland Swale - 0.33 ac.

Open Water - 191.60 ac.

Pickleweed Salt Marsh - 1.43 ac.

Tidal Waters - 0.11 ac.

Non-Sensitive Land Cover Types

Developed/Landscaped - 202.54 ac.

Ruderal - 5.30 ac.

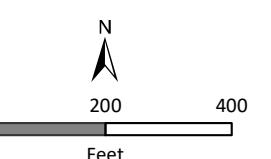




Figure 4-4.
Natural Communities and
Land Cover within the Study Area
(Sheet 3)

San Mateo Marina Lagoon
 San Mateo County, California

 Study Area - 401.31 ac.
 Project Area - 298.63 ac.

Sensitive Land Cover Types

Wetland Swale - 0.33 ac.
 Open Water - 191.60 ac.
 Pickleweed Salt Marsh - 1.43 ac.
 Tidal Waters - 0.11 ac.

Non-Sensitive Land Cover Types

Developed/Landscaped - 202.54 ac.
 Ruderal - 5.30 ac.

N
 0 200 400
 Feet



Figure 4-5.
Natural Communities and
Land Cover within the Study Area
(Sheet 4)

San Mateo Marina Lagoon
 San Mateo County, California

Study Area - 401.31 ac.

Project Area - 298.63 ac.

Sensitive Land Cover Types

Wetland Swale - 0.33 ac.

Open Water - 191.60 ac.

Pickleweed Salt Marsh - 1.43 ac.

Tidal Waters - 0.11 ac.

Non-Sensitive Land Cover Types

Developed/Landscaped - 202.54 ac.

Ruderal - 5.30 ac.

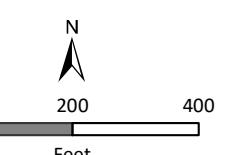




Figure 4-6.
Natural Communities and
Land Cover within the Study Area
(Sheet 5)

San Mateo Marina Lagoon
 San Mateo County, California

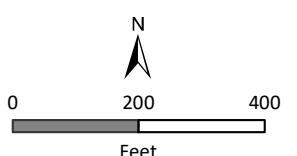
 Study Area - 401.31 ac.
 Project Area - 298.63 ac.

Sensitive Land Cover Types

Wetland Swale - 0.33 ac.
 Open Water - 191.60 ac.
 Pickleweed Salt Marsh - 1.43 ac.
 Tidal Waters - 0.11 ac.

Non-Sensitive Land Cover Types

Developed/Landscaped - 202.54 ac.
 Ruderal - 5.30 ac.



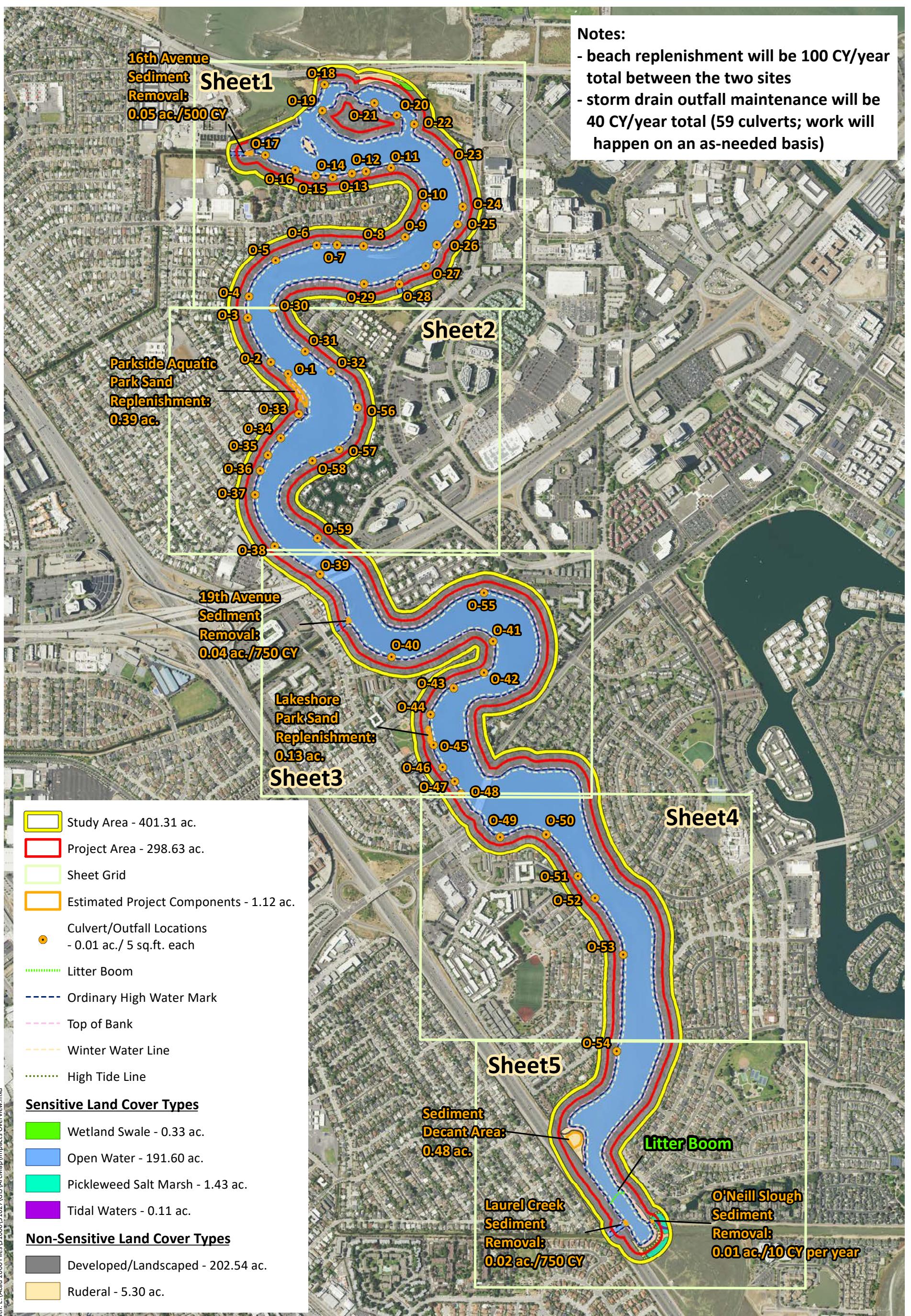


Figure 5-1. Project Impacts (Overview)

Figure 5-2.
Project Impacts
(Sheet 1)

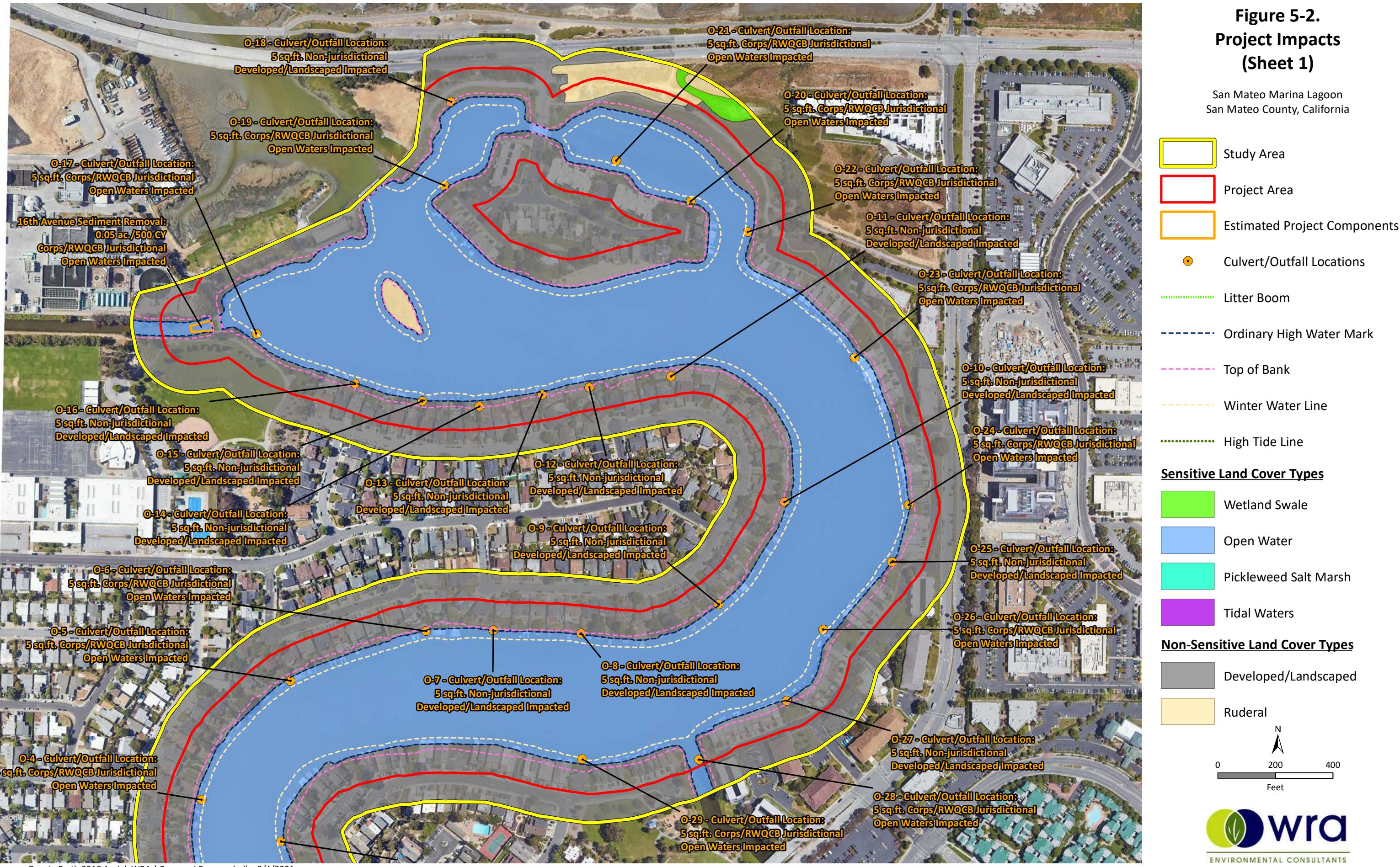


Figure 5-3.
Project Impacts
(Sheet 2)



Figure 5-4.
Project Impacts
(Sheet 3)

San Mateo Marina Lagoon
San Mateo County, California

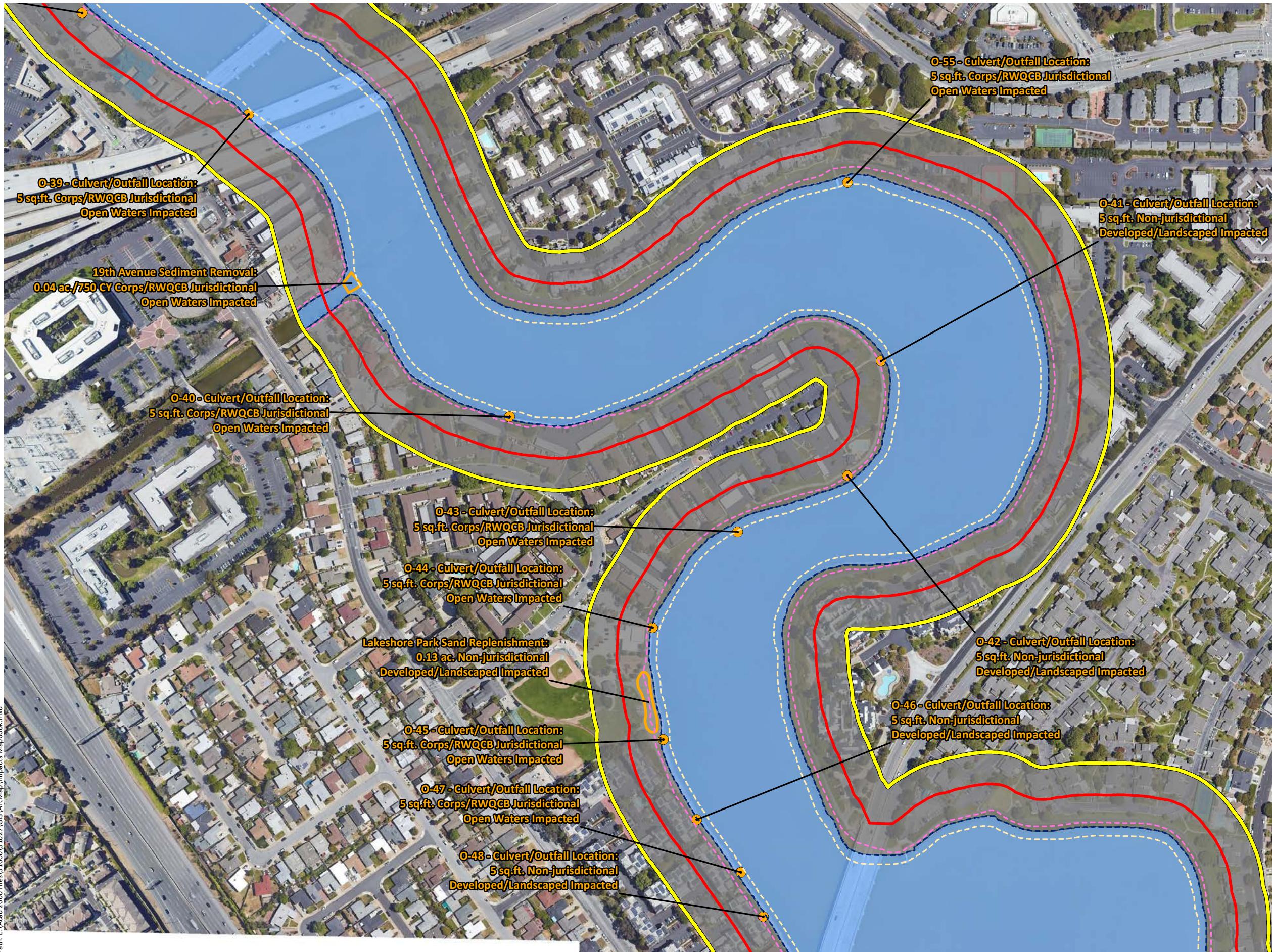


Figure 5-5.
Project Impacts
(Sheet 4)

San Mateo Marina Lagoon
San Mateo County, California



- Study Area
- Project Area
- Estimated Project Components
- Culvert/Outfall Locations
- Litter Boom
- Ordinary High Water Mark
- Top of Bank
- Winter Water Line
- High Tide Line

Sensitive Land Cover Types

- Wetland Swale
- Open Water
- Pickleweed Salt Marsh
- Tidal Waters

Non-Sensitive Land Cover Types

- Developed/Landscaped
- Ruderal

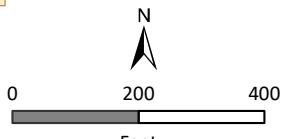
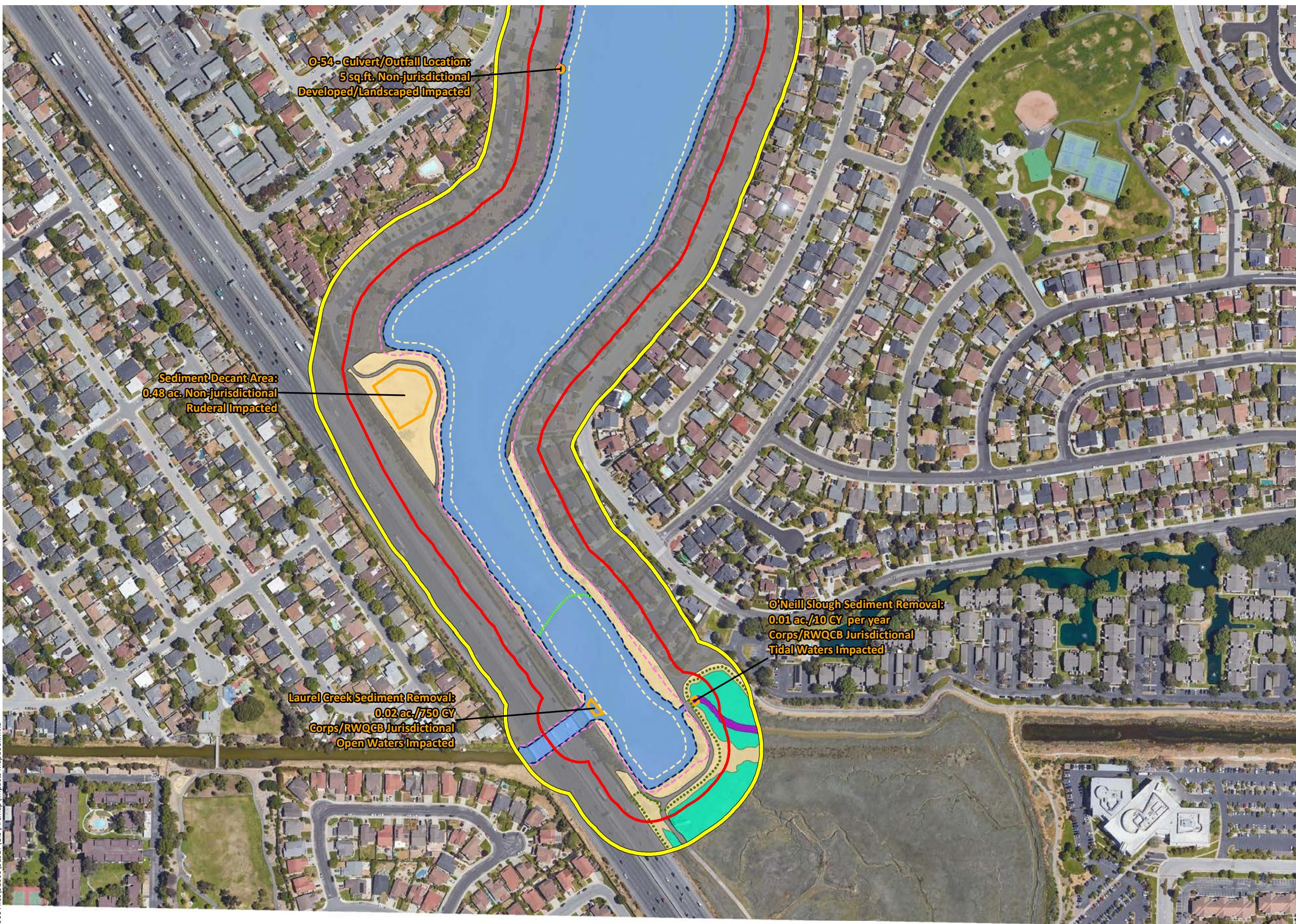


Figure 5-6.
Project Impacts
(Sheet 5)

San Mateo Marina Lagoon
San Mateo County, California



- Study Area
- Project Area
- Estimated Project Components
- Culvert/Outfall Locations
- Litter Boom
- Ordinary High Water Mark
- Top of Bank
- Winter Water Line
- High Tide Line
- Sensitive Land Cover Types**
 - Wetland Swale
 - Open Water
 - Pickleweed Salt Marsh
 - Tidal Waters
- Non-Sensitive Land Cover Types**
 - Developed/Landscaped
 - Ruderal

0 200 400
Feet



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

July 29, 2022

Regulatory Division

SUBJECT: File Number 2000-257530S

Ms. Sarah Scheidt
The City of San Mateo
330 West 20th Street
San Mateo, California 94403
sscheidt@cityofsanmateo.org

Dear Ms. Scheidt:

Enclosed is your signed copy of a Department of the Army, Regional General Permit (RGP7) (Enclosure 1) to carry out routine maintenance activities in Marina Lagoon, City of San Mateo, San Mateo County, California.

Should you have any questions regarding this matter, please call Michael Orellana of our Regulatory Division at (415) 503-6769 or by e-mail at michael.s.orellana@usace.army.mil. Please address all correspondence to the Regulatory Division and refer to the File Number at the head of this letter. If you would like to provide comments on our permit review process, please complete the Customer Survey Form available online at <http://www.spn.usace.army.mil/Missions/Regulatory.aspx>.

Sincerely,

James Mazza
Chief, Regulatory Division

Enclosure

Electronic Copies Furnished (w/encl):

US EPA, San Francisco, CA (Attn: Jennifer Siu, Siu.Jennifer@epa.gov)
US FWS, Sacramento, CA (Attn: Gary Stern, gary.stern@noaa.gov)
US NMFS, Sacramento, CA (Attn: Kim Squires, kim_squires@fws.gov)
CA RWQCB, Oakland, CA (Attn: Tahsa Sturgis, tahsa.sturgis@waterboards.ca.gov)
SF BCDC, Permit No. M2004.030.00 Amendment No. One, San Francisco, CA (Attn: Pascale Soumoy, pascale.soumoy@bcdc.ca.gov)



DEPARTMENT OF THE ARMY
SAN FRANCISCO DISTRICT, U.S. ARMY CORPS OF ENGINEERS
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE: Ms. Sarah Scheidt, City of San Mateo

PERMIT NO.: 2000-257530S, RGP7

ISSUING OFFICE: San Francisco District

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate District or Division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below:

PROJECT DESCRIPTION: This Department the Army permit authorizes the City of San Mateo to conduct routine maintenance activities resulting in the placement of fill and work within Marina Lagoon in the City of San Mateo, San Mateo County, California.

Following are the activities authorized by this permit:

- 1) Construction, maintenance, and improvement of public and private individual boat docks and ramps and pile supported boardwalks on both banks of Marina Lagoon within the City limits of San Mateo. There will be up to 5 newly constructed docks per year, for a total of 25 new docks over the span of the 5-year permit. A typical dock on the lagoon is approximately 25 feet in width, occupying the full extent of the parcel, and up to the maximum allowable length of 25 feet from the shoreline, requiring at least 6-8 support piles having a typical pile diameter of 12 inches, and therefore, the total amount of new dock structures will be approximately 34.90 cubic yards of fill within less than 0.01 acre of Corps jurisdiction over 5 years.
- 2) Maintenance and improvement of existing stormwater outfalls and the O'Neill Slough tide gate inlet, and activities related to the construction of storm water outfalls. This will include yearly sediment and debris removal to maintain lagoon flows and inlet capacity. Accumulated and captured material will be removed with mechanical equipment and hand labor from O'Neill Slough tide gate inlet, stormwater outfalls (59 total), and at the southern litter boom as needed. Up to 250 cubic yards of sediment will be removed over the span of the 5-year permit. This permit does not authorize the expansion of hardscape associated with outfall improvement or maintenance within waters of the U.S.
- 3) Construction, maintenance, and improvement of bank protection including riprap, bulkheads, paving on banks, and cuts and fills. To the maximum extent practicable, any new or additional bank stabilization shall incorporate structures or modifications beneficial to fish and wildlife. Each year, up to 200 linear feet of bank slope repair and 50 linear feet of new bank protection may be permitted under this RGP (10 feet maximum width and 250 feet maximum length). Bank protection work would be limited to 0.06 acre of disturbance in any given year. Bank and Shoreline protection shall occur as needed at any time of year. The total amount of fill permitted below the summer high water line over the course of 5 years is 116 cubic yards.
- 4) Construction, maintenance, and installation of new fences along established property lines will occur on an annual basis. Several private shoreline parcels have fences protruding into the Lagoon below the summer high water level. Fence repair and installation will occur as needed at any time of year. Up to 40 linear feet of new fencing will be constructed per year. Existing fences shall not extend more than 6 feet into the Lagoon beyond the summer high water level. No new fences shall be constructed below the point on the shoreline intersected by

the plane of the summer high water level. The total amount of fill associated with fence structures placed within Corps jurisdiction will be less than 1 cubic yard over the course of 5 years.

- 5) Maintenance, including sand replenishment, at the existing beaches at Lakeshore Park and Aquatic Park. Sand replenishment is estimated to occur once per year. Sand replenishment at both park locations will result in less than 0.001 acre of temporary impacts above the water line in each year. Up to 100 cubic yards in total of sand sourced from a local provider will be replenished annually at the Lagoon beaches.
- 6) Sediment Removal/Dredging: Operation of the Marina Lagoon will require periodic maintenance dredging to sustain the desired depth of sediment and flow in front of the 19th Avenue Creek, 16th Avenue Channel, and Laurel Creek inlets. The proposed dredging activities will result in the short-term disturbance of localized sediment. Up to 2,000 cubic yards of sediment will be dredged over the span of the 5-year permit.
- 7) Removal of nuisance aquatic vegetation. Mechanical harvesters will be used intermittently in the Lagoon throughout the late spring and summer (June through August), to control excessive growth of widgeon grass and filamentous algae to provide safe boating conditions and to maintain water quality and water flow.

All work shall be completed in accordance with the plans and drawings titled “USACE File #2000-257530S, Regional General Permit (RG 7) for Marina Lagoon, July 1, 2022, 12 Sheets,” provided as enclosure 1.

PROJECT LOCATION: Marina Lagoon in the City of San Mateo, San Mateo County, California (Lat: 37.568611, Long: 122.292222).

PERMIT CONDITIONS:

GENERAL CONDITIONS:

1. The time limit for completing the work authorized ends on June 1, 2027. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity, or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. For your convenience, a copy of the water quality certification or waiver is attached. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary

to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

7. You understand and agree that, if future operations by the United States require the removal, relocation or other alteration of the structure or work authorized herein, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, you will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

SPECIAL CONDITIONS:

1. By letter dated, February 25, 2022, the U.S. Fish and Wildlife Service (USFWS) concurred with the determination that the project may affect but is not likely to adversely affect California Ridgway's rail (*Rallus obsoletus obsoletus*) and Salt marsh harvest mouse (*Reithrodontomys raviventris*) and their critical habitat. This concurrence was premised, in part, on the description of the proposed action and conservation measures discussed in enclosure 3. These measures are incorporated as special conditions to this Regional General Permit to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
2. By letter dated, February 7, 2022, the National Marine Fisheries Service (NMFS) concurred with the determination that the project is not likely to adversely affect North American green sturgeon southern DPS (*Acipenser medirostris*) Central California Coast steelhead DPS (*Oncorhynchus mykiss*) and their critical habitat. This concurrence was premised, in part, on the description of the proposed action and conservation measures discussed in enclosure 4. These measures are incorporated as special conditions to this Regional General Permit to ensure unauthorized incidental take of species and loss of critical habitat does not occur.
3. Construction in waters of the U.S. is restricted to the California Department of Fish and Wildlife (CDFW) dry season, or the end of any extension granted by CDFW, the Water Board, and the Corps. The seasonal work period for new dock installation using poured concrete and beach sand replenishment shall be restricted to April 15 to October 31. The seasonal work period for dock repair, bank stabilization, and fence repair and installation shall be restricted to the annual drawdown period from January 15 to February 15, otherwise the work period will be restricted to April 15 to October 31. New dock installation using precast concrete may occur at any time provided that the homeowners follow the requirements of the standard Dock Specification Packet issued by the Applicant. Minor debris removal that does not require excavation, and that is immediately necessary to prevent blocking the inlets, may be conducted at any time. Any work conducted within 700 feet of Joinville Park shall be conducted from September 1 to October 15.
4. The permittee shall fully implement the avoidance and minimization measures as described in enclosure 5 during construction.
5. Prior to the start of each construction season, the permittee shall submit a pre-construction proposal for the year's projects for Corps' approval and authorization under this RGP. At a minimum, the pre-construction proposal shall include:
 - a. a list of the activities and their locations;
 - b. the volume, area, and type of temporary fill proposed to be discharged within waters of the U.S.;
 - c. the volume, area, and type of permanent fill proposed to be discharged within waters of the U.S.;
 - d. the volume and area of sediment proposed to be dredged from within waters of the U.S.;
 - e. the amount of new hardscape proposed within waters of the U.S. (as opposed to replacement hardscape); and
 - f. whether special aquatic sites (e.g., wetlands or eelgrass) would be impacted.
6. The permittee must submit an annual report in accordance with the following procedures: Within sixty days after the conclusion of the construction season, you shall submit an annual report documenting the activities

that occurred. This report shall include a description of the work performed, specifically noting any changes to proposed projects from what was outlined in the pre-construction proposal. The annual report may be submitted as an excel spreadsheet. At a minimum, the annual report shall include the following information for that year:

- A description of activities completed and their location;
- Conservation measures implemented that year;
- The impacts associated with each project category for the preceding year; and
- The total impacts associated with each project category over the life of the RGP.

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:
 (X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. Section 403).
 (X) Section 404 of the Clean Water Act (33 U.S.C. Section 1344).
 () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. Section 1413).
2. Limits of this authorization:
 - a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
 - b. This permit does not grant any property rights or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.
3. Limits of Federal Liability: In issuing this permit, the Federal Government does not assume any liability for the following:
 - a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
 - c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d. Design or construction deficiencies associated with the permitted work.
 - e. Damage claims associated with any future modification, suspension, or revocation of this permit.
4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.
5. Reevaluation of Permit Decision: This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a. You fail to comply with the terms and conditions of this permit.

- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate. (See Item 4 above.)
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 C.F.R. § 325.7 or enforcement procedures such as those contained in 33 C.F.R. §§ 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 C.F.R. § 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

- 6. Extensions: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.


(PERMITTEE)

7/26/2022

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.


James Mazza
Chief, Regulatory Division
San Francisco District

29 JUL 2022

(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFeree)

(DATE)



Water Boards

San Francisco Bay Regional Water Quality Control Board



GAVIN NEWSON
GOVERNOR



JARED BLUMENFELD
SECRETARY FOR
ENVIRONMENTAL PROTECTION

**AMENDED CLEAN WATER ACT SECTION 401 WATER QUALITY
CERTIFICATION AND ORDER
FOR THE**

Marina Lagoon Routine Maintenance Project

San Mateo County

Sent via electronic mail: No hard copy to follow

Effective Date: March 30, 2022

RM: 445464

Place ID: 877199

WDID No. 2 CW445464

Applicant: City of San Mateo
Public Works Department
330 West 20th Avenue
San Mateo, CA 94403
Phone: (650) 522-7300
Attn: Sarah Scheidt

Agent: WRA Inc.
2169-G East Francisco Boulevard
San Rafael, CA 94901
Phone: (415) 524-7530
Attn: Gregory Sproull

Water Board Tahsa Sturgis
Staff: 1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2316
Email: tahsa.sturgis@waterboards.ca.gov

JIM McGRATH, CHAIR | THOMAS MUMLEY, INTERIM EXECUTIVE OFFICER

1515 Clay St., Suite 1400, Oakland, CA 94612 | www.waterboards.ca.gov/sanfranciscobay

RECYCLED PAPER

Table of Contents

| | |
|---|----------|
| Certification and Order Coverage | 1 |
| 1. Project..... | 1 |
| 1.1 <i>Site Description</i> | 1 |
| 1.2 <i>Background</i> | 2 |
| 1.3 <i>Construction Summary</i> | 2 |
| 2. Impacts to Waters of the State | 4 |
| 2.1 <i>Fill and Discharge</i> | 4 |
| 3. Mitigation | 4 |
| 4. California EcoAtlas | 5 |
| 5. CEQA Compliance | 5 |
| 6. Conditions | 5 |
| 6.1 <i>Regulatory Compliance and Work Windows</i> | 6 |
| 6.2 <i>General Construction</i> | 7 |
| 6.3 <i>Pre-Construction Reporting and Other Requirements</i> | 8 |
| 6.4 <i>Active Construction and Post-Construction Reporting Requirements</i> | 9 |
| 6.5 <i>Dock Construction</i> | 9 |
| 6.6 <i>Mitigation and Monitoring Requirements</i> | 10 |
| 6.7 <i>Administrative and General Compliance</i> | 13 |
| 6.8 <i>Standard Conditions</i> | 14 |
| 6.9 <i>Annual Fees</i> | 14 |

Certification and Order Coverage

This Amended Clean Water Act (CWA) section 401 Water Quality Certification (Certification) and Order (Order) is issued to the City of San Mateo (Permittee). The amendments were requested by the Permittee on March 17, 2022, after the Certification was issued on March 15, 2022. The amendments herein include clarified reporting requirements and a correction to the Project's work windows.

Pursuant to CWA section 404, the Permittee requested authorization to fill and discharge to waters of the U.S. from the U.S. Army Corps of Engineers (Corps), Regulatory Branch, by renewing their Regional General Permit (RGP) 7, *Marina Lagoon General Maintenance* (Corps File No. 2000-257530S). At the time of this Certification's issuance, the Corps had not yet authorized the Project's activities under a renewed RGP 7.

The Permittee applied to the San Francisco Bay Regional Water Quality Control Board (Water Board) requesting Certification verifying the Marina Lagoon Routine Maintenance Project (Project) does not violate State water quality standards. The application for Certification was received on October 27, 2021.

The following sections are derived from the Application.

1. Project

The Project will conduct routine maintenance activities in Marina Lagoon (lagoon).

1.1 Site Description

The Project site is located within the lagoon, which is on the west shore of San Francisco Bay in the City of San Mateo (City) (Lat. 37.555738, Long. -122.291176). The lagoon is generally bordered by the City to the west, the City of Foster city to the east, San Francisco Bay to the north, and O'Neil Slough to the south. The lagoon was formed when a portion of Seal Slough was diked and dredged in the first half of the 20th century. In the 1950s, with additional dredging, levee improvements, and installation of the southern inlet at O'Neil Slough and northern pump operation at the Bay outlet, the lagoon was further developed as a flood control and recreational facility. The lagoon is now entirely ringed by residential and commercial development except for Joinville Park on the north end and O'Neil Slough at the south end. Approximately 250 private docks are situated along the lagoon's shoreline, and the Permittee operates public docks, a recreational beachfront at Parkside Aquatic Park, and the Lakeshore Beach and Recreation Center. The lagoon's shoreline is largely armored to prevent erosion from wind- and wave-wash.

Lagoon water levels and flows are regulated with the use of tide gates and pumps and managed seasonally for several purposes including stormwater flow capacity, maintenance, and recreation. Inlet weirs and a manually operated sliding tide gate at the lagoon's south end control the inflow of Bay water from O'Neil Slough. The Lagoon receives stream and stormwater runoff from a 10.3-square mile developed watershed, comprising freshwater and urban runoff from Laurel Creek, Borel Creek (the 19th Avenue Channel), and Leslie Creek (the 16th Avenue Channel). Flow through the approximately 180-acre lagoon runs from south to north, with tidal inflow at the south end occurring through manually operated tide gates and from the lagoon into the Bay at

the north end pump station. The Permittee opens the tide gates on an as-needed basis, depending on weather, the treatment schedule for aquatic vegetation removal, water quality at the beaches, and other factors. Generally, the tide gate is opened in late winter and again in spring at least twice.

1.2 Background

The Permittee previously sought and received a Certification for nearly all of the Project's activities (RM: 407138; Place ID: 825733; Effective: February 2, 2017). Previously permitted maintenance activities included routine maintenance of public and private docks, sediment and debris removal, storm drain outfall structure repair, bank stabilization, aquatic vegetation harvesting, and beach sand replenishment. To date, only dock maintenance, aquatic vegetation harvesting, and beach sand replacement have been conducted under the existing permits. In addition to the previously permitted activities, the Project also includes sediment removal in tidal waters at the tidal lagoon inlet gate to restore flow capacity.

1.3 Construction Summary

Public Docks: There are several publicly owned docks within the lagoon that either need repair over the next five years or immediate removal. The Permittee will repair and replace the two docks at the Parkside Aquatic Park. The docks are each comprised of modular floating dock systems of three separate docks that are anchored to two wooden piers approximately 2 feet in diameter. The floating sections of the south end dock can be removed and repaired on land, and the dock at the north end will be replaced in its entirety. If piles need to be replaced, pre-cast concrete piles or secondary containment for poured piles will be used. All pile replacements, or over-water dock repairs, will incorporate the best management practices (BMPs) that were specified in the Application, including the use of silt curtains and booms.

Private Docks: The Project includes construction of up to five new private docks per year, and the repair, in-kind replacement, and minor extensions of existing private docks. New docks covered under this Certification will be designed and constructed in accordance with the Permittee's Building Department Dock Permit Program.¹ The Permittee anticipates a maximum of five new docks to be constructed each year, totaling 25 new docks over this Certification's timeframe, with four piles installed per new dock. The number of dock repair or replacement work is not known at this time.

The Dock Permit Program requires the use of pre-cast concrete piles or poured concrete piles surrounded by a high-density polyethylene secondary containment casing, to ensure a 30-day curing time and no contact with freshwater. In summer high-water conditions, the piles will be installed in water that is generally 2-3 feet, but no greater than 5-6 feet, in depth, depending on site conditions, with a barge- or aquamog-mounted pneumatic or hydraulic auger. The decking then will be framed over the piles. All dock decking must be constructed at a sufficient height above the lagoon's summer high water levels. Deck repair and installation typically will require several days to several weeks, depending on the extent of the work being conducted.

¹ The Permittee requires all private dock owners to have appropriate permits and to maintain their docks in good condition, managing repair, construction, and installation of private docks through their Dock Permit Program.

Sediment and Debris Removal: Regular sediment and debris removal will be conducted in several locations to maintain lagoon inlet flows and water quality. Accumulated and captured material will be removed with mechanical equipment and hand labor from the O'Neill Slough inlet gates, Laurel Creek, 16th Avenue Channel, 19th Avenue Channel, stormwater outfalls (59 total), and at the southern litter boom as needed. About 10 cubic yards of sediment, trash, and other material will be removed from the Bay side of the O'Neil Slough inlet gates in the first maintenance year, and only minor periodic maintenance is anticipated in subsequent years. All other sediment removal activities are expected to occur only once over the Project's 5-year timeframe. At the Permittee's known storm drain outfall sites, small amounts of accumulated mud, rocks, and debris will be cleared, and pipes and flapgates will be repaired² as needed, to maintain property capacity and operation. Repairs will be located in locations above the waterline or will be exposed during the low-water maintenance period. Dewatering is not anticipated as part of the storm drain outfall repair. Excavated sediment and other debris will be taken by barge or truck to the decant area located at Laguna Vista Park, a Permittee-owned parcel off Kimberly Way at the south end of the lagoon. The decant area is an undeveloped, disturbed site, located between Highway 101 and the lagoon, consisting of mostly compacted dirt.

The Permittee will also conduct aquatic vegetation harvesting on an annual basis. Excessive growth of widgeon grass and filamentous algae is removed via mechanical harvesters that are used intermittently in the lagoon from June through August. The mechanical harvesters cut the top portion of the widgeon grass and algae, leaving the lower portion growing on the lagoon bottom and avoiding substrate disturbance and preserving habitat benefits.

Bank Protection and Fence Installation: The Permittee will repair existing bank protection as needed and install new bank protection measures along the shoreline. Most of the lagoon is designed with a 5:1 horizontal to vertical side slopes, and much of the shoreline has been armored to protect against erosion. The Permittee will either supplement or replace existing riprap areas. Where new bank stabilization is necessary, the Permittee will implement bioengineered bank stabilization measures to the maximum extent practicable. Although no bank repair or protection areas are currently identified, the Project will repair up to 200 linear feet of shoreline per year and install no more than 50 linear feet of new bank protection measures. The Permittee will install new and maintain existing fences along established property lines on an annual basis.

Beach Sand Replenishment: Sand replacement typically occurs once a year at Parkside Aquatic Park and Lakeshore Park. Each beach has a concrete path on the upland side, and replenishment occurs below and to the side of the path. The sand is replenished this way to maintain a gradual transition from the walkway to the beach for safety reasons. Additional sand is placed around the children's play area at Parkside Aquatic Park. BMPs will be implemented during fence repairs or installation to protect water quality during construction.

² Repairs will be located in locations above the waterline or will be exposed during the low-water maintenance period.

2. Impacts to Waters of the State

The Water Board has independently reviewed the Project record to analyze impacts to water quality and the environment and designated beneficial uses within the Project's watershed.

2.1 Fill and Discharge

The Project will temporarily and permanently impact approximately 0.39 acre and 0.06 acre of waters of the State, respectively, over the length of the five-year timeframe covered by this Certification, as shown in Tables 1 and 2.

Table 1: Summary of the Project's temporary impacts.

| Activity | Aquatic Resource Type ³ | Impact Type | Annual (Acres) | 5-Yr Total (Acres) |
|---------------------------------|-------------------------------------|--------------|------------------|--------------------|
| Bank Protection Repair | Stream Channel and Riparian Habitat | N/A | 0.05 | 0.23 |
| Fence Construction Repair | | | <0.01 | <0.01 |
| O'Neil Slough Tide Gate | | | 0.01 | 0.05 |
| Sediment Removal | | | <0.01 | <0.01 |
| Storm drain Outfall Maintenance | | | N/A ⁴ | 0.05 |
| 16th Ave. Sediment Removal | | | N/A ⁴ | 0.04 |
| 19th Ave. Sediment Removal | | | N/A ⁴ | 0.02 |
| Laurel Creek Sediment Removal | | | | |
| | | Total | ~0.06 | ~0.39 |

³This aquatic resource type is for accounting purposes.

⁴Sediment removal is expected to occur once at each location over the next five years.

Table 2: Summary of the Project's permanent impacts.

| Activity | Aquatic Resource Type ³ | Impact Type | Annual (Acres) | 5-Yr Total (Acres) |
|----------------------------|------------------------------------|----------------|----------------|--------------------|
| New Dock Pile Construction | Lake | Permanent Loss | <0.01 | <0.01 |
| New Bank Protection | | Degradation | 0.01 | 0.05 |
| New Fence Construction | | Degradation | <0.01 | <0.01 |
| | Total | | ~0.012 | ~0.06 |

3. Mitigation

The Permittee will mitigate the Project's temporary and permanent impacts to waters of the State. The Project's temporary impacts resulting from repairs to existing bank protection, repairs to fences, and sediment and debris removal, will be mitigated by the Permittee through an annual trash cleanup program implemented by the Permittee. The water quality benefits associated with the Project's aquatic vegetation removal will also mitigate the Project's temporary impacts. To mitigate the Project's permanent impacts to waters of the State from new dock installation,

including new pile installation, new bank protection, and new fence installation, the Permittee will enhance an approximately 0.3-acre area located between an existing trail and the shoreline in the northern portion of the Project site. The Permittee will remove and replace an approximately 0.3-acre-area of non-native vegetation, primarily ice plant (*Carpobrotus edulis*), with native vegetation. The mitigation area contains several existing trees, but all available land that is suitable for planting will be planted with native vegetation. The plantings in the mitigation area will be by native scrub species that are suitable for proliferation, and both locally common and available. The work will expand and enhance the existing riparian habitat and provide a transition zone not currently present. The shoreline fringe, where native salt grass (*Distichlis spicata*) occurs will not be planted. The mitigation area will be monitored for a five-year timeframe, and the Permittee will detail the trash cleanup efforts in the annual monitoring reports (see Conditions 18 to 23). No further mitigation is required.

4. California EcoAtlas

Regional, state, and national studies have determined that tracking of mitigation and restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. To effectively carry out the State's Wetlands Conservation Policy of no net loss to wetlands, the State needs to closely track both losses and successes of mitigation and restoration projects affecting wetlands and other waters of the State. The Water Board must also track project performance in Bay Area creeks subject to routine repair and maintenance activities, such as recurring instabilities. Therefore, we adopted the digital interactive mapping tool called *EcoAtlas*.^[1] *EcoAtlas* is a web-based tool that integrates maps, project plans, site conditions, restoration efforts, and other elements on a project-by-project basis based on data inputs. Accordingly, we require the Permittee to upload their Project information to *EcoAtlas* with the *Project Tracker* tool at <https://ptrack.ecoatlas.org> (see Condition 9). The San Francisco Estuary Institute developed *EcoAtlas* and maintains detailed instructions for *Project Tracker* on its website at <https://ptrack.ecoatlas.org/instructions>.

5. CEQA Compliance

The Permittee, as lead agency, determined the Project is categorically exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15301, *Existing Facilities*. Accordingly, on July 7, 2021, the Permittee filed a Notice of Exemption (NOE) with the Officer of Planning and Research and the County Clerk of San Mateo County (State Clearinghouse No. 2021070131). The Water Board, as a responsible agency under CEQA, concurs that the Categorical Exemption is appropriate

6. Conditions

I, Thomas Mumley, Interim Executive Officer, do hereby issue this Order certifying that any discharge from the proposed Project will comply with the applicable provisions of sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the CWA, and with other applicable requirements of

^[1] Source: California Wetlands Monitoring Workgroup (CWMW). EcoAtlas. Accessed March 12, 2019. <https://www.ecoatlas.org>. CWMW includes SFEI, State Board, U.S. EPA-Region IX, and other agencies with similar goals to track effects of projects in wetlands and other aquatic habitats.

State law. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, “General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification,” which requires compliance with all conditions of this Order, including the following:

6.1 Regulatory Compliance and Work Windows

1. **Design Conformance**. The Project work shall be constructed in conformance with the Application materials and as described in this Certification. Any changes to the Project that may impact waters of the State must be accepted by the Executive Officer before they are implemented. To request Executive Officer acceptance, the Permittee shall submit the proposed revisions, clearly marked and described, to the attention of the Water Board staff listed on the cover page of this Certification. The Permittee shall not implement the proposed revisions until notified that they have been accepted by the Executive Officer;
2. **Special Status Species**. This Certification does not allow for the take, or incidental take, of any special status species. The Permittee shall request appropriate protocols prescribed from the United State Fish and Wildlife (USFWS) and/or National Marine Fisheries Service (NMFS) to ensure that Project activities do not impact the beneficial use of the Preservation of Rare and Endangered Species, and shall implement the provided protocols, as appropriate;
3. **Precipitation and Construction Planning**. Precipitation forecasts shall be considered when planning construction activities. The Permittee shall monitor the 72-hour forecast from the National Weather Service at <http://www.nws.noaa.gov>. When there is a forecast of more than 40% chance of rain, or at the onset of unanticipated precipitation, the Permittee shall remove all equipment from waters of the State, implement erosion and sediment control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw), and cease all Project activities. If any construction activities will occur outside their respective work windows specified in Condition 4~~after October 31~~, a Winterization Plan shall be submitted to the Executive Officer for review and acceptance and contain, but not be limited to, the following:
 - a) **Activities and Timeline Description**—for any proposed activity that will begin or end after October 1, the activity and its respective construction timeline, from start to finish, shall be described in detail.
 - b) **Erosion Control Measures**—all erosion control measures shall be described in detail, including, but not limited to, the type of erosion control measure and its material, implementation timeline, and best management practices to be used during and after implementation;
4. **Work Windows**: The Project activities may be initiated as follows, so long as the precipitation and construction planning requirements specified in this Certification (see Condition 3) and the precipitation requirement listed in the Application’s materials are met:

- a) Sediment Removal, New Dock Installation using Poured Concrete, Dock Repair, Bank Stabilization, Fence Repair and Installation, and Beach Sand Replenishment: April 15 to October 31. The work window may be extended on a case-by-case basis. To request an extension of the work window for these Project activities, the Permittee must submit a written request for review and acceptable to Tahsa Sturgis at tahsa.sturgis@waterboards.ca.gov. The request shall be submitted at least two weeks prior to when work is expected to occur outside of the April 15 to October 31 work window and shall include the requirements in Condition 3 of this Certification as well as the other regulatory agencies that were contacted about the requested work extension. Minor debris removal that does not require excavation and is immediately necessary to prevent blocking inlets may be conducted any time of year. Bank repairs that do not require excavation may be conducted any time of year.
- b) Dock Repair, Bank Stabilization, and Fence Repair and Installation: April 15 to October 31 or January 15 to February 15. The work for these activities may occur during the time when the reservoir is normally lowered during the annual drawdown period (January 15 to February 15), otherwise the work shall occur from April 15 to October 31. Bank repairs that do not require excavation and fence repair and installation may be conducted any time of year.
- c) New Dock Installation using Precast Concrete: any time of year provided that the requirements in Condition 3 of this Certification are met and the Permittee's standard specification packet requirements are met.
- d) Aquatic Vegetation Harvesting: April 15 to October 31.

6.2 General Construction

- 5. **Discharge Prohibition.** No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be discharged to waters of the State;
- 6. **Equipment Maintenance Prohibition.** No fueling, cleaning, or maintenance of vehicles or equipment shall take place within waters of the State, or within any areas where an accidental discharge to waters of the State may occur; and construction materials and heavy equipment must be stored outside of waters of the State. When work within waters of the State is necessary, best management practices shall be implemented to prevent accidental discharges;
- 7. **Beneficial Use Impacts.** All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat; measures shall be employed to minimize disturbances along waters of the State that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation;

8. **Concrete Curing:** Concrete used in the Project shall be allowed to completely cure (a minimum of 28 days) or be treated with a sealant that is non-toxic to aquatic life before it comes into contact with flowing water (Note: Demonstration of non-toxicity to aquatic life may be evaluated by measuring survival of test organisms in a 96-hour bioassay. The bioassay should be performed according to the most up-to-date protocols in 40 CFR part 136, currently Methods for Measuring the Acute Toxicity of Effluents and Receiving Water to Freshwater and Marine Organisms, 5th Edition (EPA-821-R-02-012), including sample collection, handling, and preservation in accordance with U.S. EPA protocols). Only sealants that have been tested and found non-toxic to freshwater aquatic life, including benthic macro-invertebrates, may be used on concrete surfaces that may come into contact with flowing water. Any sealant that may be used must be approved by CDFW prior to use. Concrete will be considered to be cured when water poured over the surface of concrete consistently has a pH of less than 8.5;

6.3 Pre-Construction Reporting and Other Requirements

9. **EcoAtlas Form.** The Permittee shall input Project information into *EcoAtlas* no later than 14 days from this Amended Certification's issuance date, consistent with Section 4 herein. The Project information shall be added to the *Project Tracker* tool in *EcoAtlas* online at <https://ptrack.ecoatlas.org>. Instructions for adding information to *EcoAtlas* are available at <https://ptrack.ecoatlas.org/instructions>, or by contacting the Water Board staff listed on the cover page of this Certification. The Permittee shall notify the Water Board and submit documentation demonstrating the Project has been successfully added to EcoAtlas via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include **EcoAtlas_445464_Marina Lagoon Routine Maintenance Project**;
10. **Commencement of Construction.** The Permittee shall submit a Start of Construction (SOC) Report acceptable to the Executive Officer in each year that Project activities occur. The SOC Report shall be submitted no later than seven days prior to start of initial ground disturbance activities in a given Project year. The Permittee shall and notify the Water Board at least 48 hours prior to initiating in-water work and any stream diversions. Notification may be via telephone, email, delivered written notice, or other verifiable means. The SOC Report shall be submitted in same timeframe specified herein for multiple construction seasons, if necessary, via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include **SOC_445464_Marina Lagoon Routine Maintenance Project**;
11. **Photo-Documentation Points.** Prior to the start of construction, the Permittee shall establish a minimum of 4 photo-documentation points at each Project site where Project related impacts to waters of the State occur. The points shall be used to track the Project's construction impacts, the pre- and post-construction condition, and overall Project success. The Permittee shall prepare a site map with the photo-documentation points clearly marked. Prior to and following construction in each year where sediment and/or vegetation is removed or the vegetation pilot program is

implemented, the Permittee shall photographically document the immediate pre- and post-Project condition at locations where impacts to waters of the State occur, including temporary impacts. These post-construction photographs and map shall be submitted, along with the as-built and construction completion reports (See Conditions 12 and 13);

6.4 Active Construction and Post-Construction Reporting Requirements

12. **As-Built Report.** The Permittee shall prepare an as-built report(s) acceptable to the Executive Officer in each year that Project activities occurred. The as-built report(s) shall be submitted to the Water Board no later than 60 days after completing Project construction activities in a given calendar year through the duration of the Project. The report(s) shall include a description of the areas of actual disturbance during Project construction and the photographs and map specified in Condition 11. The report(s) shall clearly identify and illustrate the Project activities that occurred in a given year, and the locations where impacts to waters of the State occurred. The Permittee shall submit one as-built report annually for all Project activities that occurred in that calendar year. The as-built report(s) shall include the 100 percent construction plans marked with the contractor's field notes that clearly depict any deviations made during construction from the designs reviewed by the Water Board. If design plans are not available for a Project activity (e.g., fence repair and installation, sand beach replenishment, sediment removal at inlets), the photographs specified in Condition 11 and a narrative shall be submitted in lieu of an as-built report. The as-built report(s) shall be sent with the annual monitoring reports (see Condition 23) via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include As Built_445464_Marina Lagoon Routine Maintenance Project in the email subject line when sent electronically or in the cover letter for hard copy submissions;
13. **Project Construction Completion Report.** The Permittee shall submit a Notice of Project Construction Completion (NOC) acceptable to the Executive Officer to notify the Water Board that the Project has been completed at the end of the 5-year period in which the Project will be occur. The NOC Completion Notice shall be submitted to the Water Board no later than 60 days after completing all Project construction activities in the final construction year. The NOC Completion Notice shall include the as-built reports (see Condition 12), the post construction photographs (see Condition 11), the date of the first Project-related disturbance of waters of the State occurred, and the date the Project construction was completed for each Project activity. The NOC Completion Notice shall be sent via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports (see address on the letterhead), and include NOC_445464_Marina Lagoon Routine Maintenance Project in the email subject line when sent electronically or in the cover letter for hard copy submissions;

6.5 Dock Construction

14. **Dock Photographs:** Before commencing dock construction work, dock replacement work, and dock repair work, the Permittee shall establish a minimum of three (3)

photo-documentation points at any location where public or private dock work occurs, including new dock construction, dock replacement work, and dock repair work. The points shall be used to track the Permittee's compliance with the Certification. The Permittee shall prepare a site map with the photo-documentation points clearly marked. Prior to and following construction, the Permittee shall photographically document the immediate pre- and -post construction condition of the sites where dock work is being conducted. These post-construction photographs and map shall be submitted to the Water Board at the end of each year of the Certification's coverage (See Condition 23);

15. **Dock Specification Packet:** If revised during the timeframe covered by this Certification, the Permittee shall submit the revised standard Dock Specification Packet to the Executive Officer for review and acceptance for consistency with the activities covered in this Certification. The Executive Officer must accept the revised Dock Specification Packet, as it relates to this Certification, prior to the construction of new or replaced private and public docks adhering to the revised Dock Specification Packet;
16. **Private Dock Design:** Newly constructed or replaced private and public docks shall meet the requirements set forth by the Permittee, and specified in this Certification, including size restrictions stated in the Permittee's standard Dock Specification Packet (See Condition 15). New dock construction is limited to a maximum of five per year and a total of 25 over the 5-year Certification timeframe;
17. **Individual Dock Certifications:** If the requirements in Condition 16 are not met, the work is not covered by this Certification, and the Permittee shall instruct the dock owner to apply to the Corps, Water Board, and the California Department of Fish and Wildlife (CDFW) for all necessary permits on an individual basis;

6.6 Mitigation and Monitoring Requirements

18. **Monitoring and Monitoring Requirements.** The Permittee shall monitor the areas impacted by the Project throughout the duration of the Project (5 years) and submit annual monitoring reports to the Water Board (see Condition 23) to verify the Project's impacts and to demonstrate beneficial uses have not been adversely affected. The Permittee shall also monitor the mitigation area for a minimum five-year period to verify the Project impacts have been sufficiently and appropriately mitigated. The annual monitoring reports shall also include an appendix summarizing the Project's annual activities and impacts to waters of the State as well as the condition of the areas that were impacted (see Condition 23). If any signs of instability or excessive erosion are observed at the site, the Permittee shall document these observations in the annual reports and make recommendations for corrective actions, as necessary (see Condition 22). If any adverse impacts to waters of the State are observed during the monitoring period, compensatory mitigation may be required by the Executive Officer, including, but not limited to, extension of the monitoring period;

19. **Mitigation Monitoring Plan:** The Permittee shall ~~revise implement the mitigation and monitoring in accordance with~~ the mitigation plan included in the Application materials, and as clarified on March 22, 2022, that the mitigation area will be irrigated in perpetuity, to include achievable performance and final success criteria, which indicate the mitigation project is successful, for the five year monitoring period. ~~Any~~ The revisions to the mitigation plan shall be submitted to the Executive Officer for review and acceptance ~~not later than 60 days following this Certification's issuance date~~, and ~~the plan~~ shall not be implemented until the Executive Officer notifies the Permittee that the plan is acceptable;
20. **Mitigation Performance Criteria.** The Permittee shall evaluate the mitigation area's performance and success during the monitoring period by using the annual performance criteria in the Application materials, as revised, and as described herein. The performance criteria (e.g., plant survival, plant vigor, vegetative cover, invasive species) shall be used to track the mitigation area's annual progress towards meeting the final success criteria in the final monitoring year (see Condition 21). To demonstrate the mitigation plantings have become successfully established, no irrigation shall be used in the last two years of monitoring. If the performance criteria are not met, the Permittee shall describe the deficiencies that led to the underperformance and recommend corrective actions, as necessary, to ensure the final success criteria are met in the final monitoring year (see Condition 22);
21. **Final Success Criteria.** The Project's mitigation shall be considered successful if the Executive Officer determines the final success criteria specified in revised mitigation plan (see Condition 19) have been met in the final monitoring year's annual report and no adverse impacts to waters of the State have otherwise occurred. The Permittee shall demonstrate the mitigation area is successful in the final monitoring year by meeting the mitigation's final success criteria. The final success criteria shall be the performance criteria established for the final monitoring year specified in the Application. The Permittee shall also demonstrate that the mitigation plantings have been successfully established and are not reliant on irrigation (see Condition 20);
22. **Corrective Actions.** If any signs of instability or excessive erosion are observed along the areas impacted at the Project site, the Permittee shall document these observations in the annual reports and make corrective action recommendations, as necessary. After receipt of an annual monitoring report, if corrective actions are determined necessary by the Executive Officer, the Permittee shall be required to re-submit the corresponding annual report to include corrective actions or revise recommended corrective actions that were previously proposed or accepted by the Executive Officer;
23. **Annual Monitoring Reports.** The Permittee shall submit annual monitoring reports, acceptable to the Executive Officer, by January 31 following each monitoring year. The first monitoring year commences in the calendar year of the Project's first year of activities. At the time of this Certification and Order, the Project is anticipated to commence in 2022. Therefore, the first annual monitoring report shall be due on

January 31, 2023, unless the Project is completed at a different time. Annual reports shall include, but not be limited to, the following:

- a) Photographs: photographs taken during the monitoring year from the photo-documentation points specified in Conditions 11 and 14 shall be included in each annual monitoring report, and updated as appropriate. The photographs shall include captions with respect to the photograph's point of view, direction of flow, locations of Project activities, location of the photo-documentation point, and date photographed.
- b) Activities and Impacts: the Project activities completed in the monitoring year and their respective impacts to waters of the State shall be included in each annual monitoring report. The final monitoring report shall include all Project activities and their impacts for the duration of the Project. The monitoring reports shall also reference the activities and impacts in relation to the limits covered in this Certification. If limits for any Project activity are exceeded, the Permittee may need to submit a report of waste discharge and shall be required to provide compensatory mitigation for the impacts to waters of the State that exceed the limits authorized in this Certification. As-built reports and photographs for construction activities shall be included in the annual report. Starting in the second monitoring year, previous as-built reports and photographs shall be included in the monitoring report's appendices.
- c) Mitigation Projects: the Permittee shall include the status of the mitigation project in each annual report, including the performance and final success criteria, as applicable, specified herein.
- d) Environmental Drivers: each monitoring report shall describe the unusually low and large precipitation events that occurred at the site during the monitoring year. The effects of the Project and environmental drivers (e.g., precipitation events, drought events) on site conditions shall be described in reference to the monitoring year's precipitation events relevant Project activities.
- e) Cumulative Monitoring: each annual report shall summarize all data from previous monitoring reports in addition to the current year's monitoring data, including the need for, and implementation of, any remedial actions. Monitoring data may include all relevant qualitative and quantitative data necessary to determine whether the site is stable. The final monitoring report shall document whether the temporarily impacted areas were restored to their pre-Project condition.

The overall Project and mitigation success shall be determined by, and acceptable to, the Executive Officer. If monitoring indicates that beneficial uses have been, or have the potential to be, adversely affected, the Permittee shall, in consultation with the appropriate agencies, identify remedial measures to be undertaken, including compensatory mitigation and extension of the monitoring and reporting period until the final success criteria are met. If a Corrective Action Plan is

required and approved by the Executive Officer, the Permittee shall implement all remedial measures identified therein. Annual monitoring reports shall be submitted via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports (see the address on the letterhead), and include **AMR_445464_Marina Lagoon Routine Maintenance Project** in the email subject line when sent electronically or in the cover letter for hard copy submissions;

6.7 Administrative and General Compliance

24. **Site Access.** The Permittee shall grant Water Board staff or an authorized representative, upon presentation of credentials and other documents as may be required by law, permission to: (1) enter upon the Project site or compensatory mitigation site(s) where a regulated facility or activity is located or conducted, or where records are kept; (2) have access to and copy any records that are kept and are relevant to the Project or the requirements of this Order; (3) inspect any facilities, equipment, practices, or operations regulated or required under this Order; and (4) sample or monitor for the purposes of assuring Order compliance;
25. **Certification and Order at Site.** A copy of this Order shall be provided to any consultants, contractors, and subcontractors working on the Project. Copies of this Order shall remain at the Project site for the duration of this Order. The Permittee shall be responsible for work conducted by its consultants, contractors, and any subcontractors;
26. **Ownership Change Notification.** The Permittee shall provide a signed and dated notification to the Water Board of any change in ownership or interest in ownership of any Project area at least 10 days prior to the transfer of ownership. The purchaser shall also submit a written request to the Water Board to be named as the permittee in an amended order. Until this Order has been modified to name the purchaser as the permittee, the Permittee shall continue to be responsible for all requirements set forth in this Order;
27. **Water Quality Violations Notification.** The Permittee shall notify the Water Board of any violations of water quality standards, along with the cause of such violations, as soon as practicable (ideally within 24 hours). Notification may be via telephone, email, delivered written notice, or other verifiable means;
28. **Discharge Change Notification.** In accordance with Water Code section 13260, the Permittee shall file with the Water Board a report of any material change or proposed change in the ownership, character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change. Changes to discharges include, but are not be limited to, significant new soil disturbances, proposed expansions of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be impacted;

29. **Submittal of Reports.** Where this Certification requires submittal of reports, including plans, reports, or related information, the submitted reports shall be acceptable to the Executive Officer;
30. **Individual Waste Discharge Requirements.** Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to Water Code sections 13263 and/or 13377 and California Code of Regulations, Title 23 (23 CCR) section 3857;
31. **Expiration.** This Order shall continue to have full force and effect regardless of the expiration or revocation of any federal license or permit issued for the Project;

6.8 Standard Conditions

32. **Certification and Order Modification.** This Order is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code sections 13320 and 13330 and 23 CCR section 3867;
33. **Hydroelectric Facilities.** This Order does not apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought;
34. **Application Fee.** This Certification and Order is conditioned upon full payment of the required fee, including annual fees, as set forth in 23 CCR section 3833. The required \$8,286, calculated using the 2020/2021 Water Quality Certification Dredge and Fill Application Fee Calculator, Category A—*Fill and Excavation Discharges*, was received by the Water Board in two payments: \$2,066 on October 25, 2021, and \$6,220 on February 3, 2022;

6.9 Annual Fees

35. **Annual Fee.** In accordance with 23 CCR section 2200, the Permittee shall pay an annual fee to the Water Board each fiscal year (July 1 – June 30) until Project construction activities are completed and an acceptable Notice of Project Construction Completion is received by the Water Board. If monitoring is required, the Permittee shall pay an annual fee to the Water Board until monitoring activities are completed and an acceptable Notice of Mitigation Monitoring Completion is received by the Water Board (Note: the Annual Post Discharge Monitoring Fee may be changed by the State Water Board; at the time of Certification it was \$2,031 per year for Category A projects). Annual fees will be automatically invoiced to the Permittee. **The Permittee must notify the Water Board at Project and/or mitigation completion with a final report in order to request to terminate annual billing.** Notification shall reference **NMMC_445464_Marina Lagoon Routine Maintenance Project** and should be sent to the staff listed at the bottom of this Certification and to RB2-401Reports@waterboards.ca.gov. Water Board staff will

verify the conditions of the Certification have been met and may request a site visit at that time to confirm the Project's status and compliance with the Certification.

This Order applies to the Project as proposed in the application materials and designs referenced above in the conditions of Certification. Be advised that failure to implement the Project in conformance with this Order is a violation of this Certification. Any violation of Certification conditions is a violation of State law and subject to administrative civil liability pursuant to Water Code sections 13350, 13385, or 13399.2. Failure to meet any condition of this Certification may subject the Permittee to civil liability imposed by the Water Board to a maximum of \$25,000 per day of violation and/or \$25 for each gallon of waste discharged in violation of this action above 1000 gallons. Any requirement for a report made as a condition to this Certification (e.g., conditions 3, 9-23 and 26-28) is a formal requirement pursuant to Water Code sections 13267 and 13383, and failure or refusal to provide, or falsification of such required report, is subject to civil liability as described in Water Code section 13268 and criminal liability under 13387. The burden, including costs, of these reports bears a reasonable relationship to the need for the report and the benefits to be obtained. Should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements.

If you have any questions concerning this Order, please contact Tahsa Sturgis of my staff at (510) 622-2316 or tahsa.sturgis@waterboards.ca.gov. All future correspondence regarding this Project should reference **RM 445464** indicated at the top of this letter.

Sincerely,

for Thomas Mumley
Interim Executive Officer

cc: SWRCB, DWQ, stateboard401@waterboards.ca.gov
Water Board, Victor Aelion, victor.aelion@waterboards.ca.gov
CDFW, Will Kanz, will.kanz@wildlife.ca.gov
U.S. EPA, Region IX:
Region IX Mailbox, r9cwa401@epa.gov
Jennifer Siu, siu.jennifer@epa.gov
Corps, SF Regulatory Branch, Katerina Galacatos, katerina.galacatos@usace.army.mil



California Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.wildlife.ca.gov

EDMUND G. BROWN, Jr., Governor
CHARLTON H. BONHAM, Director



January 17, 2017

Brad Underwood
City of San Mateo Public Works Department
330 West 20th Street
San Mateo, CA 94403

Dear Mr. Underwood:

**Final Lake or Streambed Alteration Agreement, Notification No. 1600-2013-0268-R3,
Marina Lagoon General Maintenance Project**

Enclosed is the final Streambed Alteration Agreement (Agreement) for the Marina Lagoon General Maintenance Project (Project). Before the California Department of Fish and Wildlife (CDFW) may issue an Agreement, it must comply with the California Environmental Quality Act (CEQA). In this case, CDFW determined your Project is exempt from CEQA and filed a Notice of Exemption (NOE) on the same date it signed the Agreement.

Under CEQA, the filing of an NOE triggers a 35-day statute of limitations period during which an interested party may challenge the filing agency's approval of the Project. You may begin the Project before the statute of limitations expires if you have obtained all necessary local, state, and federal permits or other authorizations. However, if you elect to do so, it will be at your own risk.

If you have any questions regarding this letter, please contact Randi Adair, Senior Environmental Scientist (Supervisory) at (707) 576-2786 or by email at randi.adair@wildlife.ca.gov.

Sincerely,

Craig J. Weightman, Environmental Program Manager

cc: Simon Environmental Planning
Susan Simon
simonenvironmental@gmail.com

California Department of Fish and Wildlife
Lieutenant James Ober
James.ober@wildlife.ca.gov

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
BAY DELTA REGION
7329 SILVERADO TRAIL
NAPA, CALIFORNIA 94558
(707) 944-5500
WWW.WILDLIFE.CA.GOV



STREAMBED ALTERATION AGREEMENT
NOTIFICATION No. 1600-2013-0268-R3
MARINA LAGOON

CITY OF SAN MATEO
MARINA LAGOON GENERAL MAINTENANCE PROJECT

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and the City of San Mateo (Permittee) as represented by Brad Underwood.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on July 3, 2013 that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

This Agreement authorizes routine maintenance in the 185-acre Marina Lagoon, which was historically a portion of Seal Slough, located between East 3rd Avenue to the north and Marine Parkway to the south; in the City of San Mateo, County of San Mateo, State of California; most northern Latitude 37°34'07"N and Longitude 122°17'32"N and most southern Latitude 37°32'02"N and Longitude 122°16'37"N.

PROJECT DESCRIPTION

Under this Agreement, Permittee will conduct "routine maintenance activities", defined

as periodic activities necessary to restore the inflow into Marina Lagoon (Lagoon) to maintain the water transport and storage capacity of the Lagoon and to maintain and/or repair existing infrastructure, docks and park areas surrounding the Lagoon.

The Lagoon was historically a tidal slough connected to San Francisco Bay, but was diked and dredged to create a lagoon to function as flood-control relief for low elevation areas and a recreational boating lake. The water levels in the Lagoon are highly regulated and never fluctuate more than a few feet throughout the year. During the month of January the Lagoon is lowered 3.5 feet to facilitate maintenance work on the docks and shoreline. Water intake and release is controlled by the use of intake gates on the lagoon's south end at O'Neill Slough and by the Marina Lagoon Pump Station on the north end where the lagoon outlets to the San Francisco Bay. Numerous small underground storm drains transport runoff from urban areas in San Mateo and Foster City situated on the east side of the lagoon.

The Lagoon complex comprises four minor watersheds including 16th Avenue and 19th Avenue drainages, Laurel Creek and Direct Marina Lagoon Drainage. These watersheds are located in the southern two-thirds of San Mateo. The complex is a watershed of 10 square miles originating in the western hills of San Mateo and Belmont and draining into the Lagoon. Peak storm flows from the western hills are controlled by three dams on Laurel Creek. The watershed is almost entirely urbanized with the exception of Sugarloaf Mountain.

Routine maintenance activities authorized under this Agreement are limited to the following:

1. Docks and Ramps

Construction, maintenance and improvement of public and private individual boat docks and ramps and pile-supported boardwalks on both banks of Marina Lagoon.

Public Docks

Parkside Aquatic Park is owned by the Permittee and contains a public boat launch facility and public dock. Park amenities include a public beach, picnic area and play area. There are two boat ramps, one for public use and the other for the Harbor Master's boats. The park contains four docks; three at the south end and one at the north end. The docks at the south end facilitate the launching of boats from the boat ramps and are floating docks. The dock at the north end of the park is a fixed dock.

The floating sections of the south end docks will be removed and repaired on land. If piles need to be replaced, pre-cast concrete piles or secondary containment for poured piles will be used. Due to safety concerns, the north end dock will be removed in its entirety and will not be replaced.

Private Docks

The Lagoon is surrounded by high density residential areas and several of the shoreline parcels have private docks or the right to own one. Currently, there are approximately 300 private docks. The current Standard Plan issued by the San Mateo City Building Division permit approves only fixed wooden docks with concrete piers.

The City of San Mateo's Dock Information Packet Standards requires the use of pre-cast concrete piles or a secondary containment system. This will ensure that no freshly poured concrete will come in contact with the water for at least 30 days. Typically, poured piles will be concrete surrounded by a high density polyethylene (HDPE) secondary containment casing. The piles will be installed from a barge or aquamog equipped with an auger. The auger is used to drill the HDPE form in the lagoon bottom, driven to a minimum depth of six feet. The concrete is poured after the form has been driven into the lagoon bottom. The decking is then framed over the piles.

A turbidity curtain will be installed in the water surrounding the work area to prevent the migration of construction materials and debris from the work site. The barge or aquamog will access the water from Parkside Aquatic Park. As per City of San Mateo Standard Plan, the decking will be constructed above the summer high water levels.

The repair, replacement in-kind, and minor extensions of existing privately owned docks can be completed with the following restrictions:

- No more than five new docks shall be constructed each year.
- Pressure-treated wood shall not be used for any dock.

2. Sediment Removal from Stormwater Outfalls

Yearly maintenance dredging to remove the accumulation and alluvial material in front of the 19th Avenue Creek inlet located just north of Lakeshore Park and the Laurel Creek inlet on the southern side of the Lagoon.

Laurel Creek and 19th Avenue Creek are freshwater streams discharging to the Lagoon primarily during the winter months. Silt, sediment and debris will be dredged and removed from the Lagoon until it reaches original design depth of six feet. Dredging will be done with an Aquamog equipped with a small sealed 12 cubic yard (cy) clambucket to scoop material directly onto a low draft barge for transport to the access area and staging area at Parkside Aquatic Park. The barge will transport the material to the park where it will be removed by an excavator to sealed 10-wheeled trucks. The material will then be transported for dewatering to an upland area in Laguna Vista Park at the south end of the

Lagoon. After transport an excavator will stockpile material in a holding area designed to dewater solids via infiltration, surrounded by K-rails and straw waddles. A silt fence will be installed surrounding the exterior straw waddle to act as an additional runoff control measure. The dredged material will be dumped in the containment area and the decant water will be captured, settled, and discharged for infiltration. The material will be piled and aerated to remove any remaining water to facilitate offhaul and final disposal.

Sediment may be removed during the work window specified below, with the following restrictions:

- Sediment, vegetation or debris may be removed with mechanized equipment.
- Removal of up to a maximum 750 cubic yards (cy) per outfall per year is covered under this Agreement.

3. Aquatic Vegetation Harvesting

Mechanical harvesters are used intermittently in the Lagoon throughout the late spring and summer (June through August), primarily for the control of nuisance widgeon grass and filamentous algae that interfere with safe boating, water quality, and water flow. Harvesting removes nuisance biomass from the lagoon, thereby helping to reduce a nutrient source. This is a significant benefit to the overall health of the lagoon, which is impaired by Fecal Indicator Bacteria (FIB). The accumulation of biomass promotes and harbors bacteria, including FIB; as well as promoting reduced dissolved oxygen during the cooler evenings. This integrated approach to nuisance algae management helps minimize potential adverse environmental impacts from pesticide use. Harvesting is an efficient means of vegetation and algae control, especially in the open waters throughout the center of the lagoon where the vessels can operate without obstruction. Harvesters cannot work close to the shorelines due to shallow waters, and therefore do not operate in the far southern end of the lagoon near saline emergent wetlands. Approximately 188 cubic yards of nuisance vegetation from lagoon waters between June and August, 2016 were harvested. The amount of vegetation harvested per year fluctuates greatly due to seasonal variations from year to year.

Harvesting equipment is mobilized to the site in May. All equipment is cleaned, dried, and inspected according to the contractor's Aquatic Invasive Species – Hazard Analysis and Critical Control Point Plan (AIS-HACCPP). Once the harvester arrives at the lagoon it does not leave the site until September when it returns to their yard. The vessels are staged and launched from the Hillsdale boat launch area which consists of a gated lot and concrete boat ramp. Harvested material is stockpiled and allowed to dewater at the Hillsdale Launch

ramp before it is transported to a landfill for green-waste disposal within 48 hours.

4. Bank Protection

Most of the lagoon is designed with a 5:1 horizontal to vertical side slopes. Periodically, there are areas where existing bank armoring has been undermined and needs to be repaired. There are also areas that need bank protection where the shoreline has been eroded and exposed. The eroded shoreline areas are in locations where wave action is increased from motorboat activity. The typical bank protection material used in the lagoon is quarter ton angular rock.

Access for slope construction and repair will be from upland areas, if accessible, or from the water. If access is from the water, the material will be transported to the site by a barge. Depending on the material's size, it will be placed by hand or by an aquamog. Before any material is set, a layer of 16-ounce filter fabric will be placed on the slope to prevent the loss of slope material through void spaces. Before any work begins, a silt fence will be installed in the water on the downslope side of construction. Water access and staging will be from the boat ramp and parking lot at Parkside Aquatic Park.

Repair, Replace or Maintain Existing Bank Protection

Replacement or repair of existing damaged or failed sections of rock riprap bank stabilization with the following restrictions:

- Placement of rip-rap above or below failed sections of structures to aid in integrity of those structures. Riprap of proper size and weight to withstand wave action will be set below grade and keyed into the bank.
- Work will be confined to the damaged or failed sections and immediate adjacent bank area affected by the damage failure.
- Other bank stabilization measures that may be employed include broadcast and hydro-seeding, riparian/marsh vegetation planting and other bioengineering techniques.
- Saltmarsh vegetation shall be protected from damage to the greatest extent possible during repair and replacement.
- This activity does not include any new project sites which may need structural repair (for e.g. placement of new riprap or a new retaining wall where these structures have not been installed).

New Bank Protection

New bank stabilization will occur with the following restrictions:

- All new bank stabilization will incorporate bioengineering techniques only or biotechnical techniques if bioengineering is infeasible.

5. Fences

Construction, maintenance and improvement of fences along established property lines. Several private shoreline parcels have fences protruding below the Lagoon's summer high water level.

Construction of New Fences

New fences will be constructed with the following restrictions:

- No new fences will be constructed below the point on the shoreline intersected by the plane of the summer high water level
- Up to 20 linear feet of new fence shall be installed per year

Existing Fences

Repair, improvement and maintenance of existing fences will occur with the following restrictions:

- Up to 40 linear feet of fence repairs per year

6. Beach Sand Replenishment:

Sand replacement typically occurs once a year at Parkside Aquatic Park and Lakeshore Park. Each beach has a concrete path on the upland side and replenishment occurs below and to the side of the path. The sand is replenished this way to maintain a gradual transition from the walkway to the beach for safety reasons. Additional sand is placed around the children's play area at Parkside Aquatic Park.

The concrete path is approximately 120 feet from the shoreline at Parkside Aquatic Park and 100 feet from the shoreline at Lakeshore Park. Sand is never replenished at the shoreline. Staging and access is located in the parking lot areas of each park. Replenishment will be 20-mesh Bay reclaimed sand. The sand will be spread by hand or an excavator.

Beach replenishment will occur with the following restrictions:

- Beach replenishment shall occur once per year.
- Only hand tools shall be used to spread the sand when within 50 feet of the shoreline.

7. Debris Removal

A litter boom is installed at the southern end of the Lagoon to collect debris flowing in from the Laurel Creek and O'Neil Slough inlets. This debris will be removed as needed. Typical materials that are collected behind the boom are wood, recyclables, and trash. An airboat will be used to remove the material and transport it to a City owned waste container at Parkside Aquatic Park. The airboat will access the lagoon from the boat ramps at Parkside Aquatic Park. The City anticipates boom cleaning to occur once approximately every 4 months.

PROJECT IMPACTS

Existing fish or wildlife resources the routine maintenance activities could potentially substantially adversely affect include:

- Green sturgeon (*Acipenser medirostris*) listed as threatened under Endangered Species Act (ESA) and a state Species of Special Concern (SSC);
- Nearshore marine fish species such as surfperch (Embiotocidae), topsmelt (*Atherinops affinis*), sculpin, and rays and sharks (Elasmobranchii);
- Saltmarsh wandering shrew (*Sorex vagrans halicoetes*), a SSC;
- Migratory, nesting and foraging waterfowl;
- Foraging Ridgeway's rail (*Rallus obsoletus*, formerly California clapper rail), listed as endangered under the CESA and ESA and fully protected under the FGC;
- Saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), a SSC;
- Alameda song sparrow (*Melospiza melodia pusillula*), a SSC;
- Foraging California black rail (*Laterallus jamaicensis coturniculus*), listed as endangered under CESA and ESA and fully protected under the FGC;
- Coastal marsh milk-vetch (*Astragalus pycnostachyus var pycnostachyus*) designated as a Rare Plant Rank (RPR) 1B;
- Point Reye's Bird's-beak (*Chloropyron maritimum* ssp. *polustre*), designated as RPR 1B;
- California seablite (*Saueda californica*), listed as Endangered under ESA and designated as RPR 1B;
- Saline clover (*Trifolium hydrophium*), designated as RPR 1B;
- Temporary impacts to open water;
- Saline emergent wetlands

The adverse effects the project could potentially have on the fish or wildlife resources identified above, without implementation of the Measures to Protect Fish and Wildlife Resources specified below, include:

- Potential increase in sediment transport during project activities;
- Increase in turbidity during project activities;
- Disruption to nesting and foraging birds;
- Colonization by exotic plant or animal species;

- Direct impacts from dredging on benthic organisms,
- Long-term release of contaminants.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

- 1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.
- 1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.
- 1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. CDFW shall be notified at Suzanne Deleon, at suzanne.deleon@wildlife.ca.gov, (831) 440-9433, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-944-5500) or fax (707-944-5553). In that event, CDFW shall contact Permittee to resolve any conflict.
- 1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the work site(s) at any time to inspect routine maintenance activities performed and to verify compliance with this Agreement. 24-hour notice will be provided to private dock owners prior to inspections.
- 1.5 Additional Measures. As a result of any field inspection, CDFW may require that additional measures be applied to specific activities to protect sensitive biological resources. Such measures may be amended into this Agreement with the agreement of both parties, or if an exception to authorized activities is identified, Permittee may be asked to submit separate written notification to CDFW pursuant to Condition 1.7, below.
- 1.6 Authorized Routine Maintenance Activities. Only those activities specifically described in the Project Description shall be conducted under this Agreement.

1.7 Exceptions to Authorized Activities. Permittee shall submit separate written notification (Forms FG 2023 and FG 2024) pursuant to Section 1602 of the FGC, together with the required fee prescribed in the CDFW Streambed Alteration Agreement fee schedule, and otherwise follow the normal notification process prior to the commencement of work activities in all cases where one or more of the following conditions apply:

The proposed work does not meet the criteria established for routine maintenance activities in the Project Description of this Agreement;

The nature of the proposed work is substantially modified from the work described in the Project Description of this Agreement;

CDFW advises Permittee that conditions affecting fish and wildlife resources have substantially changed at a specified work site or that such resources would be adversely affected by the proposed maintenance activity; and/or;

The proposed work would adversely impact a State of California (State) Species of Special Concern or State or federally listed rare, threatened, endangered or candidate species or its habitat.

1.8 CDFW-Approved Qualified Biologist(s) and Biological Monitor(s). Within a minimum of 30 days prior to initiating special-status surveys within the project area, Permittee shall submit to CDFW for approval, the names and resumes of all biologists and biological monitors involved in conducting surveys and/or monitoring work.

A qualified biologist is an individual who shall have a minimum of five years of academic training and professional experience in biological sciences and related resource management activities with a minimum of two years conducting surveys for each species that may be present within the routine maintenance project area.

A biological monitor is an individual who shall have academic and professional experience in biological sciences and related resource management activities as it pertains to this project, experience with construction-level biological monitoring, be able to recognize species that may be present within the routine maintenance project area, and be familiar with the habits and behavior of those species.

1.9 Unauthorized Take. This Agreement does not authorize the take of any State or federally listed threatened species, endangered species, Species of Special Concern or candidate species. If CDFW determines, or Permittee finds, that there are such species on the work site, Permittee shall notify CDFW and/or US Fish and Wildlife Service (USFWS), as appropriate. Permittee shall immediately cease work until CDFW and other applicable agencies deem that the concern

over special status species has been resolved. This Agreement does not authorize capture and/or handling of listed species.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

Work Periods

- 2.1 Seasonal Work Period for Dredging, New Dock Installation using Poured Concrete and Beach Sand Replenishment. To avoid or minimize adverse impacts to fish and wildlife and their habitats, work within the Lagoon for these activities shall be limited to April 15 to October 31.
- 2.2 Seasonal Work Period for Dock Repair, Bank Stabilization, Fence Repair and Installation. The work for these activities may occur during the time when the reservoir is normally lowered during the annual drawdown period from January 15 to February 15 to facilitate access and repairs. If not completed during this drawdown period, then the Seasonal Work Period as stated in Measure 2.1 shall be followed. All weather forecast and precipitation measures shall be followed.
- 2.3 Seasonal Work Period for New Dock Installation using Precast Concrete. New dock installation using precast concrete may be conducted at any time provided that the homeowners follow the requirements of the standard specification packet issued by the City of San Mateo.
- 2.4 Seasonal Work Period for Debris Removal. Minor debris removal that does not require excavation, and that is immediately necessary to prevent blocking the inlets, may be conducted at any time.
- 2.5 Seasonal Work Period for Activities near Joinville Park. To avoid impacts to saltmarsh dependent species, any work conducted within 700 feet of Joinville Park shall be conducted from September 1 to October 15.
- 2.6 Seasonal Work Period for Revegetation. Revegetation work, using hand tools, may occur year-round.
- 2.7 Completion by End of Seasonal Work Period. The sediment removal and new dock installation using poured concrete shall not be initiated unless there is a high likelihood that it can be completed before the end of the seasonal work window designated in Measure 2.1. After September 15 of each year, projects that have not been started or are still underway shall be evaluated to ensure they can be completed before the end of the seasonal work period. Those projects

unlikely to be completed before the end of the seasonal work windows shall not be started.

2.8 **Work Period Modification.** If Permittee needs more time to complete project activities, work may be authorized outside of the work period as stated in Measure 2.1 and 2.2 and extended on a day-to-day basis by CDFW representative, Suzanne DeLeón, at suzanne.deleon@wildlife.ca.gov, (831) 440-9433, or if unavailable, through contact with the CDFW Bay Delta Regional Office by mail, phone (707-944-5500) or fax (707-944-5553). Permittee shall submit a written request for a work period variance to CDFW for approval at least seven (7) calendar days prior to October 31. The work period variance request shall: 1) describe the extent of work already completed; 2) detail the activities that remain to be completed; 3) detail the time required to complete each of the remaining activities; and 4) provide photographs of both the current work completed and the proposed site for continued work. Work period variances are issued at the discretion of CDFW. CDFW will review the written request to work outside of the established work period and may require additional measures to protect fish and wildlife resources as a condition for granting the variance. Any additional measures shall be made part of this Agreement.

Construction Measures

2.9 **Work During Dry Period Only.** Work within the Lagoon shall be restricted to periods of low rainfall (less than ¼ inch of rain in a 24-hour period) and dry weather as allowed during the work periods specified above. In addition, no work shall occur during a dry out period of 24 hours after the above referenced wet weather.

2.10 **Weather Forecast.** Precipitation forecasts shall be considered when planning maintenance activities. Permittee shall monitor the 72- hour forecast from the National Weather Service (<http://www.nws.noaa.gov>). When there is a forecast of more than 40% chance of rain or at the onset of any unanticipated precipitation, the Permittee shall remove all equipment and shall implement erosion and sediment control measures and all routine maintenance activities shall cease.

2.11 **Washing of Equipment.** In order to prevent the movement of invasive plant and animal species, fungi, and other biotic agents from external ecological regions, the equipment used shall be washed prior to entry and staging onto construction sites.

2.12 **Decontamination of Clothing and Equipment.** Any equipment that will enter the water during construction shall be decontaminated before and after construction to prevent the spread of aquatic diseases, such as ranavirus, and invasive aquatic species, such as quagga mussel. Workers shall also decontaminate waders, boots and other clothing that will come in direct contact with the water.

Decontamination of clothing and equipment shall be done through one or more of the following methods:

- Drying equipment in an upland location following last aquatic use. If average daytime temperatures exceed 80° F, drying times shall be at least 7 days. If average daytime temperatures are below 80° F, drying times shall be at least 30 days;
- Scalding water wash (at least 140° F) with varying high and low pressure spray to dislodge pathogens, vegetation, and contaminated sediment;
- Freezing at a temperature of less than 32° F for more than 72 hours; and/or
- Soaking in a hospital-grade disinfectant solution for at least two minutes (or longer, based on product directions). To avoid harm to non-target species, disinfected clothing and equipment shall be thoroughly rinsed in a water bath before entering the stream.
- Repeat decontamination is required only if the equipment/clothing is removed from the site, used within a different waterbody, and returned to the project site. Decontamination shall take place in an upland location, and any chemicals used during decontamination shall be prevented from entering water bodies or stormwater drains.

2.13 Stockpiling of Soil. No castings or spoils shall be placed on the stream side of the bank where it could enter the stream or cover riparian or wetland areas. If soils are stockpiled, the stockpile shall be located away from the creek and a straw waddle or other erosion control device shall surround the stockpile until it is disposed of or used.

2.14 Containment Area on Barge. A containment area shall be established around the perimeter of the barge, as feasible, by laying hay waddles and /or Visqueen around the work areas on the barge. If discharge from dredge spoils is discovered by any of the personnel on board the barge, activities shall cease until appropriate corrective measures have been completed and the discharge source has been repaired or halted. CDFW shall be notified within 24 hours of discharge.

2.15 Silt Boom while Dredging. Permittee shall deploy silt curtains around the project site to prevent heavily silted water from flowing into the Lagoon or outfall pumps. The silt curtain shall be long enough to maintain contact with the bed of the Lagoon at all times. The silt boom shall be maintained throughout all phases of the excavation activities, monitored for effectiveness and repaired or replaced as needed.

2.16 **Dredge Material**. At no time shall any dredge materials or any other substance deemed deleterious to fish or wildlife be allowed to enter the water or be placed where they may be washed into the water. Any contaminated water/materials from the Project activities shall be pumped or placed into a holding facility and removed for proper disposal. If material is released into the water, CDFW shall be notified within 24 hours of detecting the problem. Project operations shall not be resumed until the source of discharge is identified and remedied. When the situation is remedied to the satisfaction of CDFW, Project operations may resume.

Wildlife Protection Measures

2.17 **Education Session before Commencement of Work**. Prior to any routine maintenance activity, within or near saline emergent wetlands located at the far north and far south of the main channel, the biological monitor or qualified biologist shall conduct an education session on species that may be present at the project work site. The training shall consist of basic identification of the species, their basic habits, how they may be encountered in the work area, and procedures to follow when they are encountered. Any personnel joining the work crew later shall receive the same training before beginning work. The penalties for non-compliance of conditions in this Agreement shall be relayed to all project personnel.

2.18 **Sensitive Plant Survey**. Prior to any routine maintenance activity within or near saline emergent wetlands located at the far north and far south of the main channel, a qualified biologist shall conduct protocol-level surveys for sensitive plant species during the peak blooming period for each plant species that could be present within the project area. For information on special status plant survey methodology visit: <https://www.wildlife.ca.gov/Conservation/Plants>.

2.19 **Sensitive Plant Exclusion**. If, at any time, a special-status plant species is found, it shall be flagged for avoidance, and site-specific avoidance buffers approved by CDFW shall be implemented. All the special-status plants and associated buffer zones shall be avoided during project activities. CDFW may submit additional written avoidance, minimization and mitigation measures if special-status plants are found in the project area. Permittee may be required, as prescribed in CESA and FESA, to obtain take coverage for any species these acts protect prior to commencement of the project. The additional measures shall be considered part of this Agreement.

2.20 **Nesting Bird Survey**. If covered activities are scheduled during the nesting season of raptors and migratory birds, a focused survey for active nests of such birds shall be conducted by an approved qualified biologist within 15 days prior to the beginning of project-related activities. Surveys shall be conducted in all suitable habitat located at routine maintenance project work sites, in staging,

storage and stockpile areas. The minimum survey radii surrounding the work area is typically the following: i) 250 feet for passerines; ii) 500 feet for other small raptors such as accipiters; iii) 1,000 feet for larger raptors such as buteos. The bird survey methodology and the results of the survey shall be submitted to the CDFW prior to commencement of project activities.

Nesting seasons shall be defined as followed: i) March 15 to August 30 for smaller bird species such as passerines; ii) February 15 to September 15 for raptors.

- 2.21 **Active Nests.** An active nest is defined as a nest having eggs or chicks present. If active nests are found, the Permittee shall consult with the CDFW and the USFWS regarding appropriate action to comply with the Migratory Bird Treaty Act of 1918 and the FGC of California. If a lapse in project-related work of 15 days or longer occurs, another focused survey shall be conducted before project work is reinitiated. If active nests are found, the Permittee shall consult with the CDFW and the USFWS prior to resumption of project activities.
- 2.22 **Active Nest Buffers.** Active nest sites shall be designated as "Ecologically Sensitive Areas" and protected (while occupied) during routine maintenance activities with the establishment of a fence barrier surrounding the nest site. The typical minimum distances of the protective buffers surrounding each identified nest site is usually the following: i) 1,000 feet for large raptors such as buteos; ii) 250 feet for small raptors such as accipiters; iii) 250 feet for passerines. A biological monitor shall monitor the behavior of the birds (adults and young, when present) at the nest site to ensure that they are not disturbed by project-related activities. Nest monitoring shall continue during project-related construction work until the young have fully fledged, are no longer being fed by the parents and have left the nest site, as determined by a the approved biological monitor.
- 2.23 **Nesting Habitat Removal or Modification.** No trees, shrubs or wetland and marsh habitat shall be disturbed that contain active bird nests until all eggs have hatched, and young have fully fledged (are no longer being fed by the adults, and have completed left the nest site). To avoid potential impact to nesting birds, any removal, trimming or pruning of vegetation shall be conducted during the time period of September 16 to February 14, if feasible. No habitat removal or modification shall occur within the Ecologically Sensitive Area fenced nest zone even if the nest continues to be active beyond the typical nesting season for the species (refer to Measure 2.19), until the young have fully fledged and will no longer be adversely affected by the project.
- 2.24 **Sensitive Species Sightings.** If there are any sightings of special-status plant and wildlife species, all project activities shall cease and CDFW shall be contacted within 24 hours of the sighting. Through consultation with CDFW, additional measures may be developed to protect special-status species if found.

- 2.25 **Injury or Mortality of Special-Status Species.** If Permittee or its employees, contractors, or agents injures or kills a special-status species, or finds any such animal injured or dead, all activities in the work area shall immediately cease, and CDFW and USFWS shall be notified by telephone within 30 minutes of the discovery. A written report detailing the time, location, and general circumstances under which the dead or injured individual animal was found shall be submitted to CDFW and the USFWS no later than five (5) business days following the incident.
- 2.26 **Stop Work Authority.** The biological monitor or qualified biologist shall have the responsibility and authority of stopping the project if any crews or personnel are not complying with the provisions outlined in this Agreement.
- 2.27 **Change of Conditions.** If, in the opinion of CDFW, conditions arise, or change, in such a manner as to be considered deleterious to the stream or wildlife, operations shall cease until corrective measures approved by CDFW are taken.

Vegetation Removal

- 2.28 **No Removal of Coastal Salt Marsh Vegetation.** No coastal salt marsh vegetation shall be removed from the project site and access areas without the prior approval from CDFW. CDFW shall be consulted regarding the development of suitable protective and mitigation measures if vegetation will be removed. Upon determination of those measures, the CDFW shall submit written avoidance and mitigation measures to the Permittee and those measures shall be considered part of this Agreement.
- 2.29 **Removal of Vegetation.** Disturbance or removal of vegetation shall not exceed the minimum necessary to complete activities. Vegetation outside the project work area shall not be removed or damaged without prior consultation and written approval of a CDFW representative. Hand tools shall be used to trim vegetation to the extent necessary to gain access to the work sites.

Routine Maintenance Limits

- 2.30 **Limits on Sediment Removal in the Lagoon.** Sediment removal shall be limited to the amounts and timing specified in the Project Description. Specifically, sediment removal shall be limited to 750 cy in each year. No more than one dredging event shall be conducted each year.
- 2.31 **Removal of Native Material.** Except as explicitly described in this Agreement, the removal of native soils, rock, gravel, vegetation, and vegetative debris from the Lagoon or Lagoon banks is prohibited.
- 2.32 **Dock Repair and Installation.** Pressure-treated wood shall not be used for replacement or newly constructed docks.

Erosion and Sediment Control Measures

- 2.33 **Silt Control Measures.** Silt control measures shall be utilized throughout all phases of the project where silt and/or earthen fill threaten to enter Waters of the State.
- 2.34 **Silt Control Effectiveness.** Silt control structures shall be monitored daily for effectiveness and shall be repaired or replaced as needed. Passage of sediment beyond the sediment barrier is prohibited. If the sediment barrier fails to retain sediment, construction activities shall cease and corrective measures shall be employed.
- 2.35 **Cease Project for Elevation of Turbidity Levels.** Upon CDFW determination that turbidity/siltation levels resulting from project related activities constitute a threat to aquatic life, activities associated with the turbidity/siltation shall be halted until effective CDFW-approved control devices are installed or abatement procedures are initiated. CDFW may take enforcement action if appropriate turbidity and siltation control measures are not deployed.
- 2.36 **Native Vegetation Seeding and Planting.** All other areas of disturbed soil which drain toward State waters shall be planted with propagules (seeds, cuttings and/or divisions) of locally-collected native plants appropriate for the soil and hydrological conditions of the site. Locally native wildflower and/or shrub seeds may also be included in the planting mix.
- 2.37 **Prohibited Plant Species.** Permittee shall not plant, seed, or otherwise introduce invasive plant species. Prohibited exotic plant species include those categorized as "High" and "Moderate" in the California Invasive Plant Council's Inventory Database, which is accessible at: <http://www.cal-ipc.org/paf/>.

Equipment and Vehicles

- 2.38 **Vehicle/Equipment Maintenance.** Any equipment or vehicles driven and/or operated in proximity of the Lagoon or creeks shall be maintained in good working order to prevent the release of contaminants that if introduced to water could be deleterious to aquatic life, wildlife, or riparian habitat. Vehicles shall be moved away at least 150 feet from the stream prior to refueling and lubrication.
- 2.39 **Equipment Storage and Stationary Operation.** Staging and storage areas for equipment, materials, fuels, lubricants and solvents shall be located outside of the stream channel and banks. Stationary equipment such as motors, pumps, generators, compressors and welders, located adjacent to the Lagoon or stream, shall be positioned over drip-pans. Any equipment or vehicles driven and/or operated in proximity to the stream must be checked and maintained daily.

Toxic or Hazardous Materials

- 2.40 **Concrete – Primary Containment.** Permittee shall install the necessary containment structures to control the placement of wet concrete and to prevent it from entering into the Lagoon outside of those structures. No concrete shall be poured within the high flow line if the 30-day weather forecast indicates any chance of rain.
- 2.41 **Concrete – Designated Monitor.** At all times when Permittee is pouring or working with wet concrete, there shall be a designated monitor to inspect the containment structures and ensure that no concrete or other debris enters into the channel outside of those structures. Runoff from the concrete shall not be allowed to enter the stream channel at any time.
- 2.42 **Isolate Poured Concrete for 30 Days.** Poured concrete shall be excluded from the wetted channel for a period of 30 days after it is poured. During that time the poured concrete shall be kept moist, and runoff from the concrete shall not be allowed to enter a live stream. CDFW-approved commercial sealants may be applied to the poured concrete surface where difficulty in excluding water flow for a long period may occur. If sealant is used, water shall be excluded from the site until the sealant is dry.
- 2.43 **Storage and Handling of Hazardous Materials.** Any hazardous or toxic materials that could be deleterious to aquatic life shall be contained in watertight containers or removed from the project site. Such materials include, but are not limited to, debris soil, silt, bark, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, and oil or other petroleum products. These materials shall be prevented from contaminating the soil and/or entering the waters of the State. Any such materials, placed within or where they may enter a stream or lake, by Permittee or any party working under contract, or with permission of Permittee, shall be removed immediately. BMPs shall be employed to accomplish these requirements.
- 2.44 **Removal of Trash and Debris.** Permittee shall remove all raw construction materials and wastes from work sites following the completion of maintenance activities. Food-contaminated wastes generated during work shall be removed on a daily basis to avoid attracting predators to work sites. All temporary fences, barriers, and/or flagging shall be completely removed from work sites and properly disposed of upon completion of maintenance activities. Permittee or its contractors shall not dump any litter or construction debris within the riparian/stream zone.

Spills and Emergencies

2.45 **Spill Containment.** All activities performed in or near a stream shall have absorbent materials designated for spill containment and clean-up activities on-site for use in an accidental spill. The Permittee shall immediately notify the California Emergency Management Agency at 1-800-852-7550 and immediately initiate the clean-up activities. CDFW shall be notified by the Permittee and consulted regarding clean-up procedures.

3. Reporting Measures

Permittee shall meet each reporting requirement described below.

3.1 **Notification of Proposed Activities.** Given that Routine Maintenance Activities begin in January and may occur year-round, on an annual basis, Permittee shall provide CDFW written notification of maintenance projects completed and of proposed routine maintenance activities to be performed in the upcoming year. Annual reports shall include a brief project description, amount of sediment removed, quantify of vegetation removed, number of docks replaced and repaired and description of bank repair and revetment. The appropriate fee from the current CDFW Streambed Alteration Agreement Fee Schedule for work completed under this Agreement based upon the number of projects completed in the reporting period shall also accompany the notice of proposed activities. The annual report is due by January 15 of each year. A report shall be submitted to CDFW regardless of whether work was completed. CDFW may terminate this Agreement if reports and fees are not submitted by this deadline.

CDFW shall append annual notification reports of proposed maintenance activities to this Agreement. For streamlined tracking, Permittee shall label annual notification reports according to the following convention: Exhibit A-[year] (e.g. Exhibit A-2017, Exhibit A-2018).

3.2 **Species Survey Methods and Results.** Prior to commencement of project activities the Permittee shall submit to CDFW a report containing the species survey methods and results of the survey. Refer to Notification Number 1600-2013-0268-R3 when submitting the report to the CDFW.

3.3 **Notification to the California Natural Diversity Database (CNDDB).** If any listed, rare, or special status species are detected during project surveys or on or around the project site during project activities, the Permittee shall submit CNDDB Field Survey Forms to CDFW in the manner described at the CNDDB website (http://www.dfg.ca.gov/biogeodata/cnddb/submitting_data_to_cnddb.asp) within 14 working days of the sightings. Copies of such submittals shall also be submitted to the CDFW regional office as specified below.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Brad Underwood
City of San Mateo Public Works Department
330 West 20th Street
San Mateo, CA 94403
Work (650) 522-7300
bunderwood@smgov.org

To CDFW:

California Department of Fish and Wildlife
Bay Delta Region
7329 Silverado Trail
Napa, California 94558
Attn: Lake and Streambed Alteration Program – Suzanne DeLeón
Notification #1600-2013-0268-R3
Fax (707) 944-5553
Suzanne.Deleon@wildlife.ca.gov

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the

corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the applicable FGC section 711.4 filing fee listed at http://www.wildlife.ca.gov/habcon/ceqa/ceqa_changes.html.

TERM

This Agreement shall expire on **December 31, 2021** unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to

protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

EXHIBITS

The documents listed below are included as exhibits to the Agreement and incorporated herein by reference.

- A. Annual Notifications of Proposed Work (reserved for future exhibits)

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR CITY OF SAN MATEO



Brad Underwood
Permittee

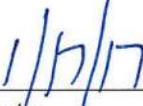


Date

FOR DEPARTMENT OF FISH AND WILDLIFE



Craig J. Weightman
Environmental Program Manager



Date

Prepared by: Suzanne DeLeón
Environmental Scientist

Date Sent: September 15, 2016; December 16, 2016

EXHIBIT A
ANNUAL NOTIFICATIONS OF COMPLETED WORK
(Reserved for future exhibits)



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



October 5, 2021

Sarah Scheidt
City of San Mateo Public Works Department
330 West 20th Street
San Mateo, California 94403

Dear Ms. Scheidt:

Extension of Lake or Streambed Alteration Agreement, Notification No. 1600-2013-0268-R3, Marina Lagoon General Maintenance Project

The California Department of Fish and Wildlife (CDFW) received your request to extend Lake or Streambed Alteration Agreement (Agreement) and extension fee, for the above referenced agreement. CDFW hereby grants your request to extend the Agreement expiration from December 31, 2021, to December 31, 2026. All other conditions in the original Agreement remain in effect.

Copies of the original Agreement and this letter must be readily available at project worksites and must be presented when requested by a CDFW representative or other agency with inspection authority.

If you have any questions regarding this letter, please contact Will Kanz, Environmental Scientist at (707) 337-1187 or by email at Will.Kanz@wildlife.ca.gov.

Sincerely,

DocuSigned by:

A handwritten signature of Craig Weightman.

7988F6C4FDC24F2...

Craig Weightman, Environmental Program Manager

cc: California Department of Fish and Wildlife

Will Kanz, Environmental Scientist
Will.Kanz@wildlife.ca.gov

Wesley Stokes, Senior Environmental Specialist (Supervisor)
Wesley.Stokes@wildlife.ca.gov



State of California – Natural Resources Agency
 DEPARTMENT OF FISH AND WILDLIFE
 Bay Delta Region
 2825 Cordelia Road, Suite 100
 Fairfield, CA 94534
 (707) 428-2002
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director



January 26, 2022

Sarah Scheidt
 City of San Mateo Public Works Department
 330 West 20th Avenue
 San Mateo, California 94403

Dear Ms. Scheidt:

Amendment of Lake or Streambed Alteration, Notification No. 1600-2013-0268-R3, Marina Lagoon General Maintenance Project

The California Department of Fish and Wildlife (CDFW) has received your request to amend Lake or Streambed Alteration Agreement 1600-2013-0268-R3 (Agreement) and the required fee in the amount of \$1,572.50 for a major amendment. Your request to amend the routine maintenance Agreement includes adding work activities to the project description and modifying the work season:

- Additional sediment removal to restore flow capacity into the Lagoon at the 16th Avenue Channel gate and O'Neil Slough tide gate (in tidal waters).
- At the 16th Avenue Channel, additional sediment removal will occur 75 feet upstream of the lagoon gate, in a trapezoidal, concrete-lined channel approximately 50 feet in width near top of bank with a narrower bottom width. Accumulated sediment is approximately 3 feet deep. Sediment removal at this location will occur once during the proposed Project's 5-year term, for an estimated total of 500 cubic yards. Sediment removal will be done with an excavator with a standard or long-reach arm stationed on land.
- At O'Neil Slough tide gate the Project will remove 10 cubic yards of sediment, and trash from the Bay side of the O'Neil Slough inlet gates in the first year. Up to 6 cubic yards of sediment will be removed in subsequent years. Sediment and debris removal will be limited to the cement inlet gate structure bounded by wingwalls and a cement floor, an area of 400 square feet or 0.01 acres. No removal will occur outside of the developed footprint. Sediment removal will only occur during low tide to minimize disturbance of adjacent sediment and performed using an excavator with standard or long-reach arm stationed above the O'Neil Slough inlet. Work is anticipated to require one to two days of excavation and is expected to occur one per year during September or October.
- Stormdrain outfall repair is needed to maintain proper function for stormwater flows. At stormdrain outfall locations, no more than a total of 40 cubic yards will be removed per year. At several of the City's 59 known stormdrain outfall sites, small amounts of accumulated mud, rocks and debris will be cleared, and pipes/flapgates repaired as needed, to maintain proper capacity and operation. Repairs will not be conducted in-water as outfalls are either located above the waterline or will be exposed during the low-water maintenance period. No dewatering will be done as part of stormdrain outfall repair.
- An additional 20 linear feet of new fence construction per year is allowed under this amendment. This brings the total new fence construction per year to 40 linear feet.

Sarah Scheidt
January 26, 2022
Page 2 of 2

- An all around work window for all maintenance activities, except for new dock structures and sediment removal in tidal habitat. Dock repair work will occur year-round.

CDFW hereby agrees to amend the agreement with addition of the following conditions:

2.1. Seasonal Work Period for Dredging, New Dock Installation using Poured Concrete and Beach Sand Replenishment. To avoid or minimize adverse impacts to fish and wildlife and their habitats, work within the Lagoon for these activities shall be limited to April 15 to October 31. The work window may be extended via written request and written CDFW approval (Will.Kanz@wildlife.ca.gov). Work period extension request must be submitted two weeks prior to when work is expected to occur outside of the April 15 to October 31 work window.

All other conditions in the Agreement remain in effect unless otherwise noted herein.

Please sign and return one copy of this letter to acknowledge the amendment. Copies of the Agreement and this amendment must be readily available at project worksites and must be presented when requested by a CDFW representative or agency with inspection authority.

If you have any questions regarding this letter, please contact Will Kanz, Environmental Scientist at (707) 337-1187 or by email at Will.Kanz@wildlife.ca.gov.

Sincerely,

DocuSigned by:

Craig Weightman, Environmental Program Manager
7988F6C4FDC24F2...

cc: California Department of Fish and Wildlife

Wesley Stokes, Senior Environmental Scientists (Supervisor)
Wesley.Stokes@wildlife.ca.gov

ACKNOWLEDGEMENT

I hereby agree to the above-referenced amendment.

Print Name: Sarah Scheidt Date: 1/26/2022
Signature: 
7775E43A3294481...

CDFW Permit Amendment #2

Anticipated June 2025

MARINA LAGOON SEDIMENT REMOVAL PROJECT

APPENDIX B
GRAIN SIZE INFORMATION

San Mateo Lagoon 2025 Sediment Grain Size

| Analyte | ML-2025 |
|-------------------------------|---------|
| % Solids | 42.6 |
| Grain Size (% dry wt) | |
| Gravel (>2.00 mm) | <0.01 |
| Sand (0.0625 mm to 2.00 mm) | <0.01 |
| Silt (0.0039 mm to 0.0625 mm) | 55.39 |
| Clay (< 0.0039 mm) | 44.62 |
| Percent fines (Silt+Clay) | 100 |

Notes:

All concentrations reported as being below the laboratory MDL are reported above as < the MDL.