

## **INSTRUCTIONS TO BIDDERS**

### **Federal Aid Contracts**

#### **1. INSTRUCTIONS**

The bidder shall carefully examine the instructions contained herein and satisfy himself/herself as to the conditions with which he/she must comply prior and with the conditions affecting the award of the contract.

This project will have a pre-bid meeting. The purpose is to explain the project and project requirements, answer questions, and provide an opportunity for Disadvantaged Business Enterprises (DBEs) and other small business firms to interact with larger firms prior to bids being prepared and submitted. Therefore, DBEs are strongly encouraged to attend and make known both their interest and areas of expertise.

The bidder's attention is directed to the City of Stockton's "*Standard Specifications*" ([www.stocktonca.gov/government/departments/publicWorks/enginStand.html](http://www.stocktonca.gov/government/departments/publicWorks/enginStand.html)) for additional detailed information regarding the project requirements.

#### **2. COMPETENCY OF BIDDERS**

(a) LICENSE- At the time of award, through contract acceptance, the selected Contractor shall be properly licensed in accordance with the laws of the State and the City of Stockton (Public Contract Code 10164).

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

Only vendors/contractors that are subject to the public works statutes would be required to register. A&E firms that are not doing or subcontracting out tasks subject to public work requiring prevailing wages are not subject to registration and public works laws. Design work is not subject to prevailing wages and, therefore, not considered public work, and the firm does not have to register. For example, A&E tasks that are subject to public works laws would be surveying, soil testing, material testing, and building/construction inspection, as there are prevailing wage determinations for these works.

No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code Section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

Department of Industrial Relations- Contractor Registration information and web link:  
<http://www.dir.ca.gov/Public-Works/PublicWorks.html>

In compliance with Senate Bill 854 and the California Labor Code, all Bidders shall include with their Bid proof of registration from the Department of Industrial Relations (DIR) that includes the contractor's Legal Name, Registration Number, License Type/Number for every contractor and subcontractor, regardless of tier. For subcontractor proof of registration that could not be included with the bid, the contractor will be allowed to submit subcontractor registration proof no later than four business days after bid opening.

This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors must submit their certified payroll records directly to the Division of Labor Standards Enforcement Compliance Monitoring Unit, as well as the City of Stockton.

### **3. EXAMINATION OF PLANS, SPECIFICATIONS AND SITE OF THE WORK**

(a) **CONTRACTOR'S RESPONSIBILITY-** The bidder shall examine carefully the site of the work and the plans and specifications therefor. He/she shall investigate and satisfy himself/herself as to conditions to be encountered, the character, quality and quantity of surface, subsurface materials or obstacles to be encountered, the work to be performed, materials to be furnished, and as to the requirements of the bid, plans and specifications of the contract.

(b) **RESPONSIBILITY FOR UTILITIES-** As part of the responsibility stated above and without limitation thereon, the Contractor shall be responsible at his/her own cost for any and all work, expense of special precautions caused or required by the existence or proximity of utilities encountered in performing the work, including, without limitation thereon, repair of any and all damage and all hand or exploratory excavation required. Attention is directed to the possible existence of underground facilities not known to the City or in a location different from that which is indicated on the plans or in the special provisions. The Contractor shall take reasonable steps to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with their service. If the Contractor discovers underground facilities not indicated on the plans or in the special provisions, he/she shall immediately give the Project Manager written notification of the existence of such facilities. Such facilities shall be protected from damage as directed by the Project Manager, and the Contractor will be paid for such work as extra work.

Where it is determined by the Project Manager that the rearrangement of an underground facility, the existence of which is not shown on the plans or in the special provisions, is essential in order to accommodate the improvement, the City will provide for the rearrangement of such facility by other forces, or such rearrangement shall be performed by the Contractor which will be paid for as extra work.

The bidder is cautioned that such utilities may include high pressure fluid pipe lines, communication cables or electrical cables which may be high voltage and the ducts enclosing such cables, and, when working or excavating in the vicinity thereof, the special precautions to be observed at his/her own cost shall also include, but may not be limited to, the following: all such cables and their enclosure ducts shall be exposed by careful hand excavation so as not to damage the ducts or cables nor cause injury to persons, and suitable warning signs, barricades and safety devices shall be erected as necessary or required.

#### **4. DISCREPANCIES OR ERRORS**

If omissions, discrepancies or apparent errors are found in the plans and specifications prior to the date of bid opening, the bidder shall submit a written request for clarification, which will be given in the form of addenda to all bidders if time permits.

#### **5. ADDENDA OR CLARIFICATIONS**

Each bid shall include all addenda or clarifications issued during the bidding period acknowledged by the bidder's signature thereon. Failure to so include or acknowledge an addendum or clarification may result in the bid being rejected as non-responsive.

#### **6. BIDDING DOCUMENTS**

(a) **BID FORMS-** City of Stockton standard bid forms, which, when filled out and executed, may be submitted as a bid. Bids not presented on City forms shall be cause for considering the bid as non-responsive. The bid forms must be submitted in the same name style and manner as used on the bidder's license and pre-qualification. Bid forms may be obtained from the City of Stockton website at: [www.stocktonca.gov/pwbid](http://www.stocktonca.gov/pwbid)

All bids shall give the prices in the manner required by the bid and shall be signed by the bidder or his/her authorized representative, with his/her address. If the bid is made by an individual, his/her name, postal address, and signature must be shown. If the bid is made by a firm or partnership, the name and postal address of the firm or partnership and the signature of one or both partners must be shown; if made by a corporation, the bid shall show the name of the state under the laws of which the corporation was chartered, the name of the corporation and the title of the person who signs on behalf of the corporation. The corporate seal must be used. Only responsive bids will be considered. All bidders shall provide proof of DIR registration (print screen from DIR website <https://efiling.dir.ca.gov/PWCR/Search>).

(b) **LIST OF PROPOSED SUBCONTRACTORS-** Bidder shall list names of all subcontractors performing work in excess of one-half of one percent (0.5%) or \$10,000 (whichever is greater) of the Bidder's total bid on the form provided in the bidding document. Each bidder shall give the name, business address, proof of DIR registration (print screen from DIR website <https://efiling.dir.ca.gov/PWCR/Search>), contractor license number, description of work, and the dollar amount to be PAID the subcontractor, for each subcontractor that will be used on the project.

(c) **BIDDER'S SECURITY-** All bids shall be accompanied by (1) cash, or (2) a cashier's check of a responsible bank, or (3) a check certified by a responsible bank, payable to the order of the City of Stockton for an amount not less than ten percent (10%) of the aggregate of the bid, or (4) bidder's bond executed by a surety authorized by the Insurance Commissioner to transact business of insurance in California, and made out in favor of the City of Stockton for an amount not less than ten percent (10%) of the aggregate of the bid.

Within ten (10) days after the award of the contract, the City of Stockton will return all bidder's security accompanying the bid that is not to be further considered in making the award. Retained bidder's security will be held until the contract has been fully executed.

When the contract for doing said work has been duly entered into and the contract bonds accompanying same have been duly approved and filed, the City Clerk shall certify said facts by voucher to the Administrative Services Officer, who shall draw his/her warrant upon the special deposit fund for the return to the Contractor of said cash or bidder's bond or the proceeds of said

check. If the bidder fails or refuses to enter into the contract to do said work or furnish said supplies or to furnish required bond within ten (10) days after the awards shall have become final, then the cash, cashier's check or certified check shall be forfeited to the City as liquidated damages and shall be transferred to the general fund, or the obligation of the bidder's bond shall be enforced and the proceeds placed in the general fund. The council does not have the power to relieve from or remit such forfeiture.

It is understood that the bid may be rejected at the sole discretion of the City Council of the City of Stockton.

(d) TITLE VI- Title VI of the Civil Rights Act of 1964 requires that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." (42 USC Section 2000d).

<http://www.dol.gov/oasam/regs/statutes/titlevi.htm>

The City of Stockton is committed to complying with the requirements of Title VI in all of its federally funded programs and activities (Bid Forms).

(e) QUALITY ASSURANCE- The City uses a Quality Assurance Program (QAP) to ensure a material is produced to comply with the Contract (Exhibit A).

You may examine the records and reports of tests the Agency performs if they are available at the job site. Schedule work to allow time for QAP.

(f) DISCRIMINATION AND HARASSMENT POLICY- The City of Stockton has a Discrimination and Harassment Policy (Exhibit B). The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating and resolving complaints of discrimination and harassment in the workplace.

(g) NON-COLLUSION DECLARATION- The bidder shall execute a Non-Collusion Declaration in the appropriate space provided in the bid form. Any bid made without such declaration or in violation thereof, and also any contract let thereunder shall be absolutely void unless a correct affidavit is received after the bid deadline with approval of the City Council.

## **7. SUBCONTRACTING** (See also Section 6b).

(a) Pursuant to the provisions in Section 1777.1 of the Labor Code, the Labor Commission publishes and distributes a list of contractors ineligible to perform work as a subcontractor on a public works project. This list of debarred contractors is available from the Department of Industrial Relations at web site: <http://www.dir.ca.gov/dlse/Debar.html>

Contracts for federal-aid projects shall specify the minimum percentage of work that a Contractor must perform with "its own organization." This percentage shall be not less than thirty percent (30%) of the total original contract price.

Before work is started on a subcontract, the Contractor shall file with the Project Manager a written statement showing the work to be subcontracted, the names of the subcontractors and the description of each portion of the work and the dollar amount to be subcontracted.

Contractor shall physically include (not to be incorporated by reference only) in each subcontracts, lower tier subcontracts, and purchase orders that may be made, the "Required Contract Provisions Federal-Aid Construction Clauses" contained in federal Form FHWA-1273 (Bid Forms).

(b) NON-COMPLIANCE- Noncompliance shall be corrected. Payment for subcontracted work involved will be withheld from progress payments due, or to become due, until correction is made. Failure to comply may result in termination of the contract.

(c) PROMPT PROGRESS PAYMENT TO SUBCONTRACTORS- The prime Contractor or subcontractor shall pay a subcontractor under this prime contract not later than 10 days of receipt of each progress payment received from the City of Stockton in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10 days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating Contractor or subcontractor to the penalties, sanctions and other remedies of that section. Any delay or postponement of payment over 30 days of receipt of each payment may take place only for good cause and with the City of Stockton's prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment, or non-payment by the prime Contractor, deficient subcontract performance, or non-compliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

(d) PROMPT PAYMENT OF WITHHELD FUNDS TO SUBCONTRACTORS- The City of Stockton shall hold five percent (5%) retainage from the prime Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to the prime Contractor based on these acceptances. The prime Contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City of Stockton. Any delay or postponement of payment over 30 days may take place only for good cause and following written approval from the City of Stockton. Any violation of this provision shall subject the violating prime Contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime Contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

(e) CONTRACT COMPLIANCE- It is the responsibility of the prime Contractor to provide evidence of all subcontractor payments in accordance with the above stated Prompt Payment provisions. The prime Contractor shall provide access to such records at the request of the City of Stockton.

## **8. DISADVANTAGED BUSINESS ENTERPRISES (DBE)**

This project is subject to Title 49, Part 26.13(b), Code of Federal Regulations [49 CFR 26.13(b)]:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

You are required to take necessary and reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have opportunity to participate in the contract (49 CFR 26). The term "Disadvantaged Business Enterprise" or "DBE" means a for-profit small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in 49 CFR 26.5.

To ensure there is equal participation of the DBE groups specified in 49 CFR 26.5, the City will specify a DBE goal for each Federal-aid transportation contract.

You are required to make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

You are required to either, A) meet the DBE goal shown in the Notice Inviting Bids, or B) demonstrate that you have made adequate good faith efforts to meet this goal.

**FAILURE TO MEET EITHER A) OR B) REQUIREMENTS, ABOVE, WILL RENDER THE BID NON-RESPONSIVE.**

It is your responsibility to verify that a subcontracting firm is properly certified as a DBE at the date of bid opening. For a list of DBEs certified by the California Unified Certification Program, go to: <https://caltrans.dbesystem.com>

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55. Additional information regarding credit for trucking companies can be found under section "Subcontractor and DBE Records."

(a) **PREBID MEETING-** A prebid meeting is scheduled for this project (refer to "Notice Inviting Bids"). The meeting is to inform bidders of project requirements, subcontractors of subcontracting and material supply opportunities, and to provide DBEs the opportunity to meet and interact with prospective bidders.

(b) **DBE COMMITMENT SUBMITTAL-** Bidders are required to submit DBE information on the form "Local Agency Bidder-DBE Commitment (Construction Contracts)," Exhibit 15-G (hereafter referred to as DBE Commitment form). Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:

If the DBE Commitment form is not submitted with the bid, the DBE Commitment form must be received by the City no later than 4:00 p.m. on the 5th calendar day after bid opening. The apparent low bidder, the 2nd low bidder, and the 3rd low bidder must complete and submit the DBE Commitment form to the City.

Other bidders do not need to submit the DBE Commitment form unless the City requests it. If the City requests you to submit a DBE Commitment form, submit the completed form within 5 calendar days of the request.

Bidders are required to submit written confirmation from each DBE stating that it is participating in the contract. Include confirmation with the DBE Commitment form. A copy of a DBE's quote will serve as written confirmation that the DBE is participating in the contract.

When 100 percent of a contract item of work is not to be performed or furnished by a DBE, a description of the exact portion of that work to be performed or furnished by that DBE should be included in the DBE information, including the planned location of that work. A successful bidder certified as a DBE should describe the work it has committed to performing with its own forces as well as any other work that it has committed to be performed by DBE subcontractors, suppliers and trucking companies. If a DBE is participating as a joint venture partner, the successful bidder should submit a copy of the joint venture agreement.

If you do not submit the DBE Commitment form within the specified time, the City will find your bid nonresponsive.

(c) GOOD FAITH EFFORTS SUBMITTAL- If you have not met the DBE goal, you must complete and submit the "DBE Information - Good Faith Efforts," Exhibit 15-H, form with the bid showing that you made adequate good faith efforts to meet the goal. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website:

<http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/lapmforms.htm>.

Only good faith efforts directed towards obtaining participation by DBEs will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the City no later than 4:00 p.m. on the 5th calendar day after bid opening.

If your DBE Commitment form shows that you have met the DBE goal or if you are required to submit the DBE Commitment form, you may also submit good faith efforts documentation within the specified time to protect your eligibility for award of the contract in the event the City finds that the DBE goal has not been met.

Good faith efforts documentation must include at a minimum the following information and supporting documents:

1. Items of work you have made available to DBE firms. Identify those items of work you might otherwise perform with your own forces and those items that have been broken down into economically feasible units to facilitate DBE participation. For each item listed, show the dollar value and percentage of the total contract. It is your responsibility to demonstrate that sufficient work to meet the goal was made available to DBE firms.

2. Names of certified DBEs and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the DBEs were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. You are reminded to solicit certified DBEs through all reasonable and available means and provide sufficient time to allow DBEs to respond.
3. Name of selected firm and its status as a DBE for each item of work made available. Include name, address, and telephone number of each DBE that provided a quote and their price quote. If the firm selected for the item is not a DBE, provide the reasons for the selection.
4. Name and date of each publication in which you requested DBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using DBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested DBEs with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If you have provided information, identify the name of the DBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested DBEs in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the DBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by you, identify the name of the DBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

Please note that you may risk losing the bid if you rely on good faith efforts documentation in lieu of meeting the DBE goal. If your good faith efforts are found to be inadequate, your bid will be deemed nonresponsive. In determining whether a bidder has made good faith efforts, the City will take into account the performance of other bidders in meeting the contract. For example, if the apparent successful bidder fails to meet the contract goal, but others meet it, the City may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. The City will specifically consider the DBE commitments of the 2nd and 3rd bidders when determining whether the low bidder made good faith efforts to meet the DBE goal. Bidders not meeting a DBE contract goal are cautioned to not automatically assume that their documentation will be adequate to pass the good faith efforts test. All documentation will be very carefully scrutinized.

(d) SUBCONTRACTOR AND DBE RECORDS- Caltrans Exhibit 12-B, Bidder's List of Subcontractors (DBE and Non-DBE) Parts I and II, is required to be completed by the contractor and submitted with your bid. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

The Contractor shall maintain records showing the name and business address of each first-tier subcontractor. The records shall also show the name and business address of every DBE subcontractor, ethnicity and gender of DBE firm owner as shown in the Caltrans Unified Certification Program database ([http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)), DBE vendor of materials and DBE trucking company, regardless of tier. The records shall show the date of payment and the total



dollar figure paid to all of these firms. DBE prime contractors shall also show the date of work performed by their own forces along with the corresponding dollar value of the work.

By the end of every month during the contract or as requested, Contractor shall submit reports of payments made to all DBE subcontractors regardless of tier to the Engineer. Upon completion of the contract, a summary of these records shall be prepared on "Final Report-Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" Form CEM-2402(F) (Exhibit 17-F) and certified correct by the Contractor or the Contractor's authorized representative, and shall be furnished to the Engineer. The form shall be furnished to the Engineer within 90 days from the date of contract acceptance. The amount of \$10,000 will be withheld from payment until a satisfactory form is submitted. Bidders can access current Caltrans forms for the New Race Conscious Program at the following website: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

Prior to the fifteenth of each month, the Contractor shall submit documentation to the Engineer showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to the Engineer showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks.

The Contractor shall obtain and submit documentation to the Engineer showing the truck number, owner's name, California Highway Patrol CA number, and if applicable, the DBE certification number of the owner of the truck for all trucks used during that month. This documentation shall be submitted on "Monthly DBE Trucking Verification" Form CEM-2404(F) (Exhibit 16-Z). Bidders can access current Caltrans forms at the following website: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

(e) **DBE CERTIFICATION STATUS-** If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

Upon completion of the contract, "Disadvantaged Business Enterprises (DBE) Certification Status Change" Form CEM-2403(F) (Exhibit 17-O) indicating the DBEs' existing certification status shall be signed and certified correct by the Contractor. The certified form shall be furnished to the Engineer within 90 days from the date of contract acceptance. Bidders can access current Caltrans forms at the following website: <https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms>

(f) **PERFORMANCE OF SUBCONTRACTORS-** The subcontractors listed by you in your bid proposal shall list therein the name and address of each subcontractor to whom the bidder proposes to subcontract portions of the work in an amount in excess of one-half of one percent of the total bid or \$10,000, whichever is greater, in accordance with the Subletting and Subcontracting Fair Practices Act, commencing with Section 4100 of the Public Contract Code. The bidder's attention is invited to other provisions of the Act related to the imposition of penalties for a failure to observe its provisions by using unauthorized subcontractors or by making unauthorized substitutions.

DBEs must perform work or supply materials as listed in the "Local Agency Bidder - DBE Commitment" form (Exhibit 15-G). Do not terminate a DBE listed subcontractor for convenience and

perform the work with your own forces or obtain materials from other sources without prior written authorization from the City.

The City grants authorization to use other forces or sources of materials for requests that show any of the following justifications:

1. Listed DBE fails or refuses to execute a written contract based on plans and specifications for the project.
2. You stipulate a bond is a condition of executing the subcontract and the listed DBE fails to meet your bond requirements.
3. Work requires a contractor's license and listed DBE does not have a valid license under Contractors License Law.
4. Listed DBE fails or refuses to perform the work or furnish the listed materials.
5. Listed DBE's work is unsatisfactory and not in compliance with the contract.
6. Listed DBE delays or disrupts the progress of the work.
7. Listed DBE becomes bankrupt or insolvent.

If a listed DBE subcontractor is terminated, you must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The substitute DBE must perform at least the same amount of work as the original DBE under the contract to the extent needed to meet the DBE goal.

The substitute DBE must be certified as a DBE at the time of request for substitution.

The City will not pay for work or materials unless it is performed or supplied by the listed DBE, unless the DBE is terminated in accordance with this section.

(g) PROMPT PAYMENT OF WITHHELD FUNDS TO CONTRACTORS- The City of Stockton shall hold five percent (5%) retainage from the prime Contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City, of the contract work, and pay retainage to the prime Contractor based on these acceptances. The prime Contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted, including incremental acceptances of portions of the contract work by the City of Stockton. Any delay or postponement of payment over 30 days may take place only for good cause and following written approval from the City of Stockton. Any violation of this provision shall subject the violating prime Contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime Contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime Contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE prime contractors and subcontractors.

(h) DBEs AND EQUAL EMPLOYMENT OPPORTUNITY- Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

- a. The contractor shall notify all potential subcontractors and suppliers of his/her Equal Employment Opportunity (EEO) obligations under this contract.

- b. Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR 26, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his/her best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Lists of DBE construction firms may be obtained from the Caltrans website at the following URL:  
<https://caltrans.dbesystem.com>

**Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the State Highway Agency and the Federal Highway Administration.

- a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

- b. The contractors will submit an annual report to the State Highway Agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Federal Highway Administration Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. Federal Highway Administration forms can be found at the following web link: <https://www.fhwa.dot.gov/eforms/>

## **9. LABOR STANDARDS PROVISIONS/CALIFORNIA LABOR CODE**

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement.  
[https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2).

- (a) **PREVAILING WAGE RATES-** The prime Contractor to whom the contract is awarded and any subcontractor must pay the higher of State or federal general prevailing wage rates as ascertained from time to time which shall be applicable to this project. Prevailing wages are required for locally funded projects over \$1,000.00 (for repair, maintenance) and over \$1,000.00 (for new construction). In accordance with the provisions of Section 1773 of the Labor Code, the Director of the Department of Industrial Wages of the State of California has determined the general prevailing rate of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093, and similar purposes applicable to the work to be done.

These wages are set forth in the General Prevailing Wage Rates for this project and are available from the California Department of Industrial Relations' internet website at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>, and from the federal Department of Labor at <https://sam.gov/content/wage-determinations>. A copy of the wage rates are also posted on BidFlash.

Any revisions to the applicable federal wage rates, up to 10 days before bid opening, shall be identified by the issuance of an addendum with a copy of the revised wage rates. The final contract documents signed by the local agency and the Contractor will physically include a copy of the wage rates.

Pursuant to 1773.2 of the Labor Code, the Contractor shall be responsible for posting the State wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work. In those projects where federal funds are involved, as indicated by reference to or the inclusion of the Federal Wage Determination in these contract documents, the minimum wages to be paid shall be the highest of either the State or federal prevailing wage rates.

Should the Contractor choose to work on a Saturday, Sunday, furlough days, or a holiday recognized by the Labor Unions, the Contractor shall reimburse the City of Stockton the actual cost of engineering, inspection, superintendence, and/or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the City, reimbursement shall not be required.

Title 40, Chapter 31(VI), Section 3143 of the United States Code applies. If any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by the contract is discovered to have been paid a rate of wages less than the contract requires, then the City by written notice may terminate the Contractor's right to proceed with the work in question. The City may have the work completed, by contract or otherwise, and the Contractor and the Contractor's sureties shall be liable to the City for any excess costs the City incurs.

The wage rates determined by the Director of Industrial Relations included in the Notice to Contractors, Special Provisions, Proposal and Contract book for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date shall be paid and incorporated in the contract. The Contractor shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

Attention is directed to the federal minimum wage rate requirements of this contract. If there is a difference between the minimum wage rates predetermined by the Secretary of Labor and the general prevailing wage rates determined by the Director of the California Department of Industrial Relations for similar classifications of labor, the Contractor and subcontractors shall pay not less than the higher wage rate. The City will not accept lower State wage rates not specifically included in the federal minimum wage determinations. This includes "helper" (or other classifications based on hours of experience) or any other classification not appearing in the federal wage determinations. Where federal wage determinations do not contain the State wage rate determination otherwise available for use by the Contractor and subcontractors, the

Contractor and subcontractors shall pay not less than the Federal minimum wage rate which most closely approximates the duties of the employees in question.

The U.S. Department of Transportation (DOT) provides a toll-free “hotline” service to report bid rigging activities. Bid rigging activities can be reported Monday through Friday, between 8 a.m. and 5 p.m., eastern time, Telephone No. 1-800-424-9071. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the “hotline” to report these activities. The “hotline” is part of the DOT’s continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

- i. **PAYROLL RECORDS**- The prime Contractor to whom the contract is awarded shall insure that the prime and each subcontractor will, in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention: Contract Compliance Officer. It shall be the prime Contractor’s responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.
- ii. **APPRENTICESHIP STANDARDS** - The prime Contractor shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the (1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and (2) contribution of funds to administer and conduct apprenticeship programs.

#### **10. LABOR NON-DISCRIMINATION**

Attention is directed to the following notice that is required by Chapter 5, Division 4 of Title 2, California Code of Regulations “NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM” (GOV. CODE, SECTION 12990). Your attention is directed to the “Nondiscrimination Clause” set forth elsewhere, “Labor Non-discrimination,” which is applicable to Nonexempt State contracts and subcontracts, and to the “Standard California Nondiscrimination Construction Contract Specifications”: set forth therein. The Specifications are applicable to all Non-exempt State construction contracts of \$5,000 or more.

#### **11. BUY AMERICA REQUIREMENTS**

Furnish steel and iron materials to be incorporated into the work with certificates of compliance. Steel and iron materials must be produced in the U.S. except:

1. Foreign pig iron and processed, pelletized, and reduced iron ore may be used in the domestic production of the steel and iron materials [60 Fed Reg 15478 (03/24/1995)];
2. If the total combined cost of the materials does not exceed the greater of 0.1 percent of the total bid or \$2,500, materials produced outside the U.S. may be used.

Production includes:

1. Processing steel and iron materials, including smelting or other processes that alter the physical form or shape (such as rolling, extruding, machining, bending, grinding, and drilling) or chemical composition;

2. Coating application, including epoxy coating, galvanizing, and painting, that protects or enhances the value of steel and iron materials.

## **12. USE OF UNITED STATES-FLAG VESSELS**

In compliance with the Cargo Preference Act of 1954 (CPA), 46 CFR §381, and the implementing regulations in 46 CFR §381.7, the Contractor agrees:

1. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;
2. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590;
3. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

## **13. FEDERAL LOBBYING RESTRICTIONS**

Section 1352, Title 31, United States Code prohibits federal funds from being expended by the recipient or any lower tier sub-recipient of a federal-aid contract to pay for any person for influencing or attempting to influence a federal agency or Congress in connection with the awarding of a federal-aid contract, the making of any federal grant or loan, or the entering into of any cooperative agreement. If any funds other than federal funds have been paid or the same purposes in connection with this federal-aid contract, the recipient shall submit an executed certification, and if required, submit a completed disclosure form as part of the bid documents.

A certification for federal aid contracts regarding payment of funds to lobby Congress or a federal agency is included in the proposal. Standard Form–LLL, "*Disclosure of Lobbying Activities*," with instructions for completion of the Standard Form–LLL, "*Disclosure of Lobbying Activities*," is also included in the Proposal. Signing the proposal shall constitute signature of the Certification.

The above referenced certification and disclosure of lobbying activities shall be included in each subcontract and any lower-tier contracts exceeding \$100,000. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the Project Manager. The Contractor, subcontractors, and any lower-tier contractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or materially affects the accuracy of the information contained in any disclosure form previously filed by the Contractor, subcontractors, and any lower-tier contractors. An event that materially affects the accuracy of the information reported includes:

(A) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action; or

(B) A change in the person(s) or Individual(s) influencing or attempting to influence a covered federal action; or

(C) A change in the officer(s), employee(s), or member(s) contracted to influence or attempt to influence a covered federal action.

#### **14. SANCTIONS**

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

#### **15. REMOVAL OF ASBESTOS AND HAZARDOUS SUBSTANCES**

When the presence of asbestos or hazardous substances are not shown on the plans or indicated in the specifications and the Contractor encounters materials which the Contractor reasonably believes to be asbestos or a hazardous substance as defined in Section 25914.1 of the Health and Safety code, and the asbestos or hazardous substance has not been rendered harmless, the Contractor may continue work in unaffected areas reasonably believed to be safe. The Contractor shall immediately cease work in the affected area and report the condition to the Project Manager in writing.

In conformance with Section 25914.1 of the Health and Safety Code, removal of asbestos or hazardous substances including exploratory work to identify and determine the extent of the asbestos or hazardous substance will be performed by separate contract. If delay or work in the area delays the current controlling operation, the delay will be considered a right of way delay and the Contractor will be compensated for the delay in conformance with the provisions Listed elsewhere as "Right of Way Delays."

#### **16. BID ITEMS**

The listed bid quantities are approximate only, being given as a basis for the comparison of bids, and the City of Stockton does not, expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work or to omit portions of the work, as may be deemed necessary or advisable by the Project Manager.

Bids are required for the entire work. The amount of the bid for the comparison purposes will be the total of all items. The total price for each bid will be determined by extension of the unit price bid, multiplied by the estimated quantity, the unit price multiplied by the estimated quantity set forth for the item. In case of a discrepancy between the item total price and the total determined by extension of the unit price bid, multiplied by the estimated quantity, the unit price shall prevail. However, if the amount set forth as a unit price is ambiguous, unintelligible, or uncertain for any cause, or is omitted, or is the same amount as the entry in the "Total" column, then the amount set forth in the "Total" column for the item shall prevail and shall be divided by the estimated quantity for the item and the price thus obtained shall be the unit price. The total for lump sum items or lump sum bids shall be the amount set forth in the "Total" column.

All bids shall include for each item of work, in clearly legible figures, a unit price and a total price for the item in the respective space provided. Illegible or ambiguous figures shall be the cause for rejection.

In determining the amount by each bidder, the City may correct mathematical errors in addition, subtraction, multiplication, and division that appear obvious on the face of the bid. When such a mathematical error appears in the Bidding Schedule, the City shall have the right to correct such error and to compute the total amount bid by each bidder on the basis of the corrected figure or figures.

When any item, for which an item unit price and/or an item total price has been included in the Bidding Schedule, is omitted from the total bid, the item total price shall be added to the total bid to arrive at a corrected total bid.

If, so for any item, both the item unit price and the item total price are omitted from the Bid, then it shall be deemed incomplete and non-responsive, and the Bid shall be disregarded.

**17. WITHDRAWAL OF BIDS**

Bids may be withdrawn at any time up to the official bid opening only upon written request to the City Clerk.

**18. PUBLIC OPENING OF BIDS**

Bids will be publicly opened and read at the time and place indicated in the "Notice Inviting Bids." Bidders or their authorized agents are invited to be present.

**19. REJECTION OR IRREGULAR BIDS**

When bids are signed by an agent other than the officer or officers of a corporation authorized to sign contracts on its behalf, or are signed by an agent other than a partner of partnership, or by an agent for an individual, a Power of Attorney must be on file with the Department of Public Works, prior to opening bids or shall be submitted with the bid; otherwise, the bid will be rejected as irregular or unauthorized.

**20. COMPETITIVE BIDDING**

If more than one bid is offered by an individual, firm, partnership, association, or any combination thereof, under the same or different names, all such bids may be rejected. A party who has quoted prices on materials or work to a bidder is not thereby disqualified from quoting prices to other bidders. All bidders are put on notice that any collusive agreement fixing the prices to be bid so as to control or affect the awarding of this contract is in violation of the competitive bidding requirements of the City and may render void any contract let under such circumstances. A non-collusion declaration is required.

**21. LIQUIDATED DAMAGES**

Bidders should note the provision for Liquidated Damages for this contract is specified in the contract Special Provisions.

**22. CONTRACT BONDS**

The Contractor shall furnish two (2) surety bonds, one performance bond guaranteeing the faithful performance of the work, and one labor and material bond securing the payment of laborers, mechanics or material personnel employed on the work under contract. The surety which provides the bonds must be authorized by the Insurance Commissioner to transact business of insurance in California. All alterations, extensions of time, extra and additional work and other changes authorized



by these specifications or any part of the contract shall be made without securing the consent of the surety or sureties on the contract bonds.

**23. BUSINESS LICENSE**

The Contractor must obtain and maintain a valid City of Stockton business license throughout the fiscal periods embraced by the duration of the contract.

**24. INSURANCE**

Please see attached Exhibit C, Summary of Indemnity and Insurance Requirements Checklist. This form is for information and is not required to be submitted. Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this agreement the policies of insurance specified in Exhibit D, which is attached to this agreement and incorporated by this reference.

Maintenance of proper insurance coverage is a material element of this contract and that failure to maintain or renew coverage or to provide evidence of renewal may be treated as a material breach of contract.

The Proponent shall satisfy these insurance requirements concurrently with the signing of the contract prior to commencement of work. Please contact City of Stockton Risk Services at (209) 937-5037. Any exceptions to this language may result in a non-responsive proposal.

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from the City of Stockton's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of Insurance required in this agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or agreement) before the City of Stockton's own Insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City of Stockton.

The City of Stockton reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.

Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this agreement, the city at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

Contractor agrees to include with all subcontractors in their subcontract the same requirements and provisions of this agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City of Stockton in the same manner and to the same extent as Contractor is bound to the City of Stockton under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the City of Stockton Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the agreement prior to commencement of any work and Contractor will provide proof of compliance to the city.

## **25. WORKER'S COMPENSATION INSURANCE**

The successful bidder shall comply with all provisions of the Worker's Compensation and Safety Laws of the State of California, Divisions IV and V of the Labor Code, and shall use all of the accepted and best safety practices for the public and/or his/her employees.

In accordance with Labor Code Section 1725.5 et seq., the successful bidder, prior to executing the contract to do the work, shall take out and maintain in full force and effect workers compensation insurance with an insurance carrier authorized to transact business in the State of California covering the bidder's full liability for compensation to any persons employed who may be injured in the carrying out of said contract or the dependents thereof. Evidence of such workers compensation insurance shall be furnished to the city of Stockton with an insurance certificate prior to the commencement of the work and said certificates shall contain a provision that the coverage thereunder will not be canceled until at least thirty (30) days prior written notice has been given to the City.

## **26. INDEMNIFICATION AND HOLD HARMLESS**

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, protect, defend with counsel approved by City and at Contractor's sole cost and expense, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this agreement, or from any violation of any federal, State, or municipal law or ordinance, or City policy, by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Contractor to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Contractor under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this agreement.

With the exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Contractor to a greater extent than permitted under the public policy of the State of California, the parties agree that Contractor's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this agreement by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this agreement, or other obligation or fault has been determined. Contractor shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal. At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Contractor for amounts paid in excess of Contractor's proportionate share of responsibility for the damages within 30 days after Contractor provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Contractor is not obligated to defend or indemnify City in any amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this agreement, Contractor shall indemnify, defend, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against all claims, losses, expenses, and costs including, but not limited to, attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Contractor, regardless of whether such claim may be covered by any applicable workers compensation insurance. Contractor's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts.

## **27. CONSTRUCTION AND DEMOLITION DEBRIS**

In order to comply with the California Integrated Waste Management Act of 1989, Assembly Bill 939, the City of Stockton requires that permitted construction and demolition projects recycle at minimum fifty percent (50%) of all materials generated by the projects to divert project waste from the landfills.

(a) **CONSTRUCTION AND DEMOLITION RECYCLING PLAN-** This plan is meant to assist contractors with identifying the types and quantities of materials that will be generated as a result of the project in order to find diversion outlets for these materials.

The Contractor is required to complete and submit a Construction/Demolition (C&D) Recycling Plan at the time of pre-construction meeting. A "Notice to Proceed" may not be provided, if the Contractor fails to submit the C&D Recycling Plan. (See *sample*:

<http://www.stocktonca.gov/government/departments/publicWorks/garbCon.html>.)

(b) **CONSTRUCTION AND DEMOLITION DEBRIS RECYCLING REPORT-** The Contractor must complete the Construction and Demolition (C&D) Debris Recycling Report within sixty (60) days of construction or demolition project completion (Notice of Completion). The completed form must be accompanied by the official weight tags or receipts verifying the information provided in the report and

must be submitted to the City of Stockton Public Works Department, Solid Waste Division, Stewart Eberhardt Building, 22 E. Weber Ave., Room 301, Stockton, CA 95202. Failure to provide the C&D Recycling Report form will result in a five percent (5%) withholding of the contract amount. (See sample: <http://www.stocktongov.com/government/departments/publicWorks/garbCon.html>.)

**28. EQUAL EMPLOYMENT OPPORTUNITY (EEO) GOALS**

The City of Stockton reserves the right to identify employment goals to be applied to bidders of City contracts, requests for proposal, and materials and supplies. Contractors are required to certify (see Form EEO-1B) their on-going attempts to recruit and hire minorities and women into their permanent workforce.

**29. BID RIGGING**

The U.S. Department of Transportation (DOT) provides a toll-free hotline to report bid rigging activities. Use the hotline to report bid rigging, bidder collusion, and other fraudulent activities. The hotline number is (800)424-9071. The service is available 24 hours 7 days a week and is confidential and anonymous. The hotline is part of the DOT's effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the DOT Inspector General.

**30. NON-RESPONSIVE BID PROPOSALS**

If any bidder fails to include, with their bid proposals the required forms, such bid(s) will be deemed non-responsive and will result in bid rejection.

**31. SAMPLE CONTRACT**

A sample contract is attached (Exhibit E) and could be subject to change.

## CITY OF STOCKTON Quality Assurance Program

### 1. Purpose

The purpose of the City of Stockton Quality Assurance Program (QAP) is to provide an outline of procedures to assist in achieving quality performance for:

- planning;
- preparing contracts, plans, and specifications; and
- assuring that acceptance and inspection sampling and testing meets City, State and Federal requirements.

The main elements addressed in this QAP are procedures for:

- Acceptance Testing;
- Testing of Manufactured Materials; and
- Independent Assurance Requirements

This QAP has been adopted by the City of Stockton as a guide for quality assurance for planning, design, and construction of public streets and state highway improvements within the City of Stockton. This QAP has been written to conform with current Caltrans and FHWA requirements. It is not intended to be a substitute for professional engineering knowledge, training, experience or judgment.

### 2. Definition of Terms

- Acceptance Testing (AT) – Sampling and testing, or inspection, to determine the degree of compliance with contract requirements.
- Independent Assurance Program (IAP) – Verification that AT is being performed correctly by qualified testers and laboratories.
- Quality Assurance Program (QAP) – A sampling and testing program that will provide assurance that the materials and workmanship incorporated into the construction project are in conformance with the contract specifications. The main elements of a QAP are the AT, and IAP.
- Source Inspection – AT of manufactured and prefabricated materials at locations other than the job site, generally at the manufactured location.

### 3. Applicability

This QAP shall only apply to projects within the City of Stockton that are off the National Highway System (Off-NHS) and off the State Highway System (Off-SHS) and are financed wholly or in part by federal-aid funding. For such projects the use of this QAP shall be mandatory. The provisions of this QAP may also be applied to street and utility facility

projects within the City of Stockton that are Off-NHS and Off-SHS and are locally funded. For projects on the NHS, quality assurance requirements are detailed in the Code of Federal Regulations Title 23, Part 637.205. Therefore, federally funded projects wholly or in part on the National Highway System (On-NHS) must comply with the Caltrans QAP as detailed in Section 16.14 of the Caltrans Local Assistance Procedures Manual (LAPM).

#### **4. Authority**

This QAP was prepared under the supervision of, and has been approved by, the City of Stockton Director of Public Works or his designee (City Engineer), who is an appropriately registered civil engineer. Copies of this QAP shall be kept on file in the office of the City Engineer and shall be available for review upon request.

#### **5. Amendments**

Amendments to this QAP will require approval by the City of Stockton Director of Public Works or his designee, the City Engineer. Amendments may be approved in either of the following forms:

By general amendment applicable to all applicable projects as described above; and

By specific amendment included within the contract documents applicable to a specific project. In the event of a conflict between this QAP and the contract documents for a specific project, the contract documents shall prevail.

In the event of amendment(s), the applicable QAP shall be the latest edition in effect at the time the subject materials are actually incorporated into the project documents. The Director of Public Works or the City Engineer may also issue clarifications to this QAP as required.

#### **6. Materials Testing**

Sampling and testing will be performed by contract with a material testing consultant. The contract with the materials testing consultant shall be arranged prior to advertising a project and addressed appropriately in the construction documents. The construction contractor shall not select or exercise any authority over the materials testing consultant or any of the sampling and testing unless specifically included in the contract documents for a specific project or otherwise approved by the City of Stockton Director of Public Works or the City Engineer in writing prior to the start of the actual sampling and testing work.

The materials testing consultant shall have a QAP that meets current Caltrans and FHWA requirements and shall provide a copy to the City upon request. Consultant(s) shall also forward copies of all subsequent amendments of their QAP(s) to the City.

The consultant's materials laboratory shall be under the responsible management of a California Registered Engineer with experience in sampling, inspection and testing of construction materials. The Engineer shall certify the results of all tests performed by laboratory personnel under the Engineer's supervision. The materials laboratory shall contain certified test equipment capable of performing the tests conforming to the

provisions of this QAP

The materials laboratory used shall provide documentation that the laboratory complies with the following procedures:

Correlation Testing Program –The materials laboratory shall be a participant in one or more of the following testing programs:

AASHTO Materials Reference Laboratory (AMRL)  
 Cement and Concrete Reference Laboratory (CCRL)  
 Caltrans' Reference Samples Program (RSP)

Certification of Personnel - The materials laboratory shall employ personnel who are certified by one or more of the following: Caltrans District Materials Engineer

Nationally recognized non-Caltrans organizations such as the American Concrete Institute, Asphalt, National Institute of Certification of Engineering Technologies, etc.

Other recognized organizations approved by the State of California and/or recognized by local governments or private associations.

Certificates for personnel on a project shall be retained in the Resident Engineer's (RE) project file(s) and shall be made available for review upon request. Sampling and testing by uncertified person(s) not previously approved by the Director of Public Works or the City Engineer, shall be acceptable only in extreme, unforeseen emergencies, and upon assurance by the Resident Engineer that the uncertified person is competent to perform the work.

Laboratory and Testing Equipment- The materials laboratory shall only use laboratory and testing equipment that is in good working order. All such equipment shall be calibrated at least once each year. All testing equipment must be calibrated by impartial means using devices of accuracy traceable to the National Institute of Standards and Technology. A decal shall be firmly affixed to each piece of equipment showing the date of the last calibration. All testing equipment calibration decals shall be checked as part of the IAP.

Records – Copies of the City's QAP, the materials testing consultant's QAP, records of samples and tests, material releases, and certificates of compliance for a project shall be incorporated into the RE's project file, and shall be available for review upon request, and shall be retained for a period of three years following completion of the project. The RE shall complete and sign a Materials Certificate (Caltrans LAPM Exhibit 17-G). The Certificate shall be retained in the project construction files. All non-conforming materials incorporated into the work must be explained and justified on the Certificate.

## **7. Acceptance Sampling and Testing**

Definition -- Acceptance Testing (AT) shall be defined as regular sampling and testing of materials entering a construction project to verify compliance with the specific project contract documents, City of Stockton Standard Plans and Specifications, and/or Caltrans

regulations.

Start of Testing -- Sampling and testing should begin as soon as materials are placed on a project. Testing should be performed promptly to enable data evaluation and necessary measures to be taken by the RE and contractor.

Testing Laboratory -- AT will be performed by a materials laboratory certified to perform the required tests. The test results will be used to ensure that all materials incorporated into the project are in compliance with the contract specifications.

Test Methods -- Except as otherwise specified and/or approved by the City, testing methods shall comply with California test methods (using English equivalent units). American Society of Testing and Materials (ASTM) test methods may also be acceptable, subject to City approval.

Tests to be Performed -- The following sampling and testing shall comprise the minimum scope of AT to be routinely completed for commonly used materials unless otherwise modified by the contract documents for a specific project, unless determined to be minor quantities by the RE, or as otherwise approved in writing by the Director of Public Works or the City Engineer.

Aggregate Base (AB) - Sieve Analysis, Sand Equivalent, R-Value and Maximum Density (Relative Compaction) for each new source and In-Place Density for AB sampled at the site.

Aggregate Sub-base (ASB) - Sieve Analysis, Sand equivalent, R-Value and Maximum Density for each new source and In-Place Density for AB sampled at the site.

Asphalt Concrete (AC)- Sieve Analysis for aggregate sampled at the plant. Asphalt Content and Maximum Density for each new source and mix design and In-Place Density for AC sampled at the site. (A Certificate of Compliance may be accepted for Liquid Asphalt.)

Grading and Trench Backfill- Maximum Density and In-Place Density at the site. Structural Concrete - Sieve analysis for aggregate sampled at the plant. (A Certificate of compliance may be accepted for Aggregate Cleanliness, Aggregate Sand Equivalent, Admixtures, and Portland Cement Concrete.) Compressive Strength (Cylinders) at the site.

Where additional sampling and testing not described above is required, it shall be in accordance with Caltrans Frequency Tables (LAPM Exhibit 16-R), and the Caltrans Standard Specifications, unless otherwise modified by the contract documents for a specific project or otherwise approved in writing by the Director of Public Works or the City Engineer.

Frequency -- Sample locations and frequencies may be in accordance with the contract



specifications. If not so specified in the contract specifications, samples shall be taken at the locations and frequencies as shown in Appendix D, "Acceptance Sampling and Testing Frequencies" of the Caltrans QAP Manual (included as Attachment 1 to this QAP). The tables are intended as a guide; the actual quality of materials tested may justify decreasing or increasing the frequency of subsequent similar samples and tests.

In-Place density testing for trench backfill shall generally be completed at intervals not exceeding 500 linear feet of trench.

Test Result Reporting Guidelines -- Results should generally be submitted to the RE within three working days of sampling, or as dictated by the construction schedule, except as listed below:

- When the aggregate is sampled at material plants, test results for Sieve Analysis, Sand Equivalent and Cleanness Value should be submitted to the Resident Engineer within 24 hours after sampling.
- When materials are sampled at the job site, test results for compaction and maximum density should be submitted to the Resident Engineer within 24 hours after sampling.
- When soils and aggregates are sampled at the job site:
  - (1) Test results for Sieve Analysis, Sand Equivalent and Cleanness Value should be submitted to the Resident Engineer within 72 hours after sampling.
  - (2) Test results for "R" Value and asphalt concrete extraction should be submitted to the Resident Engineer within 96 hours after sampling.

When sampling products such as Portland Cement Concrete (PCC), cement-treated base (CTB), hot mix asphalt (HMA), and other such materials; the time of such sampling shall be varied with respect to the time of the day insofar as possible, in order to avoid a predictable sampling routine. Results may be expedited by using fax, telephone, or e-mail.

Summary Logs -- Material Testing Summary Logs shall be maintained by the RE for each material requiring multiple sampling and testing. Log data shall include station location, test sample depth, approximate quantity of sample material, test result, and tester identification.

Minor Materials/Quantities -- Relatively minor quantities of materials from a known, reliable source may be accepted without testing if the RE performs visual examination of the materials; or the manufacturer or supplier certifies that the material furnished complies with specification requirements.

Such records of acceptance shall be placed in the RE's project files with related inspection notes. The following quantities are approximate amounts of maximum allowable minor materials/quantities:

Aggregates and Sub-Aggregates (other than Portland Cement Concrete) - 100 tons per day or 500 tons per project.

Bituminous Mixtures - 50 tons per day.

Bituminous Materials - 100 gallons per project.

Trench Compaction - 100 linear feet of trench.

Re-Testing -- Failing test results requires re-testing to isolate the failed area. The Log Summary shall cross-reference the retest to the initial failed test. Cost for repeated tests may be charged to the construction contractor if this has been included in the specifications.

Testing of Manufactured Materials -- During the Design phase of the project, the Project Engineer may submit a "Source Inspection Request" (Exhibit 16-V of the LAPM) to the Agency, consultant, or Caltrans for inspection and testing of manufactured and prefabricated materials by their materials laboratory. A list of materials that can be typically accepted on the basis of certificates of compliance during construction is found in Appendix F of the Caltrans QAP Manual (included as Attachment 2 to this QAP). All certificates of compliance shall conform to the requirements of the contract specifications, for examples see Appendix J of the Caltrans QAP Manual.

If the City request Caltrans to conduct the source inspection, and the request is accepted, all sampling, testing, and acceptance of manufactured and prefabricated materials will be performed by Caltrans' Office of Materials Engineering and Testing Services. For Federal-aid projects on the National Highway System (NHS), Caltrans will assist in certifying the materials laboratory, and the acceptance samplers and testers. For Federal-aid projects off the NHS, Caltrans may be able to assist in certifying the materials laboratory, and the acceptance samplers and testers.

## **8. Independent Assurance Program (IAP)**

Definition -- Independent Assurance Program (IAP) shall be defined as procedures to verify that Acceptance Testing is being performed correctly and reliably, and to ensure that equipment is properly calibrated, and personnel are adequately trained on proper testing procedures.

### Applicability

IAP procedures shall be required for federally funded projects on and off the NHS system. For On-NHS projects, IAP procedures shall be in accordance with the Caltrans 'Quality Assurance Program Manual' and shall be completed by Caltrans personnel. For Off-NHS projects, IAP procedures shall be as specified herein unless otherwise modified by the contract documents for a specific project or as otherwise approved in writing by the Director of Public Works or the City Engineer. IAP procedures may also be applied to other street, highway and utility facility projects, both public and private, within the City of Stockton.

IAP Testing Options -- IAP for City projects will generally be performed by contract consultant testers or by other agency personnel. IAP personnel shall be certified in all required testing procedures, as part of IAP, and shall not be involved in any aspect of AT. IAP shall be performed on every type of materials test required for the project. Proficiency tests shall be performed on Sieve Analysis, Sand Equivalent, and Cleanliness Value tests. All other types of IAP shall be witness tests.

Poor correlation between acceptance tester's results and other test results may indicate probable deficiencies with the acceptance sampling and testing procedures. In cases of unresolved discrepancies, a complete review of AT shall be performed by IAP personnel, or an independent materials laboratory chosen by the Agency. IAP samples and tests are not to be used for determining compliance with contract requirements. Compliance with contract requirements is determined only by AT.

Type and Frequency of IAP -- The following shall comprise the minimum IAP scope to be routinely completed for AT of commonly used materials unless otherwise approved in writing by the Director of Public Works or the City Engineer.

Aggregate Bases and Sub-Bases - Sieve Analysis, Sand Equivalent, Maximum Density and In-Place Density. Witness test and split sample test at intervals not to exceed one year.

Asphalt Concrete - Sieve Analysis for aggregate sampled at the plant and In-Place Density. Witness test and split sample test at intervals not to exceed one year.

Grading and Trench Backfill - Maximum Density and In-Place Density. Witness test and split sample test at intervals not to exceed one year.

Concrete - Compressive Strength (Cylinders). Witness test and split sample test at intervals not to exceed one year.

The IAP frequency for commonly used materials not included above or for contract consultant testers shall be as specified in the consultant laboratory's QAP or as otherwise approved by the City.

Test Result Reporting Guidelines -- Results should generally be submitted to the RE within five working days of sampling, or as dictated by the construction schedule. Results may be expedited by using fax, telephone, or e-mail. IAP results shall be recorded on either the Report of Witness Test (Exhibit 16-F of the LAPM) or the Corroboration Report (Exhibit 16-G of the LAPM).

Summary Logs -- IAP Summary Logs (Exhibit 16-H of the LAPM) shall be maintained by the RE for each material requiring IAP. The summary logs shall be included in the project files.

## **9. Project Certification**

Upon completion of a Federal-aid project, a "Materials Certificate" shall be completed by the Resident Engineer. The City shall include the "Materials Certificate" in the Report of Expenditures submitted to the Caltrans District Director, Attention: District Local Assistance Engineer.

A copy of the "Materials Certificate" shall also be included in the project files. The Resident Engineer in charge of the construction shall sign the certificate. All materials

incorporated into the work which did not conform to specifications must be explained and justified on the "Materials Certification", including changes by virtue of contract change orders. See Appendix K of the Caltrans QAP Manual for an example.

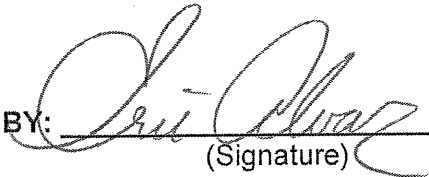
#### 10. Records

All material records of samples and tests, material releases and certificates of compliance for the construction project shall be incorporated into the Resident Engineer's project file. If a Federal-aid project:

- The files shall be organized as described in Section 16.8 "Project Files" of the Caltrans Local Assistance Procedures Manual.
- The complete project file be available at a single location for inspection by Caltrans and Federal Highway Administration (FHWA) personnel.
- The project files shall be available for at least three years following the date of final project voucher.
- Sampling and Testing results shall be entered into a "Log Summary," as shown in Appendix H of the Caltrans QAP Manual.

When two or more projects are being furnished identical materials simultaneously from the same plant, it is not necessary to take separate samples or perform separate tests for each project; however, copies of the test reports are to be provided for each of the projects to complete the records.

APPROVED BY:

  
(Signature)

057830 6/30/20  
(CE# and Expiration Date)

TITLE:

City Engineer

DATE:

11/16/18

THIS QAP TO REMAIN IN EFFECT FOR 5 YEARS FROM DATE SHOWN ABOVE



## Appendix D - Acceptance Sampling and Testing Frequencies

Note: It may be desirable to sample and store some materials. If warranted, testing can be performed at a later date.

### Portland Cement (Hydraulic Cement)

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Cement/fly ash (Sampling only)	8-lb. sample	If possible, take a least one sample per job, even if the material is accepted based on a Certificate of Compliance.	ASTM D75, C494 CT 125 AASHTO T127, M85, M295	Standard for sampling hydraulic cement or fly ash.
Cement (Testing Only)	8-lb. sample	If the product is accepted based on a Certificate of Compliance, testing is not required. If the product is not accepted using a Certificate of Compliance, test at least once per job.	ASTM C109 CT 515 AASHTO T106	If testing appears warranted, fabricate six 2-in. mortar cubes using the Portland (or hydraulic cement). Test for compressive strength.

### Portland Cement Concrete (Hydraulic Cement Concrete)

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Aggregate for Hydraulic Cement Concrete (Sampling & Testing)	50-lb. sample	Take one aggregate sample for each 1000 cu. yd. of PCC/HCC concrete. Test at least one sample per job.	ASTM D75 CT 125 AASHTO M6, T2, M80	Sample aggregate from belt or hopper (random basis).
Water (Sampling & Testing)	Take a two-quart sample using a clean plastic jug (with lining) and sealed lid. Sample at the point of use.	If the water is clean with no record of chlorides or sulfates greater than 1%, no testing is required. If the water is dirty do not use it. Test only when the chloride or sulfates are suspected to be greater than 1%.	CT 405, CT 422, CT 417 AASHTO R23	If testing appears warranted, test for chlorides and sulfates.



**Appendix D (continued)**

**Portland Cement Concrete (Hydraulic Cement Concrete) – Continued**

<b>Materials to be Sampled or Tested</b>	<b>Sample Size</b>	<b>Sampling/Testing Frequency</b>	<b>Typical Test Methods</b>	<b>Description of Comments</b>
Air Entraining Admixtures (Sampling & Testing)	Take a one-quart sample using a clean, lined can or plastic bottle, if liquid. If powder, take a 2.5 lb. sample.	If the product is accepted based on a Certificate of Compliance, testing is not required. Take one sample per job. Prior to sampling, check with Caltrans (METS) for acceptable brands and dosage rates.	ASTM C233 AASHTO M154, T157, C260	If testing appears warranted, test for sulfates and chlorides. Admixtures with sulfates and chlorides greater than 1% should not be used.
Water Reducers or Set Retarders (Sampling & Testing)	If liquid, take a 1-qt. sample using a clean plastic can. If powder, take a 2.5 lb. sample.	If the product is accepted based on a Certificate of Compliance, no testing is required. If not, test once per job. Prior to using this product, please check with Caltrans (METS) for acceptable brands and dosage rates.	ASTM C494 AASHTO M194	If testing appears warranted, test for sulfates and chlorides. Admixtures with sulfates and chlorides greater than 1% should not be used.
Freshly-Mixed Concrete (Sampling)	Approx. 150lb. (or 1 cu. ft.) near mixer discharge.	When tests are required, take at least one sample for each 500 to 1000 cu. yd. of PCC/HCC.	ASTM C172, C685 CT 539 AASHTO T141, M157	This describes a method to sample freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb/ (or 1 cu. ft.) near mixer discharge.	On projects with 500 cu. yd., or more, test at least one sample per job.	ASTM C143 AASHTO T119	This test determines the slump of the freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb/ (or 1 cu. ft.) near mixer discharge	On projects with 500 cu. yd., or more, test at least one sample per job.	ASTM C360 CT 533	This test determines the ball penetration of the freshly-mixed concrete.
Freshly-Mixed Concrete (Testing)	Approx. 150 lb/ (or 1 cu. ft.) near mixer discharge	On projects with 500 cu. yd., or more, test at least one sample per job.	ASTM C231 CT 504 AASHTO T152	This test determines the air content of freshly-mixed concrete (pressure method).
Freshly-Mixed Concrete (Testing)	Approx. 150 lb/ (or 1 cu. ft.) near mixer discharge	On projects with 500 cu. yd., or more, test at least one sample per job.	ASTM C138 CT 518 AASHTO T121	This test determines the unit weight of freshly mixed concrete.



**Appendix D (continued)**

**Portland Cement Concrete (Hydraulic Cement Concrete) – Continued**

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Freshly-Mixed Concrete (Testing)	Approx. 150 lb/ (or 1 cu. ft.) near mixer discharge	Fabricate at least two concrete cylinders per project. Test for compressive strength at least once for each 500 to 1,000 cu. yd. of structural concrete.	ASTM C39 CT 521 AASHTO T22	This test is used to fabricate 6" x 12" concrete cylinders. Compressive strengths are determined, when needed.
Freshly-Mixed Concrete (Testing)	Approximately 210 lb. of concrete are needed to fabricate three concrete beams.	One sample set for every 500 to 1,000 cu. yd. of concrete.	ASTM C78 CT 31 AASHTO T97 & T23	This test is used to determine the flexural strength of simple concrete beams in third-point loading

**Soils and Aggregates**

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Aggregate (Sampling)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D75 CT 125 AASHTO T2	This test describes the procedures to sample aggregate from the belt or hopper (random basis).
Fine Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C128 CT 208 AASHTO T84	This test determines the apparent specific gravity of fine aggregates for bituminous mixes, cement treated bases and aggregate bases.
Fine Aggregate (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C128 CT 207 AASHTO T84	This test determines the bulk specific gravity (SSD) and the absorption of material passing the No. 4 sieve.
Coarse Aggregate (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	CT 206	This test determines the cleanness of coarse aggregate.



**Appendix D (continued)**

**Soils and Aggregates - Continued**

<b>Materials to be Sampled or Tested</b>	<b>Sample Size</b>	<b>Sampling/Testing Frequency</b>	<b>Typical Test Methods</b>	<b>Description or Comments</b>
Coarse Aggregate (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C127 CT 227 AASHTO T85	This test determines the specific gravity and absorption of coarse aggregate (material retained on the No. 4 sieve).
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C136 CT 202 AASHTO T27	This test determines the gradation of soils and aggregates by sieve analysis.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2419 CT 217 AASHTO T176	This test determines the Sand Equivalent of soils and aggregates.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM C117 AASHTO T11	This test determines the gradation for materials finer than the No. 200 sieve (by washing method).
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D3744 CT 229 AASHTO T210	This test determines the Durability Index of soils and aggregates.
Soils and Aggregates (Testing)	One 50-lb. sample	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2844 CT 301 AASHTO T190	This test determines the Resistance Value (R-) and expansion pressure of compacted materials.
Soils and Aggregates (Testing)	One random location for every 2,500 sq. ft.	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D2922 CT 231 AASHTO T238	This test determines field densities using the nuclear gage.
Soils and Aggregates (Testing)	One random location for every 2,500 sq. ft.	Take one sample for every 500 to 1,000 tons of materials. Test at least one sample per project.	ASTM D3017 CT 231 AASHTO T239	This test determines the water content using the nuclear gage.





Appendix D (continued)

Asphalt Binder

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Asphalt Binder (Sampling)	One 0.5-gal. sample placed in a clean, sealed can.	Sample once per job at the asphalt concrete plant.	CT 125 ASTM D 979 AASHTO T 168, T48	This procedure describes the proper method to sample the asphalt binder.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Sample once per job at the asphalt concrete plant.	ASTM D92, D117 AASHTO T 48	This test determines the flash point of the asphalt binder (by Cleveland open cup).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2872 & D92 CT 346 AASHTO T240 & T48	This test determines the rolling thin-film oven test (RTFO).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2042 AASHTO T44	This test determines the solubility of asphalt material in trichloroethylene.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2171 AASHTO T202	This test determines the dynamic viscosity, (absolute viscosity of asphalt @ 140 degrees F by the Vacuum Capillary Viscometer Poises).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D5 AASHTO T49	This test determines the penetration of bituminous material @ 77 degrees F and percentage of original penetration from the residue.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D113 AASHTO T51	This test determines the ductility of asphalt @ 77 degrees F.
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2170 AASHTO T201	This test determines the kinematic viscosity of asphalt @275 degrees F (Centistoke).



Appendix D (continued)

Asphalt Binder - Continued

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D2171 AASHTO T202	This test determines the dynamic viscosity. (absolute viscosity of asphalt @ 140 degrees F by the Vacuum Capillary Viscometer Poises).
Asphalt Binder (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D36 AASHTO T53	This test determines the softening point of asphalt.

Asphalt Emulsified

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Emulsified Asphalt (Sampling)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D140, D979 CT 125 AASHTO T 40, T168	This test describes the procedure to sample the emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244 AASHTO T59	This test determines the sieve retention of emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244 AASHTO T59	This test determines the weight per gallon of emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244 AASHTO T59	This test determines the penetration of the emulsified asphalt.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D244 CT 330 AASHTO T59	This test determines the residue @ 325 degrees F evaporation of emulsified asphalt.



Appendix D (continued)

Asphalt Emulsified - Continued

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D4402 AASHTO T201	This test determines the Brookfield viscosity.
Emulsified Asphalt (Testing)	One 0.5-gal. sample placed in a clean, sealed can.	Obtain one sample at the asphalt concrete plant for each 1,000 tons of asphalt concrete placed.	ASTM D88 AASHTO T72	This test determines the Saybolt-Furol viscosity of emulsified asphalt @ 77 degrees F (seconds).

Hot Mix Asphalt (Asphalt Concrete) – Concrete

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Asphalt Concrete (Sampling)	Obtain one 30-lb. sample each day of production	Obtain one sample at the asphalt concrete plant for each 5,000 tons of asphalt concrete placed.	ASTM D75, D140, D979 CT 125 AASHTO T 40, T168	This test describes the procedure to sample the asphalt concrete.
Asphalt Concrete (Testing)	4" x 8" cores	Take one 4" x 8" core for every 500 ft of paved roadway.	ASTM D1188, D1560, D1561, D5361 CT 304 AASHTO T246, T247	This test determines the field density of street samples.
Asphalt Concrete (Testing)	Obtain one 30-lb. sample for each day of production	Obtain one sample for every five cores taken.	ASTM D1188, D1560, D1561, D5361 CT 304 AASHTO T246, T247	This test determines the laboratory density and relative compaction of asphalt concrete.
Asphalt Concrete (Testing)	4" x 8" cores	Obtain one sample for every five cores taken.	ASTM D2726, D1188, D5361	This test determines the specific gravity of compacted bituminous mixture dense-graded or non-absorptive.



Appendix D (continued)

Hot Mix Asphalt (Asphalt Concrete) –Continued

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Asphalt Concrete (Testing)	One 30-lb sample	Obtain one sample for every 1,000 tons of asphalt concrete.	ASTM D1559 AASHTO T245	This test determines the resistance to plastic flow of prepared mixes as determined by the Marshall Method.
Asphalt Concrete (Testing)	One 30-lb sample	Obtain one sample for every 1,000 tons of asphalt concrete.	ASTM C117, D2172 (use Method B) AASHTO T164	This test determines the screen analysis of aggregates recovered from asphalt materials.
Geotextile Fabric (Placed Under the Asphalt Concrete) (Testing)	One 12 ft. x 3 ft. sample	Obtain one sample per job.	ASTM D4632 AASHTO M288	This test determines the weight per sq. yd. and grabs strength of geotextile fabrics.
Asphalt Concrete (Testing)	Sample any test location (random basis)	Obtain one sample for every 1,000 tons of asphalt concrete.	ASTM D2950 CT 375	This test determines the nuclear field density of in-place asphalt concrete.
Asphalt Concrete (Testing)	One 10-lb sample	Obtain one sample during every day of production.	ASTM D1560, D1561 CT 366 AASHTO T246, T247	This test determines the stability value of asphalt concrete.
Slurry Seals (Sample)	One 0.5 gal. sample in a clean, dry plastic container.	Obtain one sample per truck	ASTM D979 CT 125 AASHTO T 40, T168	This test describes the procedure for sampling the slurry seal.
Aggregate for Slurry Seals (Testing)	One 30-lb. sample.	Obtain at least one sample per project from the belt or hopper or stockpile and test for Sand Equivalent	ASTM D2419 CT 217 AASHTO T176	This test determines the Sand Equivalent of aggregates.



Appendix D (continued)

Slurry Seals

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Aggregate for Slurry Seals (Testing)	One 30-lb. sample.	Obtain at least one sample per project from the belt, hopper, or stockpile and test for sieve analysis of fine sand.	ASTM C117 AASHTO T11	This test determines the sieve analysis of fine sand (gradation of materials finer than No. 200 sieve by wash grading).
Slurry Seals (Testing)	One 0.5 gal. sample in a clean, dry plastic container.	Test one sample per project and test for Abrasion.	ASTM D3910	This test determines the Wet Track Abrasion Test (2) (WTAT).

Steel

Materials to be Sampled or Tested	Sample Size	Sampling/Testing Frequency	Typical Test Methods	Description or Comments
Steel Strand (Testing)	Sample strand at various sizes.	This item may be accepted using a Certificate of Compliance. Sample and test at least two steel strands per job when a Certificate of Compliance is not used.	ASTM A370, A416, E328 AASHTO T244	This test determines the tensile strength of uncoated seven-wire stress-relieved strand for pre-stressed concrete.
Steel Rebar (Testing)	Sample rebar at various sizes.	This item may be accepted using a Certificate of Compliance. Sample and test at least two steel rebar per job when a Certificate of Compliance is not used.	ASTM A615, A370 AASHTO T244	This test determines the steel reinforcement bar tensile strength and bend capability.



## Appendix F - Construction Materials Accepted by a Certificate of Compliance \*

Soil Amendment  
Fiber  
Mulch  
Stabilizing Emulsion  
Plastic Pipe  
Lime  
Reinforcing Steel  
Structural Timber and Lumber  
Treated Timber and Lumber  
Timber and Lumber  
Culvert and Drainage Pipe Joints  
Reinforced Concrete Pipe  
Corrugated Steel Pipe and Corrugated Steel Pipe Arches  
Structural Metal Plate Pipe Arches and Pipe Arches  
Perforated Steel Pipe  
Polyvinyl Chloride Pipe and Polyethylene Tubing  
Steel Entrance Tapers, Pipe Down drains, Reducers, Coupling Bands and Slip Joints  
Aluminum Pipe (Entrance Tapers, Arches, Pipe Down drains, Reducers, Coupling Bands and Slip Joints)  
Metal Target Plates  
Electrical Conductors  
Portland Cement  
Minor Concrete  
Waterstop

\* If Caltrans Standard Specifications May 2006 is part of contract specifications.

Note: Usually these items are inspected at the site of manufacture or fabrication and reinspected after delivery to the job site.

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PER-015 (Sexual Harassment in the Workplace) revised from 10/21/94, 5/1/95, 1/1/98  
PER-037 (Sexual Harassment Investigative Procedures) revised from 2/15/93

**I. PURPOSE**

The purpose of this policy is to reaffirm the City's commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace. This policy defines prohibited behavior and conduct, and sets forth a procedure for reporting, investigating and resolving complaints of discrimination, harassment, in the workplace, including retaliation and hostile work environment.

**II. POLICY**

- A. The City of Stockton prohibits any form of discrimination and/or harassment of any person based on race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute consistent with state or federal law. All such discrimination and harassment is unlawful and shall not be tolerated. In addition, under the federal Affordable Care Act (ACA), the City of Stockton prohibits discrimination and/or harassment, or retaliation against an employee who obtains coverage, receives a tax credit or subsidy through the Health Care "Market Place" or "Exchange."
- B. It is an unlawful employment practice to discriminate against or to harass an unpaid intern or volunteer on the basis of any legally protected classification unless an exception applies, such as a bona fide occupational qualification.
- C. The City will neither tolerate nor condone discrimination and/or harassment of employees by managers, supervisors, co-workers, or non-employees with whom City employees have a business service, or professional relationship.
- D. All City employees and non-employees share a responsibility to assist in

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maintaining an employment environment free of discrimination and harassment. This policy applies to all aspects of City employment, including, but not limited to, hiring, reassignment, placement, promotion, employment action, disciplinary action, layoff, reemployment, transfer, leave of absence, compensation and benefits, training; or other terms of treatment of that person in an unpaid internship, or another limited duration program to provide unpaid work experience for that person, or the harassment of an unpaid intern or volunteer.

- E. All allegations of discrimination and/or harassment shall be investigated immediately by the City, in accordance with this policy. If it is determined that any prohibited activity has occurred, remedial action shall be taken. Such action may include discipline up to and including discharge. In addition, under applicable law, individual supervisors and employees may be subject to personal liability and/or punitive damages in any litigation arising as a result of such conduct.
- F. All new hires shall attend harassment awareness training, and supervisors and managers shall attend harassment awareness and prevention training for supervisors every two years.
- G. The City of Stockton prohibits retaliation against any employee or non-employee by another employee, non-employee, supervisor, or manager for reporting, filing, testifying, assisting or participating in any manner in any investigation, proceeding, or hearing conducted by the employer or a federal or state enforcement agency.
- H. This policy applies to all officials, employees, volunteers, unpaid interns, agents, or contractors of the City.
- I. This policy shall be administered by the Director of Human Resources.



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### **III. DEFINITION AND EXAMPLES OF DISCRIMINATION AND HARASSMENT**

- A. "Discrimination," as used in this policy, is any action, behavior, practice, or process that is intended to deny, or results in the denial of, employment rights, privileges, or benefits because of a person's race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other prohibition identified under state and federal law. The following are examples of conduct that may constitute discrimination:
1. Soliciting applications from a source where all or most of potential workers are of the same race or color.
  2. Considering a person's gender as the basis for differences in pay, work assignments, performance evaluations, training, discipline, or any other area of employment; and
  3. Questioning a job applicant about the existence, nature and severity of a disability.
- B. "Harassment," as used in this policy, consists of any conduct affecting another person because of his or her race, religious creed, color, national origin, ancestry, military and veterans status, physical or mental disability, medical condition, genetic characteristics or information, denial of family and medical care leave, marital status, sexual orientation, sex (including gender, gender identity, gender expression, transgender, pregnancy, childbirth and breastfeeding), political affiliation, age (40 and older), concerted labor activity, or any other category or attribute identified under state and federal law when such conduct has the purpose or the effect of: (1) creating an intimidating, hostile or offensive work environment; (2) unreasonably interfering with the employee's or non-employee's work performance; or (3)

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otherwise adversely affecting an employee's or non-employee's employment opportunities.

Harassment may take many forms, including, but not limited to, the following examples:

1. Verbal Harassment: Epithets, derogatory and offensive comments or slurs based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  2. Physical Harassment: Assault, impeding or blocking movement that results in the physical interference with normal work or movement on the basis of race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
  3. Visual Harassment: The displaying of posters, photography, notices, bulletins, e-mails, cartoons or drawings with derogatory and offensive content based on race, religion, color, national origin, ancestry, physical or mental disability, marital status, pregnancy, medical condition, gender, sexual orientation, political affiliation, age, or any other category or attribute identified under state and federal law.
- C. "Sexual harassment," as used in this policy, is a subcategory of harassment, and is specifically defined by law as unwanted sexual advances, requests for sexual favors or visual, verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made a term or condition of employment; or
  2. Submission to or rejection of such conduct is used as a basis for employment decisions affecting the individual; or

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3. Such conduct has the purpose or effect of unreasonably interfering with an employee's or non-employee's work performance or creating an intimidating, hostile or offensive working environment because of the persistent, severe or pervasive nature of the conduct.

Examples of Sexual Harassment include, but are not limited to the following:

- a. Unwelcome sexual overtures or propositions.
- b. Offering employment benefits or status in exchange for sexual favors.
- c. Making or threatening retaliation after a negative response to sexual advances.
- d. Visual conduct such as leering, making sexual gestures, displaying sexually suggestive objects or pictures, cartoons, calendars or posters.
- e. Verbal conduct such as using epithets or slurs, telling sexually explicit jokes, or making derogatory or suggestive comments about a person's body or dress.
- f. Written communications of a sexual nature distributed in hard copy, soft copy or via a computer network.
- g. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations.
- h. Physical conduct such as touching, assaulting, impeding or blocking movements.

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- i. Retaliation for making harassment reports or threatening to report harassment.
- D. Affordable Care Act (ACA) Anti-Retaliation  
Pursuant to section §1558 of the Affordable Care Act, the City prohibits discrimination or retaliation towards any employee who:
1. Receives a health insurance tax credit or subsidy through the Health Care “Marketplace” or “Exchange”, by which can trigger a penalty payable by the employer;
  2. Reports potential violations of protections afforded under Title I of the Act, which provides guaranteed availability protections among other things;
  3. Testifies in a proceeding concerning such violation;
  4. Assists or participates in a proceeding concerning a violation; or
  5. Objects to, or refuses to participate in, any activity, policy, practice, or assigned task that the employee reasonably believes to be in violation of any provision of the Title I of the Act.

An employee who believes that he or she has been discharged or otherwise discriminated against in violation of section §1558 of the Affordable Care Act may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 2087(b) of title 15, United States Code.

#### **IV. REPORTING AND COMPLAINT PROCEDURES**

##### **A. Immediate Action Required**

The City’s reporting and complaint procedures provide for an immediate, thorough and objective investigation of discrimination or harassment claims, appropriate disciplinary action taken against any person found to have engaged in prohibited behavior, and appropriate alternative remedies to any

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employee or non-employee subject to discrimination or harassment. To accomplish this, such incidents must be reported immediately to a supervisor or manager.

1. Employee's and Non-Employee's Responsibilities when Subjected to Discrimination and/or Harassment
  - a. Employees or non-employees who believe they have been subjected to discrimination or harassment, or are aware of discrimination or harassment against others, shall report the situation immediately to his/her supervisor or manager, except as specified in subsection (b), below. Employees and non-employees shall report any such incidents occurring in the workplace, whether committed by coworkers, supervisors or managers, or third persons doing business with the City, such as customers or vendors, or other non-employees. If comfortable doing so, an employee or non-employee who has a complaint of discrimination or harassment is encouraged to directly inform the person(s) engaging in the behavior that such conduct is offensive and insist the behavior to stop.
  - b. Employees and non-employees must immediately contact a supervisor or manager to register a complaint of discrimination or harassment, unless that supervisor or manager is the individual engaging in the unwanted behavior. In that case, the employee or non-employee may contact someone at the next supervisory level. If the employee or non-employee feels uncomfortable dealing directly with his or her immediate supervisor or manager, he or she may contact the department head, or the Director of Human Resources (or either of their designees) to register a complaint of discrimination or harassment.
  - c. Employees and non-employees may file a formal complaint of harassment or discrimination with their department head or

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with Human Resources. To assist the City in conducting a thorough investigation, complaints shall be submitted in writing and shall include specific details of the incident(s), the names of the individuals involved, the names of any witnesses, and any documentary evidence (notes, pictures, cartoons, etc.) that will corroborate the allegations.

- d. Employees and non-employees shall immediately report any retaliation to a supervisor, manager, department head or Director of Human Resources (or designee). All retaliation complaints shall be immediately, objectively and thoroughly investigated in accordance with the investigation procedures. If a report of retaliation is substantiated, appropriate disciplinary action, up to and including discharge shall be taken.
2. Supervisor's or Manager's Responsibilities to Eliminate Discrimination and/or Harassment
    - a. A supervisor or manager is responsible for enforcing the City's discrimination and harassment policy. Supervisors or managers must ensure that all employees and non-employees are aware of the City's policy through open discussion of the policy at staff meetings and by posting the policy in a conspicuous location accessible to all staff members.
    - b. A supervisor or manager shall be cognizant of employees' and non-employees' behavior and shall not permit any employee or non-employee under their supervision to be subjected to or engage in any conduct prohibited by this policy.
    - c. A supervisor or manager who observes conduct prohibited by this policy shall immediately direct the employee or non-employee to cease the conduct.

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- d. A supervisor or manager who receives a complaint of prohibited conduct is required to take the complaint seriously, and report the matter immediately to the department head; be supportive of the complainant; ensure there is no retaliation against the complainant; conduct an internal fact-finding review into the allegations; obtain as much detailed information as possible; thoroughly document the findings; communicate in written form to the parties the resolution of the complaint; and report to and consult with the Human Resources Department promptly, without delay.
- B. Confidentiality. The City will make every effort to protect the privacy and confidentiality of all parties involved, as well as any information and/or documentation obtained, to the extent possible consistent with a thorough investigation.
- C. Penalty for Non-Compliance. The City shall take disciplinary action, up to and including discharge, against any supervisor or manager who fails in his/her responsibility to take immediate action in response to an employee's or non-employee's complaint of discrimination or harassment. Further, such disciplinary action shall be taken against a supervisor or manager who fails to stop discriminatory or harassing conduct committed in his/her presence or to stop such conduct about which the supervisor or manager has knowledge.
- V. **INVESTIGATION PROCEDURES**
- A. Determination of Responsibility for Investigation

If a formal complaint is filed with the department head or the Director of Human Resources (or either of their designees), the department head and the Director of Human Resources shall consult with one another to determine whether the department or Human Resources shall conduct the fact-finding investigation into the allegations. Either the department head or the Director of Human Resources (or either of their designees), depending on who is

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responsible for the investigation, shall issue written notification to the complainant and alleged harasser(s). The notification shall specify the nature of the complaint, and inform the parties that an investigation into the allegations of discrimination and/or harassment shall be conducted.

**B. Investigative Guidelines**

The investigation shall include the following steps taken in the order best suited to the circumstances:

1. Identify and preserve the evidence.
2. Confirm the name and position of the complainant. Interview the complainant.
3. Allow the complainant the opportunity to place the complaint in writing.
4. Obtain the identity of the alleged harasser(s).
5. Obtain as many details as possible regarding the incident(s) that prompted the complaint, including the number of occurrences, dates, times, locations, and witnesses (if applicable).
6. Ascertain how the complainant felt about the alleged incident when it occurred; complainant's response(s) to the alleged behavior; and witness statements (if applicable).
7. Ascertain if any threats or promises were made in connection with the alleged harassment.
8. Ascertain if the complainant knows of or suspects that there are other victims of harassment by the same person(s).
9. Ascertain whether the complainant has spoken to anyone, especially



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supervisors, about the harassment.

10. Ascertain what resolution would be acceptable to the complainant.
11. Interview the alleged harasser to get his or her side of the story, including any possible motivation for a false allegation.
12. Interview witnesses who were identified by the complainant regarding the alleged harasser or other persons identified during the investigation.
13. Interview witnesses who were identified by the alleged harasser or other persons identified during the investigation.
14. Advise all participants that the investigation is "confidential" and not to engage in any retaliatory conduct, as such conduct is subject to disciplinary action up to and including discharge. Confidentiality will be maintained to the extent possible. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Director of Human Resources. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction.
15. Conduct follow-up interviews, if warranted.
16. Prepare report of findings and discuss with management and designated legal staff.

## **VI. RESPONDING TO THE COMPLAINT**

- A. Following the completion of the fact-finding investigation, either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation, shall

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make a report of findings, along with a recommendation regarding the appropriate remedial action to be taken, if warranted. The recommendation shall be made after reviewing the findings of the investigation, giving consideration to all factual information, the nature of the alleged conduct, and the totality of the circumstances. If the investigation was conducted by the Director of Human Resources, or designee, the Director, or designee, shall confer with the affected department head and both shall concur on the remedial action to be taken, if any. If the investigation was conducted by the department head, the department head shall confer with the Director of Human Resources prior to making the report of findings and both shall concur on the remedial action to be taken, if any.

- B. If either the department head or the Director of Human Resources does not concur with the findings and recommendation of the other, the City Attorney (or designee) shall review and resolve the matter in dispute.
- C. Report of findings and recommendation shall be treated as a confidential document and no other distribution shall be made without first consulting with the City Attorney's Office. A completed investigation report will not be disclosed, except as it is deemed necessary to support a disciplinary action, to take remedial action, to defend the City in adversarial proceedings, or to comply with the law or court order.
- D. Either the department head or the Director of Human Resources (or either of their designees), depending on who is responsible for the investigation shall provide a written response to the complainant and the person alleged to have committed the misconduct, discrimination and/or harassment. The response shall include a copy of the City's discrimination and harassment policy and a memorandum indicating the City's determination as to whether the complaint is:
1. Unsustained: The investigation failed to disclose sufficient evidence to substantiate the allegation(s).
  2. Unfounded: The investigation proved that the act(s) or omission(s)

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complained of did not occur. The finding also applies when the individual employee(s) named in the complaint were not involved in the act(s) or omission(s) alleged.

3. Sustained: The investigation disclosed sufficient evidence to substantiate the allegation(s) made in the complaint; appropriate action will be taken.

E. Details regarding any specific fact-findings or disciplinary action to be taken will not be communicated to the complainant. The City Attorney shall review the response for legal sufficiency before dissemination.

F. The City shall close and retain the investigation file, in accordance with applicable laws, regulations, and City policy regarding retention of City records.

## **VII. DISCIPLINE**

Disciplinary action imposed as a result of any investigation conducted pursuant to this policy shall be commensurate with the severity of the offense, up to and including discharge, even for a first offense.

## **VIII. ALTERNATIVE REMEDIES**

If upon exhausting all internal remedies to file, investigate, and respond to a charges of discrimination/harassment, pursuant to title VII of the Federal Civil Rights Act of 1964 (42 U.S.C §§ 2000e *et seq.*), any person has a right to file a charge of discrimination/harassment with the Equal Employment Opportunity Commission ("EEOC"). In addition, pursuant to the California Fair Employment and Housing Act (Gov. Code §§ 12900 – 12996.) a person may also file a complaint of discrimination/harassment with the California Department of Fair Employment and Housing ("DFEH"). Employees or non-employees who believe that they have been subjected to discrimination/harassment may file a complaint with either of these

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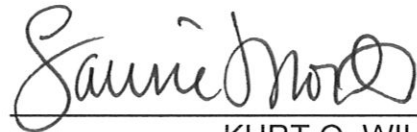
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agencies. Both the EEOC and DFEH serve as neutral fact-finders and attempt to assist parties in resolving disputes voluntarily.

**IX. COMMUNICATION OF POLICY**

This policy shall be provided to all managers, supervisors, employees, volunteers, unpaid interns, agents or contractors of the City and shall be posted in the appropriate places. All employees shall participate in City approved harassment awareness training as directed by management or Human Resources; and all supervisors, as required by law, shall participate in City approved interactive harassment awareness training and education sessions at least once every two years, or as otherwise specified by law.

APPROVED:



KURT O. WILSON  
CITY MANAGER

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EXHIBIT C  
SUMMARY OF INDEMNITY AND INSURANCE REQUIREMENTS CHECKLIST  
(NOT REQUIRED TO BE SUBMITTED)

This checklist is provided to assist in ensuring proponents provide all documentation required by the insurance exhibit (Exhibit D). The insurance exhibit details the insurance terms to be met and is controlling.

Insurance Certificate(s)/Endorsement(s):

Certificate of Insurance:

- \_\_\_\_\_ Name of Insured on Certificate matching Company named on Contract
- \_\_\_\_\_ Certificate lists City of Stockton as Additional Insured
- \_\_\_\_\_ Certificate Holder block reads: City of Stockton, Attn: Risk Services, 425 N El Dorado Street, Stockton CA 95202
- \_\_\_\_\_ Insurance Coverages/Limits are correct per the insurance requirements exhibit
- \_\_\_\_\_ General Liability is on occurrence basis
- \_\_\_\_\_ Insurance Company acceptable financial rating (not less than "A: VII," and California Admitted carrier)
- \_\_\_\_\_ Endorsement(s) are attached to the insurance certificate(s)
- \_\_\_\_\_ Declarations and endorsement page for the general liability are attached to the insurance certificate
- \_\_\_\_\_ Additional Insured Endorsement(s) wording: "City of Stockton, its Mayor, Council, Officials, Employees, Agents and Volunteers are Additional Insureds."
- \_\_\_\_\_ Additional insured form is at least as broad as CG 20 10 11 85
- \_\_\_\_\_ Endorsement(s) include:
  - Additional Insured endorsement for:
    - current/ongoing operations (General Liability)
    - completed operations (General Liability)
  - Primary and Non-Contributory (General Liability)
  - Waiver of Transfer of Rights of Recovery Against Others to Us (General Liability)
  - Waiver of Transfer of Rights of Recovery Against Others to Us (Workers' Compensation)

Contract Bond(s):

- \_\_\_\_\_ Name on Bond matches Company name on Contract
  - \_\_\_\_\_ Surety Admitted to transact Surety in California
  - \_\_\_\_\_ AMB Best Rated at least "A:VIII"
  - \_\_\_\_\_ Faithful Performance Bond(s) and Labor & Material Bond(s) at 100% of contract
  - \_\_\_\_\_ Maintenance Bond(s) at 20% of contract
  - \_\_\_\_\_ Bond(s) signed and sealed by Contractor and Surety
-

## **Insurance Requirements for Construction Contracts**

Contractor shall procure and maintain for the duration of the contract, *and for 5 years thereafter*, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.

### **MINIMUM SCOPE AND LIMIT OF INSURANCE**

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL)**: Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability**: Insurance Services Office Form CA 0001 covering Code 1 (any auto), with limits no less than **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
4. **Surety Bonds** as described below.
5. **Professional Liability** (if Design/Build), with limits no less than **\$2,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.
6. **Contractors' Pollution Legal Liability** and/or Asbestos Legal Liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

### **Self-Insured Retentions**

Self-insured retentions must be declared to and approved by the City of Stockton. The City of Stockton may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City of Stockton. The CGL and any policies, including Excess liability policies, may not be subject to a self-insured retention (SIR) or deductible that exceeds \$25,000 unless approved in writing by City of Stockton. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Additional Insured Parties. City of Stockton may deduct from any amounts otherwise due Contractor to fund the SIR/deductible. Policies shall NOT contain any self-insured retention (SIR) provision that limits the satisfaction of the SIR to the Named Insured. The policy must also provide that Defense costs, including the Allocated Loss Adjustment Expenses, will satisfy the SIR or deductible. City of Stockton reserves the right to obtain a copy of any policies and endorsements for verification.

### **Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. **The City of Stockton, its officers, officials, employees, and volunteers are to be covered as additional insureds** on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired, or borrowed by or on behalf of the Contractor. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, CG 11 85 or **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 forms if later revisions used). Additional insured Name of Organization shall read "City of Stockton, its officers, officials, employees, and volunteers." Policy shall cover City of Stockton, its officers, officials, employees, and volunteers for all locations work is done under this contract.

2. For any claims related to this project, the **Contractor's insurance coverage shall be primary and non-contributory** insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Stockton, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies. The City of Stockton does not accept endorsements limiting the Contractor's insurance coverage to the sole negligence of the Named Insured.

3. Each insurance policy required by this clause shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

***Builder's Risk (Course of Construction) Insurance***

Contractor may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall **name the City of Stockton as a loss payee** as their interest may appear.

If the project does not involve new or major reconstruction, at the option of the City of Stockton, an Installation Floater may be acceptable. For such projects, a Property Installation Floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken, or destroyed during the performance of the Work, including during transit, installation, and testing at the City of Stockton's site.

***Claims Made Policies***

If any coverage required is written on a claims-made coverage form:

1. The retroactive date must be shown, and this date must be before the execution date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
3. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective, or start of work date, the Contractor must purchase extended reporting period coverage for a minimum of five (5) years after completion of contract work.
4. A copy of the claims reporting requirements must be submitted to the City of Stockton for review.
5. If the services involve lead-based paint or asbestos identification/remediation, the Contractors Pollution Liability policy shall not contain lead-based paint or asbestos exclusions. If the services involve mold identification/remediation, the Contractors Pollution Liability policy shall not contain a mold exclusion, and the definition of Pollution shall include microbial matter, including mold.

***Umbrella or Excess Policies***

The Contractor may use Umbrella or Excess Policies to provide the liability limits as required in this agreement. This form of insurance will be acceptable provided that all of the Primary and Umbrella or Excess Policies shall provide all of the insurance



coverages herein required, including, but not limited to, primary and non-contributory, additional insured, Self-Insured Retentions (SIRs), indemnity, and defense requirements. The Umbrella or Excess policies shall be provided on a true "following form" or broader coverage basis, with coverage at least as broad as provided on the underlying Commercial General Liability insurance. No insurance policies maintained by the Additional Insureds, whether primary or excess, and which also apply to a loss covered hereunder, shall be called upon to contribute to a loss until the Contractor's primary and excess liability policies are exhausted.

### ***Acceptability of Insurers***

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best rating of no less than A: VII, unless otherwise acceptable to the City of Stockton.

### ***Waiver of Subrogation***

**Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire** from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. **The Workers' Compensation policy shall be endorsed with a waiver of subrogation** in favor of the City of Stockton for all work performed by the Contractor, its employees, agents and subcontractors.

### ***Verification of Coverage***

Contractor shall furnish the City of Stockton with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause and **a copy of the Declarations and Endorsements Pages of the CGL and any Excess policies listing all policy endorsements**. All certificates and endorsements and copies of the Declarations & Endorsements pages are to be received and approved by the City of Stockton before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time. City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

### ***Subcontractors***

Contractor shall require and verify that all subcontractors maintain insurance meeting all requirements stated herein, and Contractor shall ensure that City of Stockton is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a form at least as broad as CG 20 38 04 13.

### ***Duration of Coverage***

CGL & Excess liability policies **for any construction related work, including, but not limited to, maintenance, service, or repair work**, shall continue coverage for a minimum of 5 years for Completed Operations liability coverage. Such Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***

### ***Surety Bonds***

Contractor shall provide the following Surety Bonds:

1. Bid Bond
2. Performance Bond
3. Payment Bond
4. Maintenance Bond

The Payment Bond and the Performance Bond shall be in a sum equal to the contract price. If the Performance Bond provides for a one-year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of California and secured through an authorized agent with an office in California.

### ***Special Risks or Circumstances***

City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

### **Certificate Holder Address**

The address for mailing certificates, endorsements and notices shall be:

City of Stockton  
Its Officers, Officials, Employees and Volunteers  
400 E Main Street, 3rd Floor – HR  
Stockton, CA 95202

**\*\*\*THIS IS A TEMPLATE for federally funded projects - DO NOT ALTER THIS DOCUMENT! SAVE AS A NEW DOCUMENT BEFORE MAKING YOUR CHANGES.**

**Check/complete all items in PINK\*\*\***

## **CONSTRUCTION CONTRACT**

This contract is made and entered into on \_\_\_\_\_, by and between **NAME OF CONTRACTOR**, a (INDICATE STATUS: **STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP**), with a business address at **ADDRESS/CITY/STATE/ZIP**, hereinafter called "CONTRACTOR," and CITY OF STOCKTON, a municipal corporation, hereinafter called "CITY."

### WITNESSETH:

WHEREAS, plans and specifications for the construction of **PROJECT NAME (PROJECT NO. xx/FEDERAL PROJECT NO.xx)**, hereinafter called "PROJECT," were regularly adopted by **Council Motion -OR- Council Resolution No. \_\_\_\_\_**, on \_\_\_\_\_; and

WHEREAS, the contract for said work was regularly awarded to CONTRACTOR, by **Council Motion -OR- Council Resolution No. \_\_\_\_\_**, on \_\_\_\_\_.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants herein contained, the parties hereto expressly agree as follows:

CONTRACTOR agrees:

**1. SCOPE OF SERVICES.** To do the work and furnish all the labor, materials, tools, equipment, and insurance required for the construction of PROJECT in accordance with the plans and specifications adopted on \_\_\_\_\_, by **Council Motion -OR- Council Resolution No. \_\_\_\_\_**. The "contract documents," which include the bid documents, project plans, specifications, all letters of clarification, and the City of Stockton Standard Specifications and Plans, are incorporated into and made a part of this contract by this reference to the same extent as if fully set forth.

**2. COMPENSATION.** To do and perform the work contemplated hereby in a good and workmanlike manner and to furnish all labor, materials, tools, and equipment necessary therefore at the prices specified in Exhibit A, attached hereto and by reference made a part hereof, under the direction of and to the complete satisfaction of the Director of Public Works of the City of Stockton. Total compensation for services and reimbursement for costs shall not exceed **ENTER CONTRACT AMOUNT**, or as otherwise mutually agreed to in a Contract Change Order.

**3. INSURANCE.** CONTRACTOR shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this contract, the policies of insurance specified in Exhibit B, which is attached to this

contract and incorporated by this reference, and as provided in the “contract documents” including Section 7-1.06 of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured.

Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

The Additional Insured coverage under the Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the City of Stockton’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.

The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City of Stockton (if agreed to in a written contract or Agreement) before the City of Stockton’s own insurance or self-insurance shall be called upon to protect it as a named insured.

All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Payment Bond in the amount of the self-insured retention (SIR) may be required.

Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City of Stockton.

The City of Stockton reserves the right to obtain a full certified copy of any Insurance policy and endorsements.

Failure to exercise this right shall not constitute a waiver of right to exercise later.

Contractor shall maintain insurance as required by this contract to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the City at its sole discretion may purchase the coverage required and the cost will be paid by contractor.

Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and insurance requirements to the extent they apply to the scope of the Subcontractor's work. Subcontractors hired by Contractor agree to be bound to Contractor and the City of Stockton in the same manner and to the same extent as Contractor is bound to the City of Stockton under the Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the City of Stockton Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor shall require all sub-contractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and contractor will provide proof of compliance to the City.

**4. INDEMNITY AND HOLD HARMLESS.** With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, Contractor shall indemnify, protect, defend with counsel approved by City and at Contractor's sole cost and expense, and hold harmless City of Stockton, its officers, officials, employees, and volunteers from and against any and all claims, causes of action, liabilities, judgments, awards, losses, liens, claims, stop notices, damages, expenses, and costs (including without limitation attorneys' fees, expert and consultant fees, and other expenses of litigation) of every nature, including, but not limited to, death or injury to persons, or damage to property, which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement, or from any violation of any federal, State, or municipal law or ordinance, or City Policy, by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor shall not be obligated to indemnify or defend City for claims finally determined by a court of law or arbitrator to arise from the active negligence or willful misconduct of the City. It is the intent of the Parties that this indemnity obligation is at least as broad as is permitted under California law. To the extent California Civil Code sections 2782, et seq., limit the defense or indemnity obligations of Contractor to City, the intent hereunder is to provide the maximum defense and indemnity obligations allowed by Contractor under the law. The indemnity set forth in this section shall not be limited by insurance requirements or by any other provision of this Agreement.

With exception that this section shall in no event be construed to require indemnification, including the duty to defend, by Contractor to a greater extent than permitted under the public policy of the State of California, the parties agree that Contractor's duty to defend City is immediate and arises upon the filing of any claim against the City for damages which arise out of or are in any way connected with the work performed, materials furnished, or services provided under this Agreement by Contractor or Contractor's officers, agents, employees, volunteers or subcontractors. Contractor's duties and obligations to defend the City shall apply regardless of whether or not the issue of the City's liability, breach of this Agreement, or other obligation or fault has been determined. Contractor shall be immediately obligated to pay for City's defense costs of the claim, including, but not limited to, court costs, attorney's fees and costs, expert consultant and witness fees and costs, other witness fees, document reproduction costs, arbitration fees, and, if after final judgment an appeal is pursued, all of such costs for the appeal.

At the conclusion of the claim, if there is any determination or finding of sole active negligence or willful misconduct on the part of the City, City will then reimburse Contractor for amounts paid in excess of Contractor's proportionate share of responsibility for the damages within 30 days after Contractor provides City with copies of all bills and expenses incurred in the defense of the claim(s). It is agreed between the parties that this reimbursement provision assures Contractor is not obligated to defend or indemnify City in an amount greater than provided for under California law, including, without limitation, California Civil Code sections 2782, 2782.6, and 2782.8.

With the exception that this section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the public policy of the State of California, and in addition to the other indemnity obligations in this Agreement, Contractor shall indemnify, defend, and hold harmless the City of Stockton, its officers, officials, employees, and volunteers from and against all claims, losses, expenses, and costs including, but not limited to, attorneys' fees, arising out of any claim brought against the City by an employee, office, agent, or volunteer of Contractor, regardless of whether such claim may be covered by any applicable workers compensation insurance. Contractor's indemnification obligation is not limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor under workers' compensation acts, disability acts, or other employee benefit acts.

The City's acceptance of the insurance certificates required under this Agreement does not relieve the CONTRACTOR from its obligation under this paragraph. The indemnification obligations of this section shall survive the termination of this agreement. Any exceptions to this language may result in a proposal being deemed non-responsive.

Contractor/Subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this agreement for the full period of time allowed by law.

The defense and indemnification obligations of this agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. If any section, subsection, sentence, clause or phrase of this indemnification is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this indemnification.

**5. STANDARD PLANS AND SPECIFICATIONS.** The performance of said work and the furnishing of said materials shall be executed in accordance with Section 8-1.04B of the City of Stockton Standard Specifications and Plans as adopted on September 27, 2016, by Council Resolution No. 2016-09-27-1213, effective September 27, 2016, and the provisions of the issued project specifications.

The Director of Public Works will furnish CONTRACTOR a weekly statement showing the number of days charged to the contract for the preceding week, the number of days

specified for completion of the contract, and the number of days remaining to complete the contract. CONTRACTOR will be allowed one (1) week in which to file a written protest setting forth in what respects said weekly statement is incorrect, otherwise the statement shall be deemed to have been accepted by CONTRACTOR as correct.

**6. WORKING DAYS.** It is agreed by the parties to the contract that in case all the work called for under the contract in all parts and requirements, is not finished or completed within the number of days as set forth, damage will be sustained by CITY, and that it is and will be impracticable and extremely difficult to ascertain the actual damage which CITY will sustain in the event of and by reason of such delay; and it is therefore agreed that CONTRACTOR will pay to CITY the sum of **XXX AND NO/100 DOLLARS (\$XXX)** per day for each and every calendar day's delay in finishing the work in excess of the number of days prescribed; and CONTRACTOR agrees to pay said liquidated damages as herein provided, and in case the same are not paid, agrees that CITY, may deduct the amount thereof from any monies due or that may become due CONTRACTOR under the contract.

It is further agreed that in case the work called for under the contract is not finished and completed in all parts and requirements within the number of days as specified, CITY shall have the right to increase the number of days or not, as may seem best to serve the interest of CITY, and if CITY decides to increase the said number of days, CITY shall further have the right to charge to CONTRACTOR, CONTRACTOR's heirs, assigns or sureties, and to deduct from the final payment for the work, all or any part, as may be deemed proper, the liquidated damages as specified or the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the contract, and which accrue during the period of such extension, whichever is greater, except the cost of final surveys and preparation of final estimate shall not be included in such charges.

A working day shall not include, nor shall CONTRACTOR be assessed with liquidated damages nor the additional cost of engineering and inspection during any delay beyond the time named for the completion of the work caused by acts of God or of the public enemy, acts of CITY, fire, floods, epidemics, quarantine restrictions, strikes, and freight embargoes and subject to approval by the Director, inability to get materials ordered by CONTRACTOR or Subcontractor due to such causes provided that CONTRACTOR shall notify the Director in writing of the causes of delay within five (5) working days from the beginning of any such delay, and the Director shall ascertain the facts and the extent of the delay, and Director's findings of the facts thereon shall be final and conclusive.

If CONTRACTOR is delayed by reason of alterations made in these specifications, or by any act of the Director or of CITY, not contemplated by the contract, the time of completion shall be extended proportionately and CONTRACTOR shall be relieved during the period of such extension of any claim for liquidated damages, engineering or inspection charges or other penalties. CONTRACTOR shall have no claim for any other compensation for any such delay.

**7. CONFORMANCE TO APPLICABLE LAWS**

**A. TITLE VI**

Title VI of the Civil Rights Act of 1964 requires that “no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” (42 USC Section 2000d) <http://www.dol.gov/oasam/regs/statutes/titlevi.htm>.

The City of Stockton requires compliance with the requirements of Title VI in all of its programs and activities regardless of funding source.

**B. DISCRIMINATION AND HARASSMENT POLICY**

The City of Stockton has a Discrimination and Harassment Policy (Exhibit C). The purpose of this policy is to reaffirm the CITY’s commitment to demonstrating respect for all individuals by strictly prohibiting discrimination and harassment, including sexual harassment in the workplace, to define the types of behavior and conduct prohibited by this policy, and to set forth a procedure for reporting, investigating, and resolving complaints of discrimination and harassment in the workplace.

**C. LABOR STANDARDS AND PROVISIONS/CALIFORNIA LABOR CODE**

The bidder shall understand that conditions set forth in Chapter 1, Part 7, Division 2 of the California Labor Code shall be considered part of the contract agreement. [https://leginfo.legislature.ca.gov/faces/codes\\_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2](https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=LAB&division=2.&title=&part=7.&chapter=1.&article=2).

**D. PREVAILING WAGE**

CONTRACTOR and any Subcontractor shall pay each employee engaged in the trade or occupation not less than the prevailing hourly wage rate. In accordance with the provisions of Section 1770 of the Labor Code, the Director of Department of Industrial Relations of the State of California has determined the general prevailing rates of wages and employer payments for health and welfare, pension, vacation, travel time, and subsistence pay as provided for in Section 1773.1, apprenticeship or other training programs authorized by Section 3093 and similar purposes applicable to the work to be done. CONTRACTOR performing the work under this contract shall



obtain a copy of the wage rate determination and shall distribute copies to each Subcontractor (see Exhibit D). As the wage determination for each craft reflects an expiration date, it shall be the prime CONTRACTOR and each Subcontractor's responsibility to ensure that the prevailing wage rates of concern is current and paid to the employee.

- (i) The CONTRACTOR performing the work shall be responsible for obtaining a copy of the State wage rate determination. State wage rates may be obtained at <http://www.dir.ca.gov/OPRL/pwd/Determinations/Northern/Northern.pdf>. The CONTRACTOR shall be responsible for posting said wage rates at a prominent location at the work site and shall maintain same in a good readable condition for the duration of the work.
- (ii) Should the CONTRACTOR choose to work on a Saturday, Sunday or on a holiday recognized by the Labor Unions, the CONTRACTOR shall reimburse the CITY the actual cost of engineering, inspection, superintendence, and or other overhead expenses which are directly chargeable to the contract. Should such work be undertaken at the request of the CITY, reimbursement will not be required. To conform strictly with the provisions of Division 2, Part 7, Chapter 1, Article 2, of the Labor Code of the State of California. To forfeit as a penalty to CITY the sum of TWENTY-FIVE AND NO/100 DOLLARS (\$25.00) for each laborer, worker, or mechanic employed by CONTRACTOR, or by any Subcontractor under CONTRACTOR, in the execution of this contract, for each calendar day during which any laborer, worker, or mechanic is required or permitted to work more than eight (8) hours and who is not paid the general prevailing rate of per diem wages for holiday and overtime work in violation of the provisions of Sections 1770 to 1781 of the Labor Code of the State of California. That all sums forfeited under the provisions of the foregoing sections shall be deducted from the payments to be made under the terms of this contract.
- (iii) The CONTRACTOR to whom the contract is awarded shall ensure that the prime and each subcontractor will in accordance with Section 1776 of the Labor Code, maintain certified payroll records. A copy of said records shall be provided with each invoice to the Public Works Department, Attention Contract Compliance Officer. It shall be the CONTRACTOR'S responsibility to obtain copies of the current prevailing wage rate determination for all subcontractors. Additionally, certified payroll records must be uploaded to the DIR website as required by labor code.

- (iv) The CONTRACTOR shall comply with the provisions established in Section 1777.5 of the Labor Code concerning the 1) certified approval by local joint apprenticeship committees for the employment and training of apprentices, and 2) contribution of funds to administer and conduct apprenticeship programs, if applicable to the job.

E. APPENDIX E OF THE TITLE VI ASSURANCES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest agrees to comply with the Appendix E of the Title VI Assurances attached as Exhibit F.

F. SANCTIONS

Deliverables must conform with all applicable federal, state, and local laws. Such conformity includes compliance with federal sanctions, and Contractor certifies that it has not and will not engage in prohibited transactions with sanctioned persons or entities.

CITY agrees:

8. **COMPENSATION.** To pay CONTRACTOR for the work herein contemplated in the following manner: Progress payments will be made on or about the first day of each calendar month, in such sum as shall make the aggregate of payment up to such day equal to ninety-five percent (95%) of the proportional contract price, upon the basis of the progress certificate of the Director of Public Works as to the amount of work done and the proportional amount of the contract price represented therefore; and all of the remaining part of the contract price not as aforesaid paid, shall be paid at the expiration of thirty-five (35) days from the completion of said work of construction and the certification by the Director of Public Works of such completion.

9. **SECURITIES.** Pursuant to Section 22300 of the Public Contract Code, CONTRACTOR will be permitted, at its request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a State or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest thereon.

10. **CHANGE ORDERS.** CITY reserves the right to make such alterations, deviations, additions to or omissions from the plans and specifications, including the right to increase or decrease the quantity of any item or portion of the work, as may be deemed by the Engineer to be necessary or advisable and to require such extra work as may be determined by the Engineer to be required for the proper completion or construction of the whole work contemplated.

Any such changes will be set forth in a contract change order which will specify, in addition to the work done in connection with the change made, adjustment of contract time, if any, and the basis of compensation for such work. A contract change order will not become effective until approved by the City Manager and/or the City Council.

Processing of change orders shall be in accordance with Section 4-1.05A of the City of Stockton Standard Specifications and Plans as adopted by Council on September 27, 2016, by Resolution No. 2016-09-27-2013, effective September 27, 2016, or as otherwise amended by Council. When the compensation for an item of work is subject to adjustment under the provisions of Standard Specifications and Plans, Section 4-1.05A, CONTRACTOR shall, upon request, promptly furnish the Engineer with adequate detailed cost data for such item of work.

#### **11. AUDITS**

(a) CITY reserves the right to periodically audit all charges made by CONTRACTOR to CITY for services under the contract. Upon request, CONTRACTOR agrees to furnish CITY, or a designated representative, with necessary information and assistance.

(b) CONTRACTOR agrees that CITY or its delegate will have the right to review, obtain and copy all records pertaining to performance of the contract. CONTRACTOR agrees to provide CITY or its delegate with any relevant information requested and shall permit CITY or its delegate access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with this requirement. CONTRACTOR further agrees to maintain such records for a period of five (5) years after final payment under the contract.

#### **12. FHWA 1273 AND CARGO PREFERENCE ACT**

Federal form FHWA 1273 is physically included in this contract as Exhibit E.

In compliance with the Cargo Preference Act of 1954 (CPA), 46 CFR §381, and the implementing regulations in 46 CFR §381.7, the Contractor agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels;
- B. To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible

copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590;

- C. To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.

13. **WAIVER.** It is expressly understood and agreed by and between the parties hereto that a waiver of any of the conditions of this contract shall not be considered a waiver of any of the other conditions thereof.

It is further understood and agreed by and between the parties hereto that time is of the essence of this contract in all respects.

IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals the day and year first above written.

ATTEST:  
ELIZA R. GARZA, CMC  
CITY CLERK

CITY

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

By: \_\_\_\_\_  
HARRY BLACK  
CITY MANAGER

APPROVED AS TO FORM & CONTENT:  
LORI M. ASUNCION  
OFFICE OF THE CITY ATTORNEY

By: \_\_\_\_\_  
LIST NAME OF CONTRACTOR

By: \_\_\_\_\_  
DEPUTY CITY ATTORNEY

\_\_\_\_\_  
Tax Identification No.

**\*\*\*COPY/PASTE CONTRACTOR'S BID SCHEDULE HERE AS EXHIBIT A\*\*\***

SAMPLE

**OBTAIN INSURANCE REQUIREMENT EXHIBIT FROM RISK SERVICES AND  
INCLUDE HERE AS EXHIBIT B**

SAMPLE

**DISCRIMINATION AND HARASSMENT POLICY AS EXHIBIT C**

SAMPLE

FEDERAL WAGE RATES HERE AS EXHIBIT D

SAMPLE



PLACE REQUIRED FEDERAL-AID CONTRACT LANGUAGE - FHWA 1273 HERE  
AS EXHIBIT E (Obtain from Bid Forms Boilerplate)

SAMPLE

**PLACE EXHIBIT F APPENDIX E OF THE TITLE VI ASSURANCES**

SAMPLE

**BOND FOR FAITHFUL PERFORMANCE**

KNOW ALL MEN BY THESE PRESENTS:

That we, \_\_\_\_\_, a **(INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP)**, as Principal and \_\_\_\_\_

\_\_\_\_\_, a corporation, organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, as obligee, in the just and full sum of **SPELL OUT CONTRACT AMOUNT AND xx/100 DOLLARS (\$xxx enter dollar amount)**, in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to the said CITY, the said Principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that the above bounded Principal has simultaneously entered into a contract with the CITY, to do and perform the following work, to wit:

**NAME OF PROJECT  
(PROJECT NO. xxx/FEDERAL PROJECT NO. xxx)**

NOW, THEREFORE, if the above bounded Principal, CONTRACTOR, Company or Corporation or its Subcontractor, shall well and truly perform the work contracted to be done under said contract, then this obligation to be null and void; otherwise to remain in full force and effect.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract, or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY, and no forbearance on the part of the said CITY shall operate to relieve any Surety or Sureties from liability on this bond,

and consent by said Surety is hereby given, and the said Surety hereby waives the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on \_\_\_\_\_

APPROVED AS TO SURETY:

By \_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_

\_\_\_\_\_  
SURETY

APPROVED AS TO FORM & CONTENT:  
LORI M. ASUNCION  
OFFICE OF THE CITY ATTORNEY

By \_\_\_\_\_  
ATTORNEY-IN-FACT

By \_\_\_\_\_  
DEPUTY CITY ATTORNEY

SAMPLE

## BOND FOR LABOR AND MATERIAL

KNOW ALL MEN BY THESE PRESENTS:

That we, **NAME OF CONTRACTOR**, a (**INDICATE STATUS: STATE OF [NAME STATE] CORPORATION, PARTNERSHIP, OR SOLE PROPRIETORSHIP**), as Principal and \_\_\_\_\_, a corporation, organized and existing under the laws of the State of \_\_\_\_\_ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the City of Stockton, a municipal corporation, duly created and existing under and by virtue of the laws of the State of California, and unto any and all material suppliers, persons, companies, or corporations furnishing materials, provisions, provender or other supplies used in, upon, for or about the performance of the work contemplated to be executed or performed under the contract hereinafter mentioned, and all persons, companies, or corporations renting or hiring teams, or implements of machinery, for or contributing to said work and all persons who perform work or labor upon the same, and all persons who supply both work and materials, and whose claims have not been paid by the contractor, company or corporation in the just and full sum of **SPELL OUT DOLLAR AMOUNT AND xx/100 DOLLARS (\$xxx enter dollar amount)**, in lawful money of the United States of America (being 100% of the contract price) for the payment whereof well and truly to be made to said City of Stockton and to said persons jointly and severally, the said principal and Surety bind themselves, their successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligations is such that the above bounden Principal has simultaneously entered into a contract of even date herewith, with the CITY, to do and perform the following work, to-wit:

**NAME OF PROJECT  
(PROJECT NO. xxx/FEDERAL PROJECT NO.)**

NOW, THEREFORE, if the above bounden Principal, CONTRACTOR, Company or Corporation or its Subcontractor, fail to pay for all materials, provisions, provender, or other supplies, or teams, used in, upon, for or about the performance of the work

contracted to be done, or for any work or labor done thereon of any kind, the Surety on this bond will pay the same, in an amount not exceeding the sum specified in this bond, provided that any and all claims hereunder shall be filed and proceedings had in connection therewith as required by the provisions of Division 3, Part 4, Title 15, Chapter 5, Article 1 of the Civil Code of California, provided that in case suit is brought upon this bond, a reasonable attorney's fee shall be awarded by the Court to the prevailing party in said suit; said attorney's fee to be fixed as costs in said suit, and to be included in the judgment therein rendered.

No prepayment or delay in payment and no change, extension, addition or alteration of any provision of said contract or in said plans or specifications agreed to between the said CONTRACTOR and the said CITY and no forbearance on the part of the said CITY shall operate to relieve any surety or sureties from liability on this bond, and consent to make such alterations without further notice to or consent by any such surety is hereby given, and the said sureties hereby waive the provisions of Sections 2819 and 2845 of the Civil Code of the State of California.

SIGNED AND SEALED on \_\_\_\_\_.

APPROVED AS TO SURETY:

By \_\_\_\_\_

PRINCIPAL

\_\_\_\_\_

SURETY

APPROVED AS TO FORM & CONTENT:  
LORI M. ASUNCION OFFICE OF THE CITY ATTORNEY

By \_\_\_\_\_

ATTORNEY-IN-FACT

By \_\_\_\_\_

DEPUTY CITY ATTORNEY