

Appendix 12. Additional Labor Requirements

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APPENDIX 12

Additional Labor Requirements



12.1 PURPOSE

The purpose of this Appendix is to set forth certain State labor laws and related requirements that shall apply to the Company and its Subcontractors in connection with the performance of the Design-Build Work.

12.2 CHARACTER OF WORKERS

Only skilled and properly licensed and/or certified workers shall be employed in the performance of Design-Build Work requiring special qualification. When required in writing by SRWA, the Company or any Subcontractor shall discharge any person who is, in the opinion of SRWA, incompetent, unfaithful, disorderly or otherwise not qualified, and shall not again employ such discharged person for performance of any Design-Build Work except with the consent of SRWA. This includes, but is not limited to, the discharge or discipline of any employee of the Company or its Subcontractors who harass or otherwise engage in inappropriate behavior towards SRWA personnel or the public. Such discharge shall not be the basis of any claim for compensation or damages by the Company against SRWA or any of its officers, employees, consultants or agents. The Company shall indemnify, defend and hold harmless SRWA in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company) of the Contract, from and against all Loss and Expense resulting from any claim filed by any and all such persons discharged pursuant to this section and from any claim filed by any person alleging harassment or other inappropriate conduct caused by an employee or agent of the Company or its Subcontractors.

12.3 SAFETY, SANITATION, AND MEDICAL REQUIREMENTS

The Company and its Subcontractors and employees shall promptly and fully carry out the safety, sanitary, and medical requirements imposed by the Contract Standards and as may from time to time be prescribed by SRWA, to ensure that proper work shall be done, and that the safety and health of the employees and of the local communities shall be preserved and safeguarded. In case such requirements and orders are not observed by the Company, they may be enforced by SRWA at the Company's expense. The Company shall summarily dismiss and shall not again engage, except with the written consent of SRWA, any employee who violates the safety, sanitary, or medical requirements described in this section. Such discharge shall not be the basis of any claim for compensation or damages by the Company against SRWA or any of its officers, employees, consultants or agents. The Company shall indemnify, defend and hold harmless SRWA in accordance with and to the extent provided in Section 8.5 (Indemnification by the Company) of the Contract, from and against all Loss and Expense resulting from any claim filed by any and all such person(s) discharged pursuant to this section. The Company and its Subcontractors shall comply with applicable federal and State laws, regulations and construction safety orders concerning employee and worker safety, including, but not limited to, having an injury and illness prevention plan, code of safe practices, appropriate first aid facilities and supplies, proper accident and injury investigation and reporting, confined space rules, emergency action plan, fire prevention plan, hazard communication and response plan, and hearing conservation program.

12.4 NONDISCRIMINATION

In accordance with California Labor Code Section 1735, throughout the performance of the Design-Build Work, the Company and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age (over forty (40) years of age), or sexual orientation (as those discrimination bases are defined in California Government Code Sections 12926 and 12926.1) of such persons, except as provided in California Government Code Section 12940. The Company and any Subcontractor violating the foregoing nondiscrimination provision shall be subject to penalties as may be imposed pursuant to California Labor Code Division 2, Part 7, Chapter 1.

12.5 WAGES AND PREVAILING WAGE REQUIREMENT

Compliance with the applicable federal and State wage and hour laws and regulations is the sole responsibility of the Company. In particular, the Company and its Subcontractors shall comply with the State prevailing wage law requirement. Copies of the prevailing rate of per diem wages are on file at SRWA's office and will be made available to any interested party on request. The prevailing wage rates also are available from the State Department of Industrial Relations at http://www.dir.ca.gov/OPRL/statistics_and_databases.html

The Company acknowledges that it has examined the prevailing rate of per diem wages as established and published by the California Director of Industrial Relations. The Company agrees that it shall pay workers not less than the applicable prevailing rate of per diem wages, as the same may be amended from time to time. The Company shall post at the Sites a copy of the applicable prevailing rate determination and any other job site notices prescribed by the Department of Industrial Regulations. This Contract is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

The Company shall forfeit as a penalty to SRWA not more than \$200 and not less than \$40 for each calendar day or portion thereof for each worker (whether employed by the Company or a Subcontractor) paid less than the stipulated prevailing rates for any Design-Build Work performed under the Contract in violation of the provisions of the California Labor Code and in particular, Sections 1772 to 1780. The amount of this penalty shall be determined by the State Labor Commissioner and shall be based on consideration of the Company's or the Subcontractor's mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages, or the previous record of the Company or the Subcontractor in meeting its prevailing wage obligations, or the Company's or the Subcontractor's willful failure to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Company or the Subcontractor had knowledge of its obligations under Labor Code Sections 1720, et seq. In addition to the aforementioned penalty, each worker shall be paid the difference between the prevailing wage rate and the amount paid to each worker for each calendar day or portion thereof for which the worker was paid less than the prevailing wage.

SRWA shall not recognize any claims for additional compensation because of the payment of the prevailing wages required by the Contract. The possibility of wage increases has been considered by the Company in determining its price, and shall not under any circumstances be considered as the basis of a claim against SRWA for additional compensation.

12.6 HOURS OF WORK AND OVERTIME

In accordance with the provisions of the California Labor Code, and in particular, Sections 1810 to 1815, eight hours of labor shall constitute a day's work, and no worker, in the employ of the Company, or any Subcontractor, doing or contracting to perform any part of the Design-Build Work, shall be required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of those provisions; provided that subject to Labor Code Section 1815, a worker may perform work in excess of either eight hours per day or 40 hours during any one week upon compensation for all hours worked in excess of eight hours per day or 40 hours during any one week at not less than one and one-half times the basic rate of pay. Except as previously provided relating to compensation paid at one and one-half times the basic rate, the Company shall forfeit as a penalty to SRWA the sum of \$25 for each worker employed in the performance of the Design-Build Work by it or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of Sections 1810 through 1815.

12.7 PAYROLL RECORDS

The Company shall comply in all respects with the provisions of Labor Code Section 1776, which provisions are incorporated herein by this reference. In accordance with Section 1776, the Company and each Subcontractor shall keep an accurate record showing the names, addresses, social security numbers, work classifications, straight-time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it in connection with the performance of the Design-Build Work specified herein, which record shall be open at all reasonable hours at the principal office of the Company to the inspection of SRWA, federal and State officials and agents thereof. Certified copies of the payroll records shall be furnished or made available for inspection to others as provided in Section 1776. These payroll records shall be certified and shall be on forms provided by the State Division of Labor Standards Enforcement, or shall contain the same information as the forms provided by the State Division of Labor Standards Enforcement. The Company shall file a certified copy of the payroll records with the entity that requested the records within 10 days after receipt of a written request. Except as provided in Labor Code Section 1776, any copy of records made available for inspection as copies and furnished upon request to the public or any Governmental Body by SRWA, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Company or the Subcontractor shall not be marked or obliterated. The Company shall inform SRWA of the location of the payroll records, including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address. The Company shall have 10 days in which to comply subsequent to receipt of written notice specifying in what respects the Company must comply with this section. In the event that the Company fails to comply with the 10 day period, the Company shall, as a penalty to SRWA, forfeit \$100 for each calendar day, or

portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

12.8 EMPLOYMENT OF APPRENTICES

The Company and its Subcontractors shall comply with California Labor Code Sections 1777.5, 1777.6, and 1777.7, pertaining to employment of indentured apprentices, the provisions of which are hereby incorporated by reference into this Contract.

12.9 WORKERS' COMPENSATION INSURANCE

The Company acknowledges its obligation to purchase workers' compensation insurance coverage or undertake approved self-insurance in accordance with the requirements of the California Labor Code and the Contract. By executing the Contract, the Company shall be deemed to have executed and filed with SRWA the following certification regarding workers' compensation coverage in accordance with California Labor Code Section 1861: "We are aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability of workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and we will comply with such provisions before commencing the performance of the work of this Contract."

12.10 CONTRACTOR REGISTRATION

In accordance with California Labor Code Section 1771.1(a), the Company and its Subcontractors may not engage in the performance of any work under this Contract unless currently registered with the California Department of Industrial Relations and qualified to perform public work pursuant to California Labor Code Section 1725.5.

12.11 SKILLED AND TRAINED WORKFORCE REQUIREMENT

As required by California Public Contract Code Section 22164(c), the Company shall use (and shall require its Subcontractors to use) a "skilled and trained workforce" (as defined at California Public Contract Code Section 2601) to perform all work on the Contract that falls within an apprenticeable occupation in the building and construction trades in accordance with California Public Contract Code Division 2, Part 1, Chapter 2.9 (commencing with Section 2600).

12.11.1 Skilled and Trained Workforce Reporting

The Company and any subcontractor or subconsultant at every tier shall comply with the provisions set forth in California Public Contract Code section 2602 regarding the use of a skilled and trained workforce. The Company shall provide to SRWA, on a monthly basis while the Design-Build Work is being performed, a report demonstrating compliance with the skilled and trained workforce requirements. If the Company fails to provide the monthly report as required by this section, or provides a report that is incomplete, SRWA shall withhold further payments until a complete report is provided and further compliance is achieved in accordance with California Public Contract Code section 2602.