



THE PORT
OF LOS ANGELES

Executive Director's
Report to the
Board of Harbor Commissioners

DATE: NOVEMBER 9, 2021

FROM: CONSTRUCTION

**SUBJECT: RESOLUTION NO. _____ -
AWARD AND APPROVAL OF CONSTRUCTION CONTRACT
CONTRACTOR: HERZOG/ STACY AND WITBECK, A JOINT VENTURE
PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

SUMMARY:

Staff requests approval of an award of a construction contract (Contract) to Herzog/ Stacy and Witbeck, A Joint Venture (Joint Venture), to construct the Pier 400 Corridor Storage Tracks Expansion (Project). The Project consists of improvements at the Pier 400 rail storage yard and bridge in order to accommodate projected future rail volumes on Terminal Island. The Joint Venture, located at 600 S. Riverside Road, St. Joseph, Missouri 64507, is the lowest responsive and responsible bidder. The Contract amount of \$57,947,265, plus a 10% contingency, is \$63,741,991.50. Certain expenses, up to \$21,645,000, incurred under the proposed Contract are eligible for reimbursement under grant funding provided by the Federal Trade Corridor Enhancement Program through the State of California Department of Transportation (Caltrans). The City of Los Angeles Harbor Department (Harbor Department) will be responsible for \$42,096,991.50 in expenses, net of grant reimbursements. The Contract duration is 810 calendar days.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of the California Environmental Quality Act (CEQA) under Article II Section 2(i) of the Los Angeles City CEQA Guidelines;
2. Find that in accordance with the Los Angeles City Charter Section 1022, work under the Contract can be performed more feasibly by an independent contractor rather than by City employees;

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

3. Award and approve, Specification No. 2805 (Specification) for Bid Proposal Line Item Nos. 1 through 54 to the Joint Venture, in the amount of \$57,947,265; that a 10% contingency not included in the original Contract amount be applied for a total authorization of \$63,741,991.50, and authorize payment from the Harbor Department Construction Account. The Contract time for performance of the work will be 810 calendar days from the Notice to Proceed;
4. Authorize the Executive Director to execute and the Board Secretary to attest to this Contract for and on behalf of the Board;
5. Delegate and authorize the Executive Director to adjust the final bid quantities and accept the Contract upon its completion in accordance with City Charter Section 655 (g); and
6. Adopt Resolution No. _____.

DISCUSSION:

Project Objectives – The Project will expand the existing Pier 400 rail storage yard to accommodate projected future rail volumes on Terminal Island. Additionally, the Project will provide increased capacity for transporting containers via on-dock rail (Transmittal 1) and will accommodate waterborne containers entering and exiting the United States. The Project will increase the number of containers being loaded and unloaded onto trains in the Port of Los Angeles, thereby reducing congestion, truck-miles traveled, and emissions. These reductions will in turn improve safety and pavement wear, as well as further the efforts of the San Pedro Bay Ports Clean Air Action Plan (CAAP) 2017 Update and the California Sustainable Freight Mobility Plan. The Project fulfills a long-standing agreement between the Ports of Los Angeles and Long Beach by relocating the Pier 400 lead track from the Port of Long Beach property onto Port of Los Angeles property. To accomplish this, the project scope relocates roughly 2,000 lead track feet of existing rail approximately 80 feet to the west into Port of Los Angeles property.

Project Description - The Project consists of improvements at the Pier 400 rail storage yard and addition of a rail bridge. Five new rail storage tracks (approximately 39,000 track feet equating to 32,000 track feet of additional storage) will be added to meet the future needs of Terminal Island. Work includes construction of rail tracks, turnouts, a crossover, switches, railroad signalization, compressed air equipment, asphalt access roadway adjacent to the storage yard expansion, installation of prestressed concrete piles and stone columns, concrete rail bridge, relocating the Reeves Avenue grade crossing, handling and disposal of contaminated soil, and utility modifications.

DATE: NOVEMBER 9, 2021

PAGE 3 OF 13

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

Contractor Laydown Area - A Contractor Laydown Area is required on all construction contracts to store material and equipment, and for Contractor personnel to be stationed in the vicinity of the project site, in order to support construction activities for the duration of the Contract. The Contractor Laydown Area is identified in the Contract (Transmittal 2) and shall be utilized for the term of the Contract.

Construction Award Process – City of Los Angeles Charter Section 371(a) - Competitive Bidding sets forth the procedure that staff followed to award the Contract. For construction contracts such as this one, the Harbor Department publishes the Notice Inviting Bids in daily newspapers and trade publications circulated in the City of Los Angeles, as well as on the Port of Los Angeles website. The Harbor Department also conducts a pre-bid conference to familiarize the prospective bidders with the Project and to answer questions related to the Contract.

Bidders submit bids through the Harbor Department's Construction Division Business Opportunity Network (CDBON) system. The opportunity to submit bids closes once a predetermined time is reached. After bid closing, bid documents and other required documents are reviewed for compliance with Harbor Department requirements. Once all information is verified, and if the lowest bidder is deemed responsive, recommendation for award of the Contract is made. If the apparent low bidder is found non-responsive, the next lowest bidder is reviewed.

In conformance with the City Charter section for competitive bidding, as stated above, the Notice Inviting Bids for the Specification was advertised on June 14, 2021 on the Port of Los Angeles website, Los Angeles Business Assistance Virtual Network, Daily Breeze, La Opinion, Eastside Journal, Dodge Construction, and Metropolitan News Company to reach out to potential bidders. A virtual pre-bid meeting was held on June 30, 2021.

As authorized by the Executive Director on June 10, 2021, the Chief Harbor Engineer received ten bids for the Contract on August 17, 2021. The bid results with the companies and their respective bid amounts are included in Transmittal 3. The Joint Venture submitted the required documents in Section 00012.09 within the time specified in the Specification. Staff has verified the Joint Venture's state license, which was found to be in good standing (Transmittal 4).

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

The Contract is subject to the terms of Project Labor Agreement No. 17-3526, as approved by the Board on September 7, 2017, and the Los Angeles City Council on December 5, 2017. Local hire is not allowed as a provision of the federal funding for this project; therefore, a Letter of Understanding, signed by both the Harbor Department and the Los Angeles/Orange Counties Building and Construction Trades Council, waives the local hire requirement for this Project and has been included in Appendix “E” of the Specification. This Contract is also consistent with the State of California Prevailing Wage provisions and minimum wage requirements per the Davis-Bacon Act provisions for Federal-aid construction projects.

Bid Protest – In a letter dated September 22, 2021, Reyes Construction, Inc. (Reyes), the second lowest bidder, submitted a bid protest pointing to specific issues and requesting the Harbor Department find the Joint Venture’s bid non-responsive due to inadequate good faith effort to meet the project DBE goal (Bid Protest).

Subsequently, in a letter dated November 2, 2021, Reyes provided a supplemental protest letter restating the same concerns in their Bid Protest. The Department forwarded both documents to Caltrans for further evaluation and Caltrans confirmed their original findings that the Joint Venture’s good faith is adequate.

Reyes Bid Protest – Department staff reviewed each issue raised by Reyes and have determined the following:

Reyes Bid Protest Issue	Department’s Review
1. Reyes states that the Joint Venture used one publication to solicit DBE quotes and that the Joint Venture should have solicited bids by other means.	1. The Joint Venture advertised the project in Dodge Data & Analytics - GreenSheet, which is an industry standard that has approximately 1.5 million subscribers, of which 520,000 are contractors and subcontractors. The Department has been using GreenSheet to advertise construction projects for over 20 years.

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**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

Reyes Bid Protest Issue	Department's Review
<p>2. Reyes also mentions that they did not find evidence of sufficient follow-up email and phone call correspondence documented in the Joint Venture's good faith efforts.</p>	<p>2. In addition to their efforts by telephone, the Joint Venture used an electronic software called B2Gnow, which is a vendor management software also used by Caltrans, to communicate electronically with DBEs and receive confirmation of email delivery. The Joint Venture submitted a spreadsheet documenting the dates in which they sent emails and made telephone calls to subcontractors and suppliers, and they provided samples of emails generated from the B2Gnow software to document their good faith effort.</p>
<p>3. Reyes states that the quantity of sourced DBEs is not an issue, but the Joint Venture appears to not have used the California Unified Certification Program (CUCP), which is a database of certified DBEs maintained by Caltrans and referenced in the Specification.</p>	<p>3. The Joint Venture in fact did use the CUCP to find DBEs that perform the work in which they were seeking DBE bids. The Joint Venture provided documentation that they outreached to DBEs found through the CUCP, by providing plans and specifications, addenda, and Department-issued responses to bidder's questions.</p>
<p>4. Reyes states that the Joint Venture did not list DBE firms for work related to aggregate supply and track material supply. Reyes obtained quotes from railroad ballast suppliers (Grit & Gravel and Intra-Structure Aggregations, Inc.) and railroad track supplier (Hafco Services, Inc.), and they expected the same companies to have provided quotes to the Joint Venture.</p>	<p>4. Intra-Structure notified the Joint Venture that they did not intend to bid on the project. The Joint Venture did not receive quotes from DBEs for aggregate supply, and therefore did not include the selected non-DBEs in their good faith effort documentation. While Reyes used Hafco for procurement of rail material, the Joint Venture selected them for the precast track modules only, due to their concerns of Hafco's limitations in storing and transporting rail material.</p>

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

Disadvantaged Business Enterprise Program – Projects that receive federal funding are subject to federal Disadvantaged Business Enterprise (DBE) requirements. Therefore, the Small Business Enterprise and Very Small Business Enterprise program was replaced with the DBE program. As defined in the Specification, a DBE is a small business, pursuant to Section 3 of the Small Business Act and relevant regulations, which is majority owned and operated by one or more socially and economically disadvantaged individuals. Those individuals who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Subcontinent Asian Americans, and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act are categorized as socially and economically disadvantaged individuals. The DBE program is administered by Caltrans on behalf of the federal government and the Department will be responsible to verify compliance with the federal regulations and documentation requirements of Caltrans' DBE program. The DBE participation goal for the project is 20%.

When a bidder is unable to meet the goal, federal regulations require the bidder document and submit the good faith efforts it made to meet the DBE participation goal (29 CFR 46). Caltrans specifies that Good Faith Efforts are evaluated based on the following, as documented by Caltrans Exhibit 15-H "Proposer/Contractor Good Faith Efforts" form:

1. Names and dates of advertisements requesting DBE participation for the project
2. Names of agencies, organizations, or groups contacted to provide assistance in contacting, recruiting, and using DBE firms
3. Names and dates of written notices sent to certified DBEs soliciting bids and follow-up documentation
4. Subcontract work items made available to DBE firms
5. Efforts made to assist interested DBEs in obtaining plans and specifications
6. Efforts made to assist interested DBEs in obtaining bonds, lines of credit, insurance, equipment, supplies, materials, or services
7. Reason for bidder's rejection of DBE firms, firms selected for the work, and price difference

In accordance with Appendix A of 29 CFR 46, the sufficiency of good faith efforts is a judgment call and should not be made using quantitative formulas.

Federal regulations further states that bidders will not be penalized or considered in noncompliance if DBE participation falls short of the project's goal (49 CFR 26). Bidders are also not required to accept unreasonable quotes in order to satisfy contract goals (Appendix A, 49 CFR 26).

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

Contractor's Good Faith Efforts – The Joint Venture provided Good Faith Effort documentation that they have committed to 10.12% DBE participation. The Joint Venture submitted all required documentation in order to fulfill this requirement, which includes:

1. Publication advertisement soliciting DBE participation was submitted through Dodge Data & Analytics - GreenSheet continuously from June 23, 2021 through August 17, 2021
2. Latino Business Chamber, Greater Los Angeles African American Chamber of Commerce, American Indian Chamber of Commerce, Chinese Chamber of Commerce, Women's Business Center, and National Association of Women Business Owners of Los Angeles were contacted to provide assistance in recruiting DBE firms
3. Approximately 130 firms, determined to be DBEs using Caltrans' CUCP database, were contacted to solicit bids, notified of bid addenda, provided the questions and answers issued by the Department, and those interested were telephoned and/or emailed to follow up on their intention to bid on the Project
4. Approximately \$29,052,500 (50.14%) of work was made available to DBE firms
5. Assistance in obtaining plans, specifications, and requirements to perform the work was made available to all DBE firms contacted
6. Assistance in obtaining bonds, lines of credit, insurance, equipment, supplies, materials, or services was made available to all DBE firms interested
7. In the event that a DBE provided a quote and was not selected, the reasons for selection and price difference between the firms was provided

The Joint Venture received 29 quotes from DBE firms and ultimately selected 13 DBEs to perform work on the project, as seen in Table 1 below. In comparison, Reyes received 33 quotes from DBE firms and ultimately selected 14 DBEs to perform work on the project.

SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805TABLE 1: Joint Venture's DBE Commitment

No.	Description of Work	DBE Firm	Firm Details	Quote	Reason, if DBE Sub Not Selected
1	Precast Track Modules	Hafco Services Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 65,137.00	--
2	Flatwork	Fehoko Concrete Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 76,252.00	--
3	Trucking for Precast Deck Panels	B-Line, Inc	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 442,800.00	--
4	Trucking	Monzon & Son Enterprise, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 427,500.00	--
		Accetta Construction Equipment Services	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 466,320.00	Awarded to another DBE
		Anytime Dumping, Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ -	Incomplete quote; missing scope of work
		B&D Equipment Rental Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 668,392.00	Awarded to another DBE
5	Contaminated, Non-RCRA, and RCRA Soil Transport and Disposal	Miranda Logistics Enterprise, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 550,800.00	--
		B&D Equipment Rental Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 734,400.00	Awarded to another DBE
		Global Transloading, LLC	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 961,200.00	Awarded to another DBE
		Deltech Engineering, Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 1,944,000.00	Awarded to another DBE
6	Environmental Monitoring	Endemic Environmental Services	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 143,250.00	--
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SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805TABLE 1: Joint Venture's DBE Commitment
(continued from previous page)

No.	Description of Work	DBE Firm	Firm Details	Quote	Reason, if DBE Sub Not Selected
7	Fencing	Ace Fence Company	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 1,069,695.00	--
		In-Line Construction, Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 1,552,883.00	Incomplete quote (Missing scope of work); went with another DBE
8	Site Electric	Siege Electric, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 1,505,219.00	--
		Global Electric	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 3,895,982.00	Awarded to another DBE
9	Signal Systems	Highball Signal, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 756,612.00	--
10	Geotextile and SWPPP	Triumph Geo-Synthetics, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 58,466.00	--
11	Survey	Hunsaker & Associates, Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 212,820.00	--
		Moran Consulting Corporation	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 100,549.00	Incomplete quote (Missing scope of work); went with another DBE
12	Street Sweeping	4 Kay's Sweeping Inc.	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 183,696.00	--
		Cindy Trump Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 212,380.00	Awarded to another DBE
		Hard Hat Sweeping, Inc.	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 212,380.00	Awarded to another DBE
13	Photo Documentation	Morgner Construction Management	<input checked="" type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 117,200.00	--

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**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

**TABLE 1: Joint Venture's DBE Commitment
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No.	Description of Work	DBE Firm	Firm Details	Quote	Reason, if DBE Sub Not Selected
14	Elastomeric Bearing Pads	Scougal Rubber Corporation	<input type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 175,014.00	--
		Rupert Construction Supply	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 203,772.00	16% higher than Scougal
15	Reinforcing Steel	Pacific Steel Group	<input type="checkbox"/> DBE Firm <input checked="" type="checkbox"/> Selected Firm	\$ 542,976.00	--
		LA Steel Services	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 774,900.00	43% higher than Pacific Steel
		Heavy Metal Steel Company	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 2,694,469.00	396% higher than Pacific Steel
		Marvella Steel Placers	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 726,840.00	34% higher than Pacific Steel
		Legacy Reinforcing Steel	<input checked="" type="checkbox"/> DBE Firm <input type="checkbox"/> Selected Firm	\$ 783,887.00	44% higher than Pacific Steel
Total DBE Commitment on the Project				\$ 5,609,447.00	
Bid Amount (Excluding Contingency Bid Items)				\$55,422,265.00	
Total DBE Commitment (%)				10.12%	

The primary difference between the first and second lowest bidders' DBE participation is the use of Hafco Services, Inc. (Hafco) as a railroad material supplier. Reyes received a quote from Hafco for \$8,055,875, of which 60%, or \$4,833,525, contributed towards DBE participation. Hafco's quote contributed 8.7% to Reyes' DBE participation. Hafco garners 60% DBE credit since they are classified as a wholesaler, in that they purchase material from a rail manufacturer and supply the material to the contractor. The Joint Venture selected Hafco for railroad track modules material only, in the amount of \$108,562, of which 60% is \$65,137 or 0.12%, due to their concerns of the supplier's limitations in storing and transporting rail material.

DATE: NOVEMBER 9, 2021

PAGE 11 OF 13

**SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805**

Department staff performed a comprehensive review of the Joint Venture's good faith effort using the attached Caltrans Exhibit 9-E: Evaluation of Good Faith Efforts, in accordance with the requirements of the Specification. Our review has found that the Joint Venture has made an adequate good faith effort to meet the DBE goal and has determined the Joint Venture's bid is responsive (Transmittal 5).

Caltrans Review – Caltrans is the agency that administers the federal DBE and good faith effort program. The Department contacted Caltrans to conduct an independent good faith effort compliance review, and their attached review concurs with the Department's determination that the Joint Venture demonstrated adequate good faith efforts to meet the contract DBE goal. After receiving the protest letters from Reyes, the Department shared them with Caltrans, and Caltrans responded confirming their original findings that the Joint Venture made an adequate good faith effort (Transmittal 6).

Department staff and Caltrans both independently found that the Joint Venture fulfilled the good faith effort requirement. A response letter was sent to Reyes on October 12, 2021. As such, staff recommends approval of an award of a construction contract to the Joint Venture's bid as the lowest responsive, responsible bid (Transmittal 7).

ENVIRONMENTAL ASSESSMENT:

The proposed action is the approval of the Contract award to the Joint Venture to construct the Project, which is an activity for which the underlying project has been previously assessed in the Terminal Island Railyard Enhancement Project Mitigated Negative Declaration (TIRE MND) (SCH# 2018081086), which was certified by the Board on October 4, 2018, and the 2020 Addendum to the 2018 TIRE MND considered by the Board on August 6, 2020. As National Environmental Policy Act Lead Agency, Caltrans certified a categorical exclusion on December 5, 2019 and re-validated the categorical exclusion on April 29, 2020. Therefore, the Director of Environmental Management has determined that the proposed action has been previously evaluated pursuant to the requirements of CEQA in accordance with Article II Section 2(i) of the Los Angeles City CEQA Guidelines.

SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805

FINANCIAL IMPACT:

Funds in the amount of \$5,123,970 are budgeted for Fiscal Year 2021-2022 in Account No. 54510 (Capital Construction Services), Center No. 1140, and Program No. 000. Funds are expected to be expended as follows:

FY 2021-2022:	\$ 5,123,970.00
FY 2022-2023:	\$ 35,000,000.00
FY 2023-2024:	\$ 23,618,021.50
Total:	\$ 63,741,991.50

Funds for future fiscal years will be requested to be budgeted as part of the annual budget process, upon Board approval.

This Project is reimbursable up to \$21,645,000 under grant funding provided by the Federal Trade Corridor Enhancement Program through Caltrans, Federal I.D. No. TECP-SB1-5006(882). Subsequent to Project completion, the Harbor Department will be responsible for \$42,096,991.50 in expenses, net of grant reimbursements.

Although the Joint Venture is not obligated to perform any work under the Contract in any fiscal year in which no appropriation for the Contract has been made, the Joint Venture agrees to resume performance of the work required by the Contract on the same terms and conditions for a period of 60 days after the end of the fiscal year if an appropriation is approved within that 60-day period. The Joint Venture is responsible for maintaining all insurance and bonds during this 60-day period. The time for performance shall be extended during this period until the appropriation is made; however, such extension of time is not compensable.

If, in any subsequent fiscal year, funds are not appropriated for work required by the Contract, the Contract shall be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

DATE: NOVEMBER 9, 2021

PAGE 13 OF 13

SUBJECT: PIER 400 CORRIDOR STORAGE TRACKS EXPANSION
SPECIFICATION NO. 2805

CITY ATTORNEY:

The Office of the City Attorney reviewed and approved the Specification as to form and legality on June 7, 2021.

TRANSMITTALS:

1. Aerial Site Plan
2. Contractor Laydown Area
3. Analysis of Bids
4. Contractor, Subcontractor, and Supplier List
5. Harbor Department Evaluation of Good Faith Efforts
6. Caltrans Evaluation of Good Faith Efforts
7. Bid Protest Letters and Response Letter

FIS Approval: MB

CA Approval: SO



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